Polysemy, Plurality, & Paradigms: The Quixotic Quest for Commensurability of Ethics and Professionalism in the Practices of Law

Eric Paul Engel

University of South Florida, Eric.Engel@UNH.edu

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Polysemy, Plurality, & Paradigms:
The Quixotic Quest for Commensurability of Ethics and Professionalism
in the Practices of Law

by

Eric Paul Engel

A dissertation submitted in partial fulfillment of the requirements for the degree of
Doctor of Philosophy
Department of Communication
College of Arts and Science
University of South Florida

Major Professor: Eric M. Eisenberg, Ph.D.
Fred Steier, Ph.D.
Jane Jorgenson, Ph.D.
Cynthia Cohen, Ph.D.

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Keywords: interpersonal communication, organizational communication, coordinated management of meaning (CMM), framing, sensemaking

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Dedication

For Susan—from diapers to dissertation you've always been there (except during playoff games).

For John—who took a little boy to class with him one day and inspired a dream.

For Byron, Chaos, and Olivia—it is true that a home with cats need not have sculpture.

For Lily, Ani, and Winnie—thank you for making me take such long walks. Without you I would have never come to know how beautiful the neighborhood really was and to taste such wonderful mangos!
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Abstract

According to many, the legal industry is currently suffering from a professionalism problem. The following dissertation is a response to the question, “What can be done about incivility in the practice of law in Florida?” It begins by exploring the literature examining ethics and professionalism, specifically focusing on the role communication plays in the production and reification of patterns of meaning and action. After contextualizing the professionalism problem socio-culturally and historically, the dissertation next provides an overview of some relevant aspects of the Coordinated Management of Meaning (a theoretical communication framework employed to help make sense of the existing state of affairs) and examines how legal scholars and practitioners can begin to communicate their way out of the problem. Following the literature review, the dissertation outlines four research questions and addresses the study’s use of the World Café design principles and methodology for examining the “professionalism problem.” Finally, the dissertation concludes by relating four key findings and an observation as well as addressing five ways in which the research has practical and theoretical implications.

In embracing CMM to analyze the conversational patterns and practices of law as they relate to ethics and professionalism, this research theoretically aligns primarily with the sociocultural tradition with some critical and cybernetic overtones. While there are many ways one might examine the professionalism
problem, CMM offers an exemplary lens with which to both analyze the problem and proffer a discursive pathway out of the problem. From a communication perspective, the problematics of ethics and professionalism in the practice of law can be understood to originate in the inherent polysemy of language and the incommensurability of moral orders deriving from alternative forms of communication.
Purpose of the Study

This study originated from a single question Scott Hawkins (then President-elect of The Florida Bar) asked me on Saturday, July 17th, 2010, at The Florida Bar Voluntary Bar Association Conference in Fort Lauderdale, Florida. I’d been invited to participate on two panels, one focusing on “Lawyer Communication: What You Need to Know on How Attorneys Communicate with Each Other and the General Public” and the other focusing on “Communicating Electronically: How to More Effectively Use Your Website and Electronic Resources to Improve Your Bar’s Message and Make Your Job Easier Too.” After one of the panels, Mr. Hawkins approached me and we had a brief conversation. At the end of that conversation he asked me a seemingly simple question that changed the course of my doctoral research program and my life: “What can be done about incivility in the practice of law in Florida?” This dissertation is, at least in part, a response to that question posed so many years ago.
Chapter One. Introduction and Statement of the Problem

The legal profession in America has a problem. According to myriad sources, lawyers simply aren’t as “professional” as they used to be, and the practice of law has devolved and become downright uncivilized. Some call it a professionalism problem; others call it a civility problem. No matter the moniker, however, a significant portion of the profession has identified its current practices as problematic. Though some legal scholars have argued that the “professionalism project” has been an enduring problem since the inception of the American Bar Association (ABA) in 1878, more recently the surfacing of the problem can be traced to one individual, Chief Justice Warren E. Burger (Mashburn, 1994). In 1984 in his annual report to the midyear meeting of the ABA, Chief Justice Burger expressed concern that the Bar was moving away from traditional principles that defined the legal profession. Shortly thereafter the ABA Board of Governors established a Commission on Professionalism at Chief Justice Burger’s recommendation. Since that time there has been a concerted effort spanning nearly three decades to address the problem. In fact, trying to solve the problem has become big business. As one legal scholar notes, “the American legal establishment has spawned an entire industry devoted to raising the standards of professionalism among lawyers. Hundreds of law journal articles and dozens of commissions, studies, and conferences have tackled the professionalism project from every conceivable angle” (Vischer, 2005, p. 35).
With that said, I’d beg to differ with Vischer on one point. While the problem of professionalism has indeed been tackled from myriad “angles,” there’s at least one angle that has not been addressed. There’s at least one perspective that’s yet to be taken, and that’s a communication perspective (Eisenberg, 2007; Littlejohn & Domenici, 2001; Pearce, 1989, 1994, 2006, 2007; Transforming Communication Project, 2008).

From a communication perspective, the problematics of ethics and professionalism in the practice of law can be understood to originate in the inherent polysemy of language and the incommensurability of moral orders deriving from alternative forms of communication. “Polysemy (literally, many meanings) focuses on each point within our social worlds. It refers to the fact that any single word or action is simultaneously part of many conversations, each with a history and a future” (Pearce, 1994, p. 59). Despite The Florida Bar’s best attempts to define ethics and professionalism, any attempt to “fix” meaning once and for all, to achieve a “final solution” when it comes to meaning is impossible. As Pearce and Littlejohn articulate,

We can never know exactly what is being made or done in the abstract because the meanings of communication depend on its context. …the context affects meaning, but meaning in turn establishes context. Any act of communication… is connected to what has gone before and what will happen next. Each act we perform is both ‘out of’ and ‘into’ a context. (1997, p. 77)
Meaning is emergent in use (Eisenberg, 1998/2007; Pearce & Littlejohn, 1997; Wittgenstein, 1953/2001). We are never in complete control of what we say, and this is equally the case for The Florida Bar.

Where some scholars and practitioners currently frame the professionalism problem as one of civility, manners, and ethics requiring clarification and regulation, a very few have acknowledged the polysemy of language and in turn called for the pragmatic reconstruction of legal practices (Sullivan, 2005). Where some scholars and practitioners are embroiled in debates over normative definitions of ethics and professionalism emphasizing the values and traditions of their esteemed, noble profession (Hamilton, 2008; Minkoff, 2009), a very few have begun acknowledging (albeit circuitously) the origins of their troubles in the very pedagogy that currently dominates law school curriculums (Sullivan, Colby, Wegner, Bond, & Shulman, 2007). It’s a pedagogy modeled after positivist science promoting an instrumental rationality that obfuscates matters of morality (Sullivan, 2005) and in many respects suffers from the same maladies and trained incapacities that have surfaced in post-positivist research examining the philosophy of science beginning in the 1960s and 1970s (Feyerabend, 1975; Foucault, 1970; Gadamer, 1960/1992; Habermas, 1968/1971; Kuhn, 1962/1996; Russill, 2005).

Building on the work of Thomas Kuhn’s “Structure of Scientific Revolutions” (1962/1996), in Richard Rorty’s (1979) terms the conflict is one of normal discourse versus abnormal discourse. “Normal discourse (a generalization of Kuhn’s notion of ‘normal science’) is any discourse (scientific,
political, theological, or whatever) which embodies agreed-upon criteria for reaching agreement; abnormal discourse is any which lacks such criteria” (Rorty, 1979, p. 11). Once upon a time, the Bar and the practice of law in general were far more demographically homogenous than today. There was general agreement regarding criteria for reaching agreement with regard to things like ethics, professionalism, and civility. Over the last 75 years, however, Bar demographics have changed dramatically. Today’s Bar is demographically diverse. As a result, today’s Bar is grappling with agreeing upon criteria for reaching agreement. This makes defining ethics, professionalism, and civility a bit of a sticky wicket. It can be expected that some members of the Bar will tenaciously seek to maintain tradition by engaging in ethnocentric communication patterns (i.e., “us vs. them,” “tradition vs. change,” “with us or against us”).

As Pearce notes, “the idealized version of the scientific method, which is only sometimes realized in practice, exemplifies modernistic communication” (1989, p. 143). “After Kuhn’s studies of the way scientists actually work, we know that the story they tell about the ‘scientific method’ is seriously distorted. Most of the time, scientists engage in ‘normal science,’ which is more like ethnocentric than modernistic communication” (Pearce, 1989, p. 143). In a parallel fashion, most of the time, while the legal profession as a whole promotes an idealized modernistic rhetoric of Enlightenment ideals such as progress, equality, truth, and blind justice, in the day-to-day practice of law attorneys engage in “normal law” which is agonistic and ethnocentric.

Engaging the language of Barnett Pearce and the Coordinated
Management of Meaning (CMM), it’s about conflicting forms of ethnocentric, modernistic, and cosmopolitan communication (1989).¹ The disparity between the legal profession’s modernistic “stories told” (about progress, equality, truth, and blind justice) and its ethnocentric “stories lived” (in which attorneys attack each other in wars of words) results in a tension which most lawyers don’t know how to deal with because most lawyers don’t even see the tension as being a problem.

Examples include a publicly professed rhetoric of democratic equality while many lawyers readily acknowledge that not everyone gets treated equally in a capitalist society where money matters with regard to the quality of legal representation. Additionally, there’s the disparity between a publicly professed rhetoric of professional unitary wholeness among lawyers and the pragmatic practicality that there’s more than a little diversity among the roughly 1,225,000 licensed lawyers in the United States (ABA, 2011), with each state having its own state and local bar associations. The relatively unacknowledged nature of this problem has direct implications both for legal practitioners and the publics they serve.

The following dissertation begins by exploring the literature examining ethics and professionalism, specifically focusing on the role communication plays in the production and reification of patterns of meaning and action. After contextualizing the professionalism problem socio-culturally and historically, the dissertation next provides an overview of some relevant aspects of the

¹ Please note that ethnocentric, modernistic, and cosmopolitan communication are defined and explained more at length later in this dissertation under the heading “Four Forms of Communication.”
Coordinated Management of Meaning (a theoretical communication framework which I employ to help make sense of the existing state of affairs) and examines how legal scholars and practitioners can begin to communicate their way out of the problem. Following the literature review, the dissertation outlines four research questions and addresses the study’s design and methodology for examining the “professionalism problem.” Finally, this dissertation concludes by addressing five ways in which the research has practical and theoretical implications.
Chapter Two. Literature Review

*How Did We Get to This Particular Problem?*

In 1984, Chief Justice Burger lamented the decline of traditional principles that defined the legal profession, and at his recommendation the ABA Board of Governors established a Commission on Professionalism to study the problem (Minkoff, 2009). It is worth noting, however, that the problem of professionalism had surfaced on the ABA’s radar as early as 1970. In that year, the ABA created the National Center for Professional Discipline to provide a coordinated clearinghouse of statistics on attorney discipline to help local and state bar associations with matters of attorney regulation and discipline. One study led to two, one commission led to another, and now there are myriad studies and commissions devoted to making sense of the apparently rapid expansion of “the problem of professionalism.” According to Vischer, “a recent search of the Westlaw legal database revealed 477 articles published since the 1980s with titles containing the word ‘professionalism’” (2005, p. 35). The ABA’s Center for Professional Responsibility notes that as of 2008, 14 states have created their own professionalism commissions (ABA, 2008a).

Of course, some scholars have argued that this “crisis” is nothing new, and that, in fact, there has been talk of “professionalism” problems since the American Bar Association’s inception in 1878 (Mashburn, 1994). This is not surprising when you consider the origins of Western legal practices in competing
rhetorics that can be traced to the birth of democracy in classical Greece in the fifth century B.C. On the one hand were the Sophists, itinerant educators whose rhetorical teachings emphasized contingency and contextually-bounded knowledge along with paradox, playfulness, and possibility (Poulakos, 1995). On the other hand were philosophers like Plato, Isocrates, and Aristotle (NCA, 2007; Pearce, 2009; Poulakos, 1995). In stark contrast to the Sophists, these early philosophers offered systematic instruction in concepts emphasizing stability and definitive categorical knowledge. “For Plato, the world of thought required correct names as well as clear and distinct ideas, not discourses with blurred lines on matters of knowledge and ethical conduct” (Poulakos, 1995, p. 105). At the time, Hellenic culture was experiencing sweeping changes, from constitutional reforms shifting political power from the few to the many (from aristocracy to democracy) to the fall of mythopoetic oral traditions and the rise of logocentric discursive technologies (including the written word). Additionally, during this same period Athens experienced the growth of a middle class occupying the mid-point between the land-owning nobility and peasants. According to Poulakos, “the advent of the middle class in the fifth century B.C. was a consequence of such phenomena as a growing population, increased commercial activity, higher demand for trade labor, and newly instituted political arrangements offering the common citizen new political powers” (1995, p. 15).

Numerous parallels can be found in the socio-cultural and political environment in classical Greece at the close of the 4th century B.C. and in the United States at the close of the 19th century. At the time of the American Bar
Association’s founding, Americans too had recently experienced political reorganization, moving from tyrannical monarchical rule in Europe to constitutional representative democracy in America. We too were experiencing the rise of a middle class, blurring the lines between aristocratic propertied elites and merchants, workers, intellectuals, and resident aliens (Poulakos, 1995). Not surprisingly, some members of the Bar with aristocratic heritage decried the actions and behaviors of “lesser” members of the Bar (common citizens newly given voice in the political process) as downright “unprofessional,” just as Plato had accused practicing Sophists of being “unprofessional” in their ambiguity and inconsistency. Where Plato’s worldview valued definitional clarity and consistency, the Sophists valued ambiguity and contextual specificity—what Poulakos refers to as “a rhetoric of third alternatives” (1995, p. 71). As such, the “crisis” of professionalism in the practices of law can be conceptualized as originating as far back as classical Greece when common citizens were for the first time learning to argue their cases in court and in front of the Assembly. The system of law in existence today bears the agonistic tool marks of these argumentative rhetorical origins.

**Originating Intentions of the Professionalism Project**

A review of the literature surrounding the most recent efforts of legal scholars and practitioners reveals three originating intentions of the professionalism project (Vischer, 2005). First, efforts to reform professionalism are an attempt to remedy a perceived increase in commercialism, the direct result of increased market competition among lawyers and law firms. Indeed,
most of its history, the profession rhetorically framed its efforts as above the “dirty” business of trade. This is not surprising given that many of the earliest legal practitioners had aristocratic heritages. Even at the close of the 20th century, it was considered taboo by many to refer to the practice of law as a business.

For most of this century, if not also centuries before, the stated position of the leaders of our profession had been that lawyers should not conduct themselves as business people or tradespeople but should, in a wide variety of circumstances, act more like high priests in the temple of justice. (Jarvis & Tellam, 1996, p. 24)

In “Institutions and Organizations” (1995), Scott draws a similar priestly parallel, comparing “priests and their modern-day counterparts, professionals—ethicists, reformers, and educators”, noting that “In our own time, lawyers are involved in… three processes acting variously as priests, problem-solving professionals, and agents of the state” (1995, p. 144).

