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## **Operationalizing Research on Virtue Ethics and Moral Development for Professional Education**

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**Courage**  
**Operationalizing Research on Virtue Ethics and**  
**Moral Development for Professional Education**

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“I sat down and told the agent that I could not conduct the case ... I hastened from the court, not knowing whether my client won or lost her case, but I was ashamed of myself, and decided not to take up any more cases until I had courage enough to conduct them.”  
Mohandas Gandhi, AN AUTOBIOGRAPHY: THE STORY OF MY EXPERIMENTS WITH TRUTH 94-95 (Beacon Press, Boston 1993)

“Why was it so hard for me to relate courage to lawyering? Why was I suddenly, after twelve years of practice, looking for courage now?” Suellyn Scarnecchia, *Honors Convocation Speech* (University of Michigan Law School May 14, 1993).

*[Note: This is very much a work-in-progress. I am more familiar with literature from moral psychology than virtue ethics and welcome the opportunity at the Varieties of Virtue Ethics Conference to brainstorm about ways to operationalize virtue ethics theory into actual teaching methods for legal education.]*

Over the past 30 years researchers and educators affiliated with at the Center for the Study of Ethical Development<sup>1</sup> (“Center”) have applied the results of empirical research to design and assess ethics education for professional schools. In particular, Muriel Bebeau – the Center’s Director for many years –has developed an ethics curriculum at the University of Minnesota’s school of dentistry which has been widely adopted throughout American dental education and adapted for use in a number of other disciplines. Key elements include baseline assessment of capacity for moral judgment and formation of identity using outcome measures, small group

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<sup>1</sup> The Center was established in 1982 by James Rest and Muriel Bebeau at the University of Minnesota. It is currently housed at University of Alabama with Stephen Thoma as its Executive Director. The Center’s website is the primary resource for the Defining Issues Test as well as number of other materials for assessing moral development: <http://ethicaldevelopment.ua.edu/>

instruction, and an emphasis on performance with both self-assessment and personalized feedback, some of which is provided by high status professionals. The central theory used in this educational design is the “Four Component Model” (initially developed by the Center’s first director, James Rest), which “articulates psychological processes involved with how the individual perceives and reasons about a social issue, how issues are prioritized compared to others, and how effectively the individual engages in action.”<sup>2</sup> This “FCM” model identifies four different possible reasons why a well-intentioned professional might nonetheless engage in unprofessional conduct:

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

The model then defines four corresponding capacities for conduct that would be deemed appropriate by professional norms; each capacity is necessary for professional responsibility, but none by itself is sufficient:

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

**Moral sensitivity** in the context of professional practice requires working knowledge of the profession’s norms, often promulgated in the form of conduct rules; however, such learning is not by itself *sufficient* for becoming a morally sensitive professional. Equally critical is the ability to engage imaginatively as a situation unfolds, constructing various possible scenarios, often with limited cues and partial information, combined with the ability to foresee realistic

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<sup>2</sup> Muriel J. Bebeau & Verna E. Monson, *Guided by Theory, Grounded in Evidence: A Way Forward for Professional Ethics Education*, in HANDBOOK ON MORAL AND CHARACTER EDUCATION 557 (Darcia Narvaez & Larry Nucci eds., 2008) [hereinafter Bebeau & Monson, *Guided by Theory*.]

cause-consequence chains of events.<sup>3</sup> A well-constructed problem for developing and assessing ethical sensitivity should “present clues to a problem ... without actually signaling what the problem is.”<sup>4</sup> Moral sensitivity often requires empathy and role-taking skills, involving both cognitive and affective processes.<sup>5</sup>

**Moral Reasoning**, according to research conducted by the Center, develops over an individual’s life span and displays one or more of three structures: (1) the Personal Interests Schema which prefers reasons based on avoiding harm, making reciprocal deals, and sustaining personal relationships; (2) the Maintaining Norms Schema which prefers reasons based on clear rules that maintain the social order; or (3) the Postconventional Schema which prefer reasons based on ideals that transcend and can critique social norms.<sup>6</sup> The Personal Interests Schema is typically dominant from childhood through early adolescence as individuals move from reasons based on harm avoidance through reciprocity to maintaining friendship. In late adolescence some shift to the Maintaining Norms Schema; the Postconventional Schema typically only begins to develop in young adults and is promoted by post-secondary education.

