

ARTICLES

LAWYER, KNOW THYSELF: A REVIEW OF EMPIRICAL RESEARCH ON ATTORNEY ATTRIBUTES BEARING ON PROFESSIONALISM*

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INTRODUCTION

In the last ten to fifteen years, three related crises have emerged with respect to the legal profession: "professionalism" has declined, public opinion of attorneys and the legal profession has plummeted, and lawyer dissatisfaction and dysfunction have increased.¹ At the same time, there appears to be a perception that attorneys differ from "other people" in a variety of ways. No one has attempted to demonstrate systematically, however, whether an "attorney personality" exists, and if so, whether it is linked to these crises in the legal profession.

The approach taken by those scholars who have examined the problems in the legal profession generally involved theorizing causes and then proposing solutions. Theorized causes often focus on external, environmental changes affecting the practice of law. Proposed solutions to this "tripartite crisis" often call for a wholesale change in attorneys' values, ideals, ethics, and morals, or for attorneys to develop more humanistic, emotional, and interpersonally sensitive attributes and behavior. None of the commentators has investigated whether there are inherent "lawyer" personality characteristics or

1. See Joseph W. Bellacosa, *A Millennial Renewal of the "Spirit of the Bar,"* 100 DICK. L. REV. 505, 507 (1996) ("We can all agree that problems abound in the legal profession . . ."); Cardinal Joseph Bernardin, *The Dark Side of the Legal Profession*, 14 HUM. RTS. Q. 20, 21 (1987) ("[I]t is important that we be open and honest about the problems which confront the legal profession.").

attributes contributing to these problems. Further, none has considered whether inherent "lawyer" characteristics counter efforts to solve the problems. Instead, proposed causes and solutions have been based almost exclusively on theory and personal experience, focusing on external environmental factors and overt behavior. The limited empirical research that has been conducted in the area focuses on identifying and documenting the existence of the problems.²

Before continuing the discussion on the causes of and solutions to this "tripartite crisis," the following questions should be addressed: (1) whether attorneys' characteristics, goals, values, ideals, ethics, or morals actually differ from those of the general American adult population; (2) whether these differences, if any, are responsible for the crisis; (3) whether the offending attributes are pre-existing in those who choose to come to law school or are developed in law school; and (4) whether and how those attributes can be changed in attorneys. Empirical data collected over the last forty years indicates two things: first, that lawyers differ significantly and in consistent ways from the general adult population, particularly in their decision-making approaches, in certain personality characteristics, and in their values;³ and second, that while law school does have a dramatic effect on at least some individuals, there are some consistent, pre-existing traits which are characteristic of those who choose a legal career.⁴ No data has been collected on how to change attorneys.

Attorneys appear to differ from the general population in the way that they approach problems and make decisions, what they value and respond to, and what motivates them. Some of their personality and cognitive characteristics appear to be present prior to law school, and some appear to be amplified by or inculcated in law school. These

2. As Timothy Terrell and James Wildman observed, "[L]awyers have sought a cure for a disease before agreeing on its nature, symptoms, and causes. We want to be happy in our professional lives without investigating seriously why many of us are unhappy. We want, in short, to moralize without examining our morals." Timothy P. Terrell & James H. Wildman, *Rethinking "Professionalism,"* 41 EMORY L.J. 403, 403 (1992). Terrell and Wildman, however, propose to examine the historical context for the problems, not the empirical or psychological bases. See *id.* at 404 (proposing to examine "the profession's past and its present"); see also Rob Atkinson, *A Dissenter's Commentary on the Professionalism Crusade*, 74 TEX. L. REV. 259, 271 (1995) (arguing that researchers must adequately define "profession" and its derivatives before they can develop an accepted definition of "professionalism") (citing Terrell & Wildman, *supra*, at 403); Connie J.A. Beck et al., *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers*, 10 J.L. & HEALTH 1, 45, 57-58 (1995-96) (noting that newly practicing lawyers report "significant psychological distress symptoms well beyond that expected in a normal population").

3. See *infra* Part II.

4. See *infra* Part II.A.5.

differences may explain (at least in part) why public opinion of lawyers and lawyer satisfaction are so low.⁵ They may also shed light on the causes of the decline in professionalism.

This Article demonstrates that attorneys and persons choosing to attend law school have specific empirically demonstrable personality characteristics, and that these characteristics are partially responsible for the current crisis in the legal profession. It proposes that these characteristics which have been entirely ignored in scholarly treatment of the topic, are unlikely to change.⁶ Next, this Article examines empirical research regarding attorneys and law students to determine the characteristics, traits, qualities, attitudes, motivations, values, morals, ideals, and goals (collectively, "attributes") of individuals in the legal profession. Empirical research regarding the effect of legal education will also be investigated in order to distinguish pre-existing characteristics from those that are developed in law school. Moral development of law students and lawyers will be examined separately. Finally, this Article evaluates and discusses possible causal relationships between each of the three crises in the legal profession and these attributes.⁷

I. THE TRIPARTITE CRISIS: PROFESSIONALISM, PUBLIC OPINION, AND LAWYER DISSATISFACTION

In recent years, the legal profession has become increasingly concerned with "professionalism,"⁸ as well as with the public's

5. If these qualities are indeed causally related to the current crises, however, it is unclear why they have become problematic *now*. It is possible that the external stresses being placed on the legal profession have simply exacerbated pre-existing problems to the extent that they are now evident. A dysfunctional system may function reasonably well in a state of equilibrium, but introducing external stressors that severely tax the system may cause it to break down and cease to function. See JOSEPH H. BROWN & DANA H. CHRISTENSEN, *FAMILY THERAPY: THEORY AND PRACTICE* 21 (1986) (stating that when a certain amount of environmental and external stressors reach a critical mass a crisis in the "system" often results); see also JOHN BRADSHAW, *THE FAMILY* (1988) (characterizing family as a "system").

6. Many of the proposed solutions to the problems are likely to fail because they have been proposed without an understanding and respect for these inherent "lawyer" attributes, for the precise impact of legal education, or for the psychological mechanisms necessary for lasting personality change. A critical evaluation of these proposed solutions is beyond the scope of this Article.

7. Additional research is also proposed. As discussed throughout this Article, there is a lack of consistency in the empirical research on attorneys and law students. There have also been dramatic changes in the demographic makeup of the lawyer population in the last twenty years (specifically, the inclusion of women and minorities) which as yet have not been properly addressed.

8. See generally Don J. Young & Louise L. Hill, *Professionalism: The Necessity for Internal Control*, 61 TEMP. L. REV. 205, 205 (1988) (discussing increased focus of legal community on ethics and professional conduct, evidenced by rules of conduct approved by American Bar Association); Ronald D. Rotunda, *Professionalism, Legal Advertising, and Free Speech in the Wake of Florida Bar v. Went For It, Inc.*, 49 ARK. L. REV. 703, 703 (1997) (noting that legal advertising

perception of attorneys' credibility, morality, and utility. While it is a nebulous term, "professionalism" has been used to mean several different things.⁹ First, it is often used to set apart a profession from a trade or occupation by way of characteristics such as advanced educational and licensing requirements, regulation by government or by the profession itself, and a stated commitment to public service¹⁰ for which financial remuneration is incidental.¹¹ Second, it can refer to a set of ideals with which the members of a profession conform on a voluntary basis, that are not enforceable or actionable if breached.¹² Justice Sandra Day O'Connor, dissenting in the 1988 case, *Shapero v. Kentucky Bar Ass'n*,¹³ stated that a profession differs from other occupations in that membership "entails an ethical obligation to temper one's selfish pursuit of economic success by adhering to standards of conduct that could not be enforced either by legal fiat or through the discipline of the market."¹⁴ In a broader sense, professionalism refers to those goals, values, and attitudes which exemplify the nobler aspects of the practice of law and that enhance the public image of lawyers and the legal profession.

casts bad light on lawyers resulting in move away from professionalism); Daniel L. Zelenko, Note, *Do You Need A Lawyer? You May Have to Wait 30 Days: The Supreme Court Went Too Far in Florida Bar v. Went For It, Inc.*, 45 AM. U. L. REV. 1215, 1216 (1996); Justice O'Connor Criticizes Lawyers for 'Rambo' Tactics, WASH. POST, Apr. 4, 1993, at A27.

9. See ABA Comm. on Professionalism, "... In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism (1986), reprinted in 112 F.R.D. 243, 261 (1986) [hereinafter "ABA Blueprint"] (describing professionalism as "an elastic concept the meaning and application of which are hard to pin down"). The president of The Florida Bar simply defined professionalism as the opposite of "eat or be eaten." John W. Frost, II, "You Should Never Take More Than You Give," FLA. B.J., July-Aug. 1996, at 6. Mr. Frost stated further that professionalism "includes being civil; being honorable; showing respect for, and expecting respectability from, our fellow lawyers; and cooperating in professional relationships whenever possible without compromising the maximum benefit of our clients, those people who make our professional lives possible." *Id.*

10. See Atkinson, *supra* note 2, at 271 (describing ABA's attempt to define boundaries of conduct that fit into particularized concepts of "professional" behavior).

11. For example, professionalism has been defined as "pursuing a learned art as a common calling in the spirit of public service—no less a public service because it may incidentally be a means of livelihood." ABA Blueprint, *supra* note 9, at 261 (quoting Roscoe Pound, former dean of Harvard Law School); see Walter P. Armstrong, Jr., *Professionalism: What Lies Ahead*, 30 TENN. B.J. 12, 14 (1994) (quoting Dean Pound and explaining that professionalism means that public service is primary to the endeavor, and earning a living is secondary); Ellen S. Podgor, *Form 8300: The Demise of Law as a Profession*, 5 GEO. J. LEGAL ETHICS 485, 530 n.319 (1992) ("A new professionalism is emerging complete with the adoption of creeds and standards designed to restore public confidence in attorneys and to reinstate positive feelings among lawyers about the profession.").

12. See Atkinson, *supra* note 2, at 275. Atkinson describes this definition of professionalism as a "focus of [a]spiration," entailing "voluntary conformity with legally unenforceable standards," and "the hope of transcending, or at least supplementing, law with gospel," in a reference to the religiosity he perceives in the current professionalism movement. See *id.* at 263-64, 275.

13. 486 U.S. 466 (1988).

14. *Shapero v. Kentucky Bar Ass'n*, 486 U.S. 466, 488-89 (1988) (O'Connor, J., dissenting).

A. *The Decline in Professionalism*

The vast majority of commentators generally agree that the level of "professionalism" displayed by attorneys has declined dramatically in the last twenty-five years.¹⁵ They point to the following as evidence: (1) a decline in civility and courteous conduct between lawyers, an increase in unethical or uncivil behavior among lawyers and judges, frequent lapses of appropriate ethical and professional conduct, and increasingly aggressive, competitive, and money-oriented legal battles, fought with a "win at all costs" approach;¹⁶ (2) increased competition and pressure to win—and the underlying theory that law has become a "business" rather than a profession, placing a heightened emphasis on materialism and money;¹⁷ (3) a decline in attorney and client

15. See, e.g., Atkinson, *supra* note 2, at 268 (arguing that economic and sociological changes, including increased competition in the practice of law, have led to "efforts to uphold professional standards"); Warren E. Burger, *The Decline of Professionalism*, 63 *FORDHAM L. REV.* 949, 950 (1995) ("As a result of the marked increase in attorney misconduct . . . the standing of the legal profession is perhaps at its lowest ebb in this century—and perhaps in its history."); Louis P. DiLorenzo, *Civility and Professionalism*, 68 *N.Y. ST. B.J.* 8, 8 (1992) (noting that 40% of lawyers and judges report lack of civility and professionalism as a significant problem); William H. Gates, *Lawyers' Malpractice: Some Recent Data About a Growing Problem*, 37 *MERCER L. REV.* 559, 567 (1986) (recognizing increasing number of attorney malpractice claims resulting from intentional wrongs and fraud); Amy R. Mashburn, *Professionalism as Class Ideology: Civility Codes and Bar Hierarchy*, 28 *VAL. U. L. REV.* 657, 657-59 (1994) (noting various symptoms evidencing decline in professionalism, including lack of civility and overly aggressive litigation style, and arguing that lawyer conduct codes inculcate majority, elite values); Paula A. Franzese, *Back to the Future: Reclaiming Our Noble Profession*, 25 *SETON HALL L. REV.* 488, 488 (1994) (book review) (listing partner and associate defections motivated by personal profit interests as one example of the deterioration of professional and ethical standards within legal community); David B. Wilkins, *Practical Wisdom For Practicing Lawyers: Separating Ideals From Ideology in Legal Ethics*, 108 *HARV. L. REV.* 458, 460-61 (1994) (reviewing ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING ETHICAL IDEALS OF THE LEGAL PROFESSION* (1994)) (discussing Kronman's arguments that nineteenth-century lawyer ideals have declined in the legal profession); Jeff Dionise, *Lawyers' Perspective*, A.B.A. J., May 1991, at 40 chart (showing that 62.9% of attorneys believe attorneys inadequately police attorney misconduct); see also William H. Rehnquist, *The State of the Legal Profession*, *LEGAL ECONOMIST*, Mar. 1988, at 44 (suggesting that shift to make practice of law more like business should be subject of careful examination by law schools).

16. See, e.g., John C. Buchanan, *The Demise of Legal Professionalism: Accepting Responsibility and Implementing Change*, 28 *VAL. U. L. REV.* 563, 567 (1994) (arguing that lawyers excuse deceptive, hyperaggressive, and other reprehensible behavior as doing their utmost for their clients); Warren E. Burger, *The Decline of Professionalism*, 61 *TENN. L. REV.* 1, 4 (1993); Roger C. Cramton, *Delivery of Legal Services to Ordinary Americans*, 44 *CASE WES. RES. L. REV.* 531, 610-11 (1994) (blaming "an extreme model of adversarial advocacy" or "Rambo Litigation" for the erosion of professionalism); Amy R. Mashburn, *Professionalism As Class Ideology: Civility Codes and Bar Hierarchy*, 28 *VAL. U. L. REV.* 657 (1994); Carrie Menkel-Meadow, *Is Altruism Possible in Lawyering?*, 8 *GA. ST. U. L. REV.* 385, 401-02 (1992) (acknowledging problems of zealous advocacy); Edward D. Re, *The Causes of Popular Dissatisfaction with the Legal Profession*, 68 *ST. JOHN'S L. REV.* 85, 86-99 (1994); Seth Rosner, *A Decade of Professionalism*, 6(4) *PROF. LAW.* 2, 2 (1995) (stating that the practice of law is "no longer fun").

17. See SOL M. LINOWITZ, *THE BETRAYED PROFESSION: LAWYERING AT THE END OF THE TWENTIETH CENTURY* 245 (1994) (stating that lawyering has become too profit-driven); Louise A. LaMothe, *Opening Statement, Where Are We Going Anyway?*, 19 *LIT.* 1, 1-2 (1992) (commenting on discontent among attorneys); Re, *supra* note 16, at 98 (suggesting that law has become too

loyalty to the law firm;¹⁸ (4) frequent and abrupt dissolutions and reconstitutions of large law firms;¹⁹ (5) an increase in aggressive lawyer advertising;²⁰ and (6) a perceived general decline in lawyers' values, ideals, and morals.²¹

B. *The Decline in Public Perception of Lawyers*

The poor public perception of lawyers confirmed by a 1978 poll²² has continued to decline in the 1990s.²³ Perhaps in response to this

commercialized); Rehnquist, *supra* note 15, at 44-46 (1988) (noting that, as number of U.S. lawyers doubled between 1970 and 1985, lawyers became focused on income maximization); Rosner, *supra* note 16, at 2 (explosion in number of lawyers, coupled with dramatic decrease in demand for them, is problematic for profession).

18. See Cramton, *supra* note 16, at 611 (observing that scrutiny of clients and consumer demands for responsive service reduce autonomy of individual lawyer, especially those in large firms); Rehnquist, *supra* note 15, at 44 (noting decline in loyalty to firms, including increased mobility of partners and lateral moves).

19. See Franzese, *supra* note 15, at 488-89 ("Well-established [law] firms are disintegrating, the victims of vanishing client loyalties and the attendant (as well as troubling) view of lawyers as mere vendors selling a commodity . . .").

20. See Buchanan, *supra* note 16, at 567 ("Advertising by certain lawyers . . . is unintelligent, inflammatory, and often outright misleading . . . [A]dvertisements blatantly cater to negative emotions such as fear, anger, and greed."); Burger, *supra* note 16, at 5 (criticizing so-called 'huckster' or 'shyster' advertising as an "outrageous breach of professional conduct"); Podgor, *supra* note 11, at 485-86 (marketing of legal services denigrates the profession).

21. As explained by David B. Wilkins, Anthony T. Kronman takes this position. See Wilkins, *supra* note 15, at 460-61. Wilkins explains that Kronman's position is that the central virtue of lawyers, practical wisdom and prudence, which formerly gave lawyers a sense of self-esteem and moral satisfaction in their careers, has disappeared from the ideals and the practice of the profession. See *id.* Thus, the legal profession is no longer intrinsically satisfying to those who practice law. See *id.*

22. See CHARLES W. WOLFRAM, MODERN LEGAL ETHICS 3-4 & nn.8-9 (1986) (noting decline in public opinion of lawyers based on 1978 Harris poll).

23. See Buchanan, *supra* note 16, at 563 ("[T]he public perception problems lawyers face today are deeper and more widespread than any the profession has faced before."); Jeff Barge, *Fewer Consider Law School: Schools Reporting Applications Declining*, A.B.A. J., June 1995, at 24 (citing recent decline in applications to law schools as further evidence of poor public opinion of legal profession); see also Gary A. Hengstler, *Vox Populi: The Public Perception of Lawyers: ABA Poll*, A.B.A. J., Sept. 1993, at 60, 62-63 (reporting results of survey in which the public, especially minorities, the uneducated, and the poor, expressed significant dissatisfaction with American legal profession); Raquel A. Rodriguez, *Uncivil Litigation*, BARRISTER MAG., Summer 1996, at 2 (citing John Marks, *The American Uncivil Wars*, U.S. NEWS & WORLD REP., Apr. 22, 1996, at 66 (stating that attorneys are "symbols of everything crass and dishonorable in American public life")). A proliferation of "anti-lawyer" jokes and joke books also punctuates this sentiment. See, e.g., BILL ADLER, FIRST, KILL ALL THE LAWYERS: LEGAL PROVERBS, EPITAPHS, JOKES, AND ANECDOTES (1994); JESS BRALLIER, LAWYERS AND OTHER REPTILES (1992); ARNOLD CANTOR & JODY CANTOR, LAWYER'S BIG BOOK OF FUN (1995). In contrast, however, law continues to be a high prestige occupation. See Faye Crosby & Gregory M. Herek, *Male Sympathy with the Situation of Women: Does Personal Experience Make a Difference?*, 42 J. SOC. ISSUES 55, 58 (1986) (discussing empirical study in which lawyers and doctors were defined as "high prestige occupations" while sales clerks and truck drivers were not); Ronald H. Frederickson et al., *Social Status Ranking of Occupations in the People's Republic of China, Taiwan, and the United States*, 40 CAREER DEV. Q. 351 (1992) (noting that occupations of lawyer and physician consistently rank highest in social status and esteem among all occupations by college students from all three countries); Michael D. Goodman & Karen C. Gareis, *The Influence of Status on Decisions to Help*, 133 J. SOC. PSYCHOL. 23, 27-30 (1993) (analyzing results of study finding strangers more likely to assist lawyers and

decline, the legal profession has engaged in what Burnele Powell, former chair of the American Bar Association's ("ABA") Standing Committee on Professional Discipline, describes as a "round of professional self-evaluation" and introspection, focused on professionalism and public opinion.²⁴ The movement began in the early 1980s, and was publicly acknowledged in 1986 when the ABA commissioned and published a study (often referred to as the "Blueprint" study) to determine whether the profession was "moving away from the principles of professionalism" and "was so perceived by the public."²⁵ Around the same time, the ABA commissioned the "Peter Hart Survey" to assess the public's opinion of lawyers.²⁶ The Peter Hart Survey, as well as many other surveys and polls, revealed a surprising level of mistrust and dislike of lawyers and the legal profession in general.²⁷

C. *The Decline in Lawyer Satisfaction and Mental Health*

The ABA's Young Lawyers' Division also conducted two surveys of attorney satisfaction and mental health, reported in 1984 and 1990,²⁸ indicating that the quality of attorneys' health and lives declined from 1984 to 1990.²⁹ More recently, lawyers and social scientists have

requesters of unspecified occupational status than they were to help gas station attendants requesting assistance, and postulating that this was because lawyers had higher social status).

24. See Burnele V. Powell, *Lawyer Professionalism as Ordinary Morality*, Address for the John Turner Professionalism Lecture, South Texas College of Law (Mar. 10, 1993), in 35 S. TEX. L. REV. 275, 277 (1994).

25. *Id.* (citing ABA Blueprint, *supra* note 9, at 248).

26. See PETER D. HART RESEARCH ASSOCIATES, INC., A SURVEY OF ATTITUDES NATIONWIDE TOWARD LAWYERS AND THE LEGAL SYSTEM (1993).

27. See Hengstler, *supra* note 23, at 64 (asking rhetorically what American public wants and expects from the legal profession, given that the Hart survey found only 8% of Americans have confidence in law firms); Rosner, *supra* note 16, at 2 ("[T]he Peter Hart Survey commissioned by the Association disclosed that lawyers and the legal profession are not well-liked by the American public.").

28. See Louise A. LaMothe, *Where are We Going Anyway?*, LITIG., Fall 1992, at 1.

29. See generally A.B.A. Young Lawyers Division Survey, *The State of the Legal Profession: 1990* (1991) [hereinafter "1990 ABA/YLD Report"] (reporting results of National Survey of Career Satisfaction/Dissatisfaction Waves I and II conducted by the Young Lawyers Division in 1984 and 1990 which surveyed attorneys of all ages); A.B.A. Young Lawyers Division, *The State of the Legal Profession: 1990—Executive Summary* (1992) (summarizing results of National Survey of Career Satisfaction/Dissatisfaction Waves I and II conducted by the Young Lawyers Division in 1984 and 1990); A.B.A., *The Report of At The Breaking Point: A National Conference on The Emerging Crisis In the Quality of Lawyers' Health and Lives—Its Impact on Law Firms and Client Services* (Apr. 5-6, 1991) [hereinafter "Breaking Point"] (presenting results of the ABA's 1984 and 1990 surveys of lawyer dissatisfaction and burnout and including reasons for the problem such as too much work, lack of communication between lawyers and with clients, isolation in the firm, lack of mentoring and training). Proposed solutions to lawyer dissatisfaction include applying business principles to the practice of law, billing and working differently, improving communication, supplying training and mentoring, encouraging diversity and flexible work schedules, and changing legal education. See *id.* The principal investigator of these studies was Ronald L. Hirsch, Staff Director, ABA Young Lawyers Division. See 1990 ABA/YLD Report, *supra*, at 81. A conference

documented a growing dissatisfaction among lawyers and an internal, negative attitude toward the profession in the last ten years. Approximately 20% of lawyers are extremely dissatisfied with their jobs.³⁰ As evidence of this dissatisfaction, lawyers are currently experiencing a significantly higher level of depression (19%)³¹ and substance abuse (15-18%) than individuals in other professions (among the general population, only 3-9% is depressed, and only 10-13% is chemically dependent).³²

Since the mid-1980s, a barrage of articles, suggestions, and commentary has addressed methods to improve the public standing, satisfaction, and "professionalism" of lawyers.³³ Existing remedial measures are working neither internally (based on the continued high levels of lawyer dissatisfaction and poor mental health) nor externally (based on the poor public image of lawyers and the prevalence of poor attorney behavior). Not only are these crises relevant to the legal profession, but they often affect society as a whole. Some have observed that because lawyers constitute the vast majority of the

was held in April 1991 to discuss the results of these two surveys and to propose solutions to the "emerging crisis."

30. See Lawrence R. Richard, *Psychological Type and Job Satisfaction Among Practicing Lawyers in the United States* 22 (1994) (unpublished Ph.D. dissertation on file with Temple University) (citing "considerable consensus" among 1990s studies that approximately 20% of lawyers are extremely dissatisfied with their jobs). Richard suggests, however, that lawyer dissatisfaction may have declined slightly from 1991 to 1994. See *id.*

31. See G. Andrew H. Benjamin et al., *Comprehensive Lawyer Assistance Programs: Justification and Model*, 16 L. & PSYCHOLOGY REV. 113, 114 nn.6-7 (1992) [hereinafter Benjamin et al., *Comprehensive Lawyer*] (citing studies showing elevated levels of depression among lawyers in Wisconsin and Florida); G. Andrew H. Benjamin et al., *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers*, 13 INT'L J. L. & PSYCHIATRY 233, 240-41 (1990) [hereinafter Benjamin et al., *Prevalence of Depression*] (stating that about 20% of lawyers in Washington and Arizona had statistically significant elevated levels of depression, compared to 3-9% in general population, and many were experiencing suicidal thoughts); William W. Eaton et al., *Occupations and the Prevalence of Major Depressive Disorder*, 32 J. OCCUPATIONAL MED. 1079, 1081 (1990) (reporting that lawyers have decidedly higher levels of depression than the 3-5% found among the general population); Maura Dolan, *Miserable with the Legal Life*, L.A. TIMES, June 27, 1995, at E2 (reporting that 11% of North Carolina lawyers polled in 1991 considered taking their lives once per month).

32. See Benjamin et al., *Comprehensive Lawyer*, *supra* note 31, at 115 n.13 (citing statistics from Wisconsin); Benjamin et al., *Prevalence of Depression*, *supra* note 31, at 240-41 (finding that 18% of lawyers in the State of Washington were problem drinkers, almost twice the percentage of adults in the United States who abuse or are dependent on alcohol (10%) and asserting that alcoholism among male attorneys is likely to be occurring at the same rate (18%) in Arizona (citing *National Clearinghouse for Alcohol and Drug Information*, "Alcohol and other drug abuse affects the lives of millions of Americans," *The Fact Is . . . 1* (Oct. 1988)); see also Beck et al., *supra* note 2 (finding that while 9% of U.S. adults meet the criteria for alcohol abuse or dependency, 15-18% of lawyers were problem drinkers); Michael A. Bloom & Carol L. Wallinger, *Lawyers and Alcoholism: Is it Time for a New Approach?*, 61 TEMP. L. REV. 1409, 1413 (1988) (reporting the finding that the averages for professionals, including lawyers, range from 3-30 times the rates of alcoholism for lay people, which range from 10-13%).

33. This author's Westlaw search found no less than 145 law journal and law review articles with the word "professionalism" in the title, through August 1997.

legislature,³⁴ judiciary, and other influential government positions in the United States, the problems facing the legal profession inevitably affect public policy and the public's confidence in all branches of the government.³⁵

II. LAWYER ATTRIBUTES

To inform the discussion about the professionalism, public confidence, and lawyer satisfaction crises, empirical research on attorneys and lawyers should be examined to determine whether there are certain characteristics, personality traits, attitudes, qualities, motivations, goals, values, ideals, or morals which are stereotypical of lawyers (collectively referred to as "attributes"). This Section begins by examining attributes of lawyers prior to entering law school, attributes of pre-law students, and motives for entering the field of law. Attributes of law students, the effects of law school, and attributes of practicing lawyers will be also investigated, thus establishing a developmental sequence for the process of becoming a lawyer.³⁶ Distinguishing pre-existing attributes from those which are developed in law school is particularly important in light of the common perceptions that lawyers are aggressive and competitive primarily because the practice of law demands such traits, that lawyers' distress is mainly caused by the demands and pressure of practicing law, and that legal education inculcates troublesome traits. Finally, the moral development of attorneys will be reviewed separately in developmental sequence, as a distinct "attribute," even though it is consistent with the other, more general attorney attributes.

34. See Phoebe W. Brown, *Russian Women Lawyers in Post-Soviet Russia*, 12 GA. ST. U. L. REV. 381, 426-27 (1996) (stating that most legislators in United States are lawyers); Richard, *supra* note 30, at 254 (noting that most federal legislators and 16% of state legislators are attorneys).

35. See Buchanan, *supra* note 16, at 573 (suggesting that public confidence crisis could lead to fall of government, citing example of the unpopular Weimar Republic in post-World War I Germany). Perhaps more immediately, the question is whether a group of people who are collectively disliked and mistrusted by the American public should be running the country and whether this will have a subtly deleterious effect on the fabric of American society.

36. Most of the research on law students prior to 1980 involved predominantly male subjects. Gender differences begin to appear in the post-1970 studies. These studies will be examined separately, to accentuate the effect of the larger numbers of women law students after the mid-1970s. For example, about 80% of women lawyers entered the profession since 1970, and the percentage of women in the law has risen from 3% in 1960 and 1971 to 23% in 1995. See A.B.A. COMM'N ON WOMEN IN THE PROFESSION, BASIC FACTS FROM WOMEN IN THE LAW: A LOOK AT THE NUMBERS 8 (Dec. 1995). The pre-1980s studies of law student attributes are still relevant today, because those studies represent the current population of senior, experienced attorneys in the United States. The attributes of those students are likely to be representative of the present senior attorneys.