In 1975, however, “the Supreme Court struck down the profession’s traditional means of suppressing intraprofessional competition, the minimum fee schedule… and two years later, the traditional ban on lawyer advertising on first amendment grounds” (Galanter & Palay, 1990, p. 752). Though a direct correlation is beyond the scope of my research, it is worth noting that large law firm growth has increased exponentially since the 1970s when the practice of law became more openly commercial and profit-oriented (Sullivan, 2005).
In the 1950s only thirty-eight law firms in the United States had more than fifty lawyers—and more than half of these were in New York City... In 1988, the largest firm had 962 lawyers, and 149 firms had more lawyers than the largest firm of 1968. (Galanter & Palay, 1990, p. 749)

According to a 2008 survey of the nation’s 250 largest law firms (The National Law Journal, 2008), DLA Piper was the largest firm with 3,785 attorneys. Vischer astutely notes how dramatically the tide has turned with regard to the place of commercialism in the practice of law when he remarks, “As firms expand, the single objective of practice on which all members tend to agree is financial profit” (2005, p. 50).

Second, efforts to reform professionalism are in reaction to a perceived decrease in civility and collegiality among lawyers (Rhode, 2000; Sullivan, 2005). In fact, the impetus for my research originated in a comment made in 2010 by the incoming Florida Bar President Scott Hawkins regarding the uncivil behavior he perceived among many of his South Florida colleagues.

Third, professionalism reform efforts are an attempt to remedy a decline in public accountability originating in the social contract between lawyers and the publics they serve (Sullivan, Colby, Wegner, & Shulman, 2007). Sullivan refers to this as the “civic dimension of professionalism” (2005, p. 23).

Unlike Europe, where professions were often associated with a powerful national government or a superior social class, in the United States the professions had to struggle for status in a distinctly American way. They bargained for honor, guaranteed by legally enforced privileges, in
exchange for service and community trusteeship. This social contract became the moral basis of professionalism in America, giving American professions a civic orientation. (Sullivan, 2005, p. 55)

It’s worth noting that “in response to public concerns about the ethics of members of the legal profession that arose in the post-Watergate era” (Chinaris & Dell, 2009, p. 37), the ABA adopted Standard 302(a)5 which states that “A law school shall require that each student receive substantial instruction in… the history, goals, structure, values, rules and responsibilities of the legal profession and its members” (ABA, 2010-2011). In Florida, however, “substantial instruction” translates into only one Florida law school requiring more than a single ethics course (Chinaris & Dell, 2009). Additionally, despite 91% of Florida law schools requiring a three-credit course in “professional responsibility” (Chinaris & Dell, 2009, p. 37), a 2009 survey of American law schools found that 6.3% did not cover professionalism at all and more than half of the professional responsibility teachers who responded to the survey reported covering professionalism for fewer than two hours of class time or not at all (Chinaris & Dell, 2009).

Ironically, despite law students being taught to “think like a lawyer” during their critical first year, “training in ethics and professionalism often are notably absent during the first year” (Chinaris & Dell, 2009, p. 42). Commenting on the first year tradition of legal pedagogy, Karl Llewellyn, a distinguished American legal scholar and professor of law, noted,
The hardest job of the first year is to lop off your common sense, to knock your ethics into temporary anesthesia. Your view of social policy, your sense of justice—to knock these out of you along with woozy thinking, along with ideas all fuzzed along their edges. (1996, p. 116)

According to a report issued by the Carnegie Foundation for the Advancement of Teaching, it is common knowledge that the “temporary moral lobotomy” that law students receive in their first year is “a major facet of the case-dialogue pedagogy” (Sullivan, Colby, Wegner, Bond, & Shulman, 2007, p. 78).

Nonetheless, in a 2009 report prepared for The Florida Bar’s Henry Latimer Center on Professionalism, Chinaris & Dell observe that “only one Florida law school places it [the required professional responsibility course] in the first-year curriculum” (p. 38).

Despite the post-Watergate pedagogical mandate, public mistrust of legal professionals is clearly evident in a 2010 Gallup, Inc. poll that found only 17% of those surveyed would rate the honesty and ethical standards of lawyers as “high” or “very high,” a rating better than lobbyists (7%), members of Congress (9%), and business executives (15%) but worse than newspaper reporters (22%), bankers (23%) and auto mechanics (28%). According to a “White Paper” from the ABA Standing Committee on Professionalism, a 2002 ABA Section of Litigation survey found that “69% of those polled agreed that lawyers are more interested in making money than in serving their clients” and that “57% believed that most lawyers are more concerned with their own self-promotion than their client’s best interests” (Minkoff, 2009, p. 3).
Sullivan notes that during the 1980s, major organizational citizens defaulting on their longstanding civic bonds resulted in “interdependence without mutual trust—the precondition for generalized hostility and fear” (2005, p. 157). In light of the more recent spate of defaults involving major organizational citizens (such as Enron, Bear Stearns, Lehman Brothers, Merrill Lynch, Washington Mutual, and myriad other banks involved in the U.S. subprime mortgage crisis), it should come as no surprise that the legal profession is suffering from a crisis of confidence and legitimacy in the publics’ eyes. If the social contract between the profession and society is “embodied in the terms of licensing and the code of ethics by which the profession declares its intent to regulate its own life in order to maintain the trust and cooperation of the public” (Sullivan et al., 2007), it appears that in the public’s eyes there’s been a breach of contract, jeopardizing Sullivan’s “civic dimension of professionalism” and resulting in reduced public legitimacy and confidence.

The Professionalism Project: Where Are We Now?

Despite the best intentions of myriad professionalism scholars and practitioners, the professionalism project appears to be stalled. Rhode notes that professionalism efforts “generally vacillate between sweeping descriptions of the problem and dispiritingly ineffectual proposals to address it” (2000, p. 3). Vischer refers to the tangible outcomes of the professionalism movement as meager at best and “by no means unexpected,” noting that “the diversity of values and priorities reflected among lawyers, coupled with the profession’s unwavering protection of its own economic interests, ‘make it easier to lament lost ideals than
to invite the cost and conflict involved in institutionalising them'” (2005, p. 35-36).

While the diversity of values is a point I’ll return to at length later in my analysis, for the moment I feel it worth mentioning three broad categories identified by Mashburn into which alternative definitions of professionalism can be grouped.

Those in the first group conceive of ‘professionalism’ as a search for the definitive characterization of the lawyers’ role in society… Others use the term to denote a quest for the normative components of professional behavior… A third definition of ‘professionalism’ acknowledges the dynamic nature of the other usages and describes it as ‘a distinctive type of discourse, not a well-defined analytic concept.’ Schneyer, supra, at 365 n.14 (1993). (1994, p. 657-658)

The first and second groupings which seek to offer definitive and normative characterizations will comprise the initial focus of my analytic efforts insofar as both attempts at fixed meaning are doomed to failure due to the polysemic nature of language and the inherent instability of language insofar as meaning is defined in use (Eisenberg, 1998/2007; Pearce & Littlejohn, 1997; Wittgenstein, 1953/2001). As Eisenberg observes,

The search for literal, fixed, and representational meaning in language is most likely futile, inasmuch as there is ‘no natural end, either in the form of literal meaning of expressions or ultimate knowledge of the world, to the explication of linguistically mediated meaning’ (Rommetveit, 1974, p. 125). (1998/2007, p. 212)
While it’s not uncommon to find “zealots of certainty” (1998/2007, p. 212) who firmly believe in the possibility of fixed meaning, Eisenberg succinctly notes, “Despite centuries of scientific, philosophical, and political efforts to purify language and ‘save’ human beings from ambiguity, we have found the world profoundly resistant to any such final solution” (1998/2007, p. 219).

The third grouping begins to get at the second portion of my analysis involving the incommensurability of moral orders deriving from alternative forms of communication. Though Mashburn’s discussion of discourse by no means parallels Pearce’s distinctive identification of forms of communication (monocultural, ethnocentric, modernistic, and cosmopolitan), Mashburn is one of the few legal scholars who even remotely acknowledges the significant role communication plays in the professionalism equation.

As I hope to maximize application of my research, I’ve chosen to specifically focus on the rhetorical framing of ethics and professionalism by The Florida Bar. According to the Henry Latimer Center for Professionalism’s “CLE Guidelines” webpage, “The Rules Regulating The Florida Bar are the floor that supports our status as a lawyer in good standing. Whereas professionalism is the ceiling or higher standard that all lawyers should aspire to” (The Florida Bar, 2009a). Unfortunately, under critical analysis, such a metaphorical treatment offers little in the way of clarity for legal practitioners and their day-to-day practices. As Mashburn notes,

Construing the professionalism crisis as primarily a problem with attorney behavior raises [a] definitional issue, to-wit: what is the relationship
between 'professional' conduct and ethical conduct? The literature provides an ambiguous answer. Implicit in a number of discussions is the assumption that although ‘professionalism’ includes conducting oneself in accordance with the dictates of the disciplinary codes, the doctrine encompasses more and is in fact primarily concerned with compelling behavior that the disciplinary codes would not mandate, including, for example, good manners, common courtesy, civility. (1994, p. 659)

Notably, while there is no imposed federal standard on such matters, the ABA’s *Model Rules of Professional Conduct* (adopted by the ABA House of Delegates in 1983) (ABA, 2013) have been adopted in some form by 49 states, the District of Columbia, and the Virgin Islands. (Notably, California is the only hold out, choosing to independently maintain its own standards and practices apart from the ABA’s *Model Rules*.)

Prior to adoption of the Model Rules in 1983, the ABA’s *Model Code of Professional Responsibility* (adopted by the ABA House of Delegates in 1969) (ABA, 1980) “served as a model for the majority of state ethics codes” (Meserve, 1983). While the “Model Rules of Professional Conduct Commission on Evaluation of Professional Standards: Chair’s Introduction” states that, “The Model Rules of Professional Conduct are intended to serve as a national framework for implementation of standards of professional conduct,” it goes on to note that “the Model Rules, like all model legislation, will be subject to modification at the level of local implementation. Viewed as a whole, however,
the Model Rules represent a responsible approach to the ethical practice of law…” (Meserve, 1983).

In 1997, an “Ethics 2000” Commission was launched by the ABA Board of Governors to revisit the Model Rules due to a growing disparity in state ethics codes.

While a large majority of states and the District of Columbia had adopted some version of the Model Rules (then 39, now 42), there were many significant differences among the state versions that resulted in an undesirable lack of uniformity… A few states had elected to retain some version of the 1969 Model Code of Professional Responsibility, and California remained committed to an entirely separate system of lawyer regulation. (Veasey, 2002)

In other words, each and every state Bar association ultimately defines “ethics” and “professionalism” in its own unique fashion, though admittedly the Model Code provides “Ethical Considerations” and the Model Rules provides “Comments” both of which detail aspirational goals of the profession (ABA, 1980, 2013; The Florida Bar, 2009a, 2012b). As such, it’s not surprising to find rampant ambiguity in the legal literature surrounding ethics and professionalism.

Another distinction worthy of note is the difference between “ethics” and “ethical.” While the term “ethics” is commonly defined by lawyers as “the law of lawyering,” encompassing “the rules by which lawyers must abide in order to remain in good standing before the bar” (The Florida Bar, 2009a), the term “ethical” is often assumed by legal practitioners to be the functional equivalent of
“professionalism” (Mashburn, 1994). Per The Florida Bar, “Laws and the Rules of Professional Conduct establish minimal standards of consensus impropriety; they do not define the criteria for ethical behavior” (The Florida Bar, 2009a). In other words, a lawyer is free to act “unethically” so long as he or she does not break any “ethics” rules. While this nuanced distinction is clear and apparent to most lawyers, it quite understandably may also hint at a source of confusion among the general public when discussions turn to ethics.

In the “Model Rules of Professional Conduct Commission on Evaluation of the Rules of Professional Conduct ('Ethics 2000') Chair’s Introduction,” E. Norman Veasey writes, “At the end of the day, our goal was to develop a set of Rules that are comprehensible to the public and provide clear guidance to the practitioner” (Veasey, 2002). As a member of the public who has spent several years reviewing the relevant literature in detail, I sincerely question the assertion of public comprehensibility and practical clarity. The historical and rhetorical evolution of ethics and professionalism as terms has resulted in general confusion for legal professionals, both internally with regard to their discursive practices as a professional community and externally in their dealings with the publics they are contractually obligated to serve.

**Values/Opinions v. “Facts”**

One final thing to consider with regard to the history of ethics and professionalism centers on the distinction of values in contrast to facts or, to put it another way, the difference between being forthright in acknowledging that all ethical/moral judgments are contextually bounded in contrast to naively (or
perhaps strategically) promoting legal pedagogy and practices rooted in an acontextual, instrumental rationality. As Vischer notes,

> The failure to account fully for lawyers’ discretionary power, especially the extent to which that discretion can and should be shaped by the lawyer’s own beliefs and values, is indicative of the central problem of the professionalism movement: an overly narrow conception of authority. As the formalist paradigm denies the relevance of context, it presumes that the only sources of authority material to a lawyer’s cultivation of professional values will be grounded in the law. In reality, lawyers’ own identities and visions of the good are governed by authorities that are not founded on, and often not even accessible to, concepts of law. (2005, p. 36; italics added)

While individual lawyers have always translated their own ideals and values into their practices from their choice of cases to their choice of arguments, the ABA’s Model Code of Professional Responsibility explicitly states that each member of our society is entitled “to seek any lawful objective through legally permissible means; and to present for adjudication any lawful claim, issue, or defense” (ABA, 1980, p. 48). As Vischer rightly observes,

> The lawyer is seen as an ‘amoral technician’ (Wasserstrom, 1975), aiming not to inject her own vision of the good into the representation, but simply to pursue the client’s vision of the good through the maximisation of the client’s legal rights, consistent with profession-wide ethical norms. (2005, p. 37)
For the legal profession, “an unwavering devotion to formalism” translates into “a refusal to recognise, much less embrace, the divergent contexts in which lawyers construct and maintain their own professional identities” (Vischer, 2005, p. 36; italics added). While the profession of law preaches a rhetoric of analytic facts and evidence, it obfuscates and at times even suppresses the ethical values and beliefs implicit in each and every practitioners’ individual worldview.

Though the concept of eternal, immutable facts (episteme) can be traced as far back as classical Greece (Aristotle, 1911/1998; Pearce, 1994), Rorty notes that “In his groundbreaking *The Emergence of Probability* (Cambridge, 1975), Ian Hacking suggests that the idea of evidence, as a relation of confirmation holding between two propositions, was just beginning to emerge in the seventeenth century” (Rorty, 1979, p. 144-145). The critical relevance of evidence and facts in contrast to opinions and values also becomes apparent when considering the foundationalist epistemological assumptions undergirding both the pedagogy and practices of U.S. jurisprudence. According to Pearce, foundationalism assumes that

…events and objects exist objectively and tangibly; that knowledge consists of more or less accurate descriptions of them; and that we ‘respond’ to them or ‘cause’ them to move/change by our actions. In short, it treats the events and objects of the world as things that we *find*.

(1989, p. 32)

In myriad academic disciplines, however, the 20th century witnessed the decline of foundationalism. Nonetheless, vestiges of well-ingrained European
Enlightenment-inspired assumptions remain entrenched in the culture and practices of law, namely a belief that there are eternal, immutable Truths (*scientism*), that the individual is the source of meaning and ontologically primary (*psychologism*), and that reality can be known and explained via mechanistic principles (*mechanism*) (Russill, 2005).