Teaching professional ethics in terms of learning how to avoid loss or restriction of the license to practice or malpractice liability, or to develop and preserve a good reputation in the professional community, appeals merely to the reasoning of the immature Personal Interests Schema. To develop more mature moral reasoning, students must struggle with complex

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<sup>3</sup> Muriel J. Bebeau, James R. Rest, & Catherine M. Yamoore, *Measuring Dental Students’ Ethical Sensitivity*, 49 J. DENTAL EDUC. 225 (1985).

<sup>4</sup> Neil Hamilton & Verna Monson, *Legal Education’s Ethical Challenge: Empirical Research on How Most Effectively to Foster Each Student’s Professional Formation (Professionalism)*, 9 UNIV. ST. THOMAS L. J. 325, 399 (2012) [hereinafter Hamilton & Monson, *Legal Education’s Ethical Challenge*.]

<sup>5</sup> *Id.* at 360.

<sup>6</sup> Bebeau & Monson, *Guided by Theory* 559. This approach is an evolution based on empirical research from the well-known theory of Lawrence Kohlberg that as individuals mature they pass through identifiable stages of moral development that can be identified by the type of moral reasoning typically used at that stage. James R. Rest, Darcia Narvaez, Stephen J. Thoma & Muriel J. Bebeau, *A Neo-Kohlbergian Approach to Morality Research*, 29 J. MORAL EDUC. 381 (2000).

problems in which the protagonist faces competing duties, responsibilities and rights that cannot be resolved by application of a rule: because (1) the rule is vague or grants discretion, (2) the problem is not addressed by a rule, or (3) most challenging, a decision may be justified that the rule ought not to be followed.<sup>7</sup>

To assess the maturity of moral reasoning the Center created an easily administered, and extensively validated, multiple-choice instrument, the Defining Issues Test (DIT), that presents ethical dilemmas and then measures the extent to which an individual prefers arguments based on personal interests, maintaining norms or post-conventional rationales to resolve the dilemmas. In 33 studies of the effects of professional education, none showed significant increases in DIT scores without a carefully validated ethics curriculum.<sup>8</sup> For example, although legal ethics has been a required course in U.S. law schools for over 35 years, supporting a large cohort of teachers specializing in the subject and an extensive textbook industry, according to *Educating Lawyers*, an influential critique of American legal education from the Carnegie Foundation for the Advancement of Teaching (“the Carnegie Report”), studies have shown that law students who completed a traditional professional responsibility course did not show significantly more sophisticated moral reasoning, as measured by DIT scores, at the end of the course than at the beginning; other studies have shown no improvement in DIT scores between the beginning and end of law school.<sup>9</sup> The Carnegie Report however goes on to state that “research makes quite clear ... that specially designed courses in professional responsibility and legal ethics do support that development”.<sup>10</sup> Steven Hartwell has described how he designed an unconventional

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<sup>7</sup> Muriel J. Bebeau, *The Defining Issues Test and the Four Component Model: Contributions of Professional Education*, 31 J. MORAL EDUC. 273, 289 (2002).

<sup>8</sup> Bebeau, *Defining Issues Test* 273-81

<sup>9</sup> William M. Sullivan et al, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 133-34 (2007).

<sup>10</sup> Sullivan, *EDUCATING LAWYERS* 134.

professional responsibility course for law students which combined the pedagogies described above for promoting both moral sensitivity and moral reasoning. He used out-of-class attorney-client simulations; students were not told beforehand what ethical issues were raised by the simulations: they met in small groups to identify ethical issues, decide a course of action, and justify that action in terms of moral principles. Students took the DIT at the beginning and end of the semester each time he taught with these methods and their DIT scores increased significantly.<sup>11</sup>