A. *Personality Traits and Other Attributes of Attorneys*

There does appear to be a lawyer stereotype, or set of characteristics typically associated with lawyers.³⁷ A 1994 study found that undergraduate students perceived lawyers as significantly more "dominant" and significantly less "affiliative" than engineers, physicians, rehabilitation therapists, nurses, or teachers.³⁸ Dominance included socially desirable "masculine" traits of traditional dominance and ambition, while affiliation included socially desirable "feminine" traits of warmth and agreeability.³⁹ Law students and law faculty agree nearly unanimously that law students are very competitive.⁴⁰ Interestingly, these anecdotal stereotypes are generally consistent with empirical studies of the "lawyer attributes" described in the following sections.

1. *Attributes of the lawyer prior to entering law school*

Individuals who choose to enter law school appear to have various distinguishing characteristics as children and college students. They are highly focused on academics, have greater needs for dominance, leadership, and attention, and prefer initiating activity.⁴¹ They may

37. See Darrin R. Lehman et al., *The Focus of Judgment Effect: A Question Wording Effect Due to Hypothesis Confirmation Bias*, 18 PERSONALITY & SOC. PSYCHOL. BULL. 690, 695 (1992) (discussing empirical study in which the stereotypical lawyer was described as highly intelligent, self-confident, argumentative, involved in work, works long hours, well-dressed, strong drive for competence, competitive with others in the field, interested in social issues, writes convincingly, interestingly, and creatively, not uncomfortable lying, lives in a suburban upper-middle-class neighborhood, drives a sports car); see also John Collins et al., *Occupational Interest and Perceived Personal Success: Effects of Gender, Sex-Role Orientation, and the Sexual Composition of the Occupation*, 47 PSYCHOL. REP. 1155, 1157 (1980) (discussing empirical study indicating that legal profession is seen as a stereotypically masculine occupation); Pascal Denhaerincq et al., *The Dilution Effect and Group Membership: An Instance of the Pervasive Impact of Outgroup Homogeneity*, 19 EUR. J. SOC. PSYCHOL. 243, 245 (1989) (discussing empirical study in which certain behaviors were assumed to be stereotypical of lawyers, thereby illustrating public's perception that there is a lawyer stereotype).

38. See Heather M. McLean & Rudolf Kalin, *Congruence Between Self-Image and Occupational Stereotypes in Students Entering Gender-Dominated Occupations*, 26 CAN. J. BEHAV. SCI. 142, 155-57 (1994) (reporting on survey of student perception about persons engaged in various occupations).

39. See *id.* at 148-49. Dominance also fell between scales labeled "arrogant-calculating" and "gregarious-extroverted," while affiliation fell between scales labeled "unassuming-ingenuous" and "gregarious-extroverted." See *id.*

40. See John M. Houston et al., *Assessing Competitiveness: A Validation Study of the Competitiveness Index*, 13 PERSONALITY & INDIVIDUAL DIFFERENCES 1153, 1153-56 (1992) (analyzing 1984 study finding that 93% of law students and 90% of law faculty believe law students are competitive).

41. See Martin J. Bohn, Jr., *Psychological Needs of Engineering, Pre-Law, Pre-Med, and Undecided College Freshmen*, 12 J.C. STUDENT PERSONNEL 359, 359 (1971) (evaluating makeup of students who expressed strong interest in lawyering as career occupation); see also *infra* notes 48-55, 59-60 & 74-75 and accompanying text (discussing background and tendencies of law students).

have experienced a greater emphasis on scholastic achievement, reading, self-discipline, and the channeling of impulses into expression in their families.⁴² Their fathers were likely dominant and strong.⁴³ They may have had good social skills but a low interest in emotions or others' feelings.⁴⁴ Also, there are indications that successful, satisfied attorneys differ from less successful, less satisfied attorneys in that they experienced less social isolation, fewer feelings of inferiority, and less moodiness as children and young adults.⁴⁵

a. Early childhood experiences

Alfred Adler, a noted psychologist, placed a great deal of emphasis on the early recollections and early childhood experiences of individuals in explaining their vocational choices.⁴⁶ He theorized that individuals' job choices were motivated by a desire to conquer early feelings of discomfort resulting from these experiences.⁴⁷ Thus, Adler's theory suggests that the early memories and experiences of law students might be responsible for their internal or unconscious desire to become a lawyer.

A 1960 study by Barbara Nachmann determined that family background experiences of law students differed significantly from those of dentists and social workers.⁴⁸ Nachmann found that authoritarian male dominance, self-discipline, school achievement, and reading were emphasized in law students' early childhood, while emotions and concern for others' feelings were de-emphasized.⁴⁹ Comparing graduate social work students to dental and law students, Nachmann found that throughout the childhood of the law students, the father was a strong, dominant, adequate, authoritarian, and clearly

42. See *infra* notes 52-53 and accompanying text.

43. See Barbara Nachmann, *Childhood Experience and Vocational Choice in Law, Dentistry, and Social Work*, 7 J. COUNS. PSYCHOL. 243, 245 (1960), cited in Andrew S. Watson, *The Quest for Professional Aspects of Legal Education*, 37 U. CIN. L. REV. 91, 95 (1968).

44. See Edwin N. Shneidman, *Personality and "Success" Among a Selected Group of Lawyers*, 48 J. PERSONALITY ASSESSMENT 609, 613 (1984) (noting strong social skills).

45. See *infra* notes 66-69 and accompanying text.

46. See generally ALFRED ADLER, *THE SCIENCE OF LIVING* (1929).

47. See James L. Hafner & M. Ebrahim Fakouri, *Early Recollections of Individuals Preparing for Careers in Clinical Psychology, Dentistry, and Law*, 24 J. VOCATIONAL BEHAV. 236, 239-40 (1984) (summarizing Adler's theory that an individual's style of life is designed to overcome feelings of inferiority); see also JAMES O. PROCHASKA & JOHN C. NORCROSS, *SYSTEMS OF PSYCHOTHERAPY: A TRANSTHEORETICAL ANALYSIS*, 67-91 (1979) (discussing Alfred Adler and his theories).

48. See Nachmann, *supra* note 43, at 247-49. Nachmann theorized that lawyers' early childhood experiences would more often contain: (1) "the prominence of verbal aggression;" (2) a "concern with human justice;" and (3) "the exercise of privileged curiosity into the lives of others." *Id.*

49. See *id.* at 244.

masculine figure.⁵⁰ The dental students were closer to their fathers than were the law students.⁵¹ Law students more frequently reported that their families promoted self-discipline, rather than submission to authority.⁵² Parental emphasis on school achievement and pleasurable early school experiences were more frequently reported by law students.⁵³ Reading was more often emphasized and pleasantly remembered by the law students.⁵⁴ Channeling impulses into activity ("do") was more emphasized in law and social work students' families; dental students' families more often emphasized impulse repression ("don't").⁵⁵ Finally, concern for emotional suffering and for the feelings of others was less emphasized in law and dental students' families than in social work students' families.⁵⁶

A 1984 study by James L. Hafner and M. Ebrahim Fakouri determined that the earliest memories of law students significantly differed from those of dental and clinical psychology students.⁵⁷ In particular, law students' earliest childhood memories contained more non-family members than those of the dental students, and mentioned school as a setting more frequently than those of the dental or psychology students; this suggests that school, and people outside the family, are more important to law students as children than they are to others.⁵⁸ Further, the law students' memories had the highest

50. See *id.* at 245. He was "both in word and deed the source of authority in the home." *Id.* at 247. A strong male figure other than the father, often an uncle or grandfather who was a lawyer, was more often an important influence or an admired figure in the law student's childhood. See *id.* at 245, 248.

51. See *id.* Closeness was defined within the study as encompassing emotional or geographical components. See *id.*

52. See *id.* Conversely, dental students reported an emphasis on unquestioning submission to authority. See *id.*

53. See *id.* Social work students also more frequently reported parental emphasis on school achievement and pleasurable early school experiences, as compared to the dental students. See *id.*

54. See *id.* Reading skills were taught at an early age in law students' and social work students' families, as compared to those of dental students. See *id.* Furthermore, law students more frequently reported having been read to and hearing stories as a child as pleasurable memories than the other two groups. See *id.*

55. See *id.* at 248-49. Nachmann asserted that her findings were particularly reliable, as she carefully excluded subjects whose reasons for entering their chosen profession were related to prestige, money, expediency and included only those who were interested in the unique qualities of the work itself. See *id.* at 249. In dental students' families, "the discipline more often stressed injunctions to control—"don't touch," "don't destroy things," "don't get dirty," "don't talk back," etc. in contrast to an emphasis on more positive virtues—"do strive for accomplishment," "do learn courteous and mannerly ways of conduct," "do have consideration for others in the families of lawyers" *Id.*

56. See *id.*

57. See Hafner & Fakouri, *supra* note 47, at 236-41 (finding that law students' early recollections consisted primarily of school whereas psychology students showed significantly more "negative affect," "threatening situations," and "less reference to groups of people").

58. See *id.* at 240.

frequency of "active" components, denoting situations in which the student independently decided to act rather than simply react to the decisions or actions of others.⁵⁹ From these results, Hafner and Fakouri concluded that law students pursue goals with greater initiative than do dental or psychology students.⁶⁰ This emphasis on active behavior within an academic setting is consistent with other scholars' findings that lawyers are more motivated toward achievement, as compared to others.⁶¹ Also, because psychology students more often reported fear or anxiety in their early recollections, Hafner and Fakouri concluded that they were more emotional than dentists or lawyers, who "might be expected to see life in less emotional terms."⁶² This suggestion may be consistent with studies finding that lawyers rely less on emotions and more on rational analysis in making decisions.⁶³

b. Early childhood attributes and lawyer success

Certain early childhood traits have been linked to lawyer success. A particularly interesting study of lawyers in their 1970s, all of whom were life-long participants in Stanford University's Terman Study of the Gifted, defined early personality differences distinguishing the most successful of these lawyers from the least successful.⁶⁴ Edwin Shneidman separated these lawyers into a highly successful group and a less successful group on the basis of both professional *and* personal success.⁶⁵ The study evaluated each of its male participants throughout his life in various areas including health history, character trait

59. See *id.*

60. See *id.* at 241.

61. See Leonard H. Chusmir, *Law and Jurisprudence Occupations: A Look at Motivational Need Patterns*, COM. L.J., May 1984, at 231-35 (finding that "jobs performed by most attorneys call for duties best matching motivational needs of individuals" with high need for achievement); Sue Winkle Williams & John C. McCullers, *Personal Factors Related to Typicalness of Career and Success in Active Professional Women*, 7 PSYCHOL. WOMEN Q. 343, 350 (1983) (finding women lawyers more achievement oriented than other women).

62. Hafner & Fakouri, *supra* note 47, at 239. This is consistent with the finding that lawyers are disproportionately "Thinking" types, as compared to "Feeling" types, in the Myers-Briggs Type Indicator nomenclature. See generally Richard, *supra* note 30, at 229-34. Hafner and Fakouri relied heavily on Alfred Adler's ideas that events remembered from childhood are of great value in vocational guidance, because these events are "very near to the main interest of the individual." Hafner & Fakouri, *supra*, at 239. They explain, "Adler suggests that a person's style of life is designed to overcome feelings of inferiority," and that his (Adler's) own first recollection, a "traumatic medical experience," resulted in feelings of physical inferiority, which caused him to enter the field of medicine in order to conquer his somatic inferiority. See *id.*

63. See Richard, *supra* note 30, at 229-34.

64. See Shneidman, *supra* note 44, at 609 (discussing study of eleven lawyers, each of whom had been a subject in the Terman Study of Gifted for most of their lives).

65. In other words, professional success and marital difficulty do not go hand-in-hand. See *id.* at 611.

examination, home and family background, school history, evaluations by parents and teachers, and academic achievement tests.⁶⁶ The successful lawyers were rated higher by their mothers on leadership, popularity, sociability, mood stability, and musical appreciation at ages seven to twelve, and higher on leadership, popularity, and sociability at ages twelve to seventeen.⁶⁷ The successful group reported being less moody and having lower feelings of inferiority, less interest in religion, more interest in art and music, and more close friends than the less successful group, at ages 24-30.⁶⁸ From this data, the study concluded that the child with social skills, emotional stability, and diversified cultural interests was likely to have the most life-long success, which is contrary to the popular idea that love and work are mutually exclusive, or that bright, successful people were neurotic as children.⁶⁹ This Shneidman study suggests that less successful and less satisfied attorneys feel more inferior, moody, and socially isolated than do more successful lawyers, even as children, long before entering law school or embarking on the practice of law. If so, lawyer distress and dysfunction may not be caused entirely by the problems in the legal profession, but rather may reflect pre-existing problematic traits in distressed attorneys prior to entering the profession.

2. *Attributes of the pre-law student*

The number of studies assessing pre-law college students or entering law students is extremely limited.⁷⁰ They reveal that pre-law students need attention, prefer dominance and leadership, and are uncomfortable being subordinate or feeling inferior.⁷¹ These students tended, at least in the 1970s, to come from socioeconomically elite backgrounds (which may in part explain the need for superiority), although this may have changed since the 1970s

66. See *id.* at 609.

67. See *id.* at 613.

68. See *id.* at 614.

69. See *id.* at 615-16. Unfortunately, there is no comparison of the individuals studied by Shneidman with non-lawyers.

70. See G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students*, 1986 AM. B. FOUND. RES. J. 225, 226 ("[M]ost of the research projects [studying law students] collected data nonsystematically, episodically, or cross-sectionally and failed to separate cohort confounds, including time (semester) effects."); Bohn, Jr., *supra* note 41, at 359 (assessing students who expressed their probable career occupation as "lawyer"); Robert Stevens, *Law Schools and Law Students*, 59 VA. L. REV. 551, 555 (1973) (noting that only "a handful of . . . empirical studies of law students have been completed since 1965").

71. See Bohn, Jr., *supra* note 41, at 360 (finding that lawyers scored at extremes on five of six "needs" tables, including dominance, self-confidence, abasement, deference, and exhibition).

as the legal profession grew demographically diverse.⁷² Pre-law students also appear to experience no greater incidence of psychological distress than the general population, suggesting that individuals who come to law school are not outwardly more troubled than most people.⁷³

a. Psychological needs

In 1971, Martin J. Bohn, Jr. reported that the psychological needs of pre-law students are quite distinctive, differing significantly from the general undergraduate population, and particularly from the needs of engineering and pre-medical students. Pre-law students demonstrated definite needs to be leaders, to attract attention, and to avoid feeling inferior or assuming subordinate roles.⁷⁴ Pre-law students scored highest on the self-confidence, dominance, and exhibition scales, and lowest on the abasement and deference scales.⁷⁵ This indicates that pre-law students are often motivated by a desire for leadership, dominance, and the attention of others, which is consistent with the stereotype of lawyers as outgoing, confident (or perhaps egotistical) leaders. It may also indicate that pre-law students feel less humble or have a better self-image (or are more arrogant and egotistical) than others. It is unlikely that law school or the practice of law alone engenders these traits because they appear to be present prior to either experience.

b. Demographic attributes

A 1973 study by Robert Stevens and a 1981 study by Alexander Astin both reported that law students do not mirror the socio-economic, racial, or religious makeup of the society from which they come; instead, they come from an elite background of higher

72. See Stevens, *supra* note 70, at 573 (stating that law schools studied "appear[ed] to draw students from more affluent families"); see also A.B.A. COMM'N ON WOMEN IN THE PROFESSION, *supra* note 36, at 8 (noting that number of women in law school rose from 3% in 1960 and 1971 to 23% in 1995).

73. See Benjamin et al., *supra* note 70, at 246 (finding that among pre-law students, symptom levels were not elevated significantly when compared with the normal population).

74. See Bohn, Jr., *supra* note 41, at 360.

75. See *id.* The test used was the Adjective Check List; it was scored for fifteen psychological needs according to a standardized system. See *id.* The engineering and pre-medical students' scores were close to the mean on all the scales. See *id.* Also, the pre-law students' scores were the exact opposite image of the undecided students' scores (e.g., high on abasement and deference and low on self-confidence, dominance, and exhibition), indicating that college freshmen who were undecided about their career choices had the opposite needs of those expecting to enter law school. See *id.*

socioeconomic status than the general population.⁷⁶ Law students' need for dominance may be part of a desire to maintain the higher socioeconomic status that they grew up with, which would be consistent with research finding that law students are in part attracted by the money and prestige associated with the legal profession. Stevens also maintained that law students more often were social scientists as college students.⁷⁷

c. *Mental health*

Pre-law students' mental health appears to be similar to that of the general adult population. In 1986, Benjamin, Kazniak, Sales, and Shanfield conducted a comprehensive study of law students and lawyers, in which they surveyed law students before they began law school. These researchers looked only at symptoms of psychiatric distress, such as anxiety, depression, hostility, and irritability.⁷⁸ The study's results indicate that law students are relatively "normal" before entering law school, meaning that they experience only slightly higher levels of psychiatric distress than the mean for the normal population.⁷⁹ There is a normal frequency of clinically depressed individuals among the pre-law group (10.3%), as compared to the expected 3-9% of individuals in industrialized nations who are clinically depressed.⁸⁰ While law students may need more attention and need to assume dominant and leadership roles, this study suggests that they are not necessarily experiencing more neurosis or psychological distress than most people prior to coming to law school.

76. See Alexander W. Astin, *Pre-law Students—A National Profile*, 34 J. LEGAL EDUC. 73, 75 (1984); Stevens, *supra* note 70, at 598. A 1981 study by Alexander Astin echoes Stevens' findings regarding the elite socioeconomic backgrounds of prelaw students. See Astin, *supra*, at 75. Astin also found that women in 1981 were underrepresented among prelaw students (constituting 45% of total students, a 10% increase since 1969) but that minorities were not. See *id.* at 74-75. He also found that prelaw students were more conservative than were college undergraduates (30% vs. 21%), although all students since the late 1960s had become generally more conservative. See *id.* at 78-79. This conflicts with a 1983 study by Marilyn Heins and her colleagues, which found that law students were more liberal in their political beliefs than medical students or the general population. See Marilyn Heins et al., *Law Students and Medical Students: A Comparison of Perceived Stress*, 33 J. LEGAL EDUC. 511 (1983).

77. See Stevens, *supra* note 70, at 616-17 n.125. Interestingly, even the minority law students had a more elite background, financially and educationally, than most. See *id.* at 600-01. Astin also found that prelaw students were most underrepresented in the arts, sciences, and engineering and tended to major in the social sciences, consistent with Stevens' finding. See Astin, *supra* note 76, at 77.

78. See Benjamin et al., *supra* note 70, at 228.

79. See *id.* at 229-30.

80. See *id.* at 236, 247.

3. *Motives for entering the field of law*

Law students' and lawyers' stated reasons for entering the field of law are relevant because they indicate what is important to law students and lawyers. Studies of these motives provide information about a specific set of lawyer attributes: their values, goals, and ideals. In the following discussion, these studies are examined chronologically due to the gender differences that began to appear after about 1970.⁸¹

a. *Early studies with predominantly male subjects*

i. *"Uncertain" career goals*

Some commentators charge that law students too often lack particular vocational interests or goals other than the furtherance of their education.⁸² Although a 1976 study by Jean Campbell demonstrated that law students maintained clear vocational interests "appropriate" for the law,⁸³ other studies conducted contemporane-

81. See A.B.A. COMM'N ON WOMEN IN THE LAW, *supra* note 36, at 9-10 (reporting that 80% of women lawyers entered profession after 1970).

82. See Stephen Reich, *Strong Vocational Interest Blank Patterns Associated With Law School Achievement*, 39 PSYCHOL. REP. 1343, 1344 (1976) ("It is a well-observed fact that law frequently attracts students who are very uncertain about their ultimate occupational goals."). Because law prepares one for so many business and government positions, Reich contends that [s]tudents feel they can study law without pinning themselves down vocationally. . . .

....
[Because there are no particular prerequisites for admission to law school, t]he decision to study law can thus be made (and is frequently made) at the last hour of undergraduate training and the resultant law student body is thus a mixture of students with clear vocational goals and students who are ambivalent about their occupational future.

Id. at 1344, 1346; see Stevens, *supra* note 70, at 623 & n.131 (citing commentators from 1957 to 1965 who asserted that law is a career for the uncommitted, as it preserves options rather than requiring a decision to pursue particular employment goals). In 1973, Professor Stevens reported that uncertainty about career goals was prevalent among law students. See *id.* at 616. The uncertainty appeared to be associated more strongly, however, with those in the highest income brackets; those in the lower income brackets appeared to be less uncertain. See *id.* An average of about 25% of the law students surveyed rated having uncertain career plans as of "great" (versus "some" or "no") importance to their decision to enter law. See *id.* at 583 tbl.19. Stevens asserted that law schools are indeed becoming residual graduate schools, although his data should be evaluated in light of the Vietnam War. See *id.* at 623-24. He studied law students in the classes of 1960, 1970, and 1972; thus, the latter two classes may have included a large number of individuals who entered law school to avoid the war and thus were extraordinarily "uncertain" of their career plans. See *id.* at 560, 624.

83. See Jean Campbell, *Differential Response for Female and Male Law Students on the Strong-Campbell Interest Inventory: The Question of Separate Sex Norms*, 23 J. COUNSELING PSYCHOL. 130, 130-35 (1976) (investigating gender differences in vocational testing among sample of law students at Texas Tech University and finding that the first-, second-, and third-year law students scored highest on Lawyer scale of Strong-Campbell Interest Inventory (a widely-used vocational test) compared to other scales of the test).

ously supported a theory that law students are largely ambivalent with respect to their occupational future: approximately 25% to 50% of law students consistently reported "uncertain career goals" as one of their reasons for going to law school.⁸⁴ Further, Thomas Goolsby's 1968 study indicated that the Law School Admissions Test ("LSAT"), which is designed to predict academic achievement in law school, and used universally as an admission criterion to law school, was no more effective than any other comprehensive test of general achievement in predicting success in law school.⁸⁵ Generic achievement ability appeared to be just as relevant to success in law school as any particular aptitude for the study of law.⁸⁶ The individuals who chose law in the 1950s, 1960s, and early 1970s thus may have had appropriate interests and academic aptitude to be lawyers, but may not have had strong desires to be lawyers. The disturbingly high number of "uncertain" law students identified in Stevens' study supports the contention that law school had become a residual graduate school.⁸⁷ If these students' values, goals, and ideals were as uncertain as were their career plans, then this may partially explain the unprincipled or unethical behavior complained of among experienced attorneys.

ii. Interest in subject matter, altruism, and materialism

Law students consistently report certain reasons for deciding to attend to law school. Robert Stevens surveyed the classes of 1960, 1970, and 1972 at eight different law schools and incorporated his findings into one single, extensive study.⁸⁸ Most of these law students reported that they entered law school because of an interest in the subject matter and a desire for intellectual stimulation.⁸⁹ The top three motives were: (1) a desire for professional training (cited as "greatly important" to approximately 54% of the students on average); (2) an interest in the subject matter (greatly important to approximately 59% on average); and (3) a desire for intellectual

84. See Stevens, *supra* note 70, at 623-24 (stating that slightly more than half of law students surveyed indicated uncertain career plans as of great or some importance in their decision to enter law school); see also Wagner Thielans, Jr., *Some Comparisons of Entrants to Medical and Law School*, in THE STUDENT PHYSICIAN 131, 141 (Robert K. Merton et al. eds., 1957) (reporting that 23% of law students reported indecision as influencing their decision to enter law).

85. See Thomas M. Goolsby, Jr., *Law School Selection and Performance and Subsequent Admission to Legal Practice*, 28 EDUC. & PSYCHOL. MEASUREMENT 421, 421 (1968).

86. See *id.* at 425 (finding that the results of the LSAT are no more accurate in predicting GPA in law school than would be any comprehensive achievement test).

87. See Stevens, *supra* note 70, at 623-24.

88. See *id.* at 559-60.

89. See *id.* at 576-77.

stimulation (greatly important to approximately 44% on average).⁹⁰ The desire to make money varied in level of importance from law school to law school; at some schools it was greatly important to only 14% of the students,⁹¹ while at other schools it was greatly important to 58% of those students surveyed.⁹² Stevens notes that "a vast majority of all students surveyed indicated that 'prestige' was of some importance to them,"⁹³ in contrast to what Stevens calls "recent claims to the contrary;"⁹⁴ about a fourth of the students placed great importance on prestige in deciding to go to law school.⁹⁵ Overall, only about 17% of the students surveyed cited the desire to serve the underprivileged as greatly important.⁹⁶

Near the time of Stevens' study, an Australian study⁹⁷ examined students in law, engineering, medicine, and teaching at six Australian universities, and concluded that students' motives for choosing their careers fell into two general categories: "Professional Orientation" (consisting of an interest in the subject matter of the field along with a desire to be of service, which the authors labeled intrinsic factors) and "Status Concern" (consisting of more extrinsic reasons, such as concern for security, prestige, and wealth).⁹⁸ Consistent with Stevens' findings, the Australian study reported that altruistic concerns were a motivating factor for no more than 20% of entering law students, compared to 25% to 35% for other professions.⁹⁹

90. *See id.*

91. *See id.* at 577 (reporting that only 14% of law students at Yale University, class of 1970, cited desire for financial rewards as greatly important among their reasons for attending law school).

92. *See id.* (stating that 58% of law students at University of Southern California, class of 1970, reported that making money was greatly important factor in decision to attend law school).

93. *Id.* at 578.

94. *Id.* (taking issue with recent reports that purportedly underestimate importance of prestige to law students).

95. *See id.* at 624.

96. *See id.* at 579 tbl.14b. From 1960 to 1972, however, a desire to enter politics, to restructure society, and to serve the underprivileged became increasingly more important motives for entering law. *See id.* at 624. This is not surprising, given the political and social events occurring during this time. For example, the Vietnam War may have sparked individuals' desire to go to law school for these reasons (and also to avoid the draft). The civil rights movement also may have encouraged more altruistic individuals to enter law at this time. Altruistic motives may have become rarer after the 1960s and early 1970s.

97. *See* Don S. Anderson et al., *Conservatism in Recruits to the Professions*, 9 AUSTL. & N.Z. J. SOC. 42, 42-45 (1973).

98. *See id.* at 43.

99. Altruistic concerns were a motivator for 25% of entering engineering and medical students and for 35% of teacher trainees. *See id.*

James Hedegard replicated Stevens' results in a 1979 study of Brigham Young University law students.¹⁰⁰ The top three reasons cited by those students for going to law school were desire for intellectual stimulation (65%), interest in the subject matter (63%), and desire for professional training (63%).¹⁰¹ Altruistic concerns were greatly important to only 18-31%, while prestige and financial rewards were again greatly important to 28-31% of the students.¹⁰²

These early studies consistently confirm that for the predominantly male population studied in the 1960s and 1970s, (1) interest in the subject matter of the law, a desire for professional training, and desire for intellectual stimulation were important goals;¹⁰³ (2) law students also valued money and prestige, but only secondarily;¹⁰⁴ and (3) altruistic concerns were important to consistently fewer law students.¹⁰⁵

Alexander Astin's 1981 study found that prelaw students' top goals included "becoming an authority in their field" and "being very well-off financially."¹⁰⁶ In contrast to the earlier studies, a greater percentage of prelaw students endorsed materialistic goals; 74% of prelaw students and 65% of all students cited financial motives as "essential" or "very important" goals.¹⁰⁷ Moreover, Astin found that the goal of being well-off financially had become more popular from 1969 to 1981 for all students, including law students.¹⁰⁸ Consistent with earlier studies, altruistic goals such as social issues and problems and helping others in difficulty were less popular than material and power goals.¹⁰⁹

100. See James M. Hedegard, *The Impact of Legal Education: An In-Depth Examination of Career-Relevant Interests, Attitudes, and Personality Traits Among First-Year Law Students*, 1979 AM. B. FOUND. RES. J. 791, 814.

101. See *id.*

102. See *id.*

103. For example, Stevens found that more than 95% of law students surveyed indicated that the desire for intellectual stimulation or an interest in the subject matter motivated them to enter law school. See Stevens, *supra* note 70, at 614.

104. See *id.* at 616 tbl.35.

105. See *id.*

106. Astin, *supra* note 76, at 82 (reporting the results of a study of college undergraduates in 1981 and comparing it to results of a similar study in 1969).

107. See *id.*

108. See *id.* at 83 (finding a trend in this regard). Astin theorized that, because the goal of developing a meaningful philosophy of life had become less popular during this time, perhaps making money had become students' primary philosophy of life, reflecting a "deep-seated value shift" among young people from 1969 to 1981. See *id.*

109. See *id.* at 82-83 (finding that almost one-third of prelaw students did not endorse the goal of helping others in difficulty, which was surprising given the "helping" nature of the legal profession).

b. *More recent studies indicating gender differences*

i. *Altruism and materialism*

More recent studies indicate significant differences between men and women in their stated motives for entering law school. Male law students are consistently more likely than female law students to admit that a desire to make money motivated their decision to enter the field of law.¹¹⁰ Additionally, female students are more likely than male students to cite altruistic reasons for becoming a lawyer.¹¹¹ In the 1973 Australian study, status concern was more common among men than women for all professions,¹¹² which is consistent with other findings regarding stated motivations to enter the legal profession among American students.¹¹³ This also suggests that differences in motivation according to gender are not particular to the field of law. It is often suggested that gender differences are

110. See *id.* at 612. Stevens found, in 1973, that 54.7% of women law students surveyed indicated that financial rewards had been of no importance to their decision to enter law school, while only 13.6% of the male law students said that it had been of no importance. See *id.* Also, the vast majority of all law students surveyed indicated that prestige was of some importance in their decision, and the importance of money in the decision to become a lawyer apparently increased during the 1960s. See *id.* at 577-78.