**The Theoretical Lens of the Coordinated Management of Meaning (CMM)**

As I stated earlier in my dissertation, while the problem of professionalism has indeed been tackled from myriad “angles,” there’s at least one perspective that has *not* been addressed (or, at a minimum, failed to surface in my extensive review of the literature)— *a communication perspective*. Originating in a theoretical orientation that Littlejohn and Domenici refer to as *systemic social constructionism*, the communication perspective

...comes from a large and respectable body of literature in biology, sociology, communication, psychology, family therapy, and management. The communication perspective captures the idea that human beings are connected in complex webs of relationships, or patterns of interaction. (Littlejohn & Domenici, 2001, p. xii-xiii)

As Pearce describes it, “the ‘communication perspective’ is the knack of looking at communication rather than through it” (2006, p. 5). The communication perspective

...names something common to the linguistic turn in philosophy (e.g., Ludwig Wittgenstein; Richard Rorty), the emphasis on narrative and discourse in psychology (Ted Sarbin; Rom Harre) and organizational
theory (Karl Weick), interpretive traditions in ethnography (Clifford Geertz), and the traditions that study talk itself in sociology, such as symbolic interactionism, ethnomethodology, and conversation analysis. (2006, p. 5)

In contrast to foundationalist assumptions, a communication perspective posits the events and objects of the world as products of human agency constructed in a continuing dialectic of interpretation and action (Pearce, 1989, p. 32). Inverting “the traditional assumption of the relationship between event/objects and communication” (Pearce, 1989), the communication perspective understands wars, economic recessions, and political systems as made things rather than found things, “as complex products of an inherently imperfect process of conjoint interpretation and action” (Pearce, 1989, p. 32).

In embracing CMM to analyze the conversational patterns and practices of law as they relate to ethics and professionalism, I am theoretically aligning myself primarily with the sociocultural tradition with some critical and cybernetic overtones (Craig, 1999, 2007). While there are many ways one might examine the professionalism problem, CMM offers an exemplary lens with which to both analyze the problem and proffer a discursive pathway out of the problem. “The paradigmatic questions for CMM are ‘What are we making?’ ‘How are we making it?’ and ‘How can we make better social worlds?’” (Pearce, 2007, p. 230). To answer these questions, CMM provides a technical vocabulary ideally suited for articulating the situation confronting The Florida Bar with greater clarity and sophistication while simultaneously providing the legal profession a dialogic,
dialectic set of discursive practices to facilitate movement beyond its current stalemate.

After two decades of discussion and debate, the ensuing stagnation among legal scholars and practitioners highlights what CMM practitioners refer to as *Unwanted Repetitive Patterns* (URPs). Exemplary of what Pearce terms ethnocentric communication,

In URPs, persons act as if their perceptions of self, other, situation, and the like, are “real” and compel them to act in particular ways regardless of the consequences (Cronen, Pearce, and Snavely, 1979). When two or more such persons, with different perceptions of self, other, and so on, interact with each other, they can produce a tightly scripted, unwanted repetitive pattern that thwarts their attempts to realize their separate visions of the good, true, and beautiful. (Pearce, 1989, p. 128)

In my estimation, such is the case with the legal community’s problem of professionalism.

According to Pearce (1989), there are four forms of communication: monocultural, ethnocentric, modernistic, and cosmopolitan. Each form acts to bring into being a particular kind of social world. Unfortunately, as in the case of the legal profession’s conversational patterns surrounding ethics and professionalism, “If communicators express different resources in the practices they collectively produce, they are likely to misunderstand and thwart each other’s attempt to bring into being their vision of what is good and true” (Pearce,
1989, p. 62). The result is incommensurate moral orders debilitating coordination and confounding coherence among legal practitioners and scholars.

From the communication perspective, all forms of human activity are seen as “a recurring, reflexive process in which resources are expressed in practices and in which practices (re)construct resources” (Pearce, 1989, p. 22). In CMM, resources are conceptualized as ways of understanding or facilitating coherence, comprising “the stories, images, symbols, and institutions that persons use to make their world meaningful” (Pearce, 1989, p. 22). In contrast, practices are ways of acting or facilitating coordination, including “building a bridge, playing bridge, and seeking to bridge understandings” (Pearce, 1989, p. 22). Put another way, CMM suggests that we view communication as a recursive, reflexive process of coordinating actions and making/managing meanings (Pearce, 2007).

While CMM scholar-practitioners have produced a variety of heuristic models and methodologies to make sense of the processes and patterns of human communication, four items in particular are theoretically efficacious for analyzing the conversations constituting ethics and professionalism in the practice of law: the Atomic Model, the LUUUUTT Model, the concept of Logical Force and Emergent Interactional Logics, and the Four Forms of Communication previously mentioned. A common thread that unites all of these items is their meta-discursive focus. They all emphasize and facilitate our ability to talk about talk, our ability to communicate about communication.
The Atomic Model

Traditionally employed for examining interpersonal communication, the Atomic Model of conversation locates a “speech act” in the center of the model, with various contexts “circling” the central speech act like electrons. In the Atomic model, a speech act is metaphorically and grammatically framed as “a name for the smallest unit of analysis in communication. Speech acts are the component parts of larger communication patterns” (Pearce, 1994, p. 105).

Pearce notes, however, that “social theorists have two ways of thinking about speech acts. One may be characterized as the basic building blocks approach; the other as the unfinished creative process approach” (1994, p. 105).

Pearce himself seems inconsistent in his use of the term “speech acts” (as well as numerous other CMM terms and concepts) even within the same text. On page 122 of Interpersonal Communication: Making Social Worlds, Pearce declares, “The conversational triplet is the minimal structure in the performance of speech acts, of course” (1994, p. 122). In contrast to the Atomic model’s framing of a single speech act as the smallest unit of analysis, one page earlier Pearce writes how “Communication theorist Changsheng Xi (1991) proposed the notion of a conversational triplet as the basic structure for the performance of a speech act” (1994, p. 121). The distinction here, however, rests on the difference between the speech act (an object) and the performance of the speech act (an emergent, creative, unfinished process).

My use of the term herein considers both ways of thinking about speech acts. When you do something in words, in communication, be it say a greeting
(“Hello!”) or thank someone (“Thank you very much!”), you’re engaging in an unfinished creative process. The greeting itself (i.e., the words) is also a speech act (a heuristic, analytic object for observation, analysis, and discussion).

According to the Atomic Model, there are four contexts that you’d be wise to consider when examining a speech act: episode, self, relationships, and culture. The Atomic Model emphasizes how every speech act performed is simultaneously a part of many conversational contexts. “We are never only in one conversation at a time. Each act we perform is at the nexus of many conversations, each with its own logic of meaning and action” (Pearce, 1994, p. 35). Working from the assumption that selves are made in communication (Gergen, n.d., 1991; Pearce, 2007; Vygotsky, 1978), the Atomic Model is particularly efficacious at surfacing conflicting social patterns of communication, allowing individuals to discursively acknowledge their own positions amidst larger conversational patterns thus enabling them to better understand their own identity development and unique social standpoints (Allen, 2000; Pearce, 2007).

Extrapolating from an interpersonal context to an organizational context, the Atomic Model can also inform organizational speech acts, highlighting the myriad conversational contexts simultaneously being engaged. Extending Watzlawick, Beavin, and Jackson’s Interactional Theory (1967) highlighting two levels of communication (content and relationship), the Atomic Model predominantly emphasizes four levels or contexts of communication: self, relationships, episode, and culture. Notably, however, the model is in no way limited to just the four most commonly identified contexts (Cronen, Pearce, &

To better appreciate the importance of modeling and elaborating context both interpersonally and organizationally, it helps to appreciate the etymology of the term. Originating in the Latin contextus from contextere meaning “to weave together,” context emphasizes the parts of a discourse that occur just before and after a specific speech act which in turn help to determine the speech act’s meaning. The issue of context is an issue of place, of locating and situating our actions (including our communication) so as to facilitate meaning and understanding, coherence and coordination. Referring to research by Cronen, Johnson, and Lannamann (1982) as well as Branham and Pearce (1985), Littlejohn succinctly summarized a social constructionist view of the reflexive relationship between text and context. “An event or action being interpreted is known as a text; the reference from which the interpretation is made is context’” (1989, p. 125).

Viewing context as a metaphor rather than a variable, we can better appreciate how stories told are woven together, gaining strength through the density of interpenetrated narratives. Notably, however, the metaphor tends to direct our attention to the fabric that is woven rather than the process of weaving, and even if we look at the weaver instead of the woven, we tend to focus on a single individual (Pearce, 1994). By locating each speech act at the center of myriad contexts (as is the case with the Atomic Model), however, we can better appreciate the ways in which we weave together. Viewed as so many fields,
forces, layers, realms, and arenas (Folger & Jones, 1994), context emerges as an interpretive resource. Meanings and actions must always be understood in contexts, with the relationship between texts and contexts understood as fully reflexive and in process (Pearce, 1994; Steier, 1995).

We communicate within innumerable contexts, with texts and contexts acting in dynamic systems. This contextualist conception of meaning posits that all rules of meaning and action occur within contexts. Context serves as a sensemaking heuristic, a conceptual framework within which actions take on meaning. "People have a tendency to create new contexts in order to achieve change in their understandings and actions… Often text and context loop, such that each is used from time to time to interpret the other" (Littlejohn, 1989, p. 124-125). The various contexts or frames emphasize so many ways to punctuate meaning and action.

More than knowing about patterns of human action, social constructionists are interested in knowing how to act so that our actions fit into ongoing, unfinished patterns, contributing to the determination of the meaning of these patterns. We often call this acting into a context, understanding that our actions are part of what makes that context real and gives it its meaning. (Pearce, 1995, p. 100)

By acknowledging and respecting the communicative weaving process, we can more effectively focus on the emerging world of social action. We can empower ourselves as well as those with whom we interact. We can begin to act into
contexts, and in doing so we can better attempt to constructively co-construct our social worlds.

**The LUUUUTT Model**

In contrast to the Atomic Model’s focus on conversational contexts and speech acts, the LUUUUTT Model focuses on the stories and storytelling practices that together constitute our social worlds. LUUUUTT is an admittedly unwieldy acronym that stands for stories Lived, Un known stories, Untold stories, Unheard stories, Untellable stories, stories Told, and story Telling (Pearce, 2007). As Illene Wasserman, an Appreciative Inquiry and CMM consultant practitioner, relates, this model “invites us to explore the different forms that narratives take by guiding us to identify how we know what we know, what we don’t know and what else we may need to find out” (2005, p. 39).

The two most commonly engaged facets of the LUUUUTT Model involve the inherent tension that exists between stories lived and stories told. A prime example exists in The Florida Bar’s unitary integrationist organizational rhetoric explicitly portraying the profession as embracing a singular set of “fundamental ideals and values” as evidenced in the mission statement of a joint collaboration between The Florida Bar’s Center on Professionalism and the Supreme Court of Florida’s Commission on Professionalism (ABA, 2008b, p. 11; Martin, 1992, 2002). As Vischer astutely observes, however,

The premise that professional values must be held and pursued by the profession as a whole has been convincingly challenged before. Most notably, Brad Wendel has established in much of his work that lawyers
serve plural values, and that some of these values are not only disputed within the profession, but incommensurable with each other. (2005, p. 40) Vischer goes on to assert that “the legal profession is not a meaningful moral community, and it is not especially well-equipped to transmit a certain set of values to its members” (2005, p. 41). University of Notre Dame Law School Professor of Legal Ethics Robert E. Rodes, Jr. offers a similar sentiment challenging “the privatization of morality” (1992) and “the notion that the legal profession is, or should be considered, a community with shared values” (Mashburn, 1994).

Where the organizational stories told by The Florida Bar and the American Bar Association portray professional unity in homogeneity, the stories lived by lawyers on a day-to-day basis highlight the differentiated and often fragmented heterogeneity of myriad worldviews, paradigms, and ideologies at pluralistic play (Martin, 1992, 2002). Lawyers “find meaning and satisfaction in maintaining worldviews informed by communal commitments to myriad philosophical, sociological, economic, [and] other normative theories” (Vischer, 2005, p. 37). Lawyers daily engage in geographically disparate practices and practice areas, from a solo family law practitioner in a courtroom in Arcadia to a partner at a large securities firm in Miami, from a domestic relations attorney in a small three-person Key West law firm to a personal injury lawyer at a mid-sized firm in Jacksonville. Despite The Florida Bar’s oratory of uniformity (stories told), the practice of law is decidedly plural (stories lived).
Logical Force and Emergent Interactional Logics

A third heuristic in CMM’s theoretical toolbox is the concept of logical force and the accompanying notion of emergent interactional logics. An astute reader might have noticed Pearce mentioning the phrase “logic of meaning and action” in a quotation referenced earlier in this dissertation. It’s a phrase that appears often in CMM literature. Logical force is akin to “the force of an argument… the summation of the felt obligation to act” (Pearce, 1994, p. 29). A conversant’s logic of meaning and action describes the sense of moral obligation, the sense of “oughtness” one feels when responding to what was just said and what should be said next (Cronen & Pearce, 1981). As Littlejohn and Domenici describe it, logical force “governs how a person will connect meaning and action in a particular situation” (2001, p. 216). From this perspective, paradigms, worldviews, ideologies, and ethics/morals are all resources comprising logics of meaning and action that define what is obligatory, legitimate, dubious, or prohibited.

Pearce cites the work of Finnish philosopher Georg von Wright (1951) and his “deontic logic” as the inspiration for the notion of logical force (a.k.a. “moral force” or simply “perceived oughtness”) (Pearce, 2007, p. 120; Pearce Associates, 2004). As Pearce and Cronen were developing CMM, they realized that their sense of what was going on differed significantly from “the very rational models being developed in the work of other social theorists” who assumed that people acted logically per Aristotelian standards of logic (Pearce, 2007, p. 128).

Prior to the 20th century, it was thought that there is only one logic, that its
structure was truth-bearing assertions (technically, an alethic logic), that its primary operators were various conjugations of the verb “to be,” and that it was two-valued (that is, as Aristotle put it, a thing is either A or not-A). A number of discoveries, culminating in Godel’s “Proof” that no system can be both complete and consistent, opened up the subject and logicians realized that there are many logics. (Pearce, 2004, p. 27)

von Wright, however, had developed “a complete logical system based on the relationships of ‘prohibited; obligatory; permitted; and irrelevant.’” (Pearce, 2007, p. 128). In contrast to Aristotelian logic’s ability to describe relationships among propositions in a logical form, von Wright’s model provided Pearce and Cronen a vocabulary for describing logics of meaning and action—that is, people’s “felt” sense of that which is socially obligatory, permitted, and/or prohibited.

According to Pearce (1989), logics of meaning and action are comprised of four related forces: prefigurative force, practical force, contextual force, and implicative force. Littlejohn and Domenici offer the most concise summation of the four forces I have yet to encounter.

Sometimes we do things out of a sense of prefigurative, or causal, force. Here, we see that our actions were forced, or caused, by previous events… Sometimes, we view our actions as leading to desired outcomes. CMM calls this practical force, acting to accomplish something… Other times, an individual may feel something called contextual force, a feeling that he or she must do something just because the context demands it… Finally, we sometimes understand our actions
as an attempt to influence the context itself, *implicative force*. Here, the reasoning goes: I want to change the very context that controls what is happening… (Littlejohn & Domenici, 2001, pp. 216-217)

Paraphrasing Pearce’s description of the four forces (1989), to the question “Why did you do that?”, *prefigurative force* might respond, “Because she told me to;” *practical force* might respond, “In order to get her to do what I want;” *contextual force* might respond, “Because a person like me in a situation like that had to do that;” and *implicative force* might respond, “Because I wanted to redefine my relationship with her.” With *prefigurative force*, there’s a sense of obligation deriving from things that occur before one acts. With *practical force*, there’s a sense of obligation deriving from things that occur after one acts. With *contextual force*, there’s a sense of obligation deriving from the definitions of the myriad contexts involved (including self, other, episode, relationship, and culture). With *implicative force*, there’s a sense of obligation deriving from “the perceived/anticipated effects that one’s actions will have on the definition of self, other, relationship, situation, and the like” (Pearce, 1989, p. 40).