Since Hartwell's work, profession-specific measures of moral reasoning have also been developed that better reflect the content of professional education by using "Intermediate Concepts" that represent basic professional norms – rather than the more abstract moral schemas measured by the DIT – but are not as specific as the prevailing codes of professional conduct.<sup>12</sup> Bebeau is currently consulting with law school members of the National Institute for Teaching Ethics & Professionalism (USA) to develop Intermediate Concept measures of moral reasoning for use in legal education; this work is being done in collaboration with the Jubilee Centre at the

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<sup>11</sup>Steven Hartwell, *Promoting Moral Development Through Experiential Teaching*, 1 CLINICAL L. REV. 505, 522-23 (1994-95). See also Steven Hartwell, *Moral Growth or Moral Angst? A Clinical Approach*, 11 CLINICAL L. REV. 115 (2004-2005). Hartwell and the other law school studies cited by the Carnegie Report measured development of moral reasoning in terms of how often students preferred the Postconventional Schema (called "the P score"). More recent research using the DIT also measures how often a subject prefers *either* the Postconventional or Maintaining Norms Schema over Personal Interests ("the N2 score"). See also Neil H. Hamilton, Verna E. Monson & Jerome Organ, *Empirical Evidence That Legal Education Can Foster Professionalism/Professional Formation to Become an Effective Lawyer*, 10 UNIV. ST. THOMAS L. J. 11, 50-53, 55-62 (2012). (reporting significant increases in N2 scores over course of three year program of instruction at the University of St. Thomas School of Law in Minneapolis).

<sup>12</sup>Muriel J. Bebeau & Stephen J. Thoma, "Intermediate Concepts" and the Connection to Moral Education, 11 EDUC. PSYCHOLOGY REV. 343 (1999). See also Muriel J. Bebeau, TEACHING AND ASSESSMENT MATERIALS FOR A DENTAL ETHICS COURSE DESIGNED TO FACILITATE THE DEVELOPMENT OF MORAL REASONING AND JUDGMENT, available at <http://ethicaldevelopment.ua.edu/>.

University of Birmingham (UK) using as a starting point some of the dilemmas designed by the Jubilee Centre to survey law students, law graduates, and practicing lawyers.<sup>13</sup>

The **Moral Motivation** component of the FCM Model addresses the reality that appropriate moral sensitivity and mature moral reasoning do not always result in moral action. There are many pressures to act, or fail to act, in ways that are inconsistent with what the individual understands to be the moral decision.<sup>14</sup> Competing influences include personal interests, such as desire for advancement and recognition, and peer pressure and economic forces to conform to workplace culture.<sup>15</sup> Perhaps even more corrosive to professional conduct are moral disengagement and the feeling that “someone else should do it.”<sup>16</sup> Research indicates that moral motivation is a function of how deeply moral values have penetrated an individual’s conception of self and identity.<sup>17</sup> Such commitment can be enhanced if the individual is developing a professional identity that incorporates into the construction of the self the purposes and public duties of the profession.<sup>18</sup>

Research by the Center has correlated the moral motivation component of the FCM with Robert Kegan’s life-span model of self-development,<sup>19</sup> finding evidence of stages in an evolving identity moving from (1) individual achievement and approval, to (2) being a team player and

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<sup>13</sup> See James Arthur et al, VIRTUOUS CHARACTER FOR THE PRACTICE OF LAW: RESEARCH REPORT (2014) available at [www.jubileecentre.ac.uk/1553/projects/gratitude-britain/virtuous-character-law](http://www.jubileecentre.ac.uk/1553/projects/gratitude-britain/virtuous-character-law). For further information on this initiative, contact the author.

<sup>14</sup> Stephen J. Thoma & Muriel J. Bebeau, *Moral Motivation and the Four Component Model*, in HANDBOOK OF MORAL MOTIVATION, 49, 52 (Karin Heinrichs et al eds., 2013).

<sup>15</sup> Muriel J. Bebeau & Stephen J. Thoma, *Moral Motivation in Different Professions*, in HANDBOOK OF MORAL MOTIVATION: THEORIES, MODELS, APPLICATIONS 475, 480 (Karin Heinrichs et al eds., 2013).