111. See Anderson et al., *supra* note 97, at 43; see also Georgina Williams LaRussa, *Portia's Decision: Women's Motives for Studying Law and Their Later Career Satisfaction as Attorneys*, 1 PSYCHOL. WOMEN Q. 350, 360 (1977) (reporting that altruistic motives were of primary importance to women law students); Stevens, *supra* note 70, at 613 (explaining that women and minorities were significantly more likely than men to enter law school in order to restructure society or serve underprivileged). An extensive study conducted with students and graduates of Stanford Law School as of December 1986, found that, among other things, significantly more male than female students indicated they went to law school because of (1) a desire to make money and (2) an interest in politics. See Janet Taber et al., *Gender, Legal Education, and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates*, 40 STAN. L. REV. 1209, 1238 (1988). Graduates were slightly different; female graduates more often reported (1) a desire to serve society and (2) the need for further education in order to obtain a job as motivations to go to law school. See *id.* Male graduates more often cited (1) a desire to make money and (2) an interest in going into business as motives for law school. See *id.* There is no comparison of these motives with motivations of students or graduates of other professional schools. It should be noted, however, that there were clear gender differences between the law students and lawyers as to their motives for choosing the law. See *id.* More male students than female students cited an interest in politics (39.2% versus 20%) or a desire to make money (38.7% versus 20.6%) as an incentive for going to law school. See *id.* More female graduates of Stanford Law School than male graduates cited a desire to serve society (81.5% versus 69.3%) or the need for further education in order to obtain a job (50% versus 31.4%) as a motivation for going to law school. See *id.* Furthermore, male graduates were more likely than female graduates to admit the desire to make money as a motivator for law school (49.5% versus 38%). See *id.* But see James J. White, *Women In the Law*, 65 MICH. L. REV. 1051, 1069-70 (1967) (finding that women are not more motivated to enter law for "social worker," altruistic reasons than are men, and that women are also motivated by money, contrary to expectations).

112. See Anderson et al., *supra* note 97, at 43.

113. See Taber et al., *supra* note 111, at 1238 (finding that male law students cited making money as a motivation for entering law more frequently than did women).

simply an artifact of different social norms for men and women; that is, it may be more socially acceptable for men to admit to financial motives (being expected to support families) and more socially acceptable for women to have altruistic motives for their careers (being more in line with traditional, feminine occupations).¹¹⁴ One explanation for this is that actual motives for both men and women may not differ substantially, but what is socially acceptable for them to report may differ. The alternative explanation is that female law students are actually more altruistic than male law students.

ii. Women's motives associated with later career satisfaction

In 1970, a study conducted by Georgina Williams LaRussa found a relationship between women law students' reasons for entering law school and their later career satisfaction.¹¹⁵ Fifty-two percent of the women mentioned altruistic (helping society or others) motives, and 57.5% realistic (practical, utilitarian, materialistic) motives.¹¹⁶ The emphasis on altruistic motives among women law students is not surprising, nor is it likely to be representative of male law students, given the results of other studies of women's motives for entering law and hypothesized social norms about acceptable motivations for women, and the earlier studies described above on altruism.

The emphasis on realistic goals, however, appears to be important to career satisfaction. Interestingly, when the women in the LaRussa study were surveyed five years later for career satisfaction, different motives for going to law school distinguished satisfied women attorneys from those less satisfied.¹¹⁷ Those who went to law school to develop existing talents, or to fulfill personal, realistic, or materialistic goals were happier as lawyers than those who were interested in

114. See *id.* at 1240. These researchers explain the gender difference regarding desire to make money with the following rationale: it is socially acceptable for men to state openly that they want to work for money, while women have been socialized to feel uncomfortable if not devoting their efforts to the good of others without concern for their personal needs. See *id.* Thus, women simply feel uncomfortable admitting a desire for financial rewards. See *id.* Alternatively, men may actually feel more pressure to make money, due to social norms about "breadwinning." See *id.*

115. See LaRussa, *supra* note 111, at 361-62 (finding that high satisfaction in legal career will be found by women whose reasons for entering law were practical, realistic, or materialistic).

116. See *id.* at 355 tbl.1. Motives fell into eight thematic categories (listed in order of frequency): altruistic; realistic; self-enhancement (increased personal image); stimulation (intellectually challenging, difficult); self-fulfillment (developing existing talents or fulfilling personal goal); professional-identification (wanted to be a lawyer); action-oriented (interest in the tangible results of lawyering); and theoretical-interest (interest in law for its own sake, as a scholarly discipline). See *id.* at 353-54.

117. See *id.* at 356-57. The highly satisfied graduates more frequently reported self-fulfillment and realistic (and, to a lesser extent, theoretical-interest) motives for entering law, while those least satisfied more frequently reported action-oriented and stimulation motives. See *id.*

the actual outcomes of lawyering or who were seeking intellectual stimulation.¹¹⁸ A later study indicated that lawyers who are more objective, rational, and logical in decision-making style were the most satisfied.¹¹⁹ The realistic and pragmatic goals of the satisfied attorneys may reflect attributes of objectivity and rationality, which are related to job satisfaction and which may be present prior to entering law school. Overall, these later studies on motives do not add much to an understanding of lawyer attributes other than to illuminate various gender differences.

4. *Attributes of law students*

Law students tend to complain about their peers: "I am somewhat surprised to find out, although it seems logical to me now, what a really narrow group of people are actually attracted to law school," and "there's very little appreciation of creative intelligence or social intelligence, ability to deal with people and perceive situations really accurately."¹²⁰ They also complain that their peers are homogeneous, unimaginative, unexciting, and conform to a narrow stereotype of intelligence.¹²¹ This purported homogeneity, however, is not necessarily supported by the research and data about law students.¹²²

Research involving law students is plentiful, but for the most part, the studies do not build on each other or use the same measurement instruments in any consistent fashion. There are scattered studies in each decade from the late 1950s to the present.¹²³ Also, women were usually excluded from the sampled population until the mid-1970s. The following sections discussing the research are presented chronologically, in order to fairly reflect demographic, social, political, and gender differences in the population studied.

118. See *id.* at 353-58.

119. See Richard, *supra* note 30, at 250 (finding that lawyers who prefer the dimensions of Extroversion, Thinking, and Judging are more satisfied than those who prefer Introversion, Feeling, and Perceiving). Richard explains how these dimensions might relate to job satisfaction. See *id.* at 232-34; see also *infra* note 354 and accompanying text (illustrating this relationship between the dimensions and lawyer job satisfaction).

120. Stevens, *supra* note 70, at 608-09 (noting responses from law students at Yale University, class of 1972, who were questioned about various issues relating to the type of people attending law school).

121. See *id.* at 609.

122. See, e.g., Hedegard, *supra* note 100, at 862 (finding, contrary to expectations of critics, that students' temperaments were slightly more heterogeneous after one year of law school).

123. There are twenty-six studies of law students discussed in this section. As Amiram Elwork and Andrew Benjamin aptly point out, however, the existing research on lawyers is a "hodgepodge"; the studies suffer from "various methodological deficiencies," and are thus "suggestive rather than definitive and need replication." Amiram Elwork & G. Andrew H. Benjamin, *Lawyers In Distress*, 23 J. PSYCHIATRY & L. 205, 206-07 (1995).

a. *Early studies of predominantly male law students*

i. *A comparison to medical students*

In 1967 and 1968, Norman Solkoff reported at least two studies comparing law students to medical students.¹²⁴ Although his focus may have been on medical students,¹²⁵ using law students merely as a control group, Solkoff's research supported interesting findings regarding law students' attributes. Solkoff used the Minnesota Multi-Phasic Inventory (MMPI) to assess the students' personality characteristics, which is a highly respected and widely used personality assessment measure and screening technique.¹²⁶

Solkoff found that medical and law students differed significantly. Law students appeared to be more extroverted and sociable, more free from anxiety and insecurity, more ebullient and at ease in interpersonal relations, more "masculine" in orientation and more cynical,¹²⁷ less humanitarian,¹²⁸ and more authoritarian¹²⁹ than

124. See Norman Solkoff, *The Use of Personality and Attitude Tests in Predicting the Academic Success of Medical and Law Students*, 43 J. MED. EDUC. 1250 (1968) (detailing empirical findings concerning personality traits of medical and law school students); Norman Solkoff & Joan Markowitz, *Personality Characteristics of First-Year Medical and Law Students*, 42 J. MED. EDUC. 195 (1967).

125. These studies were conducted while Dr. Solkoff was an Associate Professor of Psychology within the Department of Psychiatry at the State University of New York, Buffalo School of Medicine. See Solkoff, *supra* note 124, at 1250; Solkoff & Markowitz, *supra* note 124, at 195.

126. For example, police departments and suicide prevention centers often use the MMPI to screen out inappropriate job applicants. The MMPI was designed to distinguish abnormal personality characteristics from normal ones, in contrast to the Myers Briggs Type Indicator (MBTI), which was developed to distinguish among normal personality types and does not indicate whether dysfunction is present or not. The MMPI is used in clinical settings; the MBTI is more often used as a counseling tool. The MBTI has been used in many seminars and workplace interventions designed to help people understand their "psychological type" and work more effectively with one another. It has also been introduced into the law office and legal education. See, e.g., Don Peters, *Forever Jung: Psychological Type Theory, The Myers-Briggs Type Indicator and Learning Negotiation*, 42 DRAKE L. REV. 1, 11 (1993) (stating that students at University of Florida College of Law are assessed with the MBTI in several negotiation and dispute settlement courses); Don Peters & Martha Peters, *Maybe That's Why I Do That: Psychological Type Theory, the Myers-Briggs Type Indicator, and Learning Legal Interviewing*, 35 N.Y.L. SCH. L. REV. 169, 174 n.20 (1990) (noting that MBTI has been used within law firms to develop collaborative work environments).

127. See Solkoff & Markowitz, *supra* note 124, at 197-99. Cynicism is defined as "a contemptuous disbelief in man's sincerity of motives or rectitude of conduct characterized by the conviction that human conduct is suggested or directed by self-interest or self-indulgence." *Id.* at 197.

128. See *id.* at 198. Humanitarianism is defined as "a regard for the interests of mankind, benevolence, philanthropy." *Id.* at 197; see Paul Van R. Miller, *Personality Differences and Student Survival in Law School*, 19 J. LEGAL EDUC. 460-67 (1967) (defining "Feeling" type in 1967 study and finding that almost twice as many "Feeling" types dropped out of law school as compared to "Thinking" types); *infra* notes 148-54 and accompanying text.

129. See Solkoff & Markowitz, *supra* note 124, at 199. Authoritarianism was defined as "acceptance of the idea of survival of the fittest, hero worship of acquaintances, and rugged

medical students.¹³⁰ The medical students appeared to be more introspective, idealistic, prone to worry, socially perceptive, "sensitive to the needs of others," and attuned to interpersonal nuances than the law students.¹³¹ Unfortunately, Solkoff drew no comparisons of either group with general college students or adults. Solkoff also asserted that his results were consistent with those of earlier studies with respect to humanitarianism and cynicism among medical and law students.¹³²

ii. Attributes associated with academic success in law school

Solkoff went on to investigate what differentiated students ranking higher academically from those ranking lower.¹³³ In this second study, he found that only two indicators distinguished the top law students from the bottom ones: IQ score and "the bottom students' exhibition of a greater tendency towards heightened levels of unrealistic self-appraisal."¹³⁴ Solkoff also discovered that the lowest-ranked law students tended to obtain higher humanitarian scores.¹³⁵ This is consistent with later studies findings' that individuals who are

individualism." *Id.* at 197.

130. *See id.* at 197-99. In particular, the law students' Pd (psychopathic deviate) and Ma (hypomania) scores were significantly higher than those of the medical students, while the medical students' D (depression) and Mf (Masculine-Feminine) scores were higher than those of the law students. *See id.* at 197. Other viable interpretations of these scales included: Pd measuring trouble with the law, lack of concern about social and moral standards of conduct, family discord, authority problems, social alienation, self alienation, social imperturbability (often thought of as anger); Ma measuring over-ambitiousness, extroversion, high aspirations, amorality, psychomotor acceleration, imperturbability, and ego inflation. *See* S. R. HATHAWAY & J. C. MCKINLEY, MINNESOTA MULTIPHASIC PERSONALITY INVENTORY-2: MANUAL FOR ADMINISTRATION AND SCORING 29-30 (1989).

131. *See* Solkoff & Markowitz, *supra* note 124, at 199.

132. *See id.* at 198.

133. *See* Solkoff, *supra* note 124, at 1251.

134. *Id.* at 1252. This latter characteristic was evidenced by higher L (Lie) scores on the MMPI among the lower-ranked students. *See id.* Solkoff's findings are fairly consistent with a later study by Reich in 1976 in which no relationships between personality dimensions (measured by the California Psychological Inventory) and first-year law school academic achievement were found. *See* Stephen Reich, *California Psychological Inventory: Profile of a Sample of First-Year Law Students*, 39 PSYCHOL. REP. 871, 872 (1976). Generally, it appears that there are few personality attributes which accurately predict law school academic performance. *See* Solkoff, *supra* note 124, at 1253. Interestingly, Solkoff's finding that, of the academic measures, only IQ score accurately predicted academic performance is consistent with a later study finding a relatively weak correlation between LSAT scores and law school grades. *See* Goolsby, Jr., *supra* note 85, at 424. Goolsby concluded that "any comprehensive test of achievement would serve as well as the LSAT as a predictor of success in law school." *Id.* at 425. These studies suggest that IQ may be more closely associated with success in law school than are undergraduate grade point average or LSAT score, which are the two criteria currently used for admission to law school. *See* Solkoff, *supra* note 124, at 1252-53.

135. *See* Solkoff, *supra* note 124, at 1253.

more people-oriented¹³⁶ are more likely to either drop out of law school¹³⁷ or be dissatisfied as attorneys.¹³⁸

In 1976, Stephen Reich investigated the differences between top academically-ranking law students and bottom-ranking students. He discovered that the top students' interests were "clearly professional or artistic in nature," while the bottom students' interests were more "predominantly business or commercial in nature."¹³⁹ These findings are fairly consistent with other studies of medical, engineering, and male and female undergraduates, indicating that law students simply follow the general pattern in this regard.¹⁴⁰

iii. *"Thinking" preferred to "Feeling"*

A 1967 study by Paul Miller employed the Myers-Briggs Type Indicator to distinguish law school drop-outs from those who continued their legal education.¹⁴¹ The study found no significant differences in the personality "types" at each of four law schools, suggesting that all of the law schools attracted the same mix of students, in terms of personality.¹⁴² However, law students differed significantly from male college students by a marked preference for Thinking over Feeling.¹⁴³ Lawrence Richard replicated this finding

136. See Miller, *supra* note 128, at 460-67 (specifically, "Feeling" types as measured by the MBTI).

137. See *id.* (11% of "Thinking" types dropped out compared to 20% of "Feeling" types, as measured by the MBTI; the ESFJ type, who values people, had the highest drop-out rate (28.1%)).

138. See Richard, *supra* note 30, at 248 ("Thinkers" report higher job satisfaction than "Feelers," referring to MBTI dimensions).

139. Reich, *supra* note 82, at 1344. The top students scored significantly higher on the Strong Vocational Interest Blank scales named Physician, Psychiatrist, Psychologist, Biologist, Artist, Musician-Performer, Lawyer, and Author-Journalist. See *id.* The bottom students scored significantly higher on the Public Speaking, Business Management, Merchandising, Office Practices, Mechanical, Religious Activities, Production Manager, Accountant, Office Worker, Purchasing Agent, Banker, Pharmacist, Funeral Director, Salesman, President-Manufacturing, Credit Manager, and Business Education Teacher scales. See *id.* Women students were excluded from the study, probably due to the small number in the sample. See *id.*

140. See *id.* These results are consistent with other studies of medical, engineering, and male and female undergraduates; top students generally score higher on professional or intellectual scales and bottom students score higher on business or commercial scales. See *id.*

141. Conducted in 1963 with students in their first week of law school at four law schools, this study measured drop-outs after the first year of law school and attempted to find correlates among academic predictors and personality type (using the Myers-Briggs Type Indicator). It found that dropping out from the first year of law school is unrelated to academic promise as a law student, based on undergraduate grade point average and Law School Admissions Test scores. See Miller, *supra* note 128, at 460-61.

142. See *id.* at 465-66.

143. Seventy-two percent of the law students preferred Thinking over Feeling, while only fifty-four percent of the male college students preferred Thinking. See *id.* at 465.

in an unpublished 1994 study,¹⁴⁴ suggesting that this preference has remained relatively consistent over time and independent of gender influences. Richard explains that the dimensions of Thinking and Feeling both represent:

rational, valid decision-making methods. Both involve thought, and neither process is related to emotions. . . .

Those who prefer to make decisions on the basis of Thinking prefer to come to closure in a logical, orderly manner. They can readily discern inaccuracies and are often critical. They can easily hurt others' feelings without knowing it. They are excellent problem solvers. They review the cause and effect of potential actions before deciding. Thinkers are often accused of being cold and somewhat calculating because their decisions do not reflect their own personal values. They focus on discovering truth, and they seek justice.

Those who prefer to make decisions on the basis of Feeling apply their own personal values to make choices. They seek harmony and, therefore, are sensitive to the effect of their decisions on others. They need, and are adept at giving, praise. They are interested in the person behind the idea or the job. They seek to do what is right for themselves and other people and are interested in mercy.¹⁴⁵

The replication of Miller's results in Richard's more recent study¹⁴⁶ (which included women lawyers) suggests that this is a particularly strong finding, that these personality type preferences survive into practice, and that the introduction of women into the sample has not changed the results.¹⁴⁷

iv. "Feeling" associated with dropping out of law school

Miller's study also determined that more of the Feeling law students dropped out of law school than did the Thinking types, suggesting that Feeling may be more incompatible with the study of law.¹⁴⁸

144. See Richard, *supra* note 30, at 229-30 (finding that 76.5% of lawyers sampled preferred Thinking over Feeling, while only 47.5% of the general population preferred the same).

145. SUSAN J. BELL & LAWRENCE R. RICHARD, *Anatomy of a Lawyer: Personality and Long-Term Career Satisfaction*, in FULL DISCLOSURE: DO YOU REALLY WANT TO BE A LAWYER? 149, 152 (Susan J. Bell ed., 2d ed. 1992). Richard also notes that the Thinking/Feeling scale is the most significant personality trait for predicting lawyer satisfaction, stating, "those with a preference for Feeling are swimming against the tide." *Id.* at 153.

146. See Richard, *supra* note 30, at 229-31, 233-34.

147. All of the early studies (1967-68) excluded women from the sample studied.

148. See Miller, *supra* note 128, at 466 (stating that 11% of Thinkers dropped out, compared to 20% of Feelers). As shall be seen later, Feeling may also be incompatible with the contented practice of law. See Bell & Richard, *supra* note 145, at 153 (finding that those with "Feeling" preference were most likely to be disenchanted with practice of law); Richard, *supra* note 30, at 233-34.

Perhaps the most striking finding was an "almost perfect inverse relationship" between the extent to which one of the sixteen personality types was present among law students and its drop-out rate.¹⁴⁹ The type that is most prevalent in law school is typically "dependable and practical with a realistic respect for facts, who absorbs and remembers great numbers of facts and is able to cite cases to support his evaluations, and who emphasizes analysis, logic and decisiveness."¹⁵⁰ This type exhibited a 6.7% drop-out rate.¹⁵¹ The least common personality type in law school belongs to the type of person who is "concerned chiefly with people, who values harmonious human contacts, is friendly, tactful, sympathetic, and loyal, who is warmed by approval and bothered by indifference and who tends to idealize what he admires."¹⁵² This type exhibited a drop-out rate of 28.1%.¹⁵³

The likelihood of dropping out was not related to academic promise, based on grade point average and LSAT scores; instead, it was related to personality characteristics.¹⁵⁴ This is consistent with psychological research on job satisfaction suggesting that job satisfaction will be optimized if job requirements are matched to individuals' personality, interests and motivations, rather than their skills, knowledge, talents, and abilities.¹⁵⁵

v. Demographic attributes of law students

In Robert Stevens' 1973 study, mentioned earlier,¹⁵⁶ women comprised approximately 5-6% of the sample population, and non-

149. The least common personality type had the highest drop-out rate; the most common personality type had the lowest drop-out rate, and so on. An overrepresented type is one that is more prevalent in the law student sample than it is in the general population (i.e., it was self-selected into law school). See Miller, *supra* note 128, at 466.

150. *Id.* at 466.

151. This is the ISTJ type reflecting a preference for Introversion, Sensing, Thinking, and Judging. See *id.*

152. *Id.*

153. This is the ESFJ type reflecting a preference for Extroversion, Sensing, Feeling, and Judging. See *id.*

154. See *id.* at 465-66. One of the most ominous conclusions drawn by Miller, however, is the statement that "the only objective criteria now used to select students were impotent in predicting survival." *Id.* at 467. These objective criteria are the undergraduate grade point average and the LSAT score. See *id.* Miller continues, stating that "[p]resumably, the purpose of a law school is to train future lawyers and not to titillate the faculty by supplying them with intellectually able first-year students—although the two are not, of course, mutually exclusive." *Id.*

155. See Chusmir, *supra* note 61, at 231-34 (concluding that most attorney positions are most happily filled by individuals with high achievement needs, moderate power needs, and low affiliation needs).

156. See *supra* notes 70, 76 & 88-96 and accompanying text.

Caucasians represented only 2%.¹⁵⁷ Demographically, law students came from high socioeconomic, elite backgrounds.¹⁵⁸ Further, a comparison of the classes of 1960, 1970, and 1972 exhibited a trend toward increased rejection of parents' religious beliefs in favor of atheism and agnosticism¹⁵⁹ and towards homogenization of backgrounds.¹⁶⁰ Stevens' study also found that law students in the 1950's were predominantly humanists in undergraduate school; by the late 1960's, however, law students were predominantly social scientists.¹⁶¹ The results of Stevens' study suggest that the character of law students changed significantly over this time period.¹⁶²

A 1974 demographic study conducted by Kay Standley found that law students were more often first-born or only children, but that this was also true of medical students, college undergraduates, and graduate students in general.¹⁶³ Medical students, however, were more likely to have a father who was a physician than law students were likely to have a father who was an attorney, suggesting that law students do not "follow in their father's footsteps" as often as do medical students.¹⁶⁴

vi. Competitiveness and aggression

Stevens' study also assessed perceived competitiveness, aggression, and congeniality among law students, based on a survey of first-term

157. See Stevens, *supra* note 70, at 571-72 n.46.

158. See *id.* at 572-74.

159. See *id.* at 574. Of course, this trend may have been present in many young people at the time, given the political and social climate of the 1960s.

160. See *id.*

161. See Astin, *supra* note 76, at 77 (social science was most popular pre-law major); see also *supra* note 77 and accompanying text.

162. At the very least this indicates a change in their intellectual approaches to life. See Stevens, *supra* note 70, at 575. Stevens also demonstrated that law students are academic achievers, in that 50% of law students ranked in the top quarter of their undergraduate classes. See *id.*

163. See Lawrence Dubin, *The Role of Law School in Balancing a Lawyer's Personal and Professional Life*, 10 J. PSYCHIATRY & L. 57, 61 (1982) (finding that law students come from higher social and economic levels than do other college graduates, which may be consistent with idea that they seek to achieve socioeconomic level equal to that of their parents (citing S. WARKOV & J. ZELAN, *LAWYERS IN THE MAKING* 2-6 (1965))); Kay Standley et al., *Family Constellations of Law and Medical Students*, 26 J. LEGAL EDUC. 241, 242-46 (1974); see also Williams & McCullers, *supra* note 61, at 351 (1983) (finding that women law students and physicians are more likely to be first-born or only children and to share other similarities).

164. See Standley et al., *supra* note 163, at 244-45. The authors suggest that sons of physicians might have a clearer idea of what their fathers do on a daily basis at work than do sons of attorneys. See *id.* This is consistent with Stephen Reich's theory that prospective law students do not have as clear an idea of what attorneys do than do students in medicine, engineering, psychology, and dentistry. See Reich, *supra* note 82, at 1344. Also, this study excluded female students in its results due to the small number of women in the sample studied. The preliminary results with the women students suggested that these same results may not be true for women medical and law students. See Standley et al., *supra* note 163, at 245.

students.¹⁶⁵ When asked about their peers, most students expected to find high or moderate levels of aggression and competition.¹⁶⁶ They reported finding as much cooperation and friendliness among their peers as they expected, but less competitiveness and aggression than they expected.¹⁶⁷ This result, however, could have been due solely to the elimination of grades and the substitution of a pass-fail system during the study.¹⁶⁸ The students consistently mentioned that competitiveness still existed, although it may have been more subtle or in the form of a self-induced, internal competitiveness fostered by a natural competitiveness in the students rather than by peer pressure.¹⁶⁹ They also viewed aggression as a favorable trait, as being "on the offensive" or "ambitious over the long run."¹⁷⁰ This finding is consistent with stereotypes of law students as competitive and aggressive; however, it alone does not indicate whether law students possess more of these attributes than other people. A later study in 1983 suggests that law students are competitive.¹⁷¹

vii. Cynicism and Machiavellianism

Alan Katz and Mark Denbeaux in 1976 investigated cynicism and other characteristics of first-year law students in response to concerns in the legal community that the "sheer volume of new lawyers would make it more difficult to keep the dishonest out of the profession" and that the stereotype of the "'crafty,' 'manipulative,' 'calculating,' 'Machiavellian'" lawyer would be revived.¹⁷² Katz and Denbeaux's study measured cynicism by assessing the students' feelings of trust or mistrust towards people generally,¹⁷³ while Machiavellianism was measured by how much the students agreed with statements from the writings of Machiavelli.¹⁷⁴ In contrast to what the authors expected,

165. See Stevens, *supra* note 70, at 673-75.

166. See *id.*

167. See *id.*

168. See *id.* at 673.

169. See *id.* at 674.

170. See *id.* at 675.

171. See *infra* notes 193-95 and accompanying text (discussing the study in detail).

172. See Alan N. Katz & Mark P. Denbeaux, *Trust, Cynicism, and Machiavellianism Among Entering First-Year Law Students*, 53 J. URB. L. 397, 398 (1976). At the same time, the American Bar Association increased its focus on monitoring attorney behavior, perhaps spurred by the Watergate events. See *id.*

173. See *id.* at 401.

174. See *id.* at 402. Richard Christie's "Machiavellian Scale" was designed to "tap a person's general strategy for dealing with people, especially the degree to which he feels other people are manipulable in interpersonal situations." *Id.* This study also investigated the students' perceptions of their likely behavior as attorneys by asking whether they would be traditionalists/passive or reformers/active, and by asking them to detail their feelings about the ethics of the legal profession. See *id.* at 402-03.

the law students were more trustful than a national sample of adults, and were no more Machiavellian than a sample of college undergraduates.¹⁷⁵ The study's findings suggest that law students are not deserving of the pejorative stereotype assigned to them. Other studies, however, indicate that law students' cynicism increases and idealism decreases as a result of law school.¹⁷⁶ Consequently, Katz and Denbeaux's study of law students during their first week of classes may not be representative of lawyers.¹⁷⁷

Law students in the Katz and Denbeaux study also believed that lawyers were more honest and ethical than "people generally"¹⁷⁸ and that lawyers were just as ethical as doctors.¹⁷⁹ This result is inconsistent with other studies of law students¹⁸⁰ and of undergraduates¹⁸¹ who ranked the level of honesty and ethics of doctors higher than lawyers, as well as studies that found that law school tends to increase law students' cynicism about lawyers and the legal profession.¹⁸²

b. Later studies including women in the sample

i. Dominance, aggression, and competitiveness among women

Possibly as a result of increasing numbers of women in the field of law during the late 1970s, researchers and academics conducted a number of studies investigating women law students, women lawyers, and gender differences among law students and lawyers.¹⁸³ A 1978 study by Jane Coplin and John Williams found that women law

175. See *id.* at 403-05. Part of the reason they were more trustful than adults generally may have been the subjects' young age. See *id.* at 400.

176. See, e.g., Anderson et al., *supra* note 97, at 45.

177. See Katz & Denbeaux, *supra* note 172, at 400.

178. *Id.* at 410-11. They rated the ethics of law professors and judges even higher. See *id.* The authors found that these results were consistent with the other findings of noncynicism in these law students. See *id.* The authors also believed that these ratings reflected a generally high esteem for the entire judicial system and an idealistic perception about their new experience in law school, due to the fact that the students were in their first week of classes. See *id.*

179. See *id.* at 410.

180. See *id.* at 411 (observing that 91% of 69 law students surveyed rated honesty of doctors above that of lawyers (citing Jean Campbell, *The Attitudes of First-Year Law Students at the University of New Mexico*, 20 J. LEGAL EDUC. 71, 75 (1967))).