By analyzing the various forces at play in a speech act, we have a more sophisticated and sensitive means of understanding the logics of meaning and action involved in the individual’s (or organization’s) sensemaking process (Weick, 1993, 1995). This becomes particularly important when we take into account the systemic notion that the whole is more than the sum of its parts and the dynamic contingency of interactional communication patterns. As Pearce describes it, “the process of coordination often develops a logic of its own, which
shapes a patterned practice that may not resemble the resources of any of the participants” (Pearce, 1989, p. 41). “One speech act elicits another, that one yet another, and after three or more turns, the participants in the episode are engaging in actions that no one expected” (Pearce, 2007, p. 153). Such is the case of emergent logics of interaction.

Take, for example, the concept of unwanted repetitive patterns of communication (Pearce, 1994). Though the pattern may vary, it generally follows a rather familiar emergent progression. An individual recognizes the pattern and can predict how it will play out. Despite disliking the pattern, once it starts the individual cannot avoid becoming deeply enmeshed in a logic of meaning and action that “requires” the individual to act in ways that will ultimately prove fruitless (repeating an unwanted but all too familiar pattern). In the conversational case of The Florida Bar, the American Bar Association, and their members, discussions of ethics and professionalism appear to follow a similar pattern. The result is the discursive stalemate currently confronting the legal profession, this despite over 30 years of deliberation and contemplation by some of the best and brightest minds in the nation focused on the professionalism project and the best practices of law.

**Four Forms of Communication**

The fourth and final theoretical tool I propose to employ involves the four forms of communication previously mentioned: monocultural, ethnocentric, modernistic, and cosmopolitan. One of the first things to understand when engaging the forms is that conversational patterns take precedence over the
actual communicators themselves. It's about shifting attention from the individual communicators to the interactive patterns of communication. “Forms of communication are patterns of patterns; they are the units of observation we name when we can discern family resemblances among patterns” (Pearce, 2005, p. 12). The relevant question becomes, “What does the conversation look like when we’re making whatever we’re making?”, recognizing that conversations (and moral orders) look different in monocultural, ethnocentric, modernistic, and cosmopolitan communication. According to Pearce, the primary differences among the four forms

… are whether those communicating are prepared to put their resources (stories that make the world coherent) "at risk" in any new encounter and whether they treat others "as natives" (that is, hold them accountable to the same interpretive and evaluative criteria that they would apply to their own behavior). (2005, p. 16)

Monocultural communication. “As a pattern of communication, monocultural communication makes it difficult to perceive or acknowledge differences” (Pearce, 2007, p. 160). This is in part due to monocultural communication’s expectation/assumption that everyone is (or should be) a native and that everyone "should perceive things in the same way, like the same things, and know the same things. Actions outside the normal pattern are often simply not noticed" (Pearce, 2007, p. 160). Since others are treated like natives in monocultural communication, resources are not perceived to be at risk (Pearce, 1989). Recognizing that monocultural communication is a relative impossibility
within the United States, particularly with regard to the professional communicative practices of lawyers, my research efforts herein will focus on ethnocentric, modernistic, and cosmopolitan forms of communication.  

**Ethnocentric communication.** Paraphrasing Pearce (2007), ethnocentric patterns of communication are particularly sensitive to differences, tending to structure the social world according to distinct dichotomies of “us” vs. “them” and “right” vs. “wrong.” Simply put, “If you are part of ‘us,’ you are expected to agree and conform; if you don’t, you are likely to be perceived as part of ‘them,’ and ‘they’ are almost always worse than ‘us’” (Pearce, 2007, p. 160). In ethnocentric patterns of communication, as long as you’re amongst your own, your resources are not at risk, but whenever you confront an “other,” they’re completely at risk.

**Modernistic communication.** In contrast to monocultural and ethnocentric communication, modernistic patterns of communication celebrate difference “— for a while” (Pearce, 2007, p. 161). According to Pearce, people engaging in this form of communication revere “progress” and as such “quickly tire of new things and look for things even newer. They see disagreements as problems to be solved so that we can ‘progress.’ People are seen as virtuous if they ‘make a difference’ or ‘make things happen’” (2007, p. 161).

According to CMM scholar-practitioner John Parrish-Sprowl, modernity has two over-riding characteristics. “One is the sense that progress is good and that we should always be looking for, seeking, and celebrating progress and development” (2011). Constant change is a catch phrase of modernistic communication. “A second over-riding pattern is a sense of thoroughgoing
relativism” (2011). A “thoroughgoing” relativism (or pejorative relativism as I perceive it) conceives of relativism “involving or attending to every detail or aspect of something.” Conceptually it’s pushing relativism to the extreme where everything is relative—period. In doing so, it wholly ignores context.

When a “thoroughgoing” relativism is combined with the modernistic belief in “thoroughgoing” equality (wherein all things are equal and nothing is better than anything else), the end result is a fatal, free flowing cocktail that denies any and all groundings or foundations for knowledge, truth, and morality. The problem, however, is that life is lived in context(s).

Bear in mind that conceptually, modernistic communication was and is a reaction to ethnocentric communication patterns which structure the world in sharp dichotomies: us vs. them; right vs. wrong; and good vs. evil.

*Cosmopolitan communication.* Whereas the first three forms of communication bias coherence or “the process by which we tell ourselves (and others) stories in order to interpret the world around us and our place in it” (Pearce, 1989, p. 21), cosmopolitan communication gives primacy to coordination or “practices in which persons attempt to call into being conjoint enactments of their visions of the good, the desirable, and the expedient, and to prevent conjoint enactments of what they envision as bad, ugly, and obstructive” (Pearce, 1989, p. 20). Cosmopolitan communication patterns, …see differences as normal and as sites for exploration. In this form of communication, one would not expect or want to ‘resolve’ differences. Instead, the challenge is to find ways of coordinating with each other in a
social world that has in it many different social worlds, and in which people not only are different, but should be different. (Pearce, 2007, p. 161)

In contrast to the “thoroughgoing” relativism of modernistic communication, an alternative approach is to consider what I refer to as the “tectonic relativism” of cosmopolitan communication.

I reference “tectonic relativism” to emphasize parallels with the geological theory of plate tectonics which addresses large-scale processes affecting the structure and motion of the earth’s crust. For most of humanity’s existence, we had no idea that the seemingly solid ground beneath our feet was actually in motion (with the exception perhaps of volcanic eruptions, lava, and earthquakes). To say so would have been akin to saying that the earth was flat (which ironically was the case for quite some time as well). In the 20th century, however, geologists proposed theories of continental drift and plate tectonics. Now, the seemingly stable has come to be understood paradoxically both as stable (in a relatively short-term sense) and in motion (in a relatively long-term sense). In a parallel socio-cultural fashion, rather than thinking of ethics, morals, and professionalism as “stable” concepts (foundational ideals), cosmopolitan communication acknowledges the paradoxically stable (in a short-term sense) and yet changing nature (in a long-term sense) of our socio-culturally, socio-linguistically negotiated meanings and actions.

Rather than biasing change at the expense of stability (as is the case for modernistic communication), cosmopolitan communication embraces change and stability, equality and inequalities, similarities and differences. In doing so, it
more faithfully aligns our stories *lived* with our stories *told*. Our daily experience is one of emergent change *and* dynamic stability. Our daily experience highlights that we are *all* human and yet paradoxically we are *all* unique. Our daily experience teaches us that despite the democratic, modernistic protestations that “all men are created equal, that they are endowed by their Creator with certain unalienable Rights” (stories *told* originating in European Enlightenment thinking), the lived experience of millions of Americans (both men *and* women, adults *and* children) is one of homelessness and hunger at the hands of unscrupulous creditors and a justice system rampant with glaring disparities based on the possession of wealth or the lack thereof (stories *lived*). This misalignment of stories *lived* and stories *told* accounts, at least in part, for the “disillusionment with modernity” noted by Pearce (1989, p. 170) and Eisenberg (1998/2007, p. 216). As Parrish-Sprowl observed,

People get tired of thoroughgoing relativism because we *do* make value judgments. There’s a difference between saying things are relative, which I think is true, and saying that we can’t make any value judgments *at all*. That’s part of what differentiates modernity from cosmopolitan communication. (2011)

In cosmopolitan communication, when dealing with people who embrace incommensurate moral orders and thus engage incommensurate realities, instead of saying ethnocentrically, “No they’re wrong and we’re right!”, we would instead ask, “How can we find a conversational frame, a set of discursive practices that allow us to peacefully co-exist and move forward?”
modernistic communication takes relativism to the extreme, asserting that no one perspective is better than the next, cosmopolitan communication acknowledges that humans exist and interact amidst speech communities and communities of practice (Wenger, 1998). While the values and beliefs of such communities may sometimes be incommensurate, we each make choices about which communities we want to be in, and in doing so we implicitly or explicitly assert that we believe one is better than another. At the same time, however, from a cosmopolitan perspective we acknowledge that we are making such choices and that our choices are decidedly relative. Rather than saying, “I’m right, and you’re wrong!”, we ask, “How can we make this all go forward?”

To see keeping a conversation going as a sufficient aim of philosophy, to see wisdom as consisting in the ability to sustain a conversation, is to see human beings as generators of new descriptions rather than beings one hopes to be able to describe accurately. (Rorty, 1979, p. 378)

To use Rorty’s aphorism, we must ask ourselves, “How can we keep the conversation going?”, with conversation replacing confrontation and dialogue supplementing debate. Describing the process of co-constituting coordination, Gergen, McNamee, and Barrett note that it’s not about attempting to accurately and precisely pin down meaning (i.e., biasing coherence), but instead it’s about working to sustain “a mutually supportive interchange that is without a necessary terminus” (2001, p. 695). In striving to do just that, cosmopolitan communication honors the social constructionist assumption “that we should preserve a complex, nuanced understanding of the social world,” which is itself “a moral and ethical
stance” (Foster & Bochner, 2008, p. 92; Eisenberg, 2011 [personal communication]).

**A Working Definition of Ethics/Morals**

Building on the CMM concepts outlined above, I am herein defining ethics/morals as habituated (i.e., reified) logics of meaning and action. I’ve employed the combined form of “ethics/morals” here to highlight that the two are rhetorically synonymous, with *ethics* emerging from Greek etymologically (*ethos*) meaning “custom” or “habit” and *morals* being the Latin translation (*mos*) allegedly coined by Marcus Tullius Cicero’s in “De Fato” (II.i) (Harper, 2010). As ethical/moral stories are socio-culturally and socio-historically shared among individuals as members of speech communities, they become reified and entrenched. As the stories are repeated from generation to generation, they legitimate certain behaviors as ethical/moral and other behaviors as unethical/imoral. “As this process continues through repeated iterations, practices (re)construct the stories they originally expressed—with increasing clarity and moral force” (Pearce, 1989, p. 29). This process, however, is never “fixed.” While one’s ethics/morals (i.e., one’s habituated logics of meaning and action) may in time become reified, in conversations, stories can change, in communication, habits and customs can change.

**Joanne Martin’s Tripartite Taxonomy of Organizational Culture(s)**

Before launching into a treatment of how the legal profession might communicate its way out of its professionalism problem, I feel it appropriate to first relate Joanne Martin’s well-known taxonomy of organizational cultures
A professor of organizational behavior at Stanford University’s Graduate School of Business, Martin has proposed and promoted the use of a multi-perspectival approach focusing variously on integration, differentiation, and fragmentation to more holistically make sense of organizations and the cultures that constitute them. My first exposure to Martin’s work was when Eisenberg, Murphy, and Andrews (1998/2007) “used Joanne Martin’s (1992) tripartite typology of organizational culture as an organizing framework” (p. 161) to examine the search for a university provost, focusing on the narrative interplay of the integration, differentiation, and fragmentation perspectives.

“According to Martin, there is no ‘correct’ definition of organizational culture; different phenomena come into view as a result of different ways of seeing” (Eisenberg, Murphy, and Andrews, 1998/2007, p. 161). “Often one perspective’s blindspot is another’s focus, so that one’s ‘strength’ is another’s ‘weakness’” (Martin, 1992, p. 4). Accordingly, each perspective differs in its orientation to consensus, consistency, and ambiguity. From an integration perspective, culture is conceptualized monolithically, with organization-wide consensus and consistency serving as the normative standard. In an integration perspective, there’s no room for ambiguity. In contrast, the defining elements of a differentiation perspective include “inconsistency, subcultural consensus, and the relegation of ambiguity to the periphery of subcultures” (Martin, 1992, p. 83). From this perspective, consensus exists but only at the subcultural level, with subcultures serving as islands of clarity in a sea of ambiguity (p. 13). Martin’s third alternative, the fragmentation perspective, focuses on ambiguity as the
essence of organizational culture and the complexity of relationships among manifestations. “Rather than seeing consensus within the boundaries of a subculture or a culture, the Fragmentation viewpoint presents a multiplicity of interpretations that seldom, if ever, coalesce into a stable consensus” (p. 130).

Just as Eisenberg, Murphy, and Andrews recognize “that rarely does one individual present a single perspective” (1998/2007, p. 161), in carefully reviewing Martin’s work I too realized that the same could be said for Pearce’s four forms of communication. Just as no single individual or organization embraces a single cultural perspective, so too no single individual or organization embraces a single form of communication. Rather, each cultural perspective and each form of communication reveals and conceals certain aspects of the individual and/or organization. Each of the typological classifications sheds light on and simultaneously casts shadows about individual and organizational actions. For example, my review of the ethics and professionalism literature revealed predominantly integrationist rhetoric in the form of ethnocentric communication. At the same time, however, alternative contextual analyses could just as easily highlight subcultural differentiation in modernistic communication patterns or cultural fragmentation as evidenced in cosmopolitan communication patterns. Each is present and absent in individuals and organizations, depending upon the contextual analytic emphasis. While my research primarily focuses on Pearce’s forms of communication as sensemaking heuristics, there’s no doubt that Martin’s tripartite taxonomy of organizational cultures compliments and parallels such efforts.
Communicating Our Way “Out” of the Problem

“When people notice what they are making together, they can choose to make something different.”
(Pearce, 2006, p. 7)

“Until you take a step, you don’t know where the next step should be.”
(Eisenberg, 2007, p. vii)

So given a communication perspective, what would it look like if we talked our way out of this problem? What turn would the conversation take? As I stated before, from a communication perspective the problematics of ethics and professionalism in the practice of law can be understood to originate in the inherent polysemy of language and the incommensurability of moral orders deriving from alternative forms of communication. As such, the following analysis will start by acknowledging the ramifications of the dominant law school pedagogical model embracing instrumental rationality. A parallel will be drawn between the instrumental view implicit in the transmission model of communication and the developmental evolution of a co-constructionist view acknowledging divergent, bounded rationalities explicit in a meta-constitutive model of communication (Craig, 1999, 2007; Shweder, 1986). Such an evolutionary developmental progression will then help to acknowledge and explain the inherent polysemy of language, a central problematic of the current conversational conundrum regarding ethics and professionalism. This will be followed by a detailed examination of the inherent tensions between ethnocentric and modernistic forms of communication as evidenced in the existing rhetoric constituting the practice and profession of law. Finally, the challenges of implementing cosmopolitan communication patterns will be discussed,
acknowledging both the opposition such a “solution” can expect to encounter as well as the opportunities already afforded by The Florida Bar’s existing continuing legal education (CLE) infrastructure (i.e., the articulated CLE purposes, goals, standards, and results desired).