<sup>16</sup> *Id.* at 480; see also Thoma & Bebeau, *Moral Motivation and Four Component Model* 59-61.

<sup>17</sup> Muriel J. Bebeau & Kathy Faber-Langendoen, *Remediating Lapses in Professionalism*, in REMEDIATION IN MEDICAL EDUCATION: A MID-COURSE CORRECTION, 103, 104 (A. Kalet & C. L. Chou eds., 2014); Bebeau & Monson, *Guided by Theory* 558.

<sup>18</sup> Bebeau & Faber-Langendoen, *Remediating Lapses* 106.

<sup>19</sup> Thoma & Bebeau, *Moral Motivation and Four Component Model* 57-59; see also Hamilton, Monson & Organ, *Empirical Evidence* 19-20.

ideally culminating in (3) the self-defining professional.<sup>20</sup> Combining the FCM with life-span research has supported the development of a validated measure of professional identity formation, the Professional Identity Essay (PIE), that uses trained coders to analyze free responses to such questions as “what does professionalism mean to you” and “what would be the worst thing for you if you failed to live up to the expectations you have set for yourself, the expectations of your clients, and the expectations of your profession?”<sup>21</sup> Results from the PIE show that entering professional students as a group generally cannot articulate key professional expectations, express beliefs that others rather than themselves have all the responsibility for enforcing professional standards, and focus on individual achievement and approval (Kegan Stage One). Significantly, when the PIE is administered to experienced professionals being remediated for serious misconduct, the results show underdeveloped professional identities comparable to entering students.<sup>22</sup>

Improvement in PIE scores can be achieved through instructional strategies that begin by using the PIE itself as a formative assessment to engage students in reflective learning about the characteristics and expectations of the profession they plan to enter. Students are then introduced in a variety of ways to real-life exemplary professionals, and work in small groups to discuss how such exemplars live up to professional expectations, thus enabling students to begin to set their own aspirational standards. Students develop a learning plan to achieve their self-defined professional moral identity and over the course of professional education periodically reflect on their progress through instructor and peer feedback and self-assessment. Strong correlations between PIE scores and results of tests of ethical sensitivity and moral reasoning suggest that

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<sup>20</sup> Bebeau & Faber-Langendoen, *Remediating Lapses* 106; Bebeau & Thoma, *Moral Motivation in Different Professions* 487-93.

<sup>21</sup> Hamilton, Monson & Organ, *Empirical Evidence* 53-55, 66-73.

<sup>22</sup> Bebeau & Faber-Langendoen, *Remediating Lapses*.



formation of professional identity can be an important driver of excellence in professional performance.

**Effective Implementation** is the fourth component of the FCM Model. The professional cannot stop with “What is happening?” [moral sensitivity], “What ought to be done?” [moral reasoning], and “Will I do what ought to be done?” [moral motivation or identity formation], but must also address “How can I effectively do this?”, “What exactly should I say?”, and “How should I say it?” Thus the teaching strategies for addressing the fourth capacity, implementation, require students to develop action plans and even specific dialogue for resolving tough problems.<sup>23</sup> “Creative problem solving is critical” as is perseverance.<sup>24</sup> As the Carnegie Report puts it, “the bottom line= [is] ... not ... what [students] know but what they can do. They must come to understand thoroughly so they can act competently, and they must act competently in order to serve responsibly.”<sup>25</sup> Therefore, teaching and assessment must take place in role rather than in the more detached mode that the law-of-lawyering courses typically foster.<sup>26</sup>

Donald Nicolson has critiqued the approach to professional ethics education developed by the Center as based on the flawed “assumption that moral behaviour requires the explicit exercise of conscious judgment [which] conflicts with evidence that much of our socio-cognitive activity is tacit, implicit, and automatic, and that individuals are often unable to explain what moral judgments motivated their actions. Indeed, automatic or subconscious responses to moral issues are said to be essential to coping effectively with everyday life ...”<sup>27</sup> Nicolson concludes

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<sup>23</sup> Muriel J. Bebeau, *Promoting Ethical Development and Professionalism: Insights from Educational Research in the Professions*, 5 UNIV. ST. THOMAS L.J. 366, 393 (2008).