181. See *id.* at 411 (noting a 1975 Gallup Poll of 904 undergraduates in which 66% rated honesty and ethical standards of doctors as High or Very High, while only 40% gave similar ranking to lawyers (citing *The Gallup Poll Index*, Sept. 1975, at 13)).

182. See *id.* at 412 (commenting that first-year law students surveyed hold less cynical perception of the legal profession than do practicing attorneys); see also *infra* notes 298-99 and accompanying text (finding that first-year law students generally described lawyers in complimentary terms).

183. See A.B.A. COMM'N ON WOMEN IN THE PROFESSION, *supra* note 36, at 1; see also Astin, *supra* note 76, at 74 (10% of prelaw students in 1969 were women; by 1981, this figure reached 45%).

students described themselves as significantly more autonomous, aggressive, confident, and "internally motivated to succeed in pursuits of socially recognized significance" than did female undergraduate students.¹⁸⁴ These results were consistent with Martin Bohn's 1971 findings that pre-law students were more interested in dominance than other college students.¹⁸⁵ Also, the female law students in the 1978 study saw themselves as less feminine, more confident, with greater need for achievement, dominance, autonomy, and aggression, and lower need for nurturance, succorance, abasement, and deference, than female undergraduates.¹⁸⁶ Even with such a strong self-image, the women law students believed that the "ideal lawyer" was even more persevering, interested in success and influence, knowledgeable, conscientious, serious, emotionally independent, competitive, distant from others, and objective than they perceived themselves to be.¹⁸⁷ It can be argued, however, that the women law students (or professional students) may have been more dominant, aggressive, and "masculine" than their male counterparts simply because they were entering a traditionally male-dominated, atypical profession.¹⁸⁸

ii. *Cold, impersonal attributes*

A 1994 study by Heather McLean and Rudolf Kalin found that although dominance was a trait associated with lawyers in general, only female law students saw themselves as slightly more dominant than the mean; male law students actually saw themselves as less dominant than the mean.¹⁸⁹ This study, which involved Canadian law students, also found that they perceived themselves to be less "affiliative" than the mean. These results indicate that their self-perceptions were less warm and agreeable and more cold and quarrelsome than were those of other graduate students.¹⁹⁰ The law students' overall self-perceptions correlated only slightly with undergraduates' perception of the stereotypical lawyer, indicating that

184. See Jane W. Coplin & John E. Williams, *Women Law Students' Descriptions of Self and the Ideal Lawyer*, 2 PSYCHOL. WOMEN Q. 323, 329-31 (1978).

185. See Bohn, Jr., *supra* note 41, at 360.

186. See Coplin & Williams, *supra* note 184, at 329-30.

187. See *id.* at 329-31. The study used the Adjective Check List to determine needs as well as personality traits. There was one interesting "reversal" in these findings; the women law students described themselves as more aggressive and less nurturing than their ideal lawyer, perhaps as a result of overcompensation and de-emphasis on feminine traits. See *id.* at 331.

188. See *infra* notes 327-28 and accompanying text (discussing empirical study of professional and non-professional women).

189. See McLean & Kalin, *supra* note 38, at 153-54.

190. See *id.*

law students see themselves differently than others see them.¹⁹¹ These correlations also suggested that engineering and law are the most similar to each other, while nursing and teaching are the most different from law.¹⁹²

iii. Competitiveness generally

Law students also appear to be competitive. Janet St. Lawrence's 1983 study of a cognitive-behavioral intervention designed to reduce stress in law students stated that "students increased their knowledge and were able to use their knowledge effectively in their personal lives while retaining their competitive approach to life."¹⁹³ The "Hard Driving" scale of the Jenkins Activity Schedule measured the "competitiveness" of the law students.¹⁹⁴ Scores on competitiveness were unchanged by the intervention.¹⁹⁵

c. Interim summary of law student attributes

There are a few disturbing studies which hint at problems in law student personality. Before turning to these studies, it will be helpful to summarize the portrait of the law student painted by the foregoing research. The research uniformly portrays law students as dominant, competitive, leadership-oriented, socially confident, extroverted, sociable, free from anxiety and insecurity, ebullient, and at ease in interpersonal relations. Law students prefer the MBTI dimension of Thinking rather than Feeling and accept "what our society considers to be a 'masculine' orientation," in addition to ideas of "survival of the fittest, hero worship of acquaintances, and rugged individualism."¹⁹⁶ The typical law student is not overly humanitarian¹⁹⁷ and tends not to be the type of person who is "concerned chiefly with

191. See *id.* at 154-55. This correlation was only 0.14, which was the lowest correlation between self-description and stereotype for all the occupations studied, including engineering, nursing, teaching, rehabilitation, therapy, medicine, and law.

192. See *id.* at 155.

193. Janet S. St. Lawrence et al., *Stress Management Training For Law Students: Cognitive Behavioral Intervention*, 1 BEHAV. SCI. & L. 101, 106 (1983).

194. See *id.*

195. See *id.*

196. See Solkoff & Markowitz, *supra* note 124, at 198; see also Hedegard, *supra* note 100, at 803 (summarizing research conducted prior to 1979 as indicating that law students were more confident, expressive, dominant, assertive, socially outgoing, introspective, and philosophical in outlook than other students).

197. Humanitarianism was defined in Solkoff's study as "a regard for the interests of mankind, benevolence, philanthropy." Solkoff & Markowitz, *supra* note 124, at 197; cf. *supra* note 145 and accompanying text (discussing Miller's definition of "Feeling" types). This lack of humanitarianism may have intensified in the 1960s and 1970s, as evidenced by a change in the usual undergraduate preparation of law students from humanistic disciplines to social science disciplines during these years. See Stevens, *supra* note 70, at 575.

people, who values harmonious human contacts, is friendly, tactful, sympathetic, and loyal, who is warmed by approval and bothered by indifference and who tends to idealize what he admires."¹⁹⁸ The research also suggests, although with some expected gender differences, that law students are motivated by achievement rather than altruism.¹⁹⁹

The above characterization, however, may be only part of the law students' personality. Stephen Reich reported interesting findings about the inner world of the law student consistent with other studies reporting a high level of psychological distress among law students and lawyers. This suggests the existence of a chink in the formidable "armor" portrayed by the foregoing studies.

d. The chink in the armor: evidence of internal distress

i. The outward image

In a particularly revealing study conducted by Stephen Reich in 1976, law students' external attributes appeared to be greatly at odds with their internal feelings.²⁰⁰ Reich administered the California Psychological Inventory to ninety-four first-year law students in an attempt to identify the personality characteristics associated with academic performance. While Reich found no personality attributes which correlated with academic performance in law school,²⁰¹ his incidental findings were much more interesting. Law students scored significantly differently than the norm for males on sixteen of eighteen of the test's scales.²⁰² Their consistently high scores on one group of these scales indicate that they:

tend to be seen as aggressive, persuasive, having leadership potential and initiative, as being socially ascendant and self-seeking, quick, spontaneous, as having an expressive, ebullient nature, as intelligent, outspoken, sharp-witted, and possessing self-confidence

198. See Miller, *supra* note 128, at 466.

199. See Hedegard, *supra* note 100, at 814 (finding that altruism was an influential factor in less than one-third of law students surveyed); *supra* notes 88-114, 295-97 and accompanying text (presenting divergent results in attitudes and motivating factors that were characteristic of law students). Results on cynicism among law students are inconsistent. Compare Anderson, *supra* note 97, at 45 (indicating that law students have increased cynicism and decreased idealism), and Solkoff & Markowitz, *supra* note 124, at 198 (discovering that cynicism in law students increases the longer one is in law school), with Katz & Denbeaux, *supra* note 172, at 400 (finding law students to be less cynical than other adults) (citing Wagner P. Thielens, *The Socialization of Law Students: A Case Study in Three Parts* (1965) (unpublished Ph.D. dissertation on file with Dept. of Sociology, Columbia University)).

200. See Reich, *supra* note 134, at 871-74.

201. See *id.* at 873-74.

202. See *id.* at 872. A list of these scales is set forth in Table 1 of Reich's study. See *id.*

. . . . [They would have] great interest in and enthusiasm for social role-playing, and for competitive, sharp-witted and self-seeking social relations. It is the picture of a group which projects itself or attempts to project itself, as socially successful, as possessing a high degree of social polish, and at least the appearance of great self-confidence, poise, and leadership.²⁰³

These findings are entirely consistent with previously discussed studies finding that law students tend to be socially at ease, ebullient,²⁰⁴ and initiative-taking,²⁰⁵ as compared to other students.

ii. The inner persona

In sharp contrast, however, and despite these qualities, the students in Reich's study also scored significantly low on a "Sense of Well Being" scale.²⁰⁶ This indicates that the students "tend to be seen as self-defensive and apologetic, as awkward, cautious, and as constricted in thought and action."²⁰⁷ Reich concluded that this "gives some evidence of a flaw in the social armor of the law students; it may be an indication that on an inner level, on the level of self-doubt, the law student does not see himself as a polished, aggressive, successful, and dominant person."²⁰⁸ If there were no other scores suggesting the same conclusions, the findings could be considered a puzzle to be interpreted with caution. The students' scores on another cluster of scales, however, indicated that they are "seen as awkward, moody, dogmatic, under-controlled, impulsive, defensive, self-centered, suspicious, aloof, inhibited, cautious, nervous, and as having internal conflicts and problems."²⁰⁹ Because these scores support the prior interpretation of the Sense of Well-Being scores, Reich concluded that "on an intrapersonal and inner level, law students are insecure, defensive, distant, and lacking in maturity and socialization."²¹⁰

In support of this conclusion, Reich further stated that

[l]aw students . . . wear a social mask and attempt to make a strong and definite impression on others; they act and react in great measure on the basis of the social role which they have adopted

203. See *id.* at 873.

204. See Solkoff & Markowitz, *supra* note 124, at 198 (noting that law students display greater ebullience, sociability and ease in interpersonal relations).

205. See Hafner & Fakouri, *supra* note 47, at 240 (finding that law students as children tend to take comparatively high initiative).

206. See Reich, *supra* note 134, at 873. The "sense of well-being scale" identifies persons who minimize their worries and complaints and who are relatively free from self-doubt and disillusionment. See *id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

and which they feel is expected of them by society. While they publicly project strength, activity, and enthusiasm, their private personality is one of awkwardness, defensiveness, and nervousness. *It is highly possible that as a reaction formation to their inner feelings of inadequacy and uncertainty they have adopted a social posture which is dominant, clear-cut, and ascendant.*²¹¹

This analysis is entirely consistent with Alfred Adler's concept that individuals choose careers in order to overcome feelings of inferiority or experiences of discomfort.²¹² Reich contends that law school is not likely to change these conflicting attributes of law students and, further, that a legal career actually exacerbates and perpetuates this conflict between the outer persona and inner feelings.²¹³ Reich's study suggests that there are pre-existing personality conflicts in law students which may be contributing to the current low levels of lawyer satisfaction and low public opinion of attorneys.

e. Law student stress, distress, and dysfunction

i. Anxiety, stress, and other psychopathology

Law students consistently report more anxiety than the general population.²¹⁴ A 1957 study by Leonard Eron and Robert

211. *Id.* at 873-74 (emphasis added). Reich continues,

Law is a role-playing profession. The law students who privately are insecure are able to ignore their inner feelings and to concentrate on championing the rights of someone else; they take on his role and focus on his problems rather than their own. The . . . [test results indicate that] law students are frequently engaged in playing a part in their lives and have not as yet really dealt with their genuine feelings.

Id. at 874. Reich contends that legal education will not be likely to change this pattern since law school encourages law students to continue to act in roles rather than to explore how they, as private persons, would deal with the situation. *See id.* This may explain why some commentators are calling for law schools to focus on teaching ethics and values and why traditional legal education has been unsuccessful in getting students to explore how they would deal with ethical dilemmas. It is plausible that these students are so used to acting in roles that they are unprepared to deal with their own feelings in troublesome situations. It also may help explain the public's low opinion of lawyers and why clients and others complain that they cannot relate to their attorneys. *See* John A. DeVault III, "My Lawyer's Dialing Finger is Broken," FLA. B.J., July-Aug. 1995, at 12. Finally, Reich concludes that possibly one of the strongest motivations for these students to become lawyers is the chance to continue their current mode of operating ("demonstrations of public vigor and dominance while being privately anxious and uncertain") and have this personality style validated and rewarded "through the choice of a socially prestigious and valued profession." Reich, *supra* note 134, at 874.

212. *See supra* notes 46-47 and accompanying text; *see also* JAMES O. PROCHASKA, SYSTEMS OF PSYCHOTHERAPY: A TRANSTHEORETICAL ANALYSIS 70-71 (1979) (contending that manner in which individuals choose career paths is influenced by inner feelings such as self-esteem).

213. *See* Reich, *supra* note 134, at 874. Further, a legal career solves the conflict by providing a socially desirable "role" for the individual to don and thereby effectively conceal the inner feelings of inadequacy and insecurity.

214. *See* Stephen B. Shanfield & G. Andrew H. Benjamin, *Psychiatric Distress in Law Students*, 35 J. LEGAL EDUC. 65, 69 (1985) (reporting "higher rates of psychiatric distress" for law students than the general population). *See generally* Benjamin et al., *supra* note 70, at 227-28 (discussing

Redmount found that law students reported significantly more anxiety than medical students.²¹⁵

A 1983 study by Marilyn Heins and her colleagues noted further that law students reported significantly higher levels of Academic Stress (stress associated with the academic demands) and Fear-of-Failing Stress (stress "related to personal reactions to the academic environment") than medical students.²¹⁶ Too much or too little stress is associated with poor performance, thus an optimal amount of stress is needed for optimal performance.²¹⁷

In the 1983 Heins study, law students indicated that they managed to cope with this stress, but were far less inclined to seek help from anyone in order to deal with it.²¹⁸ The law students also reported a greater frequency of objective stress symptoms, such as excessive alcohol use, than did the medical students.²¹⁹ This suggests that the law students denied their stress levels, or used more socially isolated

studies showing increased stress levels in law students).

215. See Leonard D. Eron & Robert S. Redmount, *The Effect of Legal Education on Attitudes*, 9 J. LEGAL EDUC. 431, 435 (1957).

216. See *id.* at 519 (noting that overall, law students did not report any greater level of anxiety than medical students). Further research has shown that within legal education, women experience more stress than men. In 1988, Janet Taber and her colleagues presented evidence that women experienced more stress during law school than men. See Taber et al., *supra* note 111, at 1251-53 (reporting differences between men and women's stress-related indicators, such as crying, having nightmares, experiencing insomnia, drinking alcohol, and overeating). This was particularly true of women alumni and less so of women law students, see *id.* at 1251-52, prompting these researchers to wonder if the law school environment has improved for women in recent years. See *id.* at 1253. The authors suggest that the difference may merely reflect varying "perception as memories of these experiences" and that the "graduates' memories of their stressful experiences may be exaggerated or distorted by time." *Id.* Furthermore, because the study tested reactions to stress, the authors suggest that men and women may experience the same level of stress, but react differently to it. See *id.* Women graduates also reported more stress as practicing attorneys than did men, see *id.* at 1258, yet women's levels of job satisfaction did not differ from that of men. See *id.* at 1245-46. The authors note, however, that the American Bar Association has interpreted the results of several surveys as showing that women lawyers are generally less satisfied with their jobs than are men. See *id.* at 1222 & n.80 (citing *Myth v. Ms.*, BARRISTER, Winter 1986, at 28). Finally, Beck noted that women generally tend to report more symptoms of distress than men, so these gender differences may simply reflect this general phenomenon. See Beck et al., *supra* note 2, at 48-49.

217. This relationship is often called the "Yerkes-Dodson Law." The Yerkes-Dodson Law holds that an optimal level of arousal or difficulty in a task (i.e., stress) is necessary for optimal performance. Too little or too much arousal is associated with poor task performance. See LUDY T. BENJAMIN, JR. ET AL., PSYCHOLOGY 339 (1994). In 1968, Lawrence Silver demonstrated that this relationship operates in the first semester of law school. See Lawrence Silver, Comment, *Anxiety and the First Semester of Law School*, 4 WIS. L. REV. 1201, 1202 (1968). Although Silver's sample of law students was too small to support significant statistical analysis of his data (only nine first-year students were interviewed), Silver found that students with high and low levels of anxiety failed to achieve grades after the first-semester consistent with their predicted grades. See *id.* at 1216.

218. See Heins et al., *supra* note 76, at 520-21 (noting that unlike law students, medical students were four times more likely to seek help, and most often indicated that they received help or support from family or friends).

219. See *id.* at 521.

and perhaps maladaptive ways of dealing with their stress, as compared to medical students.

Motivated in part by the inconsistent methods, low response rates, and methodological problems of previous studies, a 1985 study by Shanfield and Benjamin reported that law students had significantly elevated scores on a wide variety of measures designed to assess psychiatric distress, compared to the general population.²²⁰ Shanfield and Benjamin also cross-sectionally surveyed law students in October of the first, second, and third years, and in February of the first year finding that law students scored significantly differently than the norm on almost every scale, and with women law students showing higher levels of distress than men.²²¹

The study concluded that "the law students are overall quite distressed."²²² The study further discovered that there were no significant differences in levels of distress between the classes, suggesting that law students experience the same level of distress throughout law school, with the exception that second-year students may have experienced more hostility-related symptoms.²²³ Finally, the study noted that twelve percent of law students experience such significant depression as to warrant psychiatric evaluation and intervention, as compared to only 3-9% of the general population.²²⁴

Shanfield and Benjamin mention that these results do not indicate whether individuals with higher ongoing levels of distress or with a

220. See Shanfield & Benjamin, *supra* note 214, at 69. Law students had a higher rate of psychiatric distress than either a contrasting normal population or a medical student population. See *id.* at 65-66. These authors reviewed earlier studies and noted low response rates, nonsystematic approaches, little empirical data, inordinate focus on the first year, failure to compare law students to other professional students, and use of personality tests which do not measure psychiatric symptoms. See *id.*

221. See *id.* at 67, 74. These scales measured anxiety, depression, hostility, obsessive-compulsivity, interpersonal sensitivity, phobic anxiety, paranoid ideation, psychoticism, overall distress, intensity of symptoms, and total number of symptoms. See *id.* It is important to note that "interpersonal sensitivity" in this context does not mean being attuned to other people; here it denotes "feelings of inadequacy and inferiority, particularly in comparison with others." Beck et al., *supra* note 2, at 14. The assertion throughout this Article that lawyers are not interpersonally sensitive, meaning not attuned to the emotions, needs, and concerns of other people and not concerned with interpersonal issues or harmony, is therefore not inconsistent with the research finding that lawyers' "interpersonal sensitivity" (as a measure of psychological distress) is elevated.

222. *Id.* at 68. These authors used the Beck Depression Inventory, a well-respected, validated self-report instrument measuring depression; the Brief Symptom Inventory, which measures nine symptom dimensions such as somatization, hostility, interpersonal sensitivity, depression, and anxiety, and three global indices including the Global Severity Index, the Positive Symptom Distress Index, and the Positive Symptom Total; and the Multiple Affect Adjective Checklist, which is a "validated survey of feeling states" scored for anxiety, depression, and hostility. See *id.* at 67-68.

223. See *id.* at 71 (indicating that these results were consistent with earlier studies).

224. See *id.* at 72.

higher potential to develop psychiatric symptoms when under stress are attracted disproportionately to law school, or whether the law school experience creates the distress.²²⁵ The authors did not collect data from law students prior to the commencement of their legal training; nor does their data indicate whether this psychiatric distress impairs social or occupational performance, or whether it is associated with lawyer impairment (substance abuse, psychiatric disorders, or ethical violations) after law school.²²⁶ Although they suggest further research is necessary to determine whether impaired lawyers are "drawn from the ranks of the most distressed law students,"²²⁷ to date, no follow-up research has been reported. Shanfield and Benjamin, however, did participate in a second study reported in 1986, which examined the psychological distress of law students before, during, and after completing law school.²²⁸

ii. The development of distress

The 1986 study, conducted by Professors Benjamin, Kazniak, Sales, and Shanfield, is perhaps the most comprehensive, systematic, and methodologically sound study of law students and lawyers to date.²²⁹ Their results, based on surveys of students in the summer before they entered law school, indicate that law students are "normal" before entering law school.²³⁰ However, symptoms of psychiatric distress increase significantly, to a level higher than the mean for the normal population, during the first year of law school.²³¹ Furthermore, the study determined that these symptoms progressively increase throughout law school and do not abate during the first two years of practice following graduation.²³² The symptoms of psychiatric distress fell primarily into the categories of obsessive-compulsiveness and paranoia.²³³ The 1986 study ultimately concluded that distress may be related to legal education's overemphasis on thinking and its underemphasis on the development of interpersonal skills.²³⁴

225. See *id.* at 69.

226. See *id.* at 66-67 (describing method used in gathering and analyzing data).

227. *Id.* at 73.

228. See Benjamin et al., *supra* note 70, at 228 (describing study of students and alumni of University of Arizona Law School); *infra* notes 229-52 and accompanying text (analyzing studies indicating percentages of law students showing psychological distress).

229. See Benjamin et al., *supra* note 70, at 228-33 (detailing methods and procedures used in Arizona law school study).

230. See *id.* at 246.

231. See *id.*

232. See *id.*

233. See *id.*

234. See *id.* at 250-51. Other contributors to distress may include excessive workloads, time management problems, and a high student-faculty ratio. See *id.* at 248-49.

The 1986 study is not burdened with many of the difficulties associated with earlier studies because it relied on validated, proven measurement instruments.²³⁵ It improved on the authors' previous study because it re-tested a number of the same subjects over their law school careers, using a longitudinal instead of a cross-sectional design.²³⁶ The authors discovered that 17-40% of the group studied reported significantly elevated levels of depression, and 20-40% of the same group "reported other significantly elevated symptoms, including obsessive-compulsive, interpersonal sensitivity, anxiety, hostility, paranoid ideation, and (psychoticism) social alienation and isolation."²³⁷ The pre-law students, however, experienced significantly less distress than the law students and alumni. For example, approximately 10.3% of the pre-law students suffered from depression,²³⁸ compared to only 3-9% of individuals in the general population in industrialized nations.²³⁹

From these findings, the authors concluded that the pre-law students were not disproportionately depressed compared to the normal population.²⁴⁰ The authors also found no demographic or descriptive differences distinguishing those who developed severe symptomatology from those who did not.²⁴¹ No "significant relationships were found between symptom levels and age, undergraduate grade-point average, law school grade-point average, hours devoted to undergraduate studies, hours devoted to law school studies, hours devoted to employment as alumni, passage of the state bar examination, and the size of the law practice,"²⁴² indicating that the often-quoted reasons for lawyer dysfunction and dissatisfaction of long hours and large law firms are not supported by the empirical data.

The 1986 study shows that law students and new lawyers have a higher incidence of psychological distress than does the normal

235. See *id.* at 226-28 (noting that study avoided methodological flaws by using standardized social science instruments).

236. A cross-sectional method would have measured different subjects simultaneously, such as first-, second-, and third-year students and alumni. There may be inherent differences between the groups. Because a longitudinal design assesses the same subjects at different points in time, differences between the groups are likely to reflect true effects of time, not simply inherent differences among the subjects themselves. A closed-end questionnaire was used to gather various information. See *id.* at 231.

237. *Id.* at 236. The criteria for the cutoff was two standard deviations above the mean. See *id.*

238. See *id.*

239. See *id.* at 247.

240. See *id.* at 247 n.50 (citing J.H. Boyd & M.M. Weisman, *Epidemiology of Affective Disorders*, 38 ARCHIVES GEN. PSYCHIATRY 1039 (1981)).

241. See *id.* at 246.

242. *Id.*

population.²⁴³ The authors assert that law school may be responsible for this phenomenon, suggesting that law school has such a pervasive, socializing effect that it causes law students to become unduly paranoid, hostile, and obsessive-compulsive.²⁴⁴ Furthermore, legal educators might reasonably believe that law students *must* develop those qualities responsible for this increased psychological distress in order to learn and perform adversarial practice skills successfully.²⁴⁵ Additional research is needed, however, to determine whether elevated levels of psychiatric symptoms are truly helpful for lawyers practicing in an adversarial setting.²⁴⁶

Robert Stevens' 1973 study determined that law students' level of reported tension and the amount of time they spent studying declined sharply by the third year of law school.²⁴⁷ This finding is somewhat inconsistent with Benjamin and his colleagues' findings.²⁴⁸ Stevens' finding is, however, consistent with a pattern of student withdrawal from involvement in intellectual and academic activities found in studies of medical and undergraduate students, and may represent an interest in the "real world" as opposed to academic activities as the time of graduation draws closer.²⁴⁹

iii. Possible causes of distress and law students' methods of coping with it

Benjamin and his colleagues suggest that "unbalanced development of student interpersonal skills" may be one of the factors contributing

243. *See id.*

244. *See id.* at 251.

245. *See id.* at 252.

246. *See id.*

247. *See* Stevens, *supra* note 70, at 652-57. According to Professor Stevens' study, by the fifth semester of law school, most students have a two-day work week and intellectually participate in law school on a part-time basis. *See id.* at 653. Only about 5% of the students were still tense in the fifth semester or found their studies difficult; 20% found their studies stimulating. In the first semester, only 12% felt relaxed; in the fifth semester, almost 75% felt relaxed and about 30% felt bored and unchallenged. *See id.* at 653-54.

248. *See supra* notes 228-46 and accompanying text (finding that symptoms of psychological distress did not appreciably decline in third year). With respect to tension, perhaps the situation changed from 1973 to 1986 (the latter being the year Benjamin reported his findings), or perhaps the manner in which Stevens assessed tension failed to account for the psychological symptoms of distress that Benjamin captured. Students may not have reported feeling tense in response to law school because they dealt with the tension via one of the maladaptive behaviors Benjamin studied (e.g., obsessive-compulsiveness, paranoia, or substance abuse).

249. *See* Stevens, *supra* note 70, at 658 (suggesting various explanations for data showing that low levels of student interest are most prevalent among students who held summer jobs). Stevens found that the best predictor of tension during the second semester was not grades, but was tension during the first semester, suggesting that tension in law school may be a stable personality trait, not the result simply of external forces. *See id.* at 656.

to law students' psychiatric distress.²⁵⁰ This suggestion emerges from the study's finding of an association between elevated distress levels and interpersonal concerns.²⁵¹ Also, because legal education does not assist or encourage students to acquire interpersonal skills and often concentrates exclusively on the development of analytic skills, students may ignore the social and emotional consequences of decision-making.²⁵² These ideas are supported, in part, by Richard's and Miller's findings that law students disproportionately rely on analytic, rational thought to make decisions, rather than focusing on the emotional or humanistic consequences of their decisions (e.g., Thinking vs. Feeling).²⁵³ Law students may be Thinkers rather than Feelers before coming to law school, but law school's exclusive emphasis on "objective thought, rational deduction and empirical proof"²⁵⁴ likely exacerbates these tendencies, perhaps resulting in emotional distress present throughout law school and for years thereafter.²⁵⁵ Also, Heins' study finding that the majority of law students will not seek help from others in dealing with their problems suggests a profile of individuals who de-emphasize interpersonal skills and relations and tend to rely exclusively on logical analysis and rational thought to solve their problems.²⁵⁶

Law students appear to handle this stress in various ways other than by committing suicide. Despite law students' reports of increased stress, depression, anxiety, and general psychiatric distress, a 1983 study reported that "law students commit suicide significantly less frequently than [their] age-matched peers,"²⁵⁷ including medical students and graduate students.²⁵⁸ As an alternative to suicide, law students may instead handle their stress by adopting maladaptive

250. See *id.* at 250.

251. See *id.*

252. See *id.* (citing F.K. ZEMANS & V.G. ROSENBLUM, *THE MAKING OF A PUBLIC PROFESSION* 1, 137 (1981)).

253. See Miller, *supra* note 128; Richard, *supra* note 30.

254. Benjamin et al., *supra* note 70, at 250 n.65 (quoting M. Meltsner, *Feeling Like a Lawyer*, 33 J. LEGAL EDUC. 624, 633 (1983)).

255. See *id.* at 246.

256. See Heins et al., *supra* note 76, at 520-21 (noting that law students are less likely to seek help as compared to medical students).