To understand how law schools got to where they are, Sullivan provides a historical account of American progress detailing “the triumph of American scientific and organizational know-how” during and after World War II as providing the background for the pedagogical evolution in American jurisprudence (2005, p. 134). As Sullivan relates, “science and engineering daily demonstrated their capacity to control nature for human benefit” (2005, p. 134), and not surprisingly the methods and practices of science began to pervade the Academy. Relating the work of sociologist Talcott Parsons, Sullivan writes,

…the university and credentialing system allowed American society to specialize more functions, improving each of them through application of technical rationality while making them work in concert toward both a better material life and a society of greater inclusiveness and fairness. (2005, p. 147)

At the time, science was the model of technological efficiency, and in a parallel vein America witnessed the accession of expert knowledge as the model of organizational efficiency. “Under the banner of expert problem solving, the professional knowledge class seemed to have come into its own” (Sullivan, 2005, p. 135). Notably, both war and science obfuscate the matter of morals, in science through a rhetoric of amoral discovery and in war through a rhetoric of
moral righteousness. Science and war also foreground instrumental rationality, which tends to focus on means rather than ends or final values. “It asks, relentlessly: How well is this approach working? Could it be improved? What kinds of improvement will be most effective for the least cost?” (2005, p. 135)

Insofar as legal pedagogy was in a formative developmental stage at that time, lawyers as a professional knowledge class were quick to adopt such “instrumental thinking and its near kin, technical problem-solving rationality” (Sullivan, 2005, p. 135). After all, instrumental rationality had won the war and was bestowing unprecedented prosperity on society. Few people at the time, however, could foresee the unintended long-term consequences of adopting such an instrumental methodology to the pedagogical practices in law schools.

…no question was raised about how the progress of technical rationality, the assimilation of the university to the paradigm of scientific research and the practitioner to the role of technician, might affect the value orientation of the professional complex itself, not to mention its implicit [a]moral base. The organizational society was institutionalizing the professions as ever more efficient extensions of the purified, specialized technical rationality of the research institute into the messy world of daily life. (Sullivan, 2005, p. 147)

In effect, science biases acontextual knowledge and technical rationality, denying cultural influences, context(s), and matters of ethics/morals. Life, however, is lived in contexts (indeed it cannot be otherwise), and research has shown that there are myriad, divergent rationalities (Shweder, 1986). Culture, context(s),
and ethics/morals are part and parcel of daily life (i.e., the human condition), and by adopting the standards of science, legal pedagogy unknowingly set the stage for the unintended consequences it now symptomatically suffers—“the hubris of technique” (Sullivan, 2005, p. 150)—wherein lawyers are conceived as nothing more than “amoral technicians” acting solely in pursuit of maximizing their clients’ legal rights (Wasserstrom, 1975). In doing so, however, the legal community has effectively disavowed itself of the very social contract that has historically formed the basis for its professional public legitimacy.

Just as legal pedagogy was impacted by the methods of science and the biases of technical rationality, the academic history of communication also bears its mark. While the study of human communication, more specifically the study of rhetoric, can be traced back over 2500 years to classical Greece, in many ways the modern study of communication can trace its history to the rise of various communication technology from the telegraph to the telephone to television (Carey, 1989). In fact, the first major communication model (the Shannon-Weaver Model) originates in the scientific work of Claude Shannon and Warren Weaver (1949). As researchers at Bell Laboratories, the two sought to maximize the efficiency of telephone transmissions. To this day, the transmission model (or some variation thereof) continues to have cultural currency and is traditionally the first model taught to students in undergraduate introductory communication courses (Carey, 1989; McKinzie, 1994; Taylor, 1992). In time, of course, more nuanced models have been developed, many expanding in complexity on the original transmission model though still
fundamentally adopting the scientific method (at least in part due to the desire to acquire academic legitimacy in the eyes of university administrators). In the 1960s and 1970s, however, the study of communication began to experience a sea change in its receptivity to alternative methodologies. Under the influence of an “interpretive/linguistic turn,” researchers began to question the viability of old models and methodologies. As the assumptions of a positivist paradigm began to crumble under the weight of intense scrutiny, researchers began to explore ontological and epistemological alternatives. As it happens, however, while the Academy has proven adept and agile in its adaptability, the tradition-bound pedagogy and practices of law are far more glacial in terms of progress and amenability to change.

These crucial differences play out in a variety of ways with regard to the acceptance (or rejection) of the polysemic nature of language. Where the positivist pedagogical foundations of law entail a representational or foundational view of meaning in which it is considered possible to “fix” the meaning between words and objects, many communication theorists conceptualize the meaning of communicative acts as emergent, contending “that the meaning of a communicative act is contingent on the unique qualities of the context (Gergen, 1999; Pearce, 1994)” (Barge & Little, 2002, p. 380). This distinction is critical when examining much of the conversational rhetoric among legal scholars and practitioners regarding normative and descriptive definitions of ethics and professionalism. If one adopts the traditional “foundationalist” epistemological stance of science (belief in eternal, immutable Truth that exists independent of
human agency; belief that Truth is rational and as such can be known by human beings; belief that the individual is the source of meaning and that truth can be expressed accurately through the careful use of language; belief that reality can be known and explained via mechanistic principles), a goal of “fixed meaning” makes sense (Pearce, 1989; Russill, 2005). Such is the status quo of the current “normal” discourse among legal professionals (Rorty, 1979). If, however, one acknowledges the myriad limitations of traditional epistemology, the goal of “fixed meaning” proves to be a quixotic quest conceptually akin to titling at windmills (Eisenberg, 1998/2007). In this light, the call among many legal scholars and practitioners for definitional clarification and regulation appears illusive and unrealistic (though perhaps understandable presuming, of course, certain epistemological assumptions and theoretical biases).

In contrast, acknowledging the inherent instability of language entails adopting a view of meaning in use (Eisenberg, 1998/2007; Pearce & Littlejohn, 1997; Wittgenstein, 1953/2001). As Pearce and Littlejohn articulate,

We can never know exactly what is being made or done in the abstract because the meanings of communication depend on its context. …the context affects meaning, but meaning in turn establishes context. Any act of communication… is connected to what has gone before and what will happen next. Each act we perform is both ‘out of’ and ‘into’ a context. (1997, p. 77)

From a communication perspective, the relationship between meaning and context is both reflexive and emergent (Pearce & Pearce, 2003). “Both the text
and context are aspects of unfinished, continuous patterns of communication” (Pearce & Littlejohn, 1997, p. 78). Meaning gets made and managed in the *in between* of conversations, in the act of interactions that constitute commonalities and communities, and as such meaning can never be “fixed” or “final.” This fact also highlights how the making and managing of meaning (i.e., *coherence* in CMM terms) is inextricably entwined with the collaborative process of situated, conjoint interaction (i.e., *coordination* in CMM terms). Rather than continuing the *debate* over illusory “definitive” and ephemeral “normative” definitions, a communication perspective might instead recommend some kind of process or procedure to allow there to be opportunities for engaging in dialogic discourse about the contextually contingent, myriad, shifting meanings of ethics and professionalism (Barge & Little, 2002; Mashburn, 1994; Pearce, 2007; Pearce & Pearce, 2003). According to Pearce, “Dialogic communication is the most radical alternative to the DAD [decide-advocate-defend] model,” arguably the most prevalent pattern of communication in the practice of law. “In dialogue, individuals are called to listen, inquire, understand, explain, and find ways of moving forward together. Disagreements and differences are seen as sites for mutual learning, not intellectual pugilism” (2007, p. 216). While the notion of contingent, emergent meaning in use is not necessarily new among philosophers and communication scholar-practitioners, in Rorty’s terms (1979) it could easily be construed as “abnormal” discourse among legal professionals.

CMM’s Atomic Model is particularly well suited for addressing the limitations of the legal profession’s devotion to acontextual “formalism” (Vischer,
2005) noted earlier in this dissertation insofar as it heuristically foregrounds the role of context(s) in the making and management of polysemous meaning. In doing so, it rhetorically provides for meta-discursive sensemaking (something at present wholly lacking in legal pedagogy). As a developmental tool, the Atomic Model is also ideally suited for addressing a polysemous conceptualization of “standpoint” identity development (Allen, 2000), contextually facilitating the negotiation process that constitutes the dialectic of self and society, the individual’s development as a “professional” amidst myriad “professional” communities of practice (Wenger, 1998). As an analytic tool, the Atomic Model is also particularly well suited for contextualizing organizational speech acts, facilitating the process of coordinating actions and the making and management of polysemous organizational meanings among organizational members by acknowledging the dialectic of clarity and ambiguity (Eisenberg, 2007), specificity (contextual particulars) and generality (contextual abstractions). As Pearce and Littlejohn pragmatically highlight, “Because communication is contextual, people can change the pattern of conflict by telling different stories about what they are doing and making…” (1997, p. 79). In effect, by looking at the pattern of interaction in a new way, people can restructure the very contexts defining meanings and actions.

Yet another way to conceptualize the pattern of conflict at issue with regard to ethics and professionalism involves acknowledging the inherent tensions of alternative forms of communication, more specifically ethnocentric communication patterns in contradistinction to modernistic communication
patterns. For example, a unitary, integrationist, ethnocentric rhetoric pervades the legal literature with regard to the professional “community” (singular) of law. Consider the administrative and regulative structures constituting the professional practice of American jurisprudence. While the American Bar Association (ABA) is a national body rhetorically serving to unite the profession as an integrated ethnocentric whole, lawyers are disciplinarily regulated at the state level with each state bar association specifying its own standards and practices. In point of fact, a pervasive integrationist rhetoric proved to be one of the most dominant “stories told” in the course of my research (Martin, 1992, 2002). This stands in stark contrast to the “stories lived” in the present day practice of law wherein previously marginalized persons now contribute to a democratically diverse, pluralistic profession distinguished by functional specialization (i.e., employment law vs. intellectual property law vs. criminal law) and differentiated by various practice sectors (the government sector vs. the private sector vs. the corporate sector) (Mashburn, 1994).

In the wake of World War I, “rigid patterns of class distinctions softened, the middle class expanded in size and in influence, and successive waves of reforms brought new groups into the political/cultural/social mainstream” (Pearce, 1989, p. 169). The professional demographic landscape in America was changing, and the practice of law was not immune.

The unintended consequence of democratization was to enfranchise successive waves of hitherto ‘marginal’ groups. ‘Marginal’ persons always have a different perspective on the symbols and practices of a culture than
do the dominant class, and usually this perspective is richer and more accurate… Marginals or oppressed persons often come to have a sophisticated, two-leveled perception of society in which their own reality is clearly distinguished from that of—for example—the king, the church, the ‘white male system,’ or ‘the man.’ (Pearce, 1989, p. 169)

As previously marginalized groups began to attend law schools and practice law in greater numbers, “the ‘Protestant-Catholic-Jewish’ hegemony which had provided a shared ‘Judeo-Christian heritage,’ was disrupted, undercutting the traditional American basis for achieving coordination…” (Pearce, 1989, p. 170; Mashburn, 1994; Roof & McKinney, 1987). Where “traditional” (i.e., ethnocentrically) storied resources rooted in a Judeo-Christian heritage had previously provided a familiar foundation for the practice of law, the 20th century witnessed the demographic diversification of law wherein “traditional” stories were increasingly at risk—a hallmark of modernistic communication.

The content of existing stories is challenged by the emergence of previously marginal or subordinated groups. The possibility of any set of stories serving as an adequate basis for coordination has been thrown into question as part of the disillusionment with modernity. (Pearce, 1989, p. 170-171)

In many ways, the tension between the ethnocentric practices of what was largely a homogenous profession and the modernistic practices of what is becoming an increasingly heterogeneous profession is still being negotiated in
the myriad discussions and debates regarding diversity and just what constitutes “professionalism” in the practice of law today.

Another contrast between ethnocentric communication and modernistic communication exists in the treatment of difference as it relates to professionalism and the practice of law. As Pearce articulates, “In ethnocentric communication, coordination is achieved by enacting patterns well known to all participants” (1989, p. 118), with explicit/formal patterns exemplified in codified books of law and legal “ethics” (wherein patterns of action are specifically described and deviation from them is punished) and implicit/informal patterns that are made formal/explicitly exemplified in etiquette books (wherein formulations of “common” practice are prescribed but deviation carries no official sanctions). Where the explicit/formal patterns are couched in terms of “must,” “shall,” and “shall not,” the implicit/informal made explicit/formal patterns are prefaced by the term “should” (ABA, 2010; Pearce, 1989). Of course, prescribed formulations of “common” practice are understood to be “common” among the right persons in much the same way “proper” etiquette among “cultivated” persons prescribes the use of a smaller fork when eating salad. It’s “not what is done but what should be done” (per the dictates of a “silent” minority authority) (Pearce, 1989, p. 119).

In the case of salad forks, “proper” etiquette originates among elitist, generally conservative ruling-class standards historically traceable to Victorian England. In the case of legal professionalism, it has been argued that “proper” etiquette originates among elitist, generally conservative large law firms.

According to what one legal scholar termed a “definitive study of large firms”
(Mashburn, 1994, p. 675), the large law firm has “been a central institution in the development of the distinctive norms and cultural understandings that define the ideal of professionalism for American lawyers” (Nelson, 1988, p. xi). From this perspective, “The ABA, like most professional organizations, ‘is under the effective control of a minority’ (Moore, 1970, p. 166). Large law firms dominate the active center of the legal profession’s organizations and associations” (Mashburn, 1994, p. 675).

Paradoxically, however, the rhetoric of legal professionalism also frequently adopts modernistic communication patterns wherein differences are framed as problems to be solved so that the profession can “progress.” In this view, the myriad differences separating attorneys need to be “solved” through a reductionist process, distilling the essential values that ideally constitute a common ground upon which all “rational” professionals can agree. Simply put, the professionalism project is conceived as nothing more and nothing less than a quest for commensurability. Unfortunately, the disparities between ethnocentric and modernistic patterns understandably create tension and confusion among legal practitioners and scholars. The ethnocentric reverence of tradition is found to be at odds with a modernistic faith in “progress.” The ethnocentric dichotomy of “us” vs. “them” is found to be at odds with a modernistic faith in “equality.”

While the modernistic, Enlightenment rhetoric of the legal profession portrays justice metaphorically and symbolically as blind and balanced, equal unto all (i.e., stories told), agonistic ethnocentrism defines most standard legal practices (i.e., stories lived).
A parallel can be found in the conflicting public pronouncements of science in contrast to the actual practices of scientists. According to Pearce, “The idealized version of the scientific method, which is only sometimes realized in practice, exemplifies modernistic communication” (1989, p. 143). Kuhn’s research (1962/1996) into the actual practices of scientists examining how they work, however, tells another story entirely.

Most of the time, scientists engage in ‘normal science,’ which is more like ethnocentric than modernistic communication. In ‘normal science’ they take a ‘paradigm’ as a set of resources with high contextual force, and they work out the ‘problems’ set by that paradigm. (Pearce, 1989, p. 143)

The same could be said for the practice of law. The idealized version of American jurisprudence is wholly modern, “with liberty and justice for all.” Most of the time, however, attorneys engage in “normal law,” which is more like ethnocentric than modernistic communication. In “normal law” legal precedent and tradition paradigmatically provide a set of resources with high contextual force, which lawyers then use to work out the “problems” set by the “paradigm.”