<sup>24</sup> Thoma & Bebeau, *Moral Motivation and Four Component Model* 64.

<sup>25</sup> Sullivan, *EDUCATING LAWYERS* 23.

<sup>26</sup> Sullivan, *EDUCATING LAWYERS* 178.

<sup>27</sup> Donald Nicolson, “*Education, Education, Education*”: *Legal, Moral and Clinical*, 42 *LAW TEACHER: INTERN’L J. LEGAL EDUC.* 145, 156 (2010),

that what he terms “the cognitive approach” has “fallen out of favour” to be replaced by a renewed interest in the Aristotelian tradition of virtue ethics.<sup>28</sup>

Although I find much of Nicolson’s analysis very helpful, I would like to explore the possibility that the educational model produced by the Center’s empirical research need not be seen in opposition to the virtue ethics tradition but rather as largely consistent with Aristotle’s central teachings. And further, I would embark on this exploration by asking how, if at all, can the cardinal virtue of courage be developed during professional education?

According to the Jubilee Centre’s recently released research report, *Virtuous Character for the Practice of Law*, in its survey of 996 persons in the UK who were (1) beginning undergraduate legal education, (2) completing vocational training preparatory to qualifying as solicitors or barristers, or (3) experienced solicitors and barristers, bravery was infrequently identified as either a personal character strength or a value of the ideal lawyer by beginning law students, graduates or solicitors. It was however a “top six” virtue of the ideal lawyer for barristers, even though the same group of barristers did not frequently describe themselves as brave. Furthermore, on the workplace conditions section of the survey, significant numbers of established lawyers indicated that courage might be needed to resist workplace pressures, reporting that “my work involves tasks that are in conflict with my personal values” and “at work it is difficult to do the right thing.” Illustrative is this story told by one solicitor in a voluntary follow-up interview: while a trainee she had seen a supervisor trace a signature from another document “but did not at that time have the courage or confidence to act”.<sup>29</sup> The Jubilee survey of aspiring and established lawyers also contained six dilemmas and asked subjects to choose between two (or sometimes three) action choices and then to select three from among six

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<sup>28</sup> *Id.* 156-57.

<sup>29</sup> Arthur, *VIRTUOUS CHARACTER FOR LAW* 18.

possible reasons for taking the chosen action and to rank order those three reasons. One of these scenarios, “Rounding up Hours,” asked whether the subject would carry out instructions from his or her supervising partner to “round up hours to the next hundred” when reporting hours worked on each file. The scenario indicated that “you are uncomfortable with rounding up the hours billed to the clients and, feeling that your supervisor is not about to debate the issue with you, share your concerns with another Partner. He gives you a clear indication that he does not want to be troubled with this matter but says ‘if you feel strongly about this, put your concerns in writing to me.’”

31% of beginning law students and 25% of graduates on the training course chose the option to follow the supervisor’s instructions to round up the hours. The most frequently chosen reason for both groups was “I have already raised my concerns with someone but they seem to see the issue as trivial” (as it was also for the 16% of solicitors who would round up) followed by “I respect the authority of my supervising partner.”<sup>30</sup> About 1/3 of those in each group also selected as a reason: if I refuse “it will harm my relationship with my supervising partner”.<sup>31</sup> These responses, by a substantial minority of those surveyed including a decision to round up hours reported by one out of every six in the established lawyer group, certainly raise questions about whether lack of moral courage is a problem that needs attention by the legal profession.

Studies of professionals identified by their peers as exemplary show they do not typically explain their “hard choice” decisions in terms of courage but rather say that the moral action was

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<sup>30</sup> In contrast, those who said they would not comply but raise the issue with another partner strongly favored reasons that rounding up was “not fair to the client,” dishonest or fraud over self-serving considerations that if the rounding up was discovered it would damage either one’s own reputation or the firm’s.