257. M.J. Hamilton et al., *Thirty-Five Law Student Suicides*, 11 J. PSYCHIATRY & L. 335, 342 (1983).

258. See *id.* (comparing suicide rates for male and female law students to rates for other graduate students). Note, however, that the frequency of suicides among both law school and medical school students shared a slight increase during the third year of study. See *id.* The similarity between these increases among law and medical students suggests that this phenomenon is common to professional school. The rate for law students, however, still appeared to be lower than that for medical students. See *id.* at 342. The authors then suggest that law school may serve as a stabilizing, socially integrating influence which inhibits suicide. See *id.* at 343.

methods of coping, through means such as isolation and excessive alcohol consumption, or by channeling it into achievement, competition with other students, hostility, or aggression.²⁵⁹

iv. Substance abuse

A 1994 report of the American Association of Law Schools ("AALS Report") presented evidence that law students depend increasingly on alcohol as law school progresses,²⁶⁰ perhaps to deal with their stress and anxiety.²⁶¹ The AALS Report indicated that current drug and alcohol usage did not differ appreciably from that of college graduates of similar age, but that law students reported higher usage rates for alcohol, psychedelic drugs (other than LSD), tranquilizers, and barbiturates.²⁶²

While the "vast majority" of law students reported that their alcohol or drug usage began before they entered law school,²⁶³ the study showed that law students tended to use alcohol more frequently as they progressed through law school, with third-year law students' usage being significantly higher than that of first- or second-year students.²⁶⁴ The AALS Report also indicated that third-year students tended to use alcohol in a maladaptive fashion to relieve stress or tension.²⁶⁵ This type of usage could be a precursor to later, more severe substance abuse problems once those students become attorneys.²⁶⁶

259. See Stevens, *supra* note 70, at 677-78 (finding relationship between tension, ambition, and aggression).

260. See Association of Am. Law Schools, *Report of the AALS Special Committee on Problems of Substance Abuse in the Law Schools*, 44 J. LEGAL EDUC. 35, 42-43 (1994) [hereinafter *AALS Special Committee Report*] (using evidence from Law Student Survey, a comprehensive 1991 survey of all law students at 19 law schools).

261. An additional explanation for increased alcohol consumption by third-year law students as reported by the AALS is that third-year students have learned how to manage their time more effectively, allowing more time for diversions, and they generally are less interested in law school. See Stevens, *supra* note 70, at 653 (finding reduced workload and some boredom for law students in their fifth semester).

262. See *AALS Special Committee Report*, *supra* note 260, at 41-42. Law students also appear to use barbiturates, LSD, other psychedelics, marijuana, and cocaine more often than do medical students. See *id.* at 42.

263. See *id.*

264. See *id.* at 42-43.

265. See *id.* at 45 (reporting that many law students used alcohol in order to relieve anxious feelings).

266. See *id.* at 44. The AALS Committee noted that it conducted its survey, in part, "[b]ecause substance abuse is such a serious problem in the legal profession" and the survey results would help law schools educate students about substance abuse. See *id.* at 36. The report also refers to the establishment of the American Bar Association Commission on Impaired Attorneys in 1988 to respond "to the high incidence of alcoholism and chemical dependency in the legal profession" *Id.* at 45-46.

v. Alienation, dissatisfaction, and sociability

In 1977, Paul Carrington and James Conley reported that some University of Michigan law students simply "turned off" after their first year of law school and continued through school in an alienated and isolated state.²⁶⁷ Carrington and Conley's analysis of law student attitudes indicated the presence of three main factors: alienation, dissatisfaction, and sociability.²⁶⁸ Alienation was defined as disinterest or disengagement, being "turned off", uncaringness, indifference to the idea of law reform, devaluation of association with peers, and suspicion of peers and alumni.²⁶⁹ Carrington and Conley found, disturbingly, that one in seven (26 of 185) Michigan law students manifested "a very strong tendency towards alienation."²⁷⁰ No demographic factors correlated with alienation, as it appeared to cut across race, gender, sex, age, and socio-economic lines.²⁷¹ Only one item correlated positively with alienation: working while in undergraduate school.²⁷² Alienated students tended to spend little time and effort studying, received lower grades, and admitted more frequent acts of antisocial conduct, such as vandalism.²⁷³ These authors believe that alienated students detract from law school morale and are more likely to be a menace to their clients and to exhibit indifference toward professional standards of conduct.²⁷⁴

A slightly higher percentage (15.67%) of the Michigan law students reported being "dissatisfied."²⁷⁵ Dissatisfied students were angry at faculty, peers, and alumni, and worried about grades.²⁷⁶ According

267. See Paul D. Carrington & James J. Conley, *The Alienation of Law Students*, 75 MICH. L. REV. 887, 889-90 (1977) (stating that primary characteristics of alienated students are sense of disconnection from law school community and lack of interest in classes, activities, and other students).

268. See *id.* Carrington and Conley were motivated to perform this study after a large number (up to 20%) of law students at the University of Michigan Law School left after their first year. The authors set out to explore possible causes for the high incidence of dropouts, as well as what the authors termed as dropping out "emotionally and intellectually" while remaining in school. See *id.* at 887.

269. See *id.* at 889-92 (describing alienation factor). Alienation appears to be a special brand of cynicism directed toward school, the law, faculty, and peers. See *id.* at 890-91.

270. See *id.* at 891.

271. See *id.*

272. See *id.* Carrington and Conley theorized that the alienated students worked during undergraduate school because they were more materialistic and less academically oriented. They apparently did not need to work because there was no correlation between working and family income. See *id.*

273. See *id.* at 891-92.

274. See *id.* at 892 (suggesting that alienated law students will likely become cynical lawyers).

275. See *id.* at 893 n.9 (reporting 29 out of a sample of 185 manifested extreme dissatisfaction).

276. See *id.* at 894.

to Carrington and Conley, the dissatisfied student is "not 'turned off,' he or she is 'teed off.'"²⁷⁷ Dissatisfaction among law students appears to be at its highest levels during the first year of law school, and then decrease during the second and third years.²⁷⁸ Dissatisfaction did not affect academic performance or diligence, but it correlated with alcohol and drug use.²⁷⁹ While both alienated and dissatisfied students used alcohol and drugs more often than the norm, the alienated students used less than the dissatisfied students.²⁸⁰

The authors concluded that the dissatisfied students did not constitute "particular ethical risks," even though they could be risks to themselves, and later to clients, due to their maladaptive ways of dealing with their dissatisfaction.²⁸¹ Means of coping or dealing with dissatisfaction included abusing alcohol and drugs and continuing to strive in law school despite feelings of hostility and anger.²⁸² The fact that dissatisfaction decreased over time suggests that it is not a personality trait existing in students prior to entering law school. In contrast, alienation may be a stable personality trait present in law students before law school.²⁸³ Carrington and Conley concluded that both states, alienation and dissatisfaction, are excessively prevalent and damaging both to the law student and the law school milieu.²⁸⁴ These states are also likely to be damaging to the legal profession generally, considering the behavior and attitudes these individuals are likely to display once in practice.

The third main factor that Carrington and Conley identified in their study of law student attitudes was "sociability." "Sociable" law students, the study found, generally tended to desire greater personal contact with faculty, peers, and lawyers.²⁸⁵ Sociable law students often found law school lonely and considered it too doctrinal, failing to focus sufficiently on public policy.²⁸⁶ Carrington and Conley concluded that sociability, while less harmful than alienation or

277. *Id.* at 893 (suggesting that alienated students are disinterested and disconnected from law school community, while dissatisfied students are angry and hostile towards certain aspects of the community).

278. *See id.* at 894.

279. *See id.* at 894-95.

280. *See id.* at 895.

281. *See id.*

282. *See id.*

283. *See id.* at 898 (alienation was present at the same rate among first-, second-, and third-year students). The authors suggest that alienated students could be screened out of law school via the admissions process, but admit their inability to provide a means of doing so. *See id.*

284. *See id.* at 898-99.

285. *See id.* at 896 (defining sociability factor).

286. *See id.* at 897.

dissatisfaction, still contributed to students' discomfort while in law school.²⁸⁷

Overall, the study's results identified three traits which may explain the high levels of psychiatric and emotional stress among law students. The large number of alienated, dissatisfied, and sociable students likely are those experiencing the greatest anxiety, depression, and other symptomatology, thus explaining the greater-than-normal levels of distress among law students. After law school, these traits may be related to unprofessional lawyer conduct and lawyer distress.

In addition to increased psychological distress, there are a number of effects of law school on individuals. These effects are examined below.

5. *Effects of law school*

Some authors have suggested that law school affects students' altruism²⁸⁸ and cynicism²⁸⁹ and encourages conformity to a homogeneous norm.²⁹⁰ Other studies suggest that the primary function and effect of law school is to teach students to "think like a lawyer."²⁹¹ Although most of these assertions are supported by empiri-

287. See *id.* at 898. They stated that it is "unlikely that the sociable student's desire for more emotionally satisfying relationships in the law school can be fully gratified." *Id.* One wonders whether Carrington and Conley's "sociability" is a trait similar to Richard, Miller, and Natter's "Feeling" preference. The Myers-Briggs dimension of Feeling, like sociability, is associated with unhappiness in law school. Perhaps the same individuals are "Feelers" and "sociable." See Miller, *supra* note 128, at 465-66; Frank L. Natter, *The Human Factor: Psychological Type in Legal Education*, 3 RES. PSYCHOL. TYPE 55, 56 (1981); Richard, *supra* note 30, at 179 (stating that Feelers generally report lower job satisfaction than other Myers-Briggs personality types).

In 1979, James Hedegard found another correlate of law student distress when he distinguished different groups of law students within law school, based on students' career interests, personality characteristics, and attitudes. See Hedegard, *supra* note 100, at 858-59 (explaining Hedegard's methodology). Hedegard confirmed that law students became more anxious and internally conflicted during law school. See *id.* at 865. Hedegard also found that the students who experienced the greatest psychological conflicts and feelings of isolation and alienation were those most interested in abstract, jurisprudential issues and in "helping the underdog." *Id.*

288. One study of the effects of law school on law students cited Eron's early work which argued that the strong altruistic impulses held by medical students at the start of medical school tended to dissipate as their medical training progressed. See Anderson et al., *supra* note 97, at 42-43 (citing L. D. Eron, *Effect of Medical Education on Medical Students*, 10 J. MED. EDUC. 535, 559-66 (1955); L. D. Eron, *The Effect of Medical Education on Attitudes: A Follow-up Study*, 33 J. MED. EDUC. 25, 33 (1958)). Therefore, although a decline in altruism may be present in law students, it may not be unique to legal education.

289. See Anderson et al., *supra* note 97, at 42-43.

290. See Stevens, *supra* note 70, at 558-59 (investigating whether homogeneous attitudes develop as a result of attendance at law school).

291. See Kurt M. Saunders & Linda Levine, *Learning to Think Like a Lawyer*, 29 U.S.F. L. REV. 121, 121-23 (1994).

cal research, other assertions, in particular that law school homogenizes the attitudes or attributes of students, remain unsupported.²⁹²

a. Changes in attitudes

A number of studies present evidence that law students' attitudes change as a result of legal education. Don Anderson's 1973 study determined that engineers, lawyers, and doctors become more professionally oriented, or more protective of their professions, during their training.²⁹³ In contrast, James Hedegard's 1979 examination of the effects of legal education noted that research about changes in law students' attitudes toward legal ethics during law school yielded inconsistent results, concluding that in general, law students' attitudes do not change as a result of attending law school.²⁹⁴ Eron and Redmount's 1957 study found that by senior year, medical students' cynicism increased, while that of law students decreased;²⁹⁵ yet, other studies maintained that law students' cynicism increased and idealism decreased as a result of education.²⁹⁶ Hedegard also found that law students' interest in public service employment decreased, while their interest in employment with a private, small law firm increased during law school.²⁹⁷ Overall, these trends are consistent with a decrease in law students' altruism.

Students' attitudes toward the legal profession may worsen during law school. Hedegard's 1979 study determined that law students' perceptions of attorneys were fairly positive at the time that law students entered law school, but that their perceptions of lawyers markedly worsened by the end of their first year.²⁹⁸ The study demonstrated that students' attitudes almost uniformly became "less certain, more qualified, and less positive."²⁹⁹ This shift was much more apparent with respect to opinions about the way lawyers are

292. See Hedegard, *supra* note 100, at 832-35.

293. See Anderson et al., *supra* note 97, at 44.

294. See Hedegard, *supra* note 100, at 804-05 (citing Michael J. Patton, *The Student, the Situation, and Performance During the First Year of Law School*, 21 J. LEGAL EDUC. 10 (1968)); see also Stuart C. Goldberg, *How Lawful is the Practice of Law*, 2 LEARNING & L. 43 (1975).

295. See Eron & Redmount, *supra* note 215, at 440 (legal training associated with a lessening of skeptical attitudes); see also Katz & Denbeaux, *supra* note 172, at 400.

296. See Anderson et al., *supra* note 97, at 42; see also Hedegard, *supra* note 100, at 804 n.24 (citing four studies for idea that law students' career plans shift away from legal aid, criminal prosecution, public defending, and government agency work); Solkoff & Markowitz, *supra* note 124, at 198.

297. See Hedegard, *supra* note 100, at 805 n.34 at 825 (finding this shift among Brigham Young University law students from their orientation week to end of their first year).

298. See *id.* at 832; see also Katz & Denbeaux, *supra* note 172, at 410-11 (finding first-year law students' attitudes towards lawyers generally positive).

299. Hedegard, *supra* note 100, at 832.

than it was with respect to ideas about the way lawyers ought to be, suggesting that students' values change less than their perceptions about the real world.³⁰⁰ Finally, Hedegard found that law students' opinions did not appear, overall, to become more homogeneous during the first year, contradicting the popular opinion that law school is a conformist, homogenizing influence.³⁰¹

b. Changes in personality traits

Hedegard also investigated changes in personality traits during the first year of law school by administering a standard personality questionnaire before and after the first year.³⁰² He found that the first year of law school was associated with many significant changes, including a shift away from intellectual interests, increased independence of judgment, decreased sociability and interest in people, and decreased altruism.³⁰³ Law students did not become more homogeneous in personality as a result of the first-year.³⁰⁴ Hedegard compared these changes to changes generally found in undergraduates as they go through college, and was able to discard law students' tendencies to become more expressive and assertive, tolerant of ambiguity and complexity, and interested in aesthetic things as

300. See *id.* at 834.

301. See *id.* at 832-35. Hedegard also points to prior studies similarly finding that law school is not a homogenizing influence on students' attitudes. See *id.* at 805.

302. See *id.* at 810, 836-37. The questionnaire used was the Omnibus Personality Inventory, a 385-item questionnaire consisting of 14 scales: thinking introversion (introverts prefer reflective thought, ideas, abstractions, and academic activities; in contrast, extroverts prefer action and value practical applications); theoretical orientation (a preference for theoretical concerns, the scientific method, and logical, analytical and critical in approach); estheticism (diverse interests in the arts, literature, music, and drama, and highly responsive to such stimuli); complexity (an experimental and flexible orientation instead of a fixed way of viewing events, and a high tolerance for ambiguity, uncertainty, and new situations); autonomy (liberal, nonauthoritarian thinking, and a need for independence); religious orientation (skeptical of conventional religious beliefs); social extroversion (a preference for relating to people in a social context and for social activities); impulse expression (a readiness to express impulses, a need to seek gratification, active imagination, and may also feel rebellious and aggressive); personal integration (socially alienated or emotionally disturbed, feelings of hostility, aggression, isolation, or rejection); anxiety level (an absence of tension or anxiety); altruism (trusting and ethical in dealing with others and concerned for the welfare of others); practical outlook (an interest in practical, applied activities, materialism, and immediate utility, often authoritarian, conservative, and nonintellectual); masculinity-femininity (a degree of adherence to typical gender stereotypes); and response bias (an attempt to make a good impression or present a good image). See *id.* at 810-12.

303. See *id.* at 835. Scale scores showed a decrease in thinking introversion, theoretical orientation, social extroversion, and altruism, and an increase in impulse expression, anxiety, personal integration, autonomy, complexity, and estheticism. See *id.* at 836 tbl. 6. There was no change in the scale measuring adherence to male or female stereotypes, including traits such as competitiveness and practicality. See *id.* at 835.

304. See *id.* at 866.

generally true of all students in advanced education, and not specific to students in legal education.³⁰⁵

Law students, however, differed from undergraduates in that they became less philosophical and introspective, less interested in abstractions, ideas, and the scientific method, less dominant, confident, and sociable, and more anxious and internally conflicted.³⁰⁶ Overall, Hedegard's work provides strong support for the effectiveness of legal education in causing personality changes.³⁰⁷ Hedegard's results, however, should be read in conjunction with other researchers' findings, because his sample of law students was primarily (98%) composed of members of the Church of Jesus Christ of Latter Day Saints (Mormon).³⁰⁸

i. Ambition and aggression

In 1973, Stevens assessed third-year law students with respect to ambition and aggression in order to determine the effects of attending law school.³⁰⁹ Higher levels of tension combined with a perception of law school as highly competitive were related to increases in students' aggressiveness.³¹⁰ Of the third-year students, those who experienced a high level of tension throughout law school were more likely to believe that they became more aggressive as a result of law school.³¹¹ Also, more of those who described the law school atmosphere as very competitive (as opposed to very cooperative) reported that they had become more aggressive.³¹² Increased aggression was not related to amount of faculty contact, quality of faculty-student interactions, number of hours spent studying, or frequency of informal discussion.³¹³

Higher levels of tension, perceived competition, and positive faculty-student relations were related to increases in the students' ambition.³¹⁴ Students who remained tense throughout law school were more likely to believe that they became more ambitious as law school

305. See *id.* at 837.

306. See *id.* at 863-64.

307. See *id.* at 867.

308. See *id.* at 813.

309. See Stevens, *supra* note 70, at 675-80.

310. See *id.* at 678 n.203.

311. See *id.* at 678.

312. See *id.* (concluding that there existed "a positive relationship between perceived competition and increased aggression").

313. See *id.*

314. See *id.* at 678-79 (concluding that students' perceived friendly relationships with professors coincided with students' increased ambition).

progressed.³¹⁵ Also, students who perceived faculty-student relations as warmer and more frequent were more likely to believe that they became more ambitious during law school.³¹⁶ Finally, students who considered the law school atmosphere to be very competitive were more likely to believe that they became more ambitious as a result of law school.³¹⁷ Increased ambition was also associated with decreased intention to go into public defender, legal aid, or civil liberties work, indicating that the students' increased ambition was not likely to be focused on public service.³¹⁸ Based on these findings, it appears that law students deal with tension by becoming more aggressive and ambitious.

ii. Professional competitiveness

Increased competitiveness during law school may be associated with higher grades in law school. In 1974, Michael Patton reported that higher-achieving law students' interactions with peers were more competitive, task-related, and professional in tone,³¹⁹ while lower-achieving students expressed doubt about being able to present the "right" image when interacting with peers and faculty.³²⁰ The latter students appeared to prefer more personally based relationships.³²¹ The most academically successful law students preferred relationships that maintained a competitive and professional, not personal, tone.³²² These conclusions are consistent with findings that law students are less emotional and interpersonally-oriented.³²³ This phenomenon may exert a subtle pressure on otherwise sociable students to learn to interact with others in a more professional, distanced manner, which also may explain increased distress and anxiety among such law students.

315. See *id.* The author noted, however, that "[i]t would be interesting to pursue the rather anomalous finding further to see how those who remained tense but became less ambitious differ from those who remained tense and became more ambitious." *Id.* at 679 n.205.

316. See *id.* at 679.

317. See *id.* at 680.

318. See *id.* at 681.

319. See Michael J. Patton, *The Student, The Situation and Performance During the First Year of Law School*, 21 J. LEGAL EDUC. 10, 43-45 (1968).

320. See *id.*

321. See *id.*

322. See *id.* at 44.

323. See *supra* notes 141-55 and accompanying text.

6. *Lawyer attributes*

a. *The lawyer stereotype*

The lawyer stereotype is to some degree consistent with the empirical research on lawyer attributes. Lawyers are likely to be more achievement-oriented, more aggressive, and more competitive than other professionals and people in general.³²⁴ These general traits will be discussed below, in addition to two studies distinguishing successful from less successful attorneys.

b. *General lawyer attributes—goals, motives, traits, and thinking styles*

i. *Competitiveness and aggression*

John Houston and his colleagues found in 1992 that male and female attorneys are more competitive than nurses.³²⁵ This study defined competitiveness as "the desire to win in interpersonal situations."³²⁶ Sue Williams and John McCullers compared female lawyers to female doctors, secretaries, and medical assistants in 1983 and found that female lawyers had higher "masculinity" scores (which includes competitiveness and aggressiveness), more traditionally masculine play patterns in childhood, and greater unhappiness during adolescence.³²⁷ Even though this study involved only women, it does lend support to the idea that lawyers are more achievement-oriented and "masculine," which includes the traits of competition and aggression, than others.³²⁸

324. See Williams & McCullers, *supra* note 61, at 343 (studying comparison of women lawyers, doctors, secretaries, and medical assistants).

325. See John M. Houston et al., *Assessing Competitiveness: A Validation Study of the Competitive-ness Index*, 13(10) PERSONALITY & INDIVIDUAL DIFFERENCES 1153, 1155 (1992).

326. *Id.* at 1153.

327. See Williams & McCullers, *supra* note 61, at 350. In this study, women in all levels of law demonstrated higher achievement motivation than women in all levels of medicine. See *id.* The female lawyers also had higher achievement motivation and less parental pressure to fit a traditionally feminine stereotype. See *id.* Female lawyers and doctors both scored higher on intellectual ability than women in more traditionally feminine jobs. See *id.* at 349. Masculinity was assessed by the Bem Sex-Role Inventory, and the authors seem to link masculinity on this instrument with competitiveness and aggression. See *id.* at 347, 354. While greater masculinity (i.e., aggressiveness and competitiveness) distinguished female lawyers from female doctors, both groups were more masculine than women in more typical occupations. See *id.* at 354.

328. See *id.* Further, this study arguably surveyed an atypical group of women (those who would have entered the law when it was still a male-dominated profession), who might have been more "masculine" than today's female lawyers. The authors concluded that although a high level of intellectual ability is necessary to become a doctor or lawyer, which career one chooses depends on "factors other than intelligence" (presumably personality factors). See *id.*

ii. *The psychological need for achievement*

Leonard Chusmir noted that earlier research identified three basic drives which motivate most individuals: the need for power, affiliation, and achievement.³²⁹ The need for achievement can be described as the need to compete against an internal or external standard of excellence.³³⁰ The need for affiliation is the desire for friendship, love, or belonging, and the need for power is the need to lead or have impact on others.³³¹ Chusmir's study found that lawyers are more often achievement motivated, with only moderate needs for power and relatively low needs for affiliation.³³² The study's results further suggest that the more time an attorney spends in court, the more important it is to need power in order to be happy doing the work.³³³ One interesting suggestion Chusmir offers is that law schools, large law firms, and judicial appointments committees might consider motivation testing in order to place or direct law students, new lawyers, and politically appointed judges, respectively, and ensure that they will be "good fits for the position."³³⁴ Chusmir also indicates that motivation training is available and has been successful in changing people's need profile, should lawyers or judges find themselves in jobs which they find unfulfilling.³³⁵

Lawyers' stated goals reflect this achievement orientation and low need for power, as well as a lack of altruism. A survey reported in the American Bar Association Journal in July 1995 stated that lawyers' most important goals were to "do the highest quality work I can" (achievement) and to "be happy with my work" (achievement, personal satisfaction).³³⁶ The least important were to "advance to

at 344-45. This study supports Alfred Adler's idea that individuals select a career to compensate for feelings of inferiority generated by early childhood experiences. These lawyers may have selected legal careers in order to overcome discomfort or feelings of inferiority stemming from their unhappy adolescent experiences.

329. See Chusmir, *supra* note 61, at 231-35.

330. See *id.* at 231.

331. See *id.*

332. Notable exceptions are criminal lawyers, law librarians, and judges, who are motivated by a need for power rather than achievement. See *id.* at 233-34.

333. The author theorized that since attorneys and judges have different needs, it is likely that happy judges were unhappy as attorneys. See *id.* at 234. Attorneys' jobs would require satisfaction of high needs for achievement, whereas judges' duties would require satisfaction of high needs for power. This study determined which needs are associated with different legal positions by analyzing the duties typically performed in each position, rather than by surveying legal personnel and asking them about their perceptions of their own motivations.

334. *Id.* at 235.

335. See *id.*

336. See Jeff Dionese, *Striving for Happiness*, A.B.A. J., July 1995, at 41 (analyzing the St. Louis Report, a survey of 1,975 lawyers in the St. Louis area conducted by Hirsch Consulting for the Bar Association of Metropolitan St. Louis).

a position of power" (power) and to "improve the public good" (altruism).³³⁷ Also highly important was to "have time for myself/family," perhaps reflecting the high level of stress and time pressure felt by lawyers.³³⁸

iii. *"Thinking" preferred to "Feeling" and other Myers-Briggs personality dimensions*

Perhaps the most consistent finding among all studies done of lawyer characteristics is that on the Myers-Briggs Type Indicator personality assessment measure ("Myers-Briggs test"),³³⁹ lawyers disproportionately represent the "Thinking" type rather than the "Feeling" type, as compared to the distribution of these two types in the general population. This finding appears to be consistent in studies reported from 1967³⁴⁰ to 1994,³⁴¹ even after the introduc-

337. See *id.*; see also Anderson et al., *supra* note 97, at 45 (finding that altruism decreased among Australian lawyers during their first three years of practice more than it did among engineers).

338. See Dionese, *supra* note 336, at 41. Other goals included: making a substantial income, serving the client, having control over one's work life, and being respected and intellectually challenged. See *id.*

339. The Myers-Briggs test evaluates individuals' preferences with respect to four dimensions: (1) Introversion vs. Extraversion; (2) Sensing vs. Intuition; (3) Thinking vs. Feeling; and (4) Judging vs. Perceiving. See Richard, *supra* note 30, at 29. Extraversion and Introversion are "an 'attitude' . . . Extraverts focus on the outer world or the stimuli outside their consciousness. Introverts focus their attention on their inner world . . ." *Id.* Introverts are likely to enjoy "quiet and concentration, thinking things through, reflecting, reading and writing." *Id.* Sensing and Intuition are "two different ways of perceiving the data that a individual constantly takes in." *Id.* Sensors attend more to concrete, realistic things and tend to enjoy working with real facts and details. See *id.* at 232. Intuitors are likely to enjoy "solving complex problems, learning about new things, paying attention to global themes, abstractions, and 'big picture' thinking." *Id.* (citing S. K. HIRSH & J. M. KUMMEROW, INTRODUCTION TO TYPE IN ORGANIZATIONAL SETTINGS (1987)). Thinking and Feeling are "two different ways of . . . coming to closure or making decisions." *Id.* at 29. Thinkers tend to prefer "logical analysis, principles, cool and impersonal reasoning and cost/benefit analysis" and are "more tolerant of conflict and criticism." *Id.* at 233. Feelers prefer "harmonizing, building relationships, pleasing people, making decisions on the basis of one's personal likes and dislikes, and being attentive to the personal needs of others." *Id.* at 233. Finally, Judging and Perceiving are general approaches. Judges tend to prefer "structure, schedules, closure on decisions, planning, follow through and a 'cut-to-the-chase' approach." *Id.* at 234. Perceivers tend to prefer a "go with the flow and see what develops" approach. See *id.* at 77 (concluding that Perceivers are more flexible, try to roll with the punches, and try not to make decisions until the last possible moment). Richard explains that it is "not a clinical test—that is, it does not measure whether you are mentally healthy," but rather, a test demonstrating ways in which individuals prefer to focus mental energy, gather data, make decisions, perform mental tasks, and deal with the external world. The Myers-Briggs test, developed in the 1940s by Katharine Cook Briggs and Isabel Briggs Myers, is based on Carl Jung's theories about personality differences, and has become widely used in corporate and professional settings as a tool to understand differences in individual work habits and approaches. See BELL & RICHARD, *supra* note 145, at 152.

340. See Miller, *supra* note 128, at 462.

341. See Richard, *supra* note 30, at 229-30.

tion of women into the legal profession.³⁴² Paul Miller found in 1967 that law students' Thinking/Feeling distribution was 72%/28%;³⁴³ Frank Natter found in 1981 a Thinking/Feeling distribution of 63%/37%,³⁴⁴ and Lawrence Richard's 1994 study reported a 76.5%/23.5% Thinking/Feeling distribution among lawyers.³⁴⁵

In a study reported in 1993 by Richard, the Myers-Briggs test was administered to a nationwide sample of 3,014 attorneys.³⁴⁶ Richard's results indicated that attorneys tend to exhibit certain personality characteristics more frequently than others, and that attorneys differ significantly from the general population in the United States.³⁴⁷

Richard's 1993 study concluded that attorneys tend to prefer: (1) Introversion; (2) Intuiting; (3) Thinking; and (4) Judging.³⁴⁸ In each dimension, the distribution of lawyers differed from the general population.³⁴⁹ Specifically, Richard found that the majority of

342. Most of the studies done in the 1960s and 1970s excluded women from the population sampled, either because there were no women in the sample or because the number of women was so small that they were removed to factor out any gender influences. Richard's 1993 study, however, included a reasonable proportion of women lawyers. See Richard, *supra* note 30, at 209-10. The Myers-Briggs findings did not change appreciably when women were included in the sample, even though more women in the general adult population are the "Feeling" type (60%), rather than the "Thinking" type (40%). In contrast, 40-50% of women lawyers are Feelers, while 50-60% are Thinkers. See Debra Cassens Moss, *Lawyer Personality*, A.B.A. J., Feb. 1991, at 34 (reporting statistics from Larry Richard's Philadelphia-based company, Lawgistics).