Just as Pearce notes how “the energies of scientists are oriented toward the weakest parts of their resources to which they are committed,” with scientists fully expecting “that the paradigm within which they work will change someday, perhaps as a result of their own work,” so too for the professional practices of lawyers. Attorneys routinely attack the weakest parts of their opponents’ arguments, fully cognizant that their efforts may perturb precedent and change legal traditions. Despite a public story firmly grounding laws and the practice of
law in facts, lawyers themselves readily admit that the negotiation of law is more akin to functional fictions forever amenable to amendment. It is in this context that I propose Pearce’s cosmopolitan communication as a resource for individual and organizational sensemaking to cope with a pluralistic profession struggling with the paradox of both equality and inequalities, similarities and differences, commensurability and incommensurability, facts and fictions.

To better understand how embracing cosmopolitan communication patterns can help address the limitations of both ethnocentric and modernistic communication, it helps to first appreciate the nature of moral orders. According to Pearce, “a ‘moral order’ includes a set of practices and resources that promotes morality” (1989, p. 57). Of course, this begs the question, what is morality? Rather than offering a definitive or normative definition, Pearce relates how humans in language have created elaborate systems of rules, rights, duties, and obligations that constitute myriad institutionalized “moral orders” into which we are born and within which we live out our lives. Conceptually this is reminiscent of Burke’s “unending conversation.”

Imagine that you enter a parlor. You come late. When you arrive, others have long preceded you, and they are engaged in a heated discussion, a discussion too heated for them to pause and tell you exactly what it is about. In fact, the discussion had already begun long before any of them got there, so that no one present is qualified to retrace for you all the steps that had gone before. You listen for awhile, until you decide that you have caught the tenor of the argument; then you put in your oar. Someone
answers; you answer them; another comes to your defense; another aligns himself against you, to either the embarrassment or gratification of your opponent, depending upon the quality of your ally’s assistance. However, the discussion is interminable. The hour grows late, you must depart. And you do depart, with the discussion still vigorously in process. (Burke, 1941, pp. 110-111)

“Moral orders,” Pearce explains, “are socially created, expressed, and (re)constructed in the practices of various groups of persons. There are many such moral orders, and persons are enmeshed in many of them simultaneously” (1989, p. 59). With various social roles (i.e., brother, sister, husband, wife, father, mother) come various social responsibilities, rights, expectations, and obligations, none of which are precisely identical.

According to Pearce, there are two types of situations in which our being variably enmeshed in multiple systems of moral orders creates problems. First, “a person may be equally enmeshed in two or more roles with conflicting moral obligations” (1989, p. 59). Take, for example, the case of a member of the U.S. Marine Corps who is sitting by his son’s hospital bed as the child struggles to stay alive after a tragic car accident that killed his mother. The phone rings and the father learns that he’s been called to active duty effective immediately. As a single father, he is obligated to care for his son. It’s his duty. As a Marine, he is obligated to report immediately to his superiors. It’s also his duty. Or take, for example, a high-powered litigation attorney working for a large law firm. It’s late, and as usual he’s at the office preparing for a big case that’s going to court early
the next morning. Suddenly the phone rings. It’s his wife. There’s been an accident, and his son is in the hospital. As a father, he feels obligated to be with his son in his time of need. As an attorney, he has responsibilities and obligations to his clients and his firm. A second type of situation in which problems occur is when persons “find themselves enmeshed in two or more moral orders, such that it is difficult even to compare the incompatible moral obligations” (Pearce, 1989, p. 59). Take, for example, the case of a geneticist conducting stem cell research who unexpectedly falls in love with a fundamentalist Christian abortion activist. Or consider the case of a fundamentalist Christian former Army officer turned attorney working for a large law firm who is suddenly assigned to defend a fundamentalist Muslim charged with committing terrorist acts against the government of the United States.

If we acknowledge that humans characteristically create and maintain myriad moral orders, with some rooted in monocultural communication patterns, others rooted in ethnocentric communication patterns, and still others rooted in modernistic communication patterns, then it’s not a stretch to also recognize why “coordination is inherently difficult in human communication because the meaning of messages is determined by their enmeshment in various moral orders whose content cannot be assumed to be either constant or commensurate with each other” (Pearce, 1989, p. 59). The meanings of actions and ideas, as such, are determined at least in part by their enmeshment in habituated logics of meaning and action born of individual worldviews as well as communally constituted and collectively shared paradigms and ideologies (which, accordingly,
cannot be expected to necessarily be commensurate). Worldviews, paradigms, ideologies, and ethics/morals are all resources comprising logics of meaning and action expressed, reflexively (re)constructed, and reified in daily practices. This becomes particularly significant when we stop to consider the ways in which legal pedagogy and practices have historically worked to obfuscate the impact and influence of moral orders on the administration of justice.

Working from the exceedingly modernistic and undeniably democratic belief in the separation of church and state, the pedagogical and pragmatic practices of law parallel those of science in promoting value neutrality. As stated earlier, in this light lawyers are nothing more than amoral technicians acting in the service of their clients, objectively overseeing the administration of “blind” justice. Nonetheless, the final four words of The Florida Bar’s Oath of Admission reads, “So help me God” (The Florida Bar, 2013b). In the practice of law, lawyers are simultaneously embedded in myriad moral orders, from their own philosophically and spiritually-based worldviews to a communal ideology that purports to promote the “objective” application of justice. The disparities between stories lived and stories told have not escaped the notice of legal scholars.

When the legal profession in its entirety purports to serve as the exclusive arbiter of professionally relevant values for all of its members, and those values embody particular conceptions of the good, the exercise of the profession’s authority is necessarily arbitrary in the eyes of many lawyers. While every lawyer may hear the bar’s attempts to transmit the values, it should be no surprise that far fewer actually listen. (Vischer, 2005, p. 42)
In a society founded on modernistic democratic ideals, ironically the promotion of value pluralism has to date remained a minority enterprise (Rhode, 2000; Wendel, 2000) and a form of abnormal discourse (Rorty, 1979).

By embracing cosmopolitan communication patterns, however, lawyers and legal practitioners can, in a sense, rise above the dualities and dichotomies that have traditionally divided society. In their embrace of the meta-constitutive modeling of communication, cosmopolitan patterns emphasize coordination over coherence, at once acknowledging the incompatibility of incommensurate social realities and yet, by going “meta-,” simultaneously allowing for the discursive comparability of incommensurate social realities. Cybernetic epistemologist Bradford Keeney refers to this concept as moving up an order of recursion, be it moving from an examination of a specific “behavior” to the “context” within which that behavior takes place or be it moving from an examination of a behavior’s “context” to a more encompassing description of the patterned “metacontext” within which the behavioral context takes place (1983, p. 41). As Keeney explains,

To move from one order of description to another within a system of analyzing experience requires an act of double description: That is, a view from each side of a relationship must be juxtaposed to generate a sense of the relationship as a whole. (1983, p. 41)

Here Keeney is building on Gregory Bateson’s notion of double description (1979). Though humans cannot perceive distance with only one eye, having two eyes allows us to combine alternative perceptions and in turn to perceive depth.
As Bateson relates, this "two-eyed way of seeing" is an act of comparison (1979, p. 87). Making such comparisons always involves dialectically taking into account both the similarities and differences of the objects being compared. In a parallel manner, by meta-discursively emphasizing the patterns of the various forms of communication, a cosmopolitan perspective emphasizes dialectics over dualities and dichotomies. Rather than positing autonomy opposite interdependence, self opposite society, a cosmopolitan communication perspective acknowledges "cybernetic complementarity" (Keeney, 1983)—not one, not two, but one and two.

Insofar as the professionalism project has languished, cybernetically speaking its very stagnation serves as a symptom of the organizational logic of its ecology. According to Keeney, “symptomatic communication always provides the direction for therapeutic change. In a sense, all a therapist does is provide a context in which a client can utilize his own resources to achieve the necessary change(s)” (1983, p. 8). Reflexively framing my involvement as a researcher as a form of organizational development and intervention, this means taking what the client (i.e., The Florida Bar) brings to me and proposing an alternative conversational context for organizational sensemaking. In promoting the adoption of meta-communicative practices, cosmopolitan communication is committed to achieving coordination without

1. denying the existence or humanity of ‘other’ ways of achieving coherence and mystery, as monocultural communication does; 2. deprecating or opposing 'other' ways of achieving coherence and mystery,
as ethnocentric communication does; or (3) being committed to a perpetual process of changing one’s own way of achieving coherence and mystery, as modernistic communication does. (Pearce, 1989, p. 169)

Achieving this commitment in practice, however, isn’t easy. Any attempt to implement the adoption of cosmopolitan communication patterns will face numerous challenges.

The most pronounced challenge originates in the social reality that many people simply do not believe in the ethical/moral view “that we should preserve a complex, nuanced understanding of the social world” (Foster & Bochner, 2008, p. 92). Neo-traditionalists (including many religious fundamentalists), for example, believe that ethnocentric communication patterns are Right, Just, and True. As such, and in response to the disillusionment they experience with modernity, they attempt to re-create the practices and resources of ethnocentric communication. Unfortunately, it’s just this sort of thinking that leads to violence and even genocide. Wiping out non-believers effectively removes the threat to one’s resources (i.e., one’s resources are no longer at risk). As Pearce notes in describing the practices of the New Christian Right,

> When acting morally, persons do not experience doubt or confusion, or worry much about the consequences of their actions. Because what they are doing is in obedience to God, they trust God to make sure that what God wants will be done. (1989, p. 159)

Unfortunately, in a world dominated by alethic logic biasing “truth-bearing assertions” (Pearce Associates, 2004, p. 27) which teaches that “ethics is the
branch of philosophy that deals with issues of right and wrong in human affairs" (Lucas, 2009, p. 30), simplicity tends to trump complexity and naïve interpretations tend to trump a nuanced understanding of the social world. Embracing cosmopolitan patterns of communication requires challenging long-standing epistemological, ontological, and legal assumptions and expectations as the participants are deeply enmeshed and invested in their current logics of meaning and action and are neuronally entrenched in their patterns and practices.

An additional challenge exists in the cost and conflict involved in institutionally acknowledging the diversity of values and the plurality at play in the practices of law (Rhode, 2000; Vischer, 2005). In a capitalist economy, one cannot ignore the priority of profits. In taking a communication perspective and embracing a cosmopolitan form of communication, you begin to see how everything is systemically connected, a move that conceptually problematizes the foundations of individual rights by acknowledging the arbitrary punctuations, categorizations, and classifications upon which our legal traditions are founded. Confronting such assumptions is, in many ways, akin to opening Pandora’s box. It doesn’t mean that we can’t construct conversations in which we agree to disagree, acknowledging incommensurate realities about what constitutes individual as opposed to collective rights and individual as opposed to collective frames, but it does entail creating a very different moral order and a very different set of ethics (i.e., habituated logics of meaning and action). While it doesn’t
mean that the law can’t be an adversarial process, myriad aspects in the
adversarial process would have to change.

Nonetheless, practically speaking, The Florida Bar has already created a
small opening for adopting cosmopolitan communication insofar as it has
explicitly expressed a desire for continuing legal education (CLE) courses that:

- “…create a forum in which lawyers, judges and legal educators can
  explore and reflect upon the meaning and goals of professionalism in
  contemporary legal practice” (The Florida Bar, 2009a; “the general goal”).
- “…encourage introspection and dialogue about [professionalism] issues”
  (The Florida Bar, 2009a; “a major goal”).
- “…provide for smaller, more intensive groups” (The Florida Bar, 2009a).
- “…present the sorts of problems lawyers typically face, and [that] search
  for solutions or ways of thinking about these problems” (The Florida Bar,
  2009a).
- “…confront the question, ‘How will you handle this situation when it occurs
  in your practice?’” (The Florida Bar, 2009a).
- “…generate thought-provoking and introspective discussion among the
  participants about the meaning of professionalism in contemporary legal
  practice” (The Florida Bar, 2009a).
- “If successful… will inculcate a habit of talking with colleagues and
  engaging in dialogue that is essential to a healthy professional life” (The
  Florida Bar, 2009a).
- “…will encourage the habit of reflection” (The Florida Bar, 2009a).
- “...will also deepen one’s awareness of a lawyer's particular professional situation” (The Florida Bar, 2009a).
- “...strive to cultivate [the capacity for critical and] reflective judgment about the practice of law and to assess how well current practices are serving the legal profession and the system of justice in light of the traditions of our practice” (The Florida Bar, 2009a).
- address “the lawyer’s responsibility to perceive and protect the image of the profession” (The Florida Bar, 2009a).
- address “the responsibility of the lawyer to the public generally and to public service” (The Florida Bar, 2009a).

In its articulated CLE purposes, goals, standards, and results desired, The Florida Bar has acknowledged its needs and afforded opportunities for dialogic, dialectic organizational change.

Notably, however, the general and specific goals outlined under The Florida Bar’s “CLE Guidelines” (2009a) are not explicitly cited as approved subjects of discussion at CLE events, highlighting a lack of reflexive thinking on the part of The Florida Bar. This is quite ironic in light of its stated call for cultivating critical and reflective judgment about the practice of law, particularly with regard to how current practices are serving the legal profession and the system of justice in light of the traditions of practice. Despite the well documented “crisis” of professionalism and The Florida Bar’s expressed desire to find a solution to the problem, “ethics” and “professionalism” are NOT explicitly identified as approved CLE subjects, implicitly undermining the development of
critical and reflective (reflexive) judgment—what The Florida Bar has identified as “the real issue facing lawyers and professionals” (2009a).

**Research Questions**

The following set of questions constitutes the focus of my dissertation.

(\textit{Note: RQ1 = Research Question One.})

\textbf{RQ1}: What concepts and ideas (i.e., communication resources) does the legal community currently have to make sense of the \textit{ethics} and \textit{professionalism} of its members?

\textbf{RQ2}: What concepts and ideas does the legal community have for evaluating the compliance and competency of its members with regard to \textit{ethics} and \textit{professionalism}?

\textbf{RQ3}: Given the legal community’s existing concepts and ideas regarding \textit{ethics} and \textit{professionalism}, what kinds of behaviors are encouraged or discouraged?

\textbf{RQ4}: How might increased awareness of the behaviors that are encouraged and discouraged prompt different choices of terms, concepts, and ideas?

Note that I’ve attempted to combine both “What…?” and “How…?” questions to address the interdependence of communication resources and practices (Pearce, 1989). \textit{What} questions get at \textit{resources}. \textit{How} questions get at \textit{practices}. 
Chapter Three. Research Methodology

The World Café: A Methodology of/for Inquiry

The following describes the ways in which this research engages World Café conversational design principles in the study of ethics and professionalism in the context of legal practices (among legal communities of practice).

Doing research is a process of pragmatically acknowledging and engaging myriad stakeholders, voices, and worldviews. As a researcher, I found the World Café’s respect for voice particularly appealing. Insofar as it’s a conversational method of inquiry, it honors the dialectics of self/society and individuality/collectivity.

The World Café already has an impressive track record in inter-generational research, conflict research, and community research (locally and globally). As a new contribution to Burke’s “unending dialogue,” I applied the Café methodology to the practices and profession of law, examining language use and meaning making among legal practitioners and in legal communities of practice. More specifically, I applied a World Café research methodology to examine the problematics of ethics and professionalism in the practice of law.

The World Café (Brown, Isaacs, and the World Café Community, 2005) provides a ready-made method of inquiry ideally suited for the purposes of this research project. “World Café conversations are especially useful for these purposes and in these circumstances: For sharing knowledge, stimulating
innovative thinking, building community, and exploring possibilities around real-life issues and questions” (Brown et al., 2005, p. 162). Taking into account the stagnant rhetorical state of affairs concerning ethics and professionalism in the legal community, the World Café offered an opportunity to do something different.