<sup>31</sup> In a voluntary follow up interview, one student candidly stated: “I can envisage myself maybe not making the wisest decisions simply because ... I’ve worked so hard and I don’t want to be faces with a situation and go ‘Well, just for the sake of my morals so that I can feel really good about myself, I’m going to make this decision that might cost me any job or my pupillage or my career.” p16

obligatory, simply required by their professional role.<sup>32</sup> Such studies might seem to provide superficial support to Nicolson's claim that many moral actions, including professional conduct, are "automatic or subconscious" rather than the result of a conscious FCM-type process of nuanced perception of the moral dilemma, well-reasoned balancing of conflicting values and reflection on professional duties. However, it may be instructive to compare well-formed professional identity that "spontaneously" generates professional conduct with Aristotle's notion of virtue as *hexis*, "something so deeply ingrained in a person by constant habit that he will almost automatically make the morally right choices on every occasion, rejecting at the same time and equally automatically all the alternatives that are wrong."<sup>33</sup> *Hexis*, which literally means "being in a certain condition," is translated both as "habit" and "characteristic." Aristotle teaches that "characteristics develop from corresponding activities." Thus virtues must be acquired by first putting them into action: "we become just by the practice of just actions, self-controlled by exercising self-control, and courageous by performing acts of courage."<sup>34</sup>

The verbs "practice" "exercise" and "perform" suggest we consider metaphoric extension of their use in describing physical training to methods of professional ethics education. Physical exercise can produce greater strength and endurance but is most likely to do so if "practiced" in carefully planned and integrated progressive steps under expert instruction. Physical exercise also implies effort, persistence, and a willingness to experience discomfort, even suffering.

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<sup>32</sup> Thoma & Bebeau, *Moral Motivation and the Four Component Model* 59, 62; Bebeau & Thoma, *Moral Motivation in Different Professions* 475, 483; Neil W. Hamilton & Verna E. Monson, *Ethical Professional (Trans)Formation: Themes from Interviews about Professionalism with Exemplary Lawyers*, 52 SANTA CLARA L. REV. 925 (2012) When military lawyer Charles Swift was asked by an interviewer on National Public Radio whether he had considered that suing the Secretary of Defense on behalf of Osama Bin Laden's driver "might be a career killer," Swift responded: "I didn't think about it in those terms. I thought about it as this is the ethical way I can do my job." Clark D. Cunningham & Charlotte Alexander, *Developing professional judgment: law school innovations in response to the Carnegie Foundation's critique of American legal education*, in THE ETHICS PROJECT IN LEGAL EDUCATION 79, 84-85 (Michael Robertson et al eds., 2010) (available at [www.teachinglegalethics.org/developing-professional-judgment](http://www.teachinglegalethics.org/developing-professional-judgment)).

<sup>33</sup> Martin Ostwald, *Introduction*, ARISTOTLE NICOMACHEAN ETHICS xxiii (1999)

<sup>34</sup> NICOMACHEAN ETHICS 1103a(30) – 1103b(2).

In urging reliance on a virtue ethics approach in legal education, Nicolson calls for “actual engagement with moral issues. . . . by emulating others, by trial and error, by instruction from authoritative others, by experiencing and reflecting on the appropriate pride or regret at the outcomes of one’s actions.” In particular, he concludes, “strong moral character is more likely to develop where individuals are subjected to difficult and sustained challenges.”<sup>35</sup>

The Georgia State University College of Law has recently approved a new approach to teaching legal ethics through a semester-long six-credit course placed at the midpoint of the law school experience, called “Transition to Practice.” This approach will incorporate elements from two pre-existing courses: (1) Professional Responsibility: Heroes & Villains, which combines instruction in the rules of professional conduct with discussion of detailed case studies of real lawyers faced with profound ethical challenges, regularly performed simulated lawyering exercises that develop ethical decision making, and close written analysis of videotaped lawyer-client meetings that require students to propose what they would have done in the situation and (2) Fundamentals of Law Practice, in which students learn the basics of representing clients through simulations, fieldwork with practicing attorneys, and by representing domestic violence victims in emergency proceedings to obtain orders of protection. One of the case studies will immerse students in the following story.<sup>36</sup>

On May 14, 1993, a young law professor named Suellyn Scarnecchia found herself talking about courage at the Honors Convocation for students graduating from the University of Michigan Law School. For the past six months her personal and professional life had been consumed by work as lead attorney on what was to become one of the most famous family law

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<sup>35</sup> Nicolson, *Education* 157.