343. See Paul Van R. Miller, A Follow-up Study of Personality Factors as Predictors of Law School Performance (1967) (unpublished report to the LSAT Council, 1966-67, Princeton, New Jersey: Educational Testing Service); Frank L. Natter, *The Human Factor: Psychological Type in Legal Education*, 3 RES. PSYCHOL. TYPE 55, 55-67 (1981) (citing Paul Van R. Miller, *The Contribution of Non-cognitive Variables to the Prediction of Student Performance in Law School* (1965) (unpublished Ph.D. dissertation on file with University Microfilms No. 66-4630 at the University of Pennsylvania); see also Miller, *supra* note 128, at 465.

344. See Natter, *supra* note 343, at 56. Natter's sample came from law students enrolled in an elective, experiential Legal Process course, which may have attracted a somewhat atypical group of law students. See *id.*

345. See Richard, *supra* note 30, at 229-30.

346. See Larry Richard, *How Your Personality Affects Your Practice—The Lawyer Types*, 79 A.B.A. J., July 1993, at 74 (describing study which led Richard to conclude that lawyers are different from the general population).

347. See *id.* at 77 (finding that lawyers fall predominantly into four categories: Introvert-Sensor-Thinker-Judger; Extravert-Sensor-Thinker-Judger; Introvert-Intuitive-Thinker-Judger; Extravert-Intuitive-Thinker-Perceiver). Three of the four categories are Thinker-Judger combinations. See *id.*

348. See *id.* at 75-78.

349. According to Richard: (1) about 75% of the adults in the United States prefer Extraversion, while 57% of lawyers prefer Introversion; (2) about 70% of the United States population prefer Sensing, while 57% of lawyers prefer Intuiting; (3) about 60% of all men and 35% of women in the United States prefer Thinking, while 81% of male lawyers and 66% of female lawyers prefer Thinking; and (4) about 55% of the U.S. population prefer Judging, while 63% of lawyers prefer Judging. See Richard, *supra* note 346, at 74. Introversion and Intuiting preferences are relatively stable across one's lifetime, suggesting that these characteristics are pre-existing prior to law school. Electronic mail communication with Lawrence Richard,

lawyers prefers Introversion and Intuition, while the majority of adults prefers Extraversion and Sensing.³⁵⁰ Lawyers prefer Thinking and Judging even more often than do most people.³⁵¹ These differences between lawyers and the general population may explain, in part, why laypersons tend to perceive lawyers as "different" and why they may be critical of the ways that attorneys approach issues. Lawyers tend to be more logical, unemotional, rational, and objective in making decisions and perhaps less interpersonally oriented than the general population, which might explain why lawyers and their clients at times have trouble interacting with and relating to each other.³⁵²

c. Characteristics of successful, effective lawyers

i. Attributes associated with satisfaction

Richard's study is also unique in that it identifies that the most satisfied lawyers are those who preferred Extraversion, Thinking, and Judging.³⁵³ Although the finding regarding Extraversion is not obvious, the relationship of Thinking and Judging to lawyer job satisfaction is logical, given that these individuals are likely to prefer "logical analysis, principles, cool and impersonal reasoning, and cost/benefit analyses," to be "tolerant of conflict and criticism" (Thinking), and to prefer work involving "structure, schedules, closure on decisions, planning, follow through and a 'cut-to-the-chase' approach" (Judging).³⁵⁴

ii. Attributes associated with success

Two other studies investigated the elements distinguishing successful or effective lawyers from those less successful or less effective.³⁵⁵ The first was performed with eleven lawyers in their seventies, who were all life-long participants in the Terman Study of the Gifted (a study that psychology professor Lewis M. Terman began in 1921 at Stanford University).³⁵⁶ Success was defined by scores on

Psychologist (Aug. 24, 1995).

350. See Richard, *supra* note 346, at 75-78.

351. See *id.*

352. See *id.* at 78 (advocating that understanding personality differences between lawyers and lay persons will improve lawyers' communication skills).

353. See *id.* at 250.

354. See Richard, *supra* note 30, at 233-34.

355. See *infra* notes 356, 361 (detailing studies that have inquired into attributes associated with successful legal practitioners).

356. See generally Shneidman, *supra* note 44, at 609. The Terman study's basic finding was that gifted children are, contrary to popular opinion, generally more physically and mentally healthy than their less-than-gifted counterparts. See *id.* at 609-10.

four items: occupational life, marital life, family life, and overall self-fulfillment.³⁵⁷

The study concluded that successful lawyers were more often rated as "contented, fair-minded, sincere, ambitious, competitive, confident, outgoing, sophisticated, intelligent, capable, reasonable, and self controlled."³⁵⁸ Less successful lawyers were more often rated as "cautious, dissatisfied, vulnerable, defensive, depressed, frustrated and lonely."³⁵⁹ The less successful group, overall, appeared to be more neurotic, hostile, and inhibited and less creative, imaginative, and interested in sentimental, "softer" interests.³⁶⁰

iii. Attributes associated with effectiveness

The second study, reported in 1985, examined attorneys representing children in protection proceedings.³⁶¹ The study sought to determine which attorneys' involvement produced a beneficial effect. Disappointingly, most of the attorneys appointed to represent the children had no beneficial effect on the outcome of the proceedings.³⁶² However, those who did differed from the rest in that they: (1) spent more time on their cases; and (2) displayed more independence in their role as the child's advocate.³⁶³

B. Moral Development of Attorneys

Interestingly, and perhaps not by coincidence, much of the research on law students and lawyers since 1980 has focused on their moral development and moral reasoning styles rather than on their personalities.³⁶⁴

357. Scores came from third-party raters, who listened to tapes of interviews with the subjects to make their ratings; they were not self-report scores from the subjects. *See id.* at 610.

358. *See id.* at 613. It also found that lack of professional success was associated with marital difficulty, thus success in love and work went hand-in-hand. *See id.* at 611.

359. *See id.* at 614. Both groups were rated as conscientious and responsible, indicating that these traits may be unrelated to success, as defined in this study. *See id.*

360. *See id.* at 615.

361. *See* Robert F. Kelly & Sarah H. Ramsey, *The Legal Representation of Children in Protection Proceedings: Some Empirical Findings and a Reflection on Public Policy*, 34(2) FAM. REL. 277, 282 (1985).

362. *See id.* (finding specifically that attorneys representing children had no beneficial effect "in a state such as North Carolina characterized by high levels of judicial custodial intervention").

363. *See id.* at 282. It is unknown if these findings apply to other forms of legal representation.

364. *See infra* notes 367-85 and accompanying text.

1. Kohlberg's theory of moral development

Some research in this area adopts Lawrence Kohlberg's stage theory, which theorizes that there are six distinct stages of moral development.³⁶⁵ Movement through these stages normally occurs as a developmental progression throughout life, from relatively immature to increasingly more complex and sophisticated levels of moral reasoning.³⁶⁶

2. Kohlbergian moral development of law students

In 1981, Thomas Willging and Thomas Dunn found that law students appear to cluster in Kohlberg's Stages 4 and 5A, with relatively low levels of Stage 2 or 3 reasoning. This was apparently not different from the general population³⁶⁷ or from graduate students in other professional schools.³⁶⁸

In contrast, a 1982 study by Lawrence Landwehr found that practicing attorneys were overwhelmingly clustered at Kohlberg's Stage 4 (Law and Order) morality, which was different from a more scattered distribution across the stages found in the general popula-

365. See LAWRENCE KOHLBERG, *THE PSYCHOLOGY OF MORAL DEVELOPMENT* 636-38 (1984); see also Lawrence J. Landwehr, *Lawyers as Social Progressives or Reactionaries: The Law and Order Cognitive Orientation of Lawyers*, 7 LAW & PSYCHOL. REV. 39, 39-42 (1982); Thomas Willging & Thomas Dunn, *The Moral Development of the Law Student: Theory and Data on Legal Education*, 31 J. LEGAL EDUC. 306, 329 (1981).

366. See *id.* Kohlberg's theory has been extensively studied and verified among children, adolescents, and adults in the United States as well as in other countries. See Michael D. Daneker, *Moral Reasoning and the Quest for Legitimacy*, 43 AM. U. L. REV. 49, 54-56 (1993) (presenting scholarly research and views about Kohlberg's ideas). Kohlberg developed a method for determining individuals' stage of moral development using hypothetical ethical dilemmas and an interview technique. See Kohlberg, *supra* note 365, at 634-36. Although an individual's responses do not necessarily reflect a single stage, Kohlberg believes it is proper to characterize an individual as generally operating at one of the six stages of moral development. See *id.* at 634-38. Kohlberg's six stages of moral development are: Stage 1 *Punishment and Obedience*—the physical consequences of an action determine its goodness or badness, punishment is avoided, and power is respected; Stage 2 *Instrumental-Relativist*—pragmatic, marketplace considerations determine right action, i.e., "you scratch my back and I'll scratch yours;" Stage 3 *Interpersonal Concordance*—good behavior is that which pleases or helps others and is approved of by society; the individual conforms to stereotypes of nice, natural, or majority behavior; Stage 4 *Law and Order*—behavior is determined by reference to laws, rules, authority, maintaining the social order, and doing one's duty; Stage 5 *Social Contract/Legalistic*—the individual is aware of the relative nature of personal values and opinions and determines behavior on the basis of social utility. According to some, Stage 5 is the official morality of the American government and the U.S. Constitution. See Landwehr, *supra* note 365, at 40 n.2. Stage 6 *Universal Ethical Principle*—right behavior is defined by reference to abstract, universal, self-chosen ethical principles which transcend society's laws. See *id.* Stage 5 is further subdivided into Stage 5A—"normative and utilitarian, with judgments based on external sources," Willging & Dunn, *supra* note 365, at 322 (citing Kohlberg, *supra* note 365, at 40-41), and Stage 5B, described as an "awareness of rules combined with an internal evaluation of their fairness," *id.* at 322.

367. See *id.* at 354.

368. See *id.* at 356.

tion and in similarly educated adults.³⁶⁹ Attorneys thus might rely on rules and regulations (Stage 4) more than the general population, and ignore interpersonal concerns (Stage 3) or broad social principles which may override the law (Stage 5).

3. *Non-Kohlbergian studies*

In 1974, June Louin Tapp and Felice Levine employed a different, non-Kohlbergian method to assess law students' morality.³⁷⁰ Unlike Willging and Dunn, they found that law students' morality differed from that of college students, teachers, and prison inmates.³⁷¹ Law students' morality was consistently more "conventional" (as opposed to "postconventional").³⁷² "Conventional" morality focuses on maintaining social order and conformity and relies on formal rules and the moral conventions approved by the majority within the culture; post-conventional morality emphasizes overriding moral principles such as justice, fairness, equality, and social utility, rather than the formal rules.³⁷³ Kohlberg's Stages 5 and 6 are characteristic of postconventional thought,³⁷⁴ while conventional thought is associated with earlier, less developed Kohlbergian stages.³⁷⁵ Therefore, Tapp and Levine's findings are consistent with Landwehr's "Stage 4" finding for lawyers.

Taken together, Landwehr's and the law student studies do not unequivocally demonstrate that lawyers' moral reasoning differs from that of the general population; there is some evidence, however, consistent with other lawyer attribute studies, suggesting that lawyers' approach to problems and values is significantly more homogeneous and more focused on objective, rational analysis of rules and codified rights than the general population.³⁷⁶ If so, it is likely that the

369. See Landwehr, *supra* note 365, at 39-51. The results of Landwehr's nationwide survey revealed that 90.3% of the responding lawyers were at Stage 4 (*Law and Order Orientation*) and that negligible proportions were at Stage 5 (*Social Contract/Utilitarian Orientation*) (2.5%) and Stage 3 (*Interpersonal Concordance Orientation*) (7.2%). See *id.* at 44.

370. June Louin Tapp & Felicia J. Levine, *Legal Socialization: Strategies for an Ethical Legality*, 27 STAN. L. REV. 1, 22-23 n.86 (1974).

371. See *id.*

372. See *id.* at 30.

373. See Steven Hartwell, *Promoting Moral Development Through Experiential Teaching*, 1 CLINICAL L. REV. 505, 509-10 (1995) (summarizing Kohlbergian stages of moral development). "Conventionally oriented individuals conceive legitimate rule violation as an exception, representing what any good actor has a role or obligation to perform. Thus they typically do not acknowledge the legitimacy of a role rejecting posture." Tapp & Levine, *supra* note 370, at 26. Postconventional individuals maintain that compliance with the law must be "weighed against the inherent rightness or morality of the rule." *Id.*

374. Willging & Dunn, *supra* note 365, at 323.

375. See *id.* at 343.

376. See Landwehr, *supra* note 365, at 44; Tapp & Levine, *supra* note 370, at 29-31.

general public misunderstands attorneys and may perceive them as amoral or unprincipled due to this difference in moral reasoning styles of the two groups.

4. *Effect of law school on moral development*

Data regarding the effect of legal education on the moral development of or moral decision-making by law students is very inconsistent. Tapp and Levine found that law school had no effect on law students' moral reasoning³⁷⁷ and Willging and Dunn found no significant change in law students' Kohlbergian moral stage during the first year of law school or after specific ethics courses.³⁷⁸

However, Willging and Dunn found data suggesting that students tended to regress from Stage 5B to 5A during law school.³⁷⁹ In contrast, Hartwell in 1995 found that Kohlbergian stages of law students increased consistently and significantly as a result of certain professional responsibility courses.³⁸⁰

Wagner Thielens in 1969 found that law students' responses to professional ethical dilemmas became more ethical by the end of law school, but became less ethical after graduation.³⁸¹ Thielens' data suggests a regression in legal ethics as a result of practice.³⁸²

Some of these conflicts in data may reflect the situation-dependent reasoning often attributed to law students; some researchers noted that law students' level of moral development differed depending on the context.³⁸³ Also, different research methods may have been employed. Finally, perhaps gender differences in moral reasoning and the number of women included in the various studies explains

377. See Tapp & Levine, *supra* note 370, at 25-26.

378. See Willging & Dunn, *supra* note 365, at 350, 356.

379. See *id.* at 349-50, 354.

380. See Hartwell, *supra* note 373, at 522-30.

381. See Wagner P. Thielens, *The Influence of the Law School Experience on the Professional Ethics of Law Students*, 21 J. LEGAL EDUC. 587, 590-91 (1969). The number of unethical responses was disappointingly high, however, indicating a disparity between professional ethical norms and their acceptance by law students. See *id.*

382. See *id.* This study also compared law students to practicing attorneys and found that the percentage of unethical responses of lawyers (47.2%) was higher than that of even first-year law students (45.6%), suggesting a regression in ethics after graduation. See *id.* Third-year law students had the lowest percentage of unethical responses at 39.2%. See *id.*

383. See Saunders & Levine, *supra* note 291, at 181; see also Taber et al., *supra* note 111, at 1277 (suggesting that law students do not adopt global approach to solving legal hypotheticals but rather use case-by-case approach, in which various factors are weighted depending on situation).

the inconsistencies.³⁸⁴ Additional research is needed to clarify and reconcile the different results of these studies.

5. *Gender differences and law school's effect on the "ethic of care"*

Two studies, one by Janet Taber and the other by Sandra Janoff, consistently discovered gender differences in the moral reasoning and development of law students.³⁸⁵ The first study, by Taber and her colleagues in 1988, found that in terms of an ethical or moral view, female law students tended to rate contextual factors as more important while male law students rated abstract factors more highly.³⁸⁶ Contextual factors were "factors based on relationships, care, and communication,"³⁸⁷ which are consistent with an "ethic of care" or "distinct moral voice" hypothesized to be characteristic of women.³⁸⁸ Abstract factors are "factors relating to rights, logic, and abstract justice."³⁸⁹ Not all contextual factors were important to the women surveyed, perhaps reflecting a case-by-case approach by the women, an emphasis only on contextual factors which were people-oriented, or the socialization of women by legal education to value abstract factors.³⁹⁰

384. Carol Gilligan has criticized Kohlberg's theory by positing that it fails to consider that female moral reasoning differs qualitatively from male reasoning. According to Gilligan, when Kohlberg's methodology is applied to women, female moral reasoning often appears less developed (i.e., at a lower Kohlbergian stage) because Kohlberg's method and theory ignore factors characteristic of advanced moral reasoning in women. See, e.g., Carol Gilligan et al., Contributions of Women's Elimination of Sex Bias in Moral Development Theory and Research, Final Report to National Institute of Education (1982), cited in LAWRENCE KOHLBERG, THE PSYCHOLOGY OF MORAL DEVELOPMENT: ESSAYS ON MORAL DEVELOPMENT (VOLUME II) 344 (1984) (providing basis for different premises adhered to by Kohlberg and Gilligan respectively). Empirical research seeking to verify Gilligan's assertions has yielded inconsistent results, yet the controversy continues between Kohlberg and Gilligan. See *id.* at 338-61.

385. See *infra* notes 386-408 and accompanying text (discussing in part the conclusions of the Taber and Janoff studies).

386. See Taber et al., *supra* note 111, at 1209 (stating that a portion of Taber's study attempted to examine whether there are gender differences in the "moral voice" of respondents and whether that moral voice reflects concerns about contextual factors as opposed to abstract factors). In general, scholars had written little about gender differences in law school, and the studies from the 1960s and 1970s focused on women's reasons for attending law school. See *id.* at 1218-19. In 1966, women comprised six percent of those taking the LSAT; in 1970, women comprised thirteen percent. See *id.* at 1218 n.63. Astin reported that in 1969, 10% of prelaw students were women; in 1981, 45% were. See Astin, *supra* note 76, at 74.

387. See Taber et al., *supra* note 111, at 1248 (defining "contextual factors" measured in Taber's 1988 survey).

388. Carol Gilligan describes women's morality as embodying an "ethic of care," while Kohlberg's moral development theory is said to have a "rights-orientation." See *supra* note 384 (discussing Gilligan's criticisms of Kohlberg's theories).

389. See Taber et al., *supra* note 111, at 1248 (defining terms Taber used in her 1988 survey designed to measure the "moral voice" of respondents and relate that moral voice to concerns about contextual versus abstract factors).

390. See *id.* at 1249-50 (finding that women's responses to contextual factors were not always significantly different than male responses). Taber's study measured contextual and abstract

Similarly, Sandra Janoff found in 1989 that the majority of female law students studied displayed an "ethic of care" orientation at the beginning of law school, while significantly more male law students evidenced a "rights" orientation in moral reasoning at the beginning of law school.³⁹¹ An "ethic of care" orientation values interpersonal harmony, maintaining relationships, people's feelings and needs, and preventing harm.³⁹² In an ethic of care, conflicts are resolved by asking what best maintains relationships, what each person needs, and how not to hurt oneself or another.³⁹³ In contrast, a rights orientation focuses on rights, rules, standards, individuality, independence, justice, fairness, objectivity, accomplishments, ambitions, principles, personal beliefs, and freedom from others' interference.³⁹⁴ Dilemmas are resolved by impartially viewing competing claims, determining which values or rights are most important to uphold, and assessing the relative weight of the positive and negative consequences of a decision.³⁹⁵

The rights orientation can be interpreted as consistent with Kohlberg's Stage 4 orientation,³⁹⁶ Richard's Thinking dimen-

factors of an individual's moral voice by giving respondents two hypotheticals involving media law and the law of standing and asking respondents to rate the importance of various factors on the outcome of the hypothetical. *See id.* at 1248. This latter idea that legal education socializes women to value abstract factors is supported by later research by Sandra Janoff. *See* Sandra Janoff, *The Influence of Legal Education on Moral Reasoning*, 76 MINN. L. REV. 193, 234 (1991) (finding that women's moral orientation tended to shift from care perspectives (similar to Taber's contextual factors) to rights perspectives (similar to Taber's abstract factors) after one year of law school); *see also infra* notes 391-412 and accompanying text.

391. *See* Janoff, *supra* note 390, at 218, 222, 226. The methods employed were a Sentence Completion Test compiled from the Washington University Sentence Completion Test, the Real-Life Moral Conflict and Choice Interview, and a demographic information questionnaire. *See id.* at 211-12. The study's population was the 1992 class of Temple University School of Law ($n=417$, 46.8% female, 53.2% male) and the subjects for the Sentence Completion Test consisted of a random sample of 200 students from the first year class; subjects for the interview were fifteen males and fifteen females randomly selected from that same first-year class. *See id.* at 209-10. The Sentence Completion Test and Interview were coded and scored for a care-orientation versus a rights-orientation. *See id.* at 214-16. Resulting data were then statistically analyzed for significant differences. *See id.* at 217 n.31. Men expressed both orientations, but tended to favor rights orientations overall; Janoff explains that the two orientations are not mutually exclusive. *See id.* at 233. Because the Sentence Completion Test used to assess orientation is a projective test, coders used an established system to evaluate responses and classify responses in terms of care or rights oriented factors. *See id.* at 215. The research interviews were evaluated in a similar manner and coded similarly. *See id.* at 216.

392. *See id.* at 219-22.

393. *See id.* at 222-33.

394. *See id.*

395. *See id.* at 223-25.

396. *See* Landwehr, *supra* note 365, at 40 n.2 (noting that Stage 4 is an orientation toward fixed rules, authority, and maintenance of social order).

sion,³⁹⁷ and Tapp and Levine's conventional reasoning.³⁹⁸ The most important finding by Janoff, however, indicated that there was a significant decrease in the amount of care orientation and a significant increase in the amount of rights orientation exhibited by the law students from the beginning to the end of the first year of law school.³⁹⁹ With respect to gender differences, Janoff found that women's care orientations shifted significantly to a rights orientation during the first year of law school, but that men's orientations did not change significantly, or perhaps became more ingrained.⁴⁰⁰

6. *Resulting conflict between a legal career and an ethic of care*

From these findings, Janoff concluded: (1) that law students "submerge" their care orientations in order to "align with the rights assumptions of law school," suggesting that certain law school contexts tend to "silence" the voice of care;⁴⁰¹ (2) that law school does not accommodate or foster the relational side of human nature;⁴⁰² and (3) that a rights orientation reflects the primary goal of legal education in teaching students to "think like a lawyer," since thinking like a lawyer means focusing on rights and placing oneself in an emotionally neutral state in order to be an advocate.⁴⁰³ The study produced further evidence to suggest that submerging or denying one's care orientation and adopting a rights orientation in order to

397. See Richard, *supra* note 346, at 76 (defining Thinkers as those who make decisions in a logical and detached manner); see also *supra* notes 144-47 and accompanying text.

398. See Tapp & Levine, *supra* note 370, at 22 (noting that conventional reasoning seeks to maintain conformity, formal rules, social order, and group norms). The author concedes, however, that the rights orientation *could* also be interpreted as *different* from these other three attributes.

399. See Janoff, *supra* note 390, at 238 (stating that after one year of an educational environment which emphasizes rights and rules, women express their connectedness less often and their objectivity and separateness more frequently).

400. See *id.* at 229-30 (stating that students who displayed a rights orientation at the beginning of the first year did so again at the year's end with their rights orientation being even stronger at the end of the first year).

401. See *id.* at 227.

402. See *id.* Here, the classic "chicken and egg" problem exists: given that law students may be predominantly Thinkers before they come to law school, and that law professors are likely to be predominantly Thinkers as well, it is unlikely that legal education is the sole reason for the lack of emphasis on relationships and human issues. Rather, this orientation may be the reflection of preferences inherent in the individuals who make up law schools. Richard suspects that Thinkers in law school are both self-selected into law school and molded by legal education to prefer Thinking. He indicated that this is based on studies finding that Thinking scores of law students are relatively stable over time, with the exception that they tend to increase (prefer Thinking more) during law school. Electronic mail with Lawrence Richard, Psychologist (Aug. 24, 1995).

403. See Janoff, *supra* note 390, at 228. Janoff also asserts that lawyers are trained to ignore their personal feelings about their client and the client's causes in order to be an effective advocate and to pay more attention to attaining ultimate success for their client than to how asserting their client's rights might affect others. See *id.* at 228-29.

"fit in" may result in psychological discomfort.⁴⁰⁴ Janoff's findings are not surprising, given that law school is expected to teach students to "think like lawyers," thereby structurally changing students.⁴⁰⁵ What may be surprising are the implications that the moral reasoning style of the legal profession is overwhelmingly masculine (i.e., gender biased),⁴⁰⁶ that law students who do not exhibit a rights orientation prior to law school are dramatically changed by the end of the first year,⁴⁰⁷ and that the legal profession is not likely to change as a result of the addition of women.⁴⁰⁸

Janoff cites Rand Jack and Dana Jack's research that proposed three common responses to the conflict inherent in having an ethic of care orientation and becoming a lawyer: (1) denying the conflict, denying one's care orientation, and disowning one's emotional, relational self; (2) splitting one's personality so that the emotional, relational side operates in one's personal and family life and one's logical, analytical side operates at work; and (3) attempting to change the lawyer's role and lawyering to incorporate a care orientation.⁴⁰⁹ Simply denying the conflict is not likely to work, and is likely to result in an individual's need for substance abuse or workaholism to maintain the suppression of their emotional side.⁴¹⁰ Janoff notes that Jack and

404. See *id.* at 230-31 (discussing anxiety of women in law school and rights orientation). This shift may be one of the reasons for the findings of Janoff and her colleagues suggesting that women law students experience more stress in law school than do men. See *id.* at 230 (finding that some women's strategy of coping with the conflict between having a caring, emotional personality and being a lawyer did not work, resulting in continued disequilibrium and struggle) (citing RAND JACK & DANA C. JACK, MORAL VISIONS AND PROFESSIONAL DECISIONS: THE CHANGING VALUES OF WOMEN AND MEN LAWYERS 130-55 (1988)).

405. See *id.* at 228-29.

406. See *id.* at 233.

407. See *id.* at 226-27.

408. See *id.* at 236 (stating that the hope that women in the legal profession will decrease rights orientation "seems remote" because "law school education silences the care voice").

409. See *id.* at 230 (stating that Jack and Jack found a majority of women used the first two responses and isolated their personal characteristics that were incompatible with the role of lawyer while a minority of women used the third approach, attempting to incorporate their personality into their work and reshape the lawyer's role (citing JACK & JACK, *supra* note 404, at 130-55)).

410. The relationship of substance abuse to suppressing one's emotions is clear from clinical literature explaining that substance abuse is often engaged in to deal with stress and unwanted emotions. See BURL E. GILLILAND & RICHARD K. JAMES, CRISIS INTERVENTION STRATEGIES 285 (1988) (quoting a university professor and recovering alcoholic, "[w]hen you get stressed out, there may be a number of things you do to get over it . . . jog, pray, meditate, have a fight with your wife, chop wood . . . [w]hen I get stressed out I drink [and drinking is more efficient because the payoff is always the same]"). Alcoholics tend to rely on the defense mechanism of repression and deal with "threatening and hurtful events by burying them in unconscious memory." See Janoff, *supra* note 390, at 287. These authors also state that "[a]lcoholics use fantasy to escape from a variety of threatening circumstances and emotions" by using alcohol or drugs to escape anxiety or frustration. See *id.* at 286. Workaholism can be viewed as simply another form of addictive behavior. As Gilliland and James state:

Jack reported that the second response of personality splitting does not resolve the conflict; the individual continues to experience discomfort.⁴¹¹ Therefore, the third response focusing on a care orientation appears to be the only potentially successful solution. This response, however, is rarely used (as it was adopted by only two of eighteen women in Jack and Jack's study),⁴¹² and is likely to be difficult to implement single-handedly.⁴¹³ Interestingly, this third, rare response is one of the most widely touted solutions to the professionalism crisis.⁴¹⁴

C. *Summary of the Empirically-Demonstrated "Lawyer Attributes"*

1. *Attributes of pre-law students*

Law students come to law school with a set of preexisting personality traits. For example, they may be more interested in school than others and tend to emphasize active behavior, initiating action affecting their environment rather than being passive or reactive. They may have better leadership and social skills than others, even as elementary school children, but be less interested in emotional concerns and the feelings of others. Pre-law students appear to have greater needs for assuming roles of leadership and dominance and for securing attention, and appear to be less subordinate or deferential than other pre-professional students.⁴¹⁵ They do not appear to experience a greater degree of psychological distress than the general population.⁴¹⁶ Research suggests that women may have had unhap-

All of us have addictions, whether they be drinking alcohol, eating chocolate, gambling on blackjack, buying plaid sport coats, overspending on credit cards, or reading the sports page at breakfast. Anything that we start out wanting and not necessarily needing, but end up either psychologically or physically craving, may be considered addicting.

Id. at 329.

411. *See id.* at 237 (noting that care oriented students in law school experience "psychological dissonance"). Janoff also states that Jack and Jack found that women tended to express a care orientation when talking about themselves, but shifted to a rights orientation when discussing legal hypotheticals. *See id.* at 231-32. Men, however, tended to express care and rights orientations consistently in both personal and professional contexts. *See id.*

412. *See id.* at 230 (citing JACK & JACK, *supra* note 404, at 149-55). Only two out of eighteen women in Jack and Jack's study responded by trying to change the lawyer's role and lawyering to better reflect a care-orientation. *See id.*

413. To change the lawyer's role as in this third approach, one needs the support and cooperation of others such as clients, other lawyers, and society as a whole.