The café format has few “rules” per se. Rather, it promotes seven guiding principles for hosting conversations that matter. “The following set of seven integrated World Café principles, when used in combination, can help to intentionally engage the power of conversation for business and social value” (Brown et al., 2005, p. 174). I employed the seven principles as a process to host conversations that matter and as a process to conduct research that matters.

**Principle 1: Set the Context**

The first World Café principle involves clarifying “the purpose and broad parameters within which the dialogue will unfold” (Brown et al., 2005, p. 40). Since I knew lawyers generally don’t like to do things without adequate information, I drafted a short executive summary for the event to distribute to prospective attendees framing the proposed event (http://www.ketchcom.net/ethics2013.html). The webpage offered an executive summary, the proposed event agenda, and my contact information.

**Principle 2: Create Hospitable Space**

The World Café Continuing Legal Education (CLE) workshop was held in the Mann Lounge on the campus of Stetson University College of Law in
Gulfport, Florida. The venue was quite large and comfortably accommodated the 13 attendees with 3-4 people seated at each of four tables that were provided. Each table was covered with white butcher-block paper on top of which were several Post-it note pads, an assortment of colored pencils, and a green vase with a single Gerbera flower. In front of each seat I also placed a copy of the day’s agenda on the table for each of the attendees. The event was also catered, including sweetened ice tea, unsweetened ice tea, freshly brewed regular and decaffeinated coffee, a hot tea service, iced water, fresh seasonal fruit, and assorted cheeses and crackers.

**Principle 3: Explore Questions That Matter**

The third World Café principle involves focusing “collective attention on powerful questions that attract collaborative engagement” (Brown et al., 2005, p. 40). Originally I’d hoped to select one powerful question working with my dissertation committee members. I liked the simplicity of focusing on a single point of inquiry. Taking into consideration the World Café format, however, I ultimately incorporated a tiered or “funnel” approach to the World Café questioning/conversational process (per Dr. Eisenberg's recommendation). The event itself began with two opening or “framing” questions. Next, attendees were asked to explore the reasoning behind their communication choices as well as the origins of those choices. Finally, attendees were tasked with assessing collective lessons learned and considering opportunities for action (i.e., pragmatic application).
To address the issue of “exploring questions that matter” with legal practitioners, at my committee’s recommendation I incorporated five individual interviews with co-sponsoring conversational informants prior to the actual World Café workshop to aid in generating the most useful event questions.

Pragmatically, one of the most efficient ways to know whether I was asking questions that mattered was to ask the legal practitioners themselves. As such, each of the interviewees was a member of the Florida legal community with whom I engaged in a dialogue about the asking of questions that matter and the role of asking good questions (i.e., inquiry) in democratic societies. My goal with the interviews was to ascertain if the questions I was proposing to ask were powerful questions that would attract collaborative engagement among legal professionals regarding ethics and professionalism. The questions were designed to address identified needs (individually and organizationally), extending and expanding Burke’s “unending conversation” about the ideals and goals of professionalism, The Florida Bar’s CLE guidelines, The Florida Bar’s strategic objectives, and The Florida Bar Voluntary Bar Association’s programmatic diversity leadership efforts.

The agenda for the pre-event individual interviews was as follows. First, I opened by briefly re-iterating the purpose and goal(s) of the proposed World Café event and confirming that each interviewee had received a copy of the pre-event interview agenda and questions as well as an executive summary of the proposed event by email prior to the actual interview. According to Akella, providing interviewees with the interview questions in advance “results in more
concrete and specific answers. It also generates an atmosphere of openness and trust which helps in the collection of empirical data” (2008, p. 104).

Second, I briefly reviewed an initial set of questions I’d considered using during the workshop (a.k.a. “Original World Café Questions”) as well as a second set of “Updated World Café Questions” that I’d generated based on several “pre-pre-interviews” conducted at the recommendation of Dr. Steier and in consultation with Dr. Eisenberg to ascertain which set of questions each interviewee considered most likely to successfully evoke productive responses from the World Café attendees. I emphasized that ultimately I was interested in generating questions that matter.

**Original World Café Questions**

- **Q1.** “What do you (individually) mean when you reference the terms ethics and professionalism?”
- **Q2.** “How might we explain the diversity of definitions? Where do they come from (originate)? How can they co-exist?”
- **Q3.** “What have we collectively learned in our conversations today, and what do we do now? What might we do with the information, insight, and inspiration resulting from our collective inquiry? What might we do with this new knowledge and perspective?”

**“Updated” World Café Questions**

- **Q1 (First Course).** Based on your experience, please describe how you have come to define the term professionalism? How is the term used in the legal field in general?
• Q2 (Second Course). Based on your own experience, please describe based on your own experience how you have come to define the term *ethics*? How is the term used in the legal field in general?

• Q3 (Third Course). How might we explain the diversity of definitions (if, indeed, there are a diversity of definitions)? Where do they come from (originate), and how can they co-exist?

• Q4 (Fourth Course). What have we collectively learned in our conversations today, and what do we do *now*? What might we do with this insight and information, this new knowledge and perspective?

Third, I asked the interviewees to respond to the four questions I had emailed them prior to our meeting. (1) From your perspective as a prospective attendee, do the proposed event questions matter? (2) If so, *how* do they matter? (3) If so, *to/for whom* do the questions matter (i.e., who do you perceive as the relevant stakeholders)? (4) In what ways does our even *asking* the questions matter (reflexively)?

Fourth, I asked each interviewee if he had any additional recommendations as to how I might best proceed based on his understanding of the proposed collective exploration (particularly with regard to inviting additional attendees).

Recognizing that the interviewees were *extremely* busy, I explained up front that for the collective exploration to be of maximum value they’d ideally be able to commit not only to the initial pre-event interview but also to attendance at the event and participation in the post-event focus group. I further explained,
however, that commitment to all three facets of the collective exploration (the pre-event interview, the event, and the post-event focus group) was not an absolute requirement for participation. Ultimately, only two of the five interviewees were able to attend the actual World Café CLE workshop.

**Principle 4: Encourage Everyone’s Contribution**

One of the nicest things about the Café format is the way it’s purpose built to encourage interpersonal conversations and facilitate individual contributions—the source of organizational/collective knowledge (intelligence/mind). The best way I felt I could encourage everyone’s contribution was to coordinate and contextualize the meeting (i.e., be a good host) then let the attending conversationalists do most of the heavy lifting. In an effort to honor every individual’s contribution and expertise, I distributed blank nametags during the sign in at the start of the event, asking each attendee to write his or her first name only on the blank nametag.

**Principle 5: Cross-Pollinate and Connect Diverse Perspectives**

The fifth World Café principle involves using “the living system dynamics of emergence through intentionally increasing the diversity of perspectives and density of connections while retaining a common focus on core questions” (Brown et al., 2005, p. 40). The Café format is purpose built for modeling living system dynamics of emergence. From the beginning I attempted to further facilitate the dynamics of emergence by systematically seeding the conversational soil in preparation for the event. I did this in part by providing every prospective attendee an executive summary (including an introduction and
statement of the problem, an overview and summary of the event, a list of the event goals and objectives, and a list detailing the practical and theoretical significance of the event) along with a copy of the half-day workshop agenda, contact information for both the principal investigator and my doctoral advisor, and an acknowledgment of the event’s sponsors. Each prospective attendee was also informed that that information was available online at www.ketchcom.net/ethics2013.html.

**Principle 6: Listen Together for Patterns, Insights, and Deeper Questions**

The sixth World Café principle involves focusing “shared attention in ways that nurture coherence of thought without losing individual contributions” (Brown et al., 2005, p. 40). Patterns help us organize and make sense of chaos and nonsense. Patterns often serve as sources of insight and are found at the heart of inquiry (from Einstein’s space-time to Foucault’s power-knowledge for example).²

In addition to encouraging event participants to listen for patterns and insights *during* the myriad conversations that ultimately constituted the event, specific time was also allotted for collective reflection (i.e., relational debriefing) in the second half of the event. A “Debriefing and Feedback” session that concluded the event proper was followed by a one-hour post-event focus group (to which all attendees were invited to stay and participate). During the post-event focus group, I asked three questions.

² Note that I take issue, however, with the notion of “deeper questions” insofar as such wording implies foundational thinking. Listen for intriguing questions? OK. Listen for pragmatic questions (i.e., questions that matter)? Obviously. But what makes questions “deeper”? What constitutes “deeper”? Whatever makes one question “deeper” than another is arbitrary and a matter of opinion (popular or otherwise).
• What did you experience moving through the World Café today?
• What worked and what didn’t?
• Do you have any recommendations for how the data collected during the course of today’s World Café might best be utilized in support of The Florida Bar’s existing ethics and professionalism efforts?

The data for this research included five interview transcripts resulting from four hours and 16 minutes of digital audio recordings, transcripts from the World Café CLE “Town Hall Debriefing and Feedback” session culled from 54 minutes of a digital audio recording, and transcripts from the World Café CLE “Post-Event Focus Group” culled from 55 minutes of a digital audio recording, as well as “table notes” and “sticky notes” that were created by the World Café CLE participants during the event. “Table notes” were the musings and observations attendees wrote down on the butcher-block paper covering the tables. Each table was also provided with numerous Post-it® note pads on which attendees recorded their observations and insights with the understanding that their “sticky notes” would later be used as conversational fodder during the “Town Hall Debriefing and Feedback” session at the end of the day.

Thematic Analysis. From the collected transcripts and field notes I used thematic analysis (Scott, 2005; Shanley, 2007) and a constant comparative or grounded theory method (Glaser & Strauss, 1967) to identify key words, phrases, categories, and themes. According to Shanley, thematic analysis is useful “to draw out themes in the interview transcripts, and to develop interpretations and connections to the literature” (2007, p. 700).
Themes are often identified not by the specific content items in a set of data but by the more general concepts that emerge and give the set of data meaning. Thematic analysis is interested in how each person responds to the different interview questions and how different people responded to the same questions. (Shanley, 2007, p. 705)

For my research, this involved first reading through all of the transcripts in their entirety, identifying areas in which the interviewees addressed issues related to ethics and professionalism and developing an initial understanding of interviewees’ cultural perspectives on ethics and professionalism as they related to the practice of law in Florida. Then I did a second reading, specifically noting sections wherein the interviewees addressed terms directly and indirectly related to ethics and professionalism. This was followed by a third reading in which I focused on the sections previously identified and began to surface emergent categories. Following Scott’s lead, I then employed a constant comparative or grounded theory method to delineate broad themes. To further refine the emergent key words, phrases, and categories, I finally re-examined the categories and themes relative to one another “in an effort to refine them and begin looking for tensions and contradictions between them” (Scott, 2005, p. 246).

**Principle 7: Harvest and Share Collective Discoveries**

The seventh World Café principle involves making “collective knowledge and insight visible and actionable” (Brown et al., 2005, p. 40). Conceptually, this
principle also constitutes my method of inscription (in contrast to my methodology of/for inquiry).

Fundamentally, the process of hosting a World Café is a community affair. I think the same should, will, and must be true of the products that emerge from the event. With that in mind, I intend to make the collectively created capta/data available to everyone involved, with the work products emerging from the process becoming conversational and relational resources for all to share (providing everyone is equally willing to share). Work products I foresee ultimately emerging from the event include:

- A compiled list of the participants’ comments as recorded in their “table notes” (i.e., notes written on the butcher-block paper covering the tables) and “sticky notes” (i.e., notes recorded on Post-it® pads).
- Digital audio recordings and accompanying transcripts for the pre-event interviews, the “Town Hall Debriefing and Feedback” session, and the “Post-Event Focus Group.” (Unfortunately, due to guarantees of anonymity these items cannot be shared publicly. Upon completion of this dissertation, however, permission to share this information may be sought from each of the participants.)
- This dissertation.
- An article for submission to The Florida Bar Journal, the ABA’s Law Practice Management, or a progressive law review. The article would likely be a solo project but it may alternatively be a co-authored piece written in coordination with one or more of the event attendees.
New relationships among the attendees (i.e., community building).

While this one might be a stretch in terms of being a “work product,” as a group the event attendees were organizing for the purposes of work. As such, I’ve included it here to emphasize the often taken-for-granted value of conversational, relational, and networking resource development. New relationships did emerge as a direct result of this event, building a community among the lawyers of the state of Florida in word and deed. This strategically aligns with the “General Purposes” from the Henry Latimer Center for Professionalism’s CLE Guidelines.

The general goal of the professionalism CLE requirement is to create a forum in which lawyers, judges and legal educators can explore and reflect upon the meaning and goals of professionalism in contemporary legal practice. Building a community among the lawyers of this state is a specific goal of this requirement. (The Florida Bar, 2009a)

Ideally, once this dissertation is finalized, I intend to disseminate a post-event follow-up report among all of the event attendees, further encouraging that they share it with their professional (and unprofessional), ethical (and unethical) colleagues. In doing so, I will be making “collective knowledge and insight visible and actionable” (Steier, Gyllenpalm, Brown, & Bredemeyer, 2008, p. 8).
Engaging the World Café as a Research Methodology: In Summary

By engaging the World Café as a qualitative methodology to specifically focus on legal pedagogy and legal practices, this research makes a methodological contribution. This section is an attempt to consolidate and summarize how I employed a World Café research methodology.

First and foremost, it’s important to have an awareness of the scope of what it means to engage a conversational meeting format as a method of inquiry (i.e., a research methodology). Rather than conceptualizing the research “capta” as emerging in the outcomes of Principles 6 (listening together) and 7 (harvesting and sharing collective discoveries), it’s important to acknowledge that “data” emerged throughout the process, beginning when I attempted to set the context (well before the event was ever held).

In an ideal action research world, I would have been able to consult all of my attendees before the event itself and inquire as to the perceived relevance of the questions I proposed we consider (thus exploring to see if my questions were actually questions that matter for that specific group of individuals, and if so how they mattered). Unfortunately, expediency demanded otherwise. Pragmatically, I was unable to know who would ultimately attend the event until the day of the event. As such, I interviewed representative members of the legal community who were willing to volunteer their time and insight. Though three of the five had intended to attend the World Café CLE, only two ultimately attended. As described earlier, an initial set of proposed event questions were worked out in coordination with my dissertation committee. Then, during the pre-event
interviews, I garnered feedback from interviewees comparing the initial set of
proposed questions to a second set of “updated” questions worked out in
collaboration with members of the legal community and my dissertation advisor.

In terms of encouraging everyone’s contribution (Principle 4), attendee’s
were asked to identify themselves by their first names only (on their name tags)
in an effort to keep the conversations personal and honor each individual’s voice
and expertise. In an effort to cross-pollinate and connect diverse perspectives
(Principle 5), I invited a diverse array of legal professionals and members of the
legal community from law students to Florida Supreme Court judges. This topic,
however, will be addressed more at length in the final discussion chapter of this
dissertation.

**Agenda: Half-Day Workshop**

Building on the theme of a four-course café, the event was designed to
begin with a short sign in, sit down, and socialize period followed by a brief
introduction in which I would introduce myself as the host and then briefly review
the World Café conversational meeting format to help clarify expectations.