<sup>36</sup> Students will also learn the end of the first story mentioned in the preface to this paper -- of how Gandhi finally gained the courage he needed when he continued a perilous trip to Pretoria out of duty to his client after being thrown off a train in the middle of the night because he had offended the practice of apartheid by purchasing a first class ticket.

cases of the 20<sup>th</sup> Century: “the Baby Jessica adoption.” She and her students in the law school’s Child Advocacy Clinic represented Roberta and Jan DeBoer, who had adopted Jessica a few days after her birth in Iowa only to find out months later that the birth father had never been informed of the adoption proceedings and was attempting to vacate the adoption. After two years of litigation, the Iowa Supreme Court had ruled that the birth father’s parental rights could not be terminated and ordered Jessica to be transferred to birth parents she had never known. Scarnecchia won a reprieve for the DeBoers by obtaining a hearing in Michigan to determine whether such a transfer would be in the child’s best interests. Although she had told the DeBoers at the outset that the chance of winning were extremely low, she had won a surprising victory after an eight-day hearing in the trial court covered by the national media and televised live by Court TV. When she delivered the Honors Convocation address, she was preparing to defend in the next month before the Michigan Supreme Court the trial court’s order that Jessica should remain with the DeBoers.

She told her audience of graduating law students how, after sleepless nights and stressful days, she yielded to her “longstanding addiction to movies” and decided to watch a “Tom Cruise movie” for a “cathartic experience.” She picked out “A Few Good Men,” in which a slacker military attorney played by Cruise is assigned the unwelcome task of defending two marines accused of murder. Cruise is a master at negotiating plea bargains that keep him and his clients out of trial, but his usual strategy runs up against a brick wall when the marines reject the deal he pitches as too good to pass up. As Scarnecchia recounts the scene, Cruise tells his clients they are crazy and one of the marines replies, “You don’t have any courage.”

At this moment of movie watching Scarnecchia was startled. “Why was he talking to his lawyer about courage?” she asked herself. And then she wondered, “why was it so hard for me

to relate courage to lawyering?” She reflected on the stories of lawyers who had inspired her to go to law school and realized that it was their courage that drew her to the profession. “Then, I thought, why was I suddenly, after twelve years of practice, looking for courage now?”

She realized that the Baby Jessica case “was calling for something more from me.” She did not need courage to face the TV cameras and overcome fear of personal failure and humiliation. No, she was calling on her courage more than usual because she knew the chances of losing the case were great and, based on the evidence she had presented, that the resulting trauma of transfer from the only parents she had ever known would be devastating to the helpless two-year old Jessica. “When I realized that my courage was being tested, I accepted the challenge and went on with my work.”

She lost the appeal before the Michigan Supreme Court and then made the incredibly difficult decision to counsel her clients against pursuing the case further to the United States Supreme Court. By accepting her advice, her clients knew they would probably never see their adoptive child again. A week later, it was Scarnecchia herself who received Baby Jessica from the arms of her adoptive mother and carried the howling infant from their home and gave her to the birth parents, acting simultaneously as the DeBoers’ trusted lawyer of the adoptive parents and as an officer of the court, taking Jessica from them – forever.

It is hoped that the story of Scarnecchia’s realization of the courage required of her will both inspire students and give them a template for “exercising” their own developing courage as they represent domestic violence victims in cases that have the urgency, risks and high stakes that Scarnecchia faced. Several years ago, students in the Fundamentals of Law Practice course were posed the following question in an anonymous end-of-course evaluation: “Domestic violence cases can be unpredictable, stressful and time consuming. One option in the future

might be to observe DV hearings but then prepare and present a DV case just as a class simulation. Please comment.” The students universally rejected the simulation option. As one student vividly responded: “No way. The whole thing driving this course and making lawyering come to life is engaging clients and going to court. The stress and the unpredictability is what makes the student commitment happen, which is when the real-life learning begins.”