414. *See* Janoff, *supra* note 390, at 235-36 (discussing the advantages of the care orientation in the legal profession, particularly in enhancing the attorney client relationship).

415. *See* Bohn, Jr., *supra* note 41, at 360.

416. *See* Benjamin et al., *supra* note 70, at 228 (stating that pre-law students tested during the summer prior to law school did not show elevated psychological distress, but that two months after the start of law school, students' psychological distress had elevated significantly).

py adolescent experiences; men may have had strong, dominant fathers. Pre-law students tend to be interested in being active and dominant, particularly in school settings.

2. *Motives for entering the legal profession*

Pre-law students tend to select the field of law primarily because of an interest in the subject matter and a desire for intellectual stimulation; however, money and prestige are also important, usually more so than altruistic or public service concerns.⁴¹⁷ There are distinct gender differences in reported reasons for going to law school which appear to be connected to social acceptability of money orientation in men, but not in women.⁴¹⁸ Women's motives appear to be more altruistic and less financially oriented than are men's.⁴¹⁹ These motives suggest that lawyers value education, intellectual achievement, status, and materialism, although more women than men may value altruism and public service. Lawyers' early needs for dominance may have been channeled into valuing academic or intellectual superiority, money, and status by the time they enter law school.⁴²⁰ However, women may seek dominance for the purpose of helping others rather than for self-fulfillment purposes.⁴²¹ Although lawyers seek roles of leadership and dominance, which would imply a need to maintain power "over others," these drives may not necessarily be oriented towards others.⁴²² Rather, they appear to reflect a need for personal excellence and perhaps the admiration of others.⁴²³

417. See *supra* notes 81-109 and accompanying text.

418. See Taber et al., *supra* note 111, at 1240 (noting that "more male graduates tended to be influenced by the prospect of making money when deciding to attend law school" than female graduates who responded to study's survey); *supra* notes 110-14 and accompanying text.

419. See Taber et al., *supra* note 111, at 1240-41 (finding that more female than male graduates expressed desire to serve society and that male graduates were more likely to express interests in making money and business related careers as reason for attending law school).

420. See *supra* notes 48-61 and accompanying text.

421. See Nancy Levit, *Feminism for Men: Legal Ideology and the Construction of Maleness*, 43 UCLA L. REV. 1037, 1098-1103 (1996) (suggesting that gender differences such as male dominance result from a combination of biological and culturally learned behaviors, and that gender stereotypes perpetuate ideas that men should be outwardly aggressive and dominant, but that women should not); Taber et al., *supra* note 111, at 1241 (stating that more female law school graduates expressed a desire to serve society than did male graduates).

422. See Chusmir, *supra* note 61, at 231 (finding lawyers' primary need for "achievement"); Williams & McCullers, *supra* note 61, at 354 (finding similar results for women lawyers).

423. See *id.*; see also Janoff, *supra* note 390, at 205-06 (reporting that between 20-40% of women stated that they went to law school for self-enhancement, stimulation, self-interest, and a desire to be identified as a member of a profession).

3. *Preference for rational analysis over humanistic concerns*

Pre-law students, law students, and lawyers are uniformly less interested in people, in emotions, and interpersonal concerns.⁴²⁴ In fact, evidence suggests that humanistic, people-oriented individuals do not fare well, psychologically or academically, in law school or in the legal profession.⁴²⁵ Law students and lawyers overwhelmingly (male and female) display an orientation (Janoff's "rights" orientation and Richard's Thinking dimension) toward rights and justice, logic, thinking, and rationality without regard to their personal values.⁴²⁶ They tend not to apply their personal values to problems nor do they usually consider interpersonal harmony or humanistic concerns in making decisions.⁴²⁷ There is evidence that some of this orientation may result from the socialization process of law school, occurring even as early as the first year.⁴²⁸

Lawyer attributes documented only during law school or thereafter are the following: a great emphasis on logic, thinking, rationality, justice, fairness, rights, and rules; a low interest in people, emotional concerns, and interpersonal matters; a low level of altruism; sociability; authoritarianism; a great need for achievement; masculine traits such as competitiveness and aggression; and insecurity, defensiveness, anxiety, internal discomfort, and higher than normal levels of psychiatric distress. Some of these traits are developed in or amplified by law school.

4. *Effects of law school*

Law school appears to alter at least some characteristics and attitudes of law students. Those who come to law school with a "rights" orientation, somewhat similar to Richard's Thinking dimen-

424. See Hafner & Fakouri, *supra* note 47, at 236-41 (detailing results of study showing individuals in legal profession or academia are less emotionally oriented than remainder of population); Richard, *supra* note 346, at 76 (finding that 78% of all lawyers are Thinkers, making effort not to allow "personal preferences" to interfere with their decision making process and instead reach decisions in detached manner); *supra* notes 141-47 and accompanying text.

425. See Richard, *supra* note 346, at 76 (concluding that such individuals "are often criticized for being overly sentimental" and that constant "adversarial mentality" in legal profession "wears" on them); *supra* notes 353-54 and accompanying text. For studies, see *supra* notes 148-53, 285-87 and accompanying text.

426. See *supra* notes 141-47, 340-51, 385-404 and accompanying text (stating that lawyers tend to be "Thinkers" and law school tends to reduce care orientation—in favor of a rights orientation).

427. See *id.*; see also Janoff, *supra* note 390, at 224 (stating that a person operating in a rights orientation tends to adopt an impartial standpoint and to consider negative and positive consequences).

428. See *id.* at 232 (discussing finding of significant increase in rights oriented responses after conclusion of first year of law school).

sion, are either unchanged or graduate with this orientation further ingrained.⁴²⁹ Those who come to law school with an "ethic of care," perhaps linked to Richard's Feeling dimension, appear to adopt a rights orientation by the end of the first year.⁴³⁰ Cynicism about the legal profession increases and opinions of lawyers and the legal system become more guarded and negative by the end of the first year of law school, but an elitist protectiveness of the profession also emerges.⁴³¹ There is evidence, although not entirely uncontroverted, that law students' altruism and interest in public service decrease more than do other professionals' as a result of professional school and practice.⁴³² Law students' interest in professional private practice with a small firm tends to increase and interest in public service positions decreases.⁴³³ Students also tend to become less intellectual (i.e., less philosophical and introspective, and less interested in abstractions, ideas, and the scientific method), perhaps in favor of more realistic, practical values.⁴³⁴ Law school may increase competitiveness, aggression, and ambition (perhaps in reaction to increased tension and anxiety). However, lawyers' competitiveness, aggressiveness, need for academic achievement, and low interest in emotions are likely to have been present prior to law school, even though they may be amplified and increased by the legal education process.

5. *Attributes of law students*

Law students tend to come from a socioeconomically elite and privileged background and have more liberal political beliefs than the general population.⁴³⁵ Women law students may be more dominant, aggressive, and masculine, and be more achievement oriented than

429. See *id.* at 231 (describing that in male students who traditionally entered with rights oriented perspective, responses remained consistent therewith).

430. See *id.* at 232 (noting increase of rights oriented responses in women who typically entered law school with a care oriented approach).

431. See *supra* notes 293, 295-96 298-300 and accompanying text.

432. See Audrey James Schwartz, *Law, Lawyers, and Law School: Perspectives from the First-Year Class*, 30 J. LEGAL EDUC. 437, 462 (1980) (finding that after one year of law school, males tended to change their views to believe that lawyers are oriented toward profit rather than public service, while females tended to believe lawyers are the guardians of the have-nots and public service was an important goal of lawyers); *supra* notes 296-97 and accompanying text.

433. See Hedegard, *supra* note 100, at 805 n.34, 825; see also Astin, *supra* note 76, at 83 (stating that over the past decade, pre-law students have become more interested in material and power goals and are less inclined to be concerned about social issues).

434. See Hedegard, *supra* note 100, at 863-64.

435. See Stevens, *supra* note 70, at 598, 600-01; see also Astin, *supra* note 76, at 83 (suggesting that pre-law students tend to come from more highly educated, affluent families than the general population and that they tend to have a strong political orientation, identifying themselves as liberal, but that like students in general, pre-law students have become more conservative over the past decade).

other women students.⁴³⁶ Law students tend to see themselves as more argumentative than others and may indeed be more competitive.⁴³⁷ They are also more authoritarian than other professional students.⁴³⁸

6. *Psychological distress among law students*

Despite a panoply of dominant, confident, and self-assured attributes, found in both pre-law students and law students, law students appear to be internally conflicted. They outwardly project a self-confident image, while internally they feel awkward, defensive, and insecure.⁴³⁹ This conflict may develop in law school. Despite findings that law students are more extroverted, sociable, and masculine than other professional students,⁴⁴⁰ these characteristics may diminish and students may become less dominant, confident, and sociable during the course of law school.⁴⁴¹ At least since 1970, studies have consistently found that law students report an unusually high level of stress, psychiatric symptoms, substance abuse, anxiety, depression, and internal conflict soon after beginning law school.⁴⁴² They develop a greater than average amount of psychological distress during the first year of law school which continues after graduation, manifesting itself primarily as anxiety, depression, obsessive-compulsive symptomatology, isolation, and paranoia.⁴⁴³ These problems do not appear to develop until the first semester of law school; however, there may be pre-existing internal conflicts or troublesome traits such as tension or alienation which contribute to the quick and dramatic development of these problems during the first year of law school.

It is unclear if the internal conflict between outer image and inner persona develops during the first year of law school, or if it predates law school and causes the distress exhibited during the first year and

436. See Coplin & Williams, *supra* note 184, at 329.

437. See McLean & Kalin, *supra* note 38, at 153-54; St. Lawrence et al., *supra* note 193, at 101, 106; see also Janoff, *supra* note 390, at 204 (noting that, because of adversarial nature of legal system, competition is essential to "good lawyering").

438. See Miller, *supra* note 128, at 466; Solkoff & Markowitz, *supra* note 124, at 197.

439. See Reich, *supra* note 134, at 873.

440. See Solkoff & Markowitz, *supra* note 124, at 197; see also *supra* notes 41-45 and accompanying text (discussing attributes of law students as children).

441. See Hedegard, *supra* note 100, at 837.

442. See *supra* notes 214-17, 220-42 and accompanying text; AALS Special Committee Report, *supra* note 260, at 73 (describing incidence of substance abuse among law students and finding such abuse to be problematic for profession).

443. See Benjamin et al., *supra* note 70, at 246 (finding that prior to law school, law students do not differ from the general population on incidence of psychiatric symptomatology; however, during law school, a greater than normal percentage of students develop symptoms of obsessive-compulsive behavior, interpersonal sensitivity, depression, anxiety, hostility, phobic anxiety, paranoid ideation, and isolation).

beyond. There is evidence to suggest that law students' distress is associated with interpersonal concerns, a failure to utilize social systems as support despite their traits of sociability and extroversion, and an excessive use of thinking as a coping strategy.⁴⁴⁴ As students progress through law school, they appear to deal with these stresses through increased substance abuse (but not suicide) and by becoming alienated or more aggressive and ambitious as law school progresses.⁴⁴⁵

Further, it is unclear whether these problems are manifesting primarily in female, minority, and other nontraditional students (i.e., those who do not have the white male law student's typical attributes prior to law school) who may feel a need to change and conform in law school. Janoff's work suggests that women and minorities exhibit values and a thinking and moral decision-making style different from the law school norm, experience pressure to adopt the norm, and develop great anxiety and distress as a result.⁴⁴⁶ Additional research is necessary to determine whether law students who are different from the law student norm prior to entering law school are those who experience the high levels of psychiatric distress found by Benjamin and his colleagues.

7. *Lawyer attributes*

Lawyers have been studied less frequently than law students. Lawyers appear to be more competitive, aggressive, and achievement-oriented, and overwhelmingly Thinkers (instead of Feelers), as compared to the general population. Women lawyers are more achievement-oriented, competitive, and aggressive than other women professionals and laypersons.⁴⁴⁷ Both male and female lawyers are more competitive than people in other occupations.⁴⁴⁸ Lawyers are more often motivated by a need for achievement than are others, which includes a need to compete against an internal or external

444. See *supra* notes 250-59 and accompanying text.

445. See *supra* notes 257-84, 309-18 and accompanying text; see also Beck et al., *supra* note 2, at 5-6 (finding that although 9% of U.S. adults meet the criteria for alcohol abuse or dependency, 15-18% of lawyers are problem drinkers). Controlled aggressiveness can be a valuable asset to a lawyer, but uncontrolled anger and aggression tends to alienate families, friends, and co-workers. See *id.* at 9.

446. See Janoff, *supra* note 390, at 206-08 (stating that women law students reported feeling alienated from the legal classroom and feeling they must repudiate their own orientation to "play a man's game" in order to succeed in law school). See generally *supra* notes 391-412 and accompanying text (discussing Janoff's study).

447. See Williams & McCullers, *supra* note 61, at 350.

448. See Houston et al., *supra* note 325, at 1155.

standard of intelligence.⁴⁴⁹ They tend to display a disproportionate preference for the personality dimensions of Introversion, Intuition, Thinking, and Judging more than the general population,⁴⁵⁰ and tend to be more homogeneous in personality type than the general population.⁴⁵¹ Currently, lawyers are experiencing significantly higher levels of psychological distress (depression, substance abuse, etc.) than the general population.⁴⁵² This is a fairly sparse amount of information about the attorney personality, yet it is almost entirely consistent with the research on law students (and even pre-law students).

8. *Lawyers' moral reasoning*

Lawyers are often believed to reason differently than the general population. While there is evidence to suggest that their stage of moral development and decision-making styles may be more homogeneous than the general population and more focused on maintaining rules, regulations, social order, and conformity,⁴⁵³ there is also evidence that their stage of moral development does not differ from the moral development of other similarly educated adults,⁴⁵⁴ and that law school has no real effect on their level of moral development.⁴⁵⁵ Conflicts in the data on the effects of law school may be explained by gender differences.⁴⁵⁶ For example, recent studies reveal that while law school may have no effect on male students' approach to morality, it dramatically shifts female students' orientations from an ethic of care and compassion to an orientation similar to that of men, which typically emphasizes a rights and justice orientation.⁴⁵⁷ Also, results of studies using Kohlberg's methodology may not be applicable to women, to the extent that Kohlberg's

449. See Chusmir, *supra* note 61, at 231-35; Dionese, *supra* note 336, at 41.

450. See Richard, *supra* note 346, at 75 (finding that majority of lawyers were in those categories).

451. See Landwehr, *supra* note 365, at 44 (stating that 90.3% of lawyers reason at Stage 4 of moral reasoning and that only 30-50% of adults in general do so).

452. See Benjamin et al., *Prevalence of Depression*, *supra* note 31, at 241 (alcohol abuse and depression among lawyers twice that of the general population); see also Beck et al., *supra* note 2, at 51 (noting that 70% of lawyers sampled were likely to develop alcohol problems over their lifetime).

453. See Landwehr, *supra* note 365, at 39-42 (Stage 4 morality associated with lawyers); Tapp & Levine, *supra* note 370, at 21-22 (conventional morality characteristic of lawyers); *supra* notes 369-76 and accompanying text.

454. See Willging & Dunn, *supra* note 365, at 356.

455. See *supra* notes 377-84 and accompanying text.

456. See *supra* notes 385-400 and accompanying text.

457. See Janoff, *supra* note 390, at 232 (noting shift of women to rights oriented approach); Taber et al., *supra* note 111, at 1250 (noting that "the socialization of legal training may have lead women to respond [to survey] in the traditional manner to legal precedent").

theories have been criticized as inadequate to assess women's moral development.⁴⁵⁸ There is also evidence to suggest that lawyers' moral reasoning may differ depending on the situation and the context of the problem presented.⁴⁵⁹

9. *Attributes associated with career satisfaction*

Successful and satisfied lawyers appear to have pragmatic reasons for entering law school, prefer Extraversion, Thinking, and Judging, have less neuroses, and have a broader range of interests than less successful attorneys. Effective lawyering in some cases is related to amount of time spent on cases and how active the attorney's role is in the representation.

III. RELATIONSHIP BETWEEN LAWYER ATTRIBUTES AND THE TRIPARTITE CRISIS

Many of the implications of the empirical research reviewed herein can be related to the specific problems in the legal profession today. It is this author's contention that the above-listed lawyer attributes are an entirely overlooked part of the tripartite crisis in the legal profession. First, it will be important to determine which of the lawyer attributes are likely to be causally related to the problems in the legal profession. This may help explain why the problems have arisen. Second, whether the troublesome attributes are pre-existing or are a product of legal education will indicate how difficult they may be to change, and whether changes to legal education are likely to have any effect on the problems.⁴⁶⁰ Certain of the empirically-demonstrated lawyer attributes, described above, will be related to each of the three problems in turn.⁴⁶¹

458. See *supra* note 384 and accompanying text (discussing gender differences in moral reasoning).

459. See *supra* note 390 and accompanying text.

460. Third, proposed solutions to the tripartite crisis can be critically evaluated in light of these lawyer attributes to assess the likelihood of their implementation, efficacy, and success; however, this is beyond the scope of this article. It is this author's hope that this analysis will suggest some new and as yet unexplored solution to the tripartite crisis, perhaps one involving profound, structural personality changes in lawyers themselves. As is often quoted in professionalism articles, "the problem is not in the stars, but in the lawyers themselves." A discussion of the conditions necessary for lasting personality change in adults is also beyond the scope of this article, and reserved for another time.

461. These three problems are interrelated and circular. Lawyer dissatisfaction likely contributes to lawyers' uncivil behavior. This behavior then contributes to the public's poor image of lawyers, which in turn plays a role in lawyer unhappiness and lawyer-client problems.

A. *The Public Confidence Crisis*

The lack of public esteem for lawyers may be directly related to the notion that lawyers think and value things differently than does the general population. What lawyers consider to be important, proper, and moral may be considerably different from their clients. These differences are likely to cause a gap in understanding, even a difference in morality, which could cause lawyers to be perceived negatively as cold, dispassionate, uncaring, overly logical, fact-driven, aggressive, competitive, ruthless, and even amoral. Lawyers do appear to be more competitive and aggressive, need more dominance, and be driven to succeed more than most adults. Clients may perceive lawyers as cold, uncaring, uncommunicative, disinterested in anything but the "relevant facts," overly rule-oriented, aggressive, competitive, and hard-driving because they actually are more that way than the norm. Further, lawyers' use of Thinking and tendency towards conventional, Stage 4 or 5A moral reasoning may well appear odd, rigid, and even amoral to a public who uses both Thinking and Feeling and who reason at Kohlberg's Stages 3, 4, and 5 (including post-conventional reasoning).⁴⁶²

Even though lawyers (regardless of gender) typically embody the "masculine" ideal of rationality and impartiality, which may be necessary for a fair and predictable legal system, they may lack the counterbalancing "feminine" ideal of compassion and care, unlike the American public who exhibit and rely on both.⁴⁶³ This difference between lawyers and the general public likely promotes misunderstanding and reciprocal criticism, and thereby a negative image of lawyers. At best, these characteristics (among others) set lawyers apart from people generally and may cause the public to see them as a special, strange breed of individuals.

These characteristics are also likely to cause specific difficulties in interactions between laypeople and lawyers. Lawyers' relationships with their clients and with the public likely suffer as a result of lawyers' preference for Introversion, Thinking, and objective analysis, compounded by a lack of sensitivity to human, emotional, interpersonal concerns. Lawyers' preference for Introversion suggests an indifference to their outer world, including other people, and their preference for Thinking implies a cool, impersonal attitude, both of

462. See *supra* notes 340-49, 368-79 and accompanying text.

463. This is based on differences in incidence of Thinking vs. Feeling in lawyers and in the general population. See Richard, *supra* note 346, at 74.

which suggest that they may not relate well to other people, including their clients. There is recent evidence that lawyers are actually more like engineers than they are like nurses or teachers, being logical and unemotional,⁴⁶⁴ yet unlike engineers, in that their work is inextricably involved in interpersonal conflicts and issues.⁴⁶⁵ These lawyer attributes, although they may be adaptive for the practice of law because they allow the lawyer to avoid feeling unduly emotional about his or her clients' cases, may be maladaptive in the client counseling part of legal practice.

One might conclude that lawyers should become more emotional, partial, compassionate, and interpersonally sensitive. However, there is evidence that humanistic, people-oriented individuals are the least satisfied lawyers. Further, it is unclear whether lawyers can change these impersonal attributes. A disinterest in emotions and in interpersonal concerns appears to exist long before law school, even though it may be intensified during law school. Law schools can change, but promoting change in the self-selection processes of those who decide to come to law school would be much more difficult.

Although traits and characteristics largely unique to lawyers may exacerbate misunderstandings about lawyers and problems in attorney-client relations, these traits and characteristics may be essential and desirable in the practice of law. For example, some believe that clients will not patronize lawyers who are other than competitive, aggressive, and ruthless. The recent increase in competition between lawyers for clients is likely to encourage this attitude and hamper any efforts to change these attributes.⁴⁶⁶

Lawyers' impersonal attributes such as a preference for Introversion and Thinking, a rights orientation, and possibly conventional or Stage 4 morality may also be the very traits that American society appears to need and insist on in its lawyers. First, these qualities may be necessary in order for lawyers to be able to mete out impartial justice and provide legal representation to all, particularly to unpopular or repugnant clients.⁴⁶⁷ Second, there may be a conflict between the

464. See McLean & Kalin, *supra* note 38, at 155.

465. See *id.* at 143.

466. See Rosner, *supra* note 16, at 2 (chair of the American Bar Association's Standing Committee on Professionalism at the time, notes an "explosion" in the number of lawyers and a shrinking demand for their services); see also Cramton, *supra* note 16, at 610 (expecting competition in the legal profession to continue into the 21st century).

467. At the least, impartial lawyers are important so that each litigant receives legal representation. Without such impartiality, some litigants' positions would be so unpopular that no lawyer would represent them. See Stephen L. Pepper, *The Lawyer's Amoral Role: A Defense, A Problem, and Some Possibilities*, 1986 AM. B. FOUND. RES. J. 613, 616-19 (arguing that such impartiality on the part of lawyers preserves autonomy, diversity, and equal access to justice).

qualities associated with lawyer satisfaction (e.g., the dimensions of Thinking and Judging were found to correlate with lawyer satisfaction) and those that clients may desire when seeking to retain an attorney.

The trade-off for, or benefit of, lawyers' lack of interpersonal sensitivity, caring, compassion, and emotionality appears to be lawyers' ability to be rational, logical, oriented towards rights, attuned to rules, and interested in maintaining the social order.⁴⁶⁸ Our entire system of justice may depend on its administrators (lawyers) to be logical, rational, objective, unemotional, and impartial in order to administer the laws "fairly."⁴⁶⁹ If so, then society should consider carefully the consequences of having lawyers who are less impartial, objective, and rights-oriented, before concluding that they should change. There is some evidence that these impersonal traits are present prior to law school.⁴⁷⁰ Convincing evidence demonstrates that law school tends to de-emphasize interpersonal concerns, perhaps with sound reason, assuming that this will adequately prepare law students to be effective and satisfied advocates.⁴⁷¹

In summary, lawyers' preferences for Introversion and Thinking, rights orientation, conventional or Stage 4 or 5A morality, competitiveness, aggressiveness, need for dominance, and drive to achieve may all contribute to a gap in understanding and communication between lawyers and clients or the public. These characteristics, some of which appear to exist before law school, are likely to be resistant to change and may be helpful in the practice of law. Law school appears to intensify them. They may not, however, be the sole cause of the public's poor opinion of lawyers. Lawyers' impersonal traits

468. Although these two groups of qualities are not mutually exclusive, they have usually been viewed as dichotomous categories rather than extremes. See Richard, *supra* note 30, at 61, 75-77. For example, Thinking and Feeling on the Myers-Briggs Type Indicator are usually viewed as dichotomous categories rather than as extreme ends of a continuous trait. See *id.*

469. In fact, it is possible that some of the current emphasis on logic, rights, rational analysis etc., in legal education and the legal profession is a reaction to perceived injustices worked by the American legal system prior to the events of the 1960s (such as the civil rights movement). See Fred C. Zacharias, *Reconciling Professionalism and Client Interests*, 36 WM. & MARY L. REV. 1303, 1316 (1995) (documenting the historical development of the current emphasis on rights, etc., and arguing that it gained importance during the 1950s and 1960s when lawyers were used as instruments to help protect individual liberties and civil and constitutional rights); see also Daniel R. Coquillette, *Professionalism: The Deep Theory*, 72 N.C. L. REV. 1271, 1273-76 (1994) (arguing that the profession's emphasis has shifted from "justice" to simply serving as a means to achieving the client's ends).

470. See Hafner & Fakouri, *supra* note 47, at 236-41 (positing that lawyers as children "might be expected to see life in less emotional terms").

471. See Hedegard, *supra* note 100, at 835 (decreased interest in people); Janoff, *supra* note 390, at 195 (shift away from care orientation).

appear to have been present for several decades, and the current crisis appears to be a more recent phenomenon.

B. Lawyer Dissatisfaction and Dysfunction

Psychological problems, substance abuse, depression, anxiety, and job dissatisfaction among attorneys appear to have increased in recent years.⁴⁷² The relationship between lawyer attributes and these problems may be a bit more complex. The problems seem to begin in law school, as law school appears to foster abnormal levels of psychiatric distress among law students.⁴⁷³ This distress appears to continue on into law practice.⁴⁷⁴ Other evidence exists that lawyers generally experience more psychological distress than do individuals in other professions. The reasons for this distress have not been convincingly documented, but many studies suggest both external and internal reasons.

1. External environmental causes of distress

Law school, for example, does appear to do certain things which cause students emotional distress. In 1968, Lawrence Silver discussed possible reasons for the undue anxiety of first-term law students.⁴⁷⁵ Silver focused on the uncertainty involved in studying all semester without receiving any feedback (in the form of grades) on one's performance,⁴⁷⁶ the intimidating nature of the Socratic method used by many law professors,⁴⁷⁷ as well as the unfamiliarity of the subject matter and the ambiguity of the law.⁴⁷⁸ He noted that many students became used to black and white, right and wrong answers in undergraduate education and were distressed to find few such answers in law school.⁴⁷⁹

Interestingly, almost the same factors were deemed responsible for law student stress in a 1979 article written more than a decade after

472. See *supra* notes 29-32 and accompanying text.

473. See Beck et al., *supra* note 2, at 47 (noting that "for many lawyers psychological distress levels remain high [more than general population] throughout their career span"); Benjamin et al., *supra* note 70, at 226.

474. See Beck et al., *supra* note 2, at 47 (tracing lawyers' emotional distress from law school to legal practice).

475. See Silver, *supra* note 217, at 1202-16 (noting that purpose of study was to discover general problems encountered by first-year law school students).

476. See *id.* at 1201-02.

477. See *id.* at 1202-04.

478. See *id.* at 1204-09.

479. See *id.* at 1208 (stating that law school students were hesitant "to give up a method proven successful in the past especially if the student is unable to determine what success his efforts are obtaining").

Silver's study:⁴⁸⁰ use of the Socratic method, heavy work load, competition, isolation, loneliness, emphasis on professionalism rather than humanism or philosophy, and the lack of feedback.⁴⁸¹ Empirically, legal education appears to foster competition, isolation, and an emphasis on professionalism.⁴⁸²

Increased competition in law school among students who are used to high academic achievement may contribute to student distress. Empirically, there does appear to be a pressure or tendency in law school to keep interpersonal relationships on a professional and competitive basis rather than a cooperative basis and thus indirectly to increase competitiveness among students.⁴⁸³ This tendency also may discourage students from seeking social support systems to cope with their problems and may inculcate an isolationist, competitive, noncollaborative attitude, thus contributing to emotional distress.

Law school also appears to intensify law students' tendencies to ignore emotions, interpersonal concerns, and warm interpersonal relations.⁴⁸⁴ There may be nothing maladaptive about law students' preference for logic and rationality (e.g., Thinking) over interpersonal concerns and emotions (Feeling), but this preference may become extreme and thus dysfunctional during law school and thereafter. It may contribute to an unbalanced approach to life and difficulties relating to peers, family, friends, and clients,⁴⁸⁵ thus increasing dissatisfaction and distress.

In the alternative, some of the law student distress may be directly attributable to the increase in law school of women and others who exhibit an ethic of care or a preference for Feeling or Perceiving prior to law school. These individuals appear to experience pressure in law school to adopt a rights orientation⁴⁸⁶ and a preference for Thinking and Judging⁴⁸⁷ which may foster internal conflict. They

480. See Phyllis W. Beck & David Burns, *Anxiety and Depression in Law Students: Cognitive Intervention*, 30 J. LEGAL EDUC. 270, 285-86 (1979) (citing James B. Taylor, *Law School Stress and Deformation Professionals*, 27 J. LEGAL EDUC. 251, 251 (1975)). Beck and Burns generally discuss the benefits of cognitive behavioral intervention, a therapy technique focused on negative, irrational thinking and typically used to treat anxiety and depression, in treating law student stress. See *id.* at 283.

481. See *id.*

482. See Patton, *supra* note 319, at 43-45 (discussing competition, isolation, and professionalism).

483. See *id.* (noting that higher achieving students' relationships were characterized by more competitive, 'professional' behavior).

484. See Miller, *supra* note 128, at 460-67 (Feeling associated with dropping out of law school).

485. See Amiram Elwork & G. Andrew H. Benjamin, *Lawyers In Distress*, 1995 J. PSYCHIATRY & L. 205, 216 (noting that lawyers' traits cause them to be unbalanced).

486. See Janoff, *supra* note 390, at 228.

487. See Richard, *supra* note 30, at 250.

may experience anxiety and other symptoms as a result, whether conforming to the norm or resisting conformity, which may explain the high percentage of law students and new lawyers experiencing psychiatric distress.⁴⁸⁸ This heightened distress may explain the recent increase in lawyer dissatisfaction and dysfunction, as the percentage of these nonconforming students is likely to have increased in recent years.⁴⁸⁹

2. *Internal causes of distress*

A great deal of law student and lawyer stress, however, is likely to be caused by long-term personality traits which are present prior to law school. Undoubtedly, law school places a great deal of external stress on law students; however, as Phyllis Beck and David Burns stated in a 1979 article:

[a]ll law students are exposed to these same potentially stressful forces, but only some students develop adverse reactions. This suggests that there must be some internal factors which resulted in sub-optimal coping with law school in certain individuals.⁴⁹⁰

They state further:

[t]his conceptual model proposes that it is not the organization of legal education per se that creates anxiety or depression in the law students. Rather, it is the interaction of the potential stresses of the law school experience with certain individuals' specific dysfunctional attitudes that results in adverse emotional reactions.⁴⁹¹

Thus, law student distress may have two interacting causes: external stresses of law school and internal personality traits which are maladaptive. Specifically, Beck and Burns believe that cognitive distortion among law students may be one of the primary causes of their anxiety and depression.⁴⁹² According to them, it occurs "when an individual interprets stimuli that are neutral or mildly negative in an unrealistically bleak fashion."⁴⁹³

This dual causation theory may be true of lawyers as well. For example, Amiram Elwork presented a similar "diathesis stress" model of causation for lawyer stress in his book "Stress Management For

488. See Beck et al., *supra* note 2, at 46 (noting increased symptoms among newer lawyers).

489. See Astin, *supra* note 76, at 74-75.

490. Beck & Burns, *supra* note 480, at 286.

491. *Id.* at 287. Amiram Elwork and Andrew Benjamin appear to agree with a "dual causation" model in explaining lawyer stress. See Elwork & Benjamin, *supra* note 485, at 207-08.

492. See Beck & Burns, *supra* note 480, at 273.

493. *Id.* This erroneous interpretation of external stimuli causes the individual to feel hopeless, anxious, inadequate, and a failure. See *id.* The internal thoughts appear to continue to misinterpret the external stimuli and cause a downward emotional spiral from which the individual finds it difficult to emerge. See *id.* at 274.

Lawyers.”⁴⁹⁴ Elwork acknowledged the external stresses of law practice (e.g., time pressures, workload, competition, economy, office politics, role conflicts, and adversary system), but also asserted that there are “individual differences” with respect to flexibility, self-control, hostility, self-esteem, values, race, and gender that make certain lawyers more vulnerable to the effects of the external stressors.⁴⁹⁵

Of the personality traits which are unique to law students and lawyers, some may make them particularly susceptible to external stressors. Beck and Burns believe the “sub-optimal” internal factors present in some law students are irrational, negative thoughts about themes of achievement and self-worth, perfectionism, all-or-nothing thinking (if I’m not the best, then I’m a total failure), need for approval, and need for certainty, correctness, and control of one’s environment.⁴⁹⁶ Amiram Elwork asserts that, based on existing empirical research on attorney personality, there are several personality traits which tend to intensify lawyers’ stress levels.⁴⁹⁷ According to Elwork, these are: lack of flexibility, intolerance for change, an unbalanced commitment to work and personal life, a belief that destiny cannot be controlled, hostility, cynicism, aggression, fear, low self-esteem, person-centered values, and altruistic social concerns.⁴⁹⁸ To the extent that lawyers exhibit these traits, Elwork contends that they experience greater disappointment and stress in practicing law.⁴⁹⁹ Elwork’s argument is partially supported by Shneidman’s longitudinal study of successful versus less successful lawyers which found a higher level of general neuroses among less successful attorneys.⁵⁰⁰

Of the traits identified by Beck, Burns, and Elwork, several have been demonstrated to be present in lawyers more often than normal. These are: aggressiveness, competitiveness, need for achievement and dominance, low self-esteem, fear expressed through awkwardness, paranoia, and insecurity, ways of coping with anxiety, inflexibility and intolerance for change expressed through authoritarianism.⁵⁰¹

494. AMIRAM ELWORK, *STRESS MANAGEMENT FOR LAWYERS* 3-5 (1995).

495. *See id.* at 13.

496. *See* Beck & Burns, *supra* note 480, at 286-87.

497. *See* ELWORK, *supra* note 494, at 15.

498. *See id.*; *see also* Elwork & Benjamin, *supra* note 485, at 212-15 (describing study in which researchers found that “level of hostility, cynicism, and aggression” felt by lawyers during law school was highly correlated with their mortality rate thirty years later).

499. *See* ELWORK, *supra* note 494, at 15.

500. *See supra* notes 64-69 and accompanying text.

501. *See* Beck et al., *supra* note 2 (identifying anger, hostility, insecurity, paranoia, and low self-esteem as traits characteristic of attorneys); Bohn, Jr., *supra* notes 70, 74-75 (discussing pre-

For example, lawyers' needs for achievement and their competitiveness can cause workaholism and perfectionism. In law school, if law students equate self-worth with achievement, to the extent that self-esteem depends entirely on continual successes, a less-than-average academic performance equates with personal worthlessness. The law school experience itself frustrates individuals' need for achievement, since formerly top students in college may now be average students in law school. Due to law students' demonstrated high needs for achievement, success, and dominance, this phenomenon may have devastating effects on their self-esteem and self-worth. In law practice, these traits may easily become maladaptive. They can lead to workaholism and perfectionism, which are at first rewarded by professional and financial success, thus satisfying lawyers' drives for achievement, dominance, money, and prestige.⁵⁰² These behaviors can, when used in the extreme, however, exact a greater toll on the individual than the benefits they provide, resulting in stress, interpersonal difficulties, and substance abuse.⁵⁰³

Elwork believes that workaholism contributes greatly to lawyer stress, and that lawyers have three personality traits which cause them to become "workaholics": "justifiable paranoia," perfectionism, and an "insatiable desire for success."⁵⁰⁴ Elwork believes that the paranoia is caused by the adversarial legal system in which lawyers work, which causes them to suspect everyone of ulterior motives, and encourages secretiveness, manipulateness, and selfishness.⁵⁰⁵

Empirical data about law students indicate, however, that paranoia increases dramatically in law school, suggesting that either paranoia is a response of law students to law school or that law school itself is

law students' need for dominance); Houston et al., *supra* note 325, at 1155 (noting competitiveness of male and female attorneys); Reich, *supra* note 134, at 873-74 (concluding that law students are "insecure, defensive, distant, and lacking in maturity and socialization"); Solkoff & Markowitz, *supra* note 124, at 199; Stevens, *supra* note 70, at 673-75 (studying perceived competitiveness, aggression and congeniality among law students); Williams & McCullers, *supra* note 61, at 350 (commenting that women lawyers are more achievement-oriented than other women).

502. See Beck et al., *supra* note 2, at 53, 57 (increased anger and hostility, obsessive-compulsiveness, interpersonal sensitivity, and anxiety, which are characteristic of attorneys, are useful in the practice of law).

503. See *id.* at 53, 57 (anger is not, however, adaptive at home and may harm the attorney's primary relationship; obsessive-compulsive symptoms characteristic of attorneys are maladaptive in the high pressure, adversarial arena). Beck and her colleagues assert that certain lawyer attributes (anger and hostility, obsessive-compulsiveness, interpersonal sensitivity, and anxiety) were important to being a successful lawyer but either were maladaptive to the lawyer's home life or caused other problems, such as depression, isolation, and social alienation. See *id.* at 57. Beck found that both male and female attorneys' satisfaction with their primary relationships was significantly less than that of the general population. See *id.* at 30.

504. See ELWORK, *supra* note 494, at 16-20.

505. See *id.* at 17.

adversarial and fosters paranoia.⁵⁰⁶ Perfectionism is encouraged by a profession and a personality that emphasize rules, order, organization, logical thought, and objective analysis.⁵⁰⁷ Mistakes are very costly, and perfectionism is rewarded both professionally and financially, thus fueling attorneys' need to achieve.⁵⁰⁸ Finally, lawyers' achievement orientation may lead to a never-satisfied drive for success. Elwork points out that not only is this drive insatiable, but it is also fundamentally, on a deeper level, a need for "security, love, esteem, power, or autonomy," which is a psychological need rather than a professional goal.⁵⁰⁹

Elwork's work is consistent with Reich's findings that law students are internally insecure, awkward, and anxious.⁵¹⁰ Law students may have a psychological need for security, esteem, and power in order to counteract these inner feelings.⁵¹¹ Elwork asserts that this psychological need can be met more effectively by addressing it directly, rather than through indirect means, such as workaholism and "success."⁵¹² Thus, workaholism does not efficiently meet the needs driving it, and it creates additional stress for the lawyer through increased workload, time pressures, and less available personal and relaxation time.

Lawyers appear to be in artful at dealing with emotions generally (being Thinkers rather than Feelers),⁵¹³ so instead of expressing their conflicting feelings or working through them with other people, they may resolve these uncomfortable feelings by channeling them into a drive for achievement.⁵¹⁴ Data suggest that law students similarly cope with uncomfortable feelings not by utilizing other people for social support, but instead by becoming more aggressive

506. See Benjamin et al., *supra* note 70 (finding higher rates of anxiety and paranoia among law students).

507. See Janoff, *supra* note 390, at 235-38 (noting differences between male and female law students' resolution of moral dilemmas dissipates after first year); Landwehr, *supra* note 365, at 39-42 (commenting on different stages of moral development).

508. See ELWORK, *supra* note 494, at 18-19.

509. See *id.* at 18-20.

510. See Reich, *supra* note 134, at 873.

511. Notwithstanding the issue of whether the conflict identified between the outer image and inner feelings of law students exists before or develops in law school, if it continues into practice, it can likely drive attorneys to compensate for the inner insecurity in some fashion, such as an increased drive to succeed, to achieve, and to make money, or increased aggression, workaholism, and perfectionism, or substance abuse. See Reich, *supra* note 134, at 874.

512. See ELWORK, *supra* note 494, at 20.

513. See Richard, *supra* note 30, at 250.

514. See Chusmir, *supra* note 61, at 231 (claiming that need for achievement motivates most lawyers). This channeling could be understood as a form of the defense mechanism known as "sublimation." Sublimation has been defined as "transforming frustrated urges . . . into more socially acceptable forms of behavior," BENJAMIN, JR. ET AL., *supra* note 217, at 386 (defining the major psychoanalytic defense mechanisms).

and ambitious, turning to workaholism and substance abuse, or becoming depressed.⁵¹⁵

In 1996, Connie Beck extended the work of Benjamin and his colleagues on lawyer distress by investigating, among other things, possible lawyer traits contributing to the distress.⁵¹⁶ She verified the existence of increased hostility, anger, insecurity, feelings of inferiority, and paranoia among lawyers as compared to the general population.⁵¹⁷ She then focused on several traits: anger and hostility; tendency to abuse alcohol; and obsessive-compulsive tendencies as causally related to the lawyers' distress. Statistically, increased anger and hostility among lawyers was most related to the distress.⁵¹⁸ Beck asserted that anger and hostility, though possibly instrumental to a legal career, may have become so extreme in lawyers that it cannot be turned off at home.⁵¹⁹ This may explain the high level of lawyer distress and low level of marital satisfaction among lawyers as compared to the general population discovered by Beck and her colleagues.⁵²⁰ She then noted that alcohol "releases anger and aggression" and that 70% of the attorneys she studied are likely to develop alcohol problems in their lifetime.⁵²¹ She also theorized that lawyers' anger may cover up their excessive insecurity, anxiety, and tension.⁵²² In addition, she believed that lawyers' increased tendency towards obsessive-compulsiveness perhaps related to a need to control, which when frustrated by the unpredictable nature of law practice, became extreme and maladaptive.⁵²³

Other traits suggest the presence of a need for control among lawyers. Lawyers' demonstrated needs for dominance, leadership, the attention of others, and achievement,⁵²⁴ their preference for Judg-

515. See *supra* notes 250-58 and accompanying text.

516. See Beck et al., *supra* note 2, at 6 (looking at aggravating and mitigating variables for lawyers' psychological distress and substance abuse, such as "social support and satisfaction with social support, marital satisfaction, anger, and perceived stress").

517. See *id.* at 24, Table 5 (reporting results on ten scales for lawyers and adults generally).

518. See *id.* at 51 (using a multivariate model, "clearly the association driving the model is between anger and global psychological distress").

519. See *id.* at 53 (some lawyers may bring these emotions home).

520. See *id.* at 50, 58.

521. See *id.* at 51 (she studied lawyers in Washington state) and 53 (regarding the relationship between anger and alcohol).

522. See *id.* at 54-55 (anxiety and tension here measured as "interpersonal sensitivity" and included feelings of inferiority, similar to Reich's findings with respect to law students, see *supra* notes 206-11 and accompanying text).

523. See *id.* at 55 (resulting in a cycle of distress).

524. See Bohn, Jr., *supra* note 41, at 260 (documenting law students' need for dominance and wish for attention as part of personality trait); Chusmir, *supra* note 61, at 231-34 (commenting on lawyers' desire for achievement).

ing which reflects a preference for certainty and closure,⁵²⁵ and their authoritarianism, competitiveness, and preference for active, initiative-taking behavior⁵²⁶ all may be part of a need to control events. This would be different than Chusmir's need for power over others, for which lawyers typically have only moderate needs,⁵²⁷ yet it would be consistent with perfectionism and workaholism.⁵²⁸ First, law school may frustrate this need for control, approval, certainty, and correctness (due to the uncertainty and unfamiliarity inherent in the program), thus creating anxiety and psychological problems in law students.⁵²⁹ Second, law practice may further frustrate this need, as the outcomes of cases and clients' actions are often uncontrollable and may have become even less predictable in recent years.⁵³⁰ Also, increased competition among lawyers may frustrate a need to control one's work. Consequently, these factors may cause a great deal of stress and discomfort for law students and attorneys. The stress is unlikely to be easily alleviated in attorneys, and it is likely to continue to create discomfort and distress for them.⁵³¹

C. *The Professionalism Crisis*

Outward signs of the professionalism crisis may be related to lawyers' demonstrated competitive, aggressive, and masculine traits, their needs for achievement and material success, some law students' uncertainty as to career goals, and the high levels of psychological stress lawyers exhibit. Certain of these outward signs, such as unprofessional, discourteous, and uncivil behavior, blatant lawyer advertising, deprofessionalism of the law, and materialism may simply be products of these typical lawyer attributes.

525. See Richard, *supra* note 30, at 233-34 (confirming lawyers' preference for "judging" personality trait).

526. See Hafner & Fakouri, *supra* note 47, at 241 (commenting on initiative-taking as integral part of lawyer behavior); Houston, *supra* note 325, at 1155 (commenting on competitiveness as component of lawyer behavior); Solkoff & Markowitz, *supra* note 124, at 199 (documenting authoritarianism as personality trait prominent in lawyers).

527. See Chusmir, *supra* note 61, at 231-35 (commenting that lawyers need to receive recognition and have some authority, not necessarily power over others).

528. See ELWORK, *supra* note 494, at 4.

529. See Silver, *supra* note 217, at 1216 (analyzing clash between demands of first year law school and personality traits of law students).

530. Cf. ELWORK, *supra* note 494, at 15 (acknowledging belief in inalterable destiny as an added stressor present in lawyers).

531. See Beck & Burns, *supra* note 480, at 287.

1. *Unprofessional behavior and lawyer misconduct*

As the number of lawyers has dramatically increased, competition for clients and fees has correspondingly increased.⁵³² Lawyers' competitiveness and need for achievement and dominance could easily lead to competitive, aggressive, hostile, and overreaching behavior in a tight market (if achievement after law school is defined by professional prestige and material success). The poor behavior of the lawyer engaging in "Rambo litigation" may be a natural outgrowth of these lawyer traits.⁵³³ In addition to personal success, competitiveness and a need for achievement could foster an undue desire to win the client's case, which could intensify unprofessional behavior.⁵³⁴

The disturbing proportion of law students who come to law school for "uncertain career goals" may also explain part of the unprofessional behavior exhibited by modern attorneys. If these individuals are uncertain about becoming lawyers, they may be similarly uncertain about their values, standards, morals, and ideals. Thus, they could develop unethical and unprincipled habits in their legal practices. As uncertain and undeveloped individuals, they may be unduly susceptible to adopting materialistic, competitive, achievement-oriented, and impersonal and objective values present in many law students. These values may indirectly encourage unethical behavior. Whether legal education or the legal profession can instill other values that promote ethical behavior in such individuals remains to be seen. There is evidence that some law school courses can promote a higher stage of moral development,⁵³⁵ but whether a higher stage of moral develop-

532. See Rosner, *supra* note 16, at 2 (finding increase in number of attorneys and decrease in demand for services).

533. Roger Cramton refers to "an extreme model of adversarial advocacy" or "Rambo litigation" and asserts that it is in part responsible for the erosion of traditional professionalism. See Cramton, *supra* note 16, at 610-11; see also Mashburn, *supra* note 16, at 657 (referring to "Rambo" litigators in the context of a perceived decline in professionalism).

534. See Chusmir, *supra* note 61, at 233-34 (noting need for achievement); Houston, *supra* note 325, at 1155 (discussing manner in which competitiveness breeds unprofessional behavior).

535. See Hartwell, *supra* note 380, at 509-12 (stage of moral development increased as a result of certain law school courses). Further, researchers have not isolated the features of these courses which appear to have caused the improvement; thus, it is unknown exactly how to improve students' moral development. See *id.* at 531-35; see also William Y. Penn, Jr., *Teaching Ethics—A Direct Approach*, 19(2) J. MORAL EDUC. 124, 130 (1990) (finding through empirical study that undergraduate students' "P" scores on the Defining Issues Test of moral development significantly increased as a result of an undergraduate ethics course which integrated the study of logic, developmental theory, and philosophy and taught the skills of logic, role-taking, and justice operations).

ment would result in moral behavior is unclear.⁵³⁶

There is evidence that lawyers experience a conflict between their outer, confident, socially ascendant image and their inner view of themselves as awkward, defensive, and insecure.⁵³⁷ This conflict may be inadequately resolved, and as a consequence express itself in defensiveness, unwillingness to admit mistakes or change attitudes, or aggression towards others to compensate for their inner insecurity. These characteristics may lead to discourteous, uncivil behavior and be linked in this way to the decline in professionalism.

Furthermore, individuals who do not resemble the lawyer "norm" in terms of values and decision-making approaches appear to be changed by law school to fit the norm, and they may experience conflict as a result of this transformation.⁵³⁸ They may have adopted one set of values but may have lost their own values and ideals in the process. This conflict may also express itself in behavior which is unethical or unprofessional simply due to confusion about the individual's true values.

Finally, the high levels of anxiety, depression, alienation, and dissatisfaction among law students that appear to continue into law practice may cause unprofessional behavior. Data suggest that law students cope with such uncomfortable feelings by becoming more aggressive and ambitious and by abusing substances, but not by relying on social support, committing suicide, or dropping out of law school.⁵³⁹ Because lawyers are likely to continue using these coping strategies after graduation, these specific coping mechanisms can affect clients and the legal profession, not just the attorneys. They may be linked to the decline in professionalism, as they are likely to produce (a) overzealous representation of clients and overreaching conduct due to aggression and ambition, or (b) lawyer malpractice resulting from depression or substance abuse.⁵⁴⁰

536. See Richard N. Tsujimoto & Kathy A. Emmons, *Predicting Moral Conduct: Kohlberg's and Hogan's Theories*, 115 J. PSYCHOL. 241, 241-44 (1983) (finding that moral development does not correlate directly with moral behavior).

537. See Reich, *supra* note 134, at 871-74.

538. See Janoff, *supra* note 390, at 227.

539. See *supra* notes 250-59, 309-22 and accompanying text.

540. See Benjamin et al., *Prevalence of Depression*, *supra* note 31, at 244 (sixty percent of malpractice cases involved a substance abusing attorney (citing C. Greene, *Half of Lawyer Malpractice and Discipline Stems from Substance Abuse—Annual Meeting of the National Conference of Bar Presidents* (Aug. 6, 1988))); Jonathan Goodliffe, *Alcohol and Depression in English and American Disciplinary Proceedings*, 89 ADDICTION 1237, 1243 (1994) (acknowledging link between depression and malpractice suits against attorneys).

2. *Materialism*

Seventy-four percent of prelaw students and an average of thirty percent of law students admit that they desire money and prestige, and concede further that money and prestige were important considerations in the decision to apply to law school.⁵⁴¹ This supports the contention that materialism and financial motivation are widespread in the legal profession.⁵⁴² Commentators charge that law has become too commercialized,⁵⁴³ too much a business,⁵⁴⁴ and too profit-driven,⁵⁴⁵ which has led to greater potential for ethical difficulties.⁵⁴⁶ In addition, lawyers on the average now make considerably more money than they did 25 years ago.⁵⁴⁷ In 1996 legal services generated the second highest revenues per employee among professional services, and the fourth highest total annual revenues among United States service industries.⁵⁴⁸ Because of this, it might appear that lawyers are more materialistic today than they were in the past. Research shows that about the same percentage of law students were motivated by money and prestige to enter law in the 1960s as in the late 1970s.⁵⁴⁹ Although there may or may not be an increased emphasis on materialism and profit motivation today, it is also possible that practicing lawyers have simply become more overt about their inherent materialism, thus degrading the public image of lawyers.

To conclude, the materialism complained of among lawyers appears to exist. Although it may have increased in recent years, it has been present since the 1960s.⁵⁵⁰ This desire for financial success (added

541. See Astin, *supra* note 76, at 82 (reporting that 65% of law students (and 74% of pre-law students) viewed "being very well-off financially" as an "essential" or "very important" goal); Hedegard, *supra* note 100, at 814 (finding 28-31% of students motivated by prestige and money); Stevens, *supra* note 91, at 577 (14-58% said money was greatly important in choosing law).

542. See Rehnquist, *supra* note 15, at 46 (stating that law has become too focused on profit-maximization).

543. See Re, *supra* note 16, at 98 (noting that increasing salaries and billing practices of lawyers foster belief in commercialization of legal profession).

544. See Rehnquist, *supra* note 15, at 46.

545. See Franzese, *supra* note 15, at 493 n.33 (arguing that the profession's preoccupation with income maximization lies at the heart of the legal profession's problems).

546. See Rehnquist, *supra* note 15, at 46.

547. See *id.*

548. See Attorneys Take Lion's Share of Earnings Among Professionals, 96-2 LAW OFF. MGMT. & ADMIN. REP. 4 (1996). Legal services ranked second only to computer services for revenues per employee among all professional services. Law firms averaged \$109,476 in revenue for every secretary, paralegal, and attorney employed by the firm. See *id.*

549. See *supra* notes 91-104 and accompanying text; see also Astin, *supra* note 76, at 82 (reporting 1981 data).

550. See *supra* note 541 and accompanying text. Stevens studied the classes of 1960, 1970, and 1972; Hedegard's study finding slightly greater percentages of students admitting

to attorneys' need for achievement), in an era of increased competition among lawyers, may have fueled competitiveness among lawyers and motivated some lawyers to engage in overly aggressive, unprofessional, "Rambo litigation" tactics, in a desire to win, collect more legal fees, and attract more clients. In this way, materialism is likely to be related to professionalism concerns.

3. *Deprofessionalism of the law*

Some charge that law has become too much of a business and no longer a profession, due to the lack of public and community service rendered by attorneys.⁵⁵¹ Here, it is lawyers' impersonal orientation and materialism which may contribute to the phenomenon. Lawyers, being logical, rational, and not people-oriented, may not see public service as necessary to their success. They are not likely to be motivated to provide public service simply for the benefit of others or for the emotional gratification of the work because of their unemotional, Thinking orientation. Also, lawyers' materialism likely discourages them from electing to do pro bono work and other nonlucrative community service instead of working on paying, private clients' matters. Materialism and a prevalence for Thinking appear to be partially present before law school, although law school appears to magnify them.

It is unclear if these traits were present fifty years ago. They may have been present at least since the 1960s, based on data suggesting that lawyers have consistently had a preference for Thinking (logic, rationality, and objective analysis) and a disinterest in interpersonal concerns.⁵⁵² However, there is evidence to the contrary, based on a shift in undergraduate preparation from humanistic studies in the 1950s to the social sciences in the late 1960s.⁵⁵³ If these traits are a recent, post-1960 development, then perhaps they partially explain why deprofessionalism has surfaced now.⁵⁵⁴

materialistic motives was reported in 1979; Astin's study finding again greater percentages of students admitting desires to be well-off financially was done in 1981. There may be a trend towards increasing materialism among law students, based on these studies.

551. See Rehnquist, *supra* note 15, at 44-46. For example, Ellen Podgor notes that community service and pro bono work are what distinguish a profession from a trade. See Podgor, *supra* note 11, at 533.

552. See *supra* notes 141-47, 339-51 & 391-99 and accompanying text.

553. See Stevens, *supra* note 70, at 575.

554. Advertising may also have developed a crass and perhaps distasteful flavor in the mouths of the general public, due to lawyers' lack of sensitivity to interpersonal concerns. Lawyers, being rational and logical, may see direct advertising as sensible, and may be blind to the human or emotional impact it may have on others. Thus, what lawyers tolerate in their own profession could appear to the public as unprofessional and insensitive. It could be logically reasonable to the attorneys, as businessmen, but emotionally unpleasant to the public. There is evidence,

CONCLUSION

In conclusion, there are a number of empirically-demonstrated lawyer attributes which appear to be responsible, at least in part, for both the internal and external problems making up the tripartite crisis, particularly in conjunction with recent developments such as increased competition among lawyers. Empirical research indicates that some of these attributes are present prior to law school and even as early as childhood, and are thus likely to be extremely difficult to change. Changes in legal education or in the legal profession are thus likely to be ineffective in altering these pre-existing traits. Further, these traits may be related to the self-selection process of individuals into the law.

Other attributes are clearly amplified or developed by the legal education process. Even though these could be changed by reforming legal education, it may not be desirable to de-emphasize certain lawyer attributes; they may be adaptive or even necessary for effective and satisfying advocacy. Some typical lawyer attributes, such as lawyers' overemphasis on Thinking, rationality, objective analysis, rights, justice, and rules, although they may currently be causing problems, may actually be helpful in the practice of law and to the administration of the American justice system.

Other attributes, such as competitiveness, need for dominance and achievement, materialism, and aggressiveness may be causing problems simply because they have become too extreme and need to be moderated. In addition, why law school produces high levels of psychological distress, and whether this is desirable, must also be investigated.⁵⁵⁵ It is with this latter group of attributes, including

however, that attorneys actually view lawyer advertising more negatively than do clients, suggesting that attitudes towards advertising are not well understood and not easily related to lawyer attributes. See Roy M. Sobelson, *The Ethics of Advertising By Georgia Lawyers: Survey and Analysis*, 6 GA. ST. L. REV. 23, 67 (1989) (noting that many lawyers also feel that "advertising is not in the best interests of consumers").

555. Additional research is necessary to determine if lawyers are predisposed to develop psychological distress. Benjamin and his colleagues suspect this is true, stating that many lawyers are "victims of child abuse, neglect, and exploitation" and that lawyers overachieve as a way to overcompensate for "these earlier narcissistic injuries inflicted upon them by their parents," which suffices so "long as the challenges are not too difficult." Benjamin et al., *Prevalence of Depression*, *supra* note 31, at 246 n.50; see also *supra* note 47 and accompanying text. However, in today's crowded and competitive legal profession, the challenges appear to have become too "difficult." Benjamin et al., *Prevalence of Depression*, *supra* note 31, at 248. Benjamin and his colleagues have suggested that the dramatic increases in psychological problems (such as tension, anxiety, and depression), in a group of otherwise "normal" individuals, resulting from law school, must be further investigated. See *id.* at 245. It is imperative to determine (1) whether law students are in any way predisposed to develop this psychological distress, (2) what law school does to create it, and (3) why the distress does not abate after graduation. See

distress, that changes in legal education hopefully will have some effect.

Once it has been determined which lawyer attributes should be changed, existing proposals for solutions to the tripartite crisis should be evaluated. Specifically, it should be considered whether an overhaul in lawyers' values, morals, and ideals is at all possible in light of existing, countervailing, long-ingrained lawyer characteristics and decision-making approaches. Finally, the necessary conditions for lasting personality change must be determined and created, before the troublesome lawyer attributes are likely to change.