The “Introductions and Expectations” period would be followed by three
“courses” in succession in which attendees would be asked to address several
questions in succession (EQ1-EQ3). The three courses would then be followed
by a “working” break in which attendees would be encouraged to add their
essential “sticky ideas” to a “Wall of Inquiry” (documenting and displaying the
group’s collective knowledge). While we “can never actually capture the whole of
what has occurred in a Café dialogue because each individual makes his or her
own sense of it... By inviting multiple perspectives on the essence of what’s been discovered, the group, together, can point toward the deeper knowledge of what’s most important” (Brown et al., 2005, p. 146)

The “working” break would be followed by a fourth course in which participants would be asked to return to their original tables (i.e., the tables where they started in the morning). Everyone would then be asked to focus on **EQ4**: “What have we collectively learned in our conversations today, and what do we do now? What might we do with this insight and information, this new knowledge and perspective?” Participants would be asked to continue looking for patterns, insights, and opportunities for further inquiry, reviewing and summarizing their conversations, insights, and observations.

Reconvening as a whole, the last hour would be spent debriefing the “Wall of Inquiry,” ultimately closing the session with an informal “Town Hall” style debriefing and feedback session. The event proper would then be followed by a one-hour post-event focus group.

The following table outlines the half-day agenda.

*Table 1. Half-Day Event Agenda*

<table>
<thead>
<tr>
<th>Time</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>30 min.</td>
<td>11:30 a.m. – 12:00 p.m.</td>
</tr>
<tr>
<td>15 min.</td>
<td>12:00 p.m. – 12:15 p.m.</td>
</tr>
</tbody>
</table>
| 30 min.  | 12:15 p.m. – 12:45 p.m. | **I. First Course.**  
**Q1:** Based on your experience, what do you (individually) mean when you reference the term *ethics*? |
| 30 min.  | 12:45 p.m. – 1:15 p.m. | **II. Second Course.**  
**Q2:** Based on your experience, what do you (individually) mean when you reference the term *professionalism*? |
Table 1 (Continued)

<table>
<thead>
<tr>
<th>Time</th>
<th>Duration</th>
<th>Time</th>
<th>Event</th>
</tr>
</thead>
</table>
| 30 min |          | 1:15 p.m. – 1:45 p.m. | III. Third Course.  
Q3: How might we explain the diversity of definitions (if, indeed, there are a diversity of definitions)? Where do they come from (originate), and what are the consequences of this divergence? |
| 45 min |          | 1:45 p.m. – 2:30 p.m. | A “Working” Break: The Wall of Inquiry  
Attendees will be encouraged to add their essential “sticky ideas” to a “Wall of Inquiry” (documenting and displaying the group’s collective knowledge). While we “can never actually capture the whole of what has occurred in a Café dialogue because each individual makes his or her own sense of it…” By inviting multiple perspectives on the essence of what’s been discovered, the group, together, can point toward the deeper knowledge of what’s most important” (Brown, Isaacs, and the World Café Community, 2005, p. 146) |
| 30 min |          | 2:30 p.m. – 3:00 p.m. | IV. Fourth Course.  
Q4: What have we collectively learned in our conversations today, and what do we do now? What might we do with this insight and information, this new knowledge and perspective? |
| 60 min |          | 3:00 p.m. – 4:00 p.m. | Debriefing and Feedback.  
Reconvening as a whole, we’ll end the morning by debriefing the “Wall of Inquiry,” ultimately closing the session with informal “Town Hall” style feedback. |
| 60 min |          | 4:00 p.m. – 5:00 p.m. | Post-Event Focus Group. |

Organizational Goals and Objectives

After years of research and countless hours ruminating on words like civility, professionalism, ethics, and diversity, I identified a nexus of needs and opportunities. This research academically and pragmatically addresses a complex web of organizational goals and objectives (see Table 2), strategically aligning and uniting efforts on behalf of The Florida Bar per its Ideals and Goals of Professionalism (2009b), CLE Guidelines (2009a), 2010-2013 Strategic Objectives (n.d.c), and 2013-2016 Strategic Objectives (n.d.d.); The Florida Bar Voluntary Bar Association per its “Diversity Leadership Grant” program (n.d.a; n.d.b; 2010); and the University of South Florida. The goals and objectives of The Florida Bar are as follows:
Table 2. The Florida Bar: Strategic Organizational Goals and Objectives

<table>
<thead>
<tr>
<th>Strategic Organizational Documentation</th>
<th>Organizational Goals and Objectives</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>The Florida Bar: Ideals and Goals of Professionalism</strong></td>
<td>1. To enhance attendees’ knowledge and skills.</td>
</tr>
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<td></td>
<td>2. To further the profession’s commitment to serving others and to promoting public good.</td>
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<td></td>
<td>3. To educate the public about the capabilities and limits of the profession.</td>
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<td></td>
<td>4. To inculcate a desire to uphold professional standards and foster peer regulation to ensure competence and public-spiritedness.</td>
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<tr>
<td><strong>The Florida Bar: CLE Guidelines</strong></td>
<td>5. To design and implement a forum wherein lawyers, judges, and law students can explore the meaning of professionalism.</td>
</tr>
<tr>
<td></td>
<td>6. To create a forum in which legal practitioners (i.e., lawyers, judges, legal educators, law students, and legal paraprofessionals) and the lay public can together explore and reflect upon the meaning and goals of professionalism in contemporary legal practice.</td>
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<tr>
<td></td>
<td>7. To facilitate networking and community building among Florida lawyers.</td>
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<td></td>
<td>8. To encourage introspection and dialogue about the aspirational standards contained in the <em>Ideals and Goals of Professionalism</em>, including:</td>
</tr>
</tbody>
</table>
Table 2 (Continued)

<table>
<thead>
<tr>
<th>The Florida Bar: 2010-2013 Strategic Objectives</th>
<th>16. To promote the legal profession and positively impact public perception of lawyers and the practice of law.</th>
</tr>
</thead>
<tbody>
<tr>
<td>17. To enhance and improve the value of Florida Bar membership.</td>
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</tbody>
</table>

9. To explore more creative, introspective, and interactive methods for presenting professionalism issues in the CLE course.

10. To identify and discuss models of behavior and professional values.

11. To confront the question, “How will you handle use of the terms ethics and professionalism in your daily practices?”

12. To generate thought-provoking and introspective discussion about the meaning of professionalism in contemporary legal practice.

13. To inculcate a habit of talking with colleagues and engaging in reflective dialogue.

14. To develop attendees’ capacities for critical and reflective inquiry and judgment about the practice of law.

15. To assess how well current practices are serving the legal profession and the system of justice in light of the profession’s traditions of practice.
| The Florida Bar:  
2013-2016 Strategic Objectives | 18. To enhance and improve The Florida Bar’s relationship with its members.  
19. To enhance the legal profession and the public’s trust and confidence in attorneys and the justice system.  
20. To enhance and improve the value of Florida Bar membership and the Bar’s relationship with its members.  
21. To continue to encourage and promote diversity and inclusion in all aspects of the profession and the justice system. |
| The Florida Bar:  
Voluntary Bar Association  
“Diversity Leadership Grant” | 22. To foster an inclusive environment in which lawyers are motivated to success professionally and contribute to the goals of the legal profession.  
23. To increase knowledge and awareness of diversity and cultural competency.  
24. To increase participation and representation in local and specialty bars.  
25. To improve diversity in legal education and The Florida Bar. |

*Note.* The numbers assigned to the referenced goals and objectives have been specifically (albeit arbitrarily) assigned for organizing purposes of this research.

By tactically addressing the combined goals and objectives in a single half-day event, this research at once strategically and pragmatically aligned individual,  

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3 *Note:* Here I’m positing (A) The Florida Bar’s administration/executives relationship with the organization’s members and (B) The Florida Bar as a collective of individual members’ networked relationships. Either way, this gets at interpersonal communication, organizational communication, and community building.
organizational, institutional/structural, and social needs in an effort to improve the present situation (The Florida Bar, n.d.a.).
Chapter Four. Results

The following chapter outlines the results of my research. More specifically, the chapter opens by describing the three stages of the research project as they transpired, including the five pre-event interviews, the four-hour World Café Continuing Legal Education (CLE) program, and the one-hour post-event focus group. This is followed by a detailed presentation of the keywords and themes that emerged from the data in response to the four identified research questions. Note that the interview and event transcripts are provided in full as appendices. To facilitate a fluid reading of the research results, however, I have also provided “in-line” transcript quotations and thematic sub-headings when and where appropriate.

Pre-Event Interviews

In preparation for the actual World Café CLE, I conducted five pre-event interviews over the course of 27 days between May 8, 2013, and June 4, 2013. In duration, the interviews ranged from just over 15 minutes to just shy of 75 minutes, with a median interview time of roughly 51 minutes. One interview was conducted in person at a restaurant in Clearwater, Florida, with the remaining four interviews conducted by telephone. Despite attempts to obtain gender and racial variability, all five of the interviewees were male (four Caucasians and one Hispanic-American). One interviewee was a solo legal practitioner, one interviewee was a shareholder at a medium-sized law firm and a former officer of
The Florida Bar, one interviewee is an executive with The Florida Bar, and two interviewees were former Florida Supreme Court justices.

**World Café Continuing Legal Education (CLE) Program**

On Friday, June 7, 2013, a four-hour CLE program was conducted employing the World Café meeting format and principles. The program formally convened at 12:10 p.m. and promptly concluded at 4 p.m. Engaging a dining metaphor, the World Café included four “courses.” Prior to the start of the event, as attendees arrived they were encouraged to get a cup of coffee or tea and socialize. This was followed by a brief introduction from 12:00 p.m. to 12:25 p.m. in which I introduced myself as the host and provided a very general overview of the World Café conversational meeting format to help clarify expectations.

The first “course” ran from 12:25 p.m. to 1:10 p.m. (lasting ~45 minutes). The second “course” ran from 1:10 p.m. to 1:45 p.m. (~35 minutes). The third “course” ran from 1:49 p.m. to 2:20 p.m. (~31 minutes). Though the original agenda called for a working break followed by a separate fourth “course,” the two were combined on the day of the event due to time constraints. Thirteen people ultimately attended the program, with two individuals arriving 25 minutes late and one arriving 45 minutes late. Despite extensive attempts to obtain gender, racial, ethnic, practice area, and legal role diversity, there were nine males and four females* in attendance (12 Caucasians, 1 African-American*). Attendees legal roles included three solo practitioners with practices in the greater Tampa Bay area, one shareholder at a medium-sized south Florida law firm who also formerly served as an officer of The Florida Bar, one attorney from a large Florida
law firm, a retired shareholder of a large south Florida law firm, three Florida law school faculty members, and four principals at small law firms in the greater Tampa Bay area.

*Post-Event Focus Group*

A one-hour focus group was held from 4 p.m. to 5 p.m. immediately following the World Café CLE program. At 4 p.m. I explained that the formal CLE was concluded but that I would be hosting an informal, one-hour post-event focus group as part of my dissertation. I invited everyone to stick around and assist me with gathering quality data both for my dissertation and to help me facilitate a better World Café the next time around. Three people chose to contribute their feedback (two males and a female, all Caucasians). Two of the post-event focus group attendees were solo practitioners (one of whom also formerly held both a faculty and an administrative position at a Florida law school). The third post-event focus group attendee was a full-time Florida law school faculty member (who possessed both a J.D. and a communication Ph.D.).

*Research Question 1: Responses and Emergent Themes*

The following section addresses the themes that emerged from keyword coding of the data in response to my first research question (RQ1), “What concepts and ideas (i.e., communication resources) does the legal community currently have to make sense of the ethics and professionalism of its members?” As was noted earlier in the “Literature Review” section, communication resources are conceptualized as ways of understanding or facilitating coherence, comprising “the stories, images, symbols, and institutions that persons use to
make their world meaningful” (Pearce, 1989, p. 22). Thematically six categories surfaced, though admittedly the thematic categories were by far not “clean” and distinct insofar as several items failed to fit neatly into any single category. The categories included (1) “Formal” Communication Resources, (2) Accountability, (3) The Practice of Law in a Market Society, (4) Community & Demography, (5) Pedagogy & Mentoring, and (6) Psychology.

1. “Formal” Communication Resources

The first thematic category (“Formal” Communication Resources) includes all of the formally organized bodies, programs, committees, and documents that surfaced in the course of the interviews, the World Café event, and the post-event focus group.

Organized bodies, programs, and committees that were referenced included The Florida Bar Board of Governors, the Attorney Consumer Assistance and Intake Program (ACAP), Circuit Committees on Professionalism, Local Grievance Committees, Circuit Professionalism Peer Review Programs (though only one of these, the “Professionalism Implementation Program” in the 6th Circuit Court, was explicitly mentioned), The Florida Bar’s Ethics Hotline, Continuing Legal Education (CLE) coursework, and the American Inns of Court.

The “formal” documents that were referenced included The Florida Bar’s Oath of Admission (The Florida Bar, 2013b), the American Bar Association’s Model Rules of Professional Conduct (13th ed.) (ABA, 2013), the “Rules Regulating The Florida Bar” (The Florida Bar, 2013c), Florida Supreme Court Opinion “SC13-688: Code for Resolving Professionalism Complaints” (Florida
Supreme Court, 2013), and the “formal” definitions of ethics and professionalism per The Florida Bar. Though the definitions are outlined by The Florida Bar in several disparate documents including its Oath of Admission (The Florida Bar, 2013b), CLE Guidelines (The Florida Bar, 2009a), Creed of Professionalism (The Florida Bar, 2013a), Ideals and Goals of Professionalism (The Florida Bar, 2009b), The Standing Committee’s Working Definition of Professionalism (The Florida Bar, 2012b), and The Rules Regulating The Florida Bar (The Florida Bar, 2013c), it was notable that only the Oath of Admission and The Rules Regulating The Florida Bar were explicitly addressed.

Another point worth mentioning is that the Florida Supreme Court had issued Opinion SC13-688 on Thursday, June 6, 2013, just one day before the World Café CLE program. In light of the event’s focus on ethics and professionalism in the practices of law in Florida, one attendee saw fit to bring a copy to the event to insure that our discussion included the latest developments with regard to the appropriate processes and bodies involved in resolving professionalism complaints. Another attendee also saw fit to bring a copy of the American Bar Association’s Model Rules of Professional Conduct (13th ed.) which ultimately was cracked open during the course of the afternoon and used as a reference to inform one table’s conversation.

2. Accountability

The second thematic category that emerged from the data I’ve labeled broadly as “Accountability.” It includes references to motivations, expectations, and consequences as well as comments about enforcement and sanctions.
With respect to the motivations behind how lawyers make sense of ethics and professionalism, one of the program attendees noted during the town hall debriefing and feedback session at the end of the day, “The problem with following the rules… I can follow them but not give a damn about them” (Participant #11). Another attendee had written a sticky note expressing a similar sentiment, “Lawyers are taught how to get around Rules.”

A conversational exchange during the post-event focus group further illuminated this point and the issue of accountability with regard to motivations, expectations, and consequences.

Ya know, I think it was… is it Holmes that the bad man… was it Holmes that… that you write the law for the bad man… (Participant #7)

Oh yeah… (Participant #15)

…and there’s the countervailing view which is you write the law… you… you follow the law because they want to, right? I mean… I’m trying to think back… those are original jurisprudence things. (Participant #7)

Yeah. (Participant #5)

And I tend to think that you’ve got to approach it from both sides because I think there are people who will do what they’re supposed to do only because they could be caught. And demonstrating to them, ‘Here’s what happens if you get caught. You don’t want this.’ But I think there are also people who are not motivated by the consequence. They’re motivated by the sense of, ‘Tell me what the right thing is to do. Tell me what the expectations are in this community.’ Um… and I tend to think that ends up
being a better way to solve the problem if you can get more at that internal sense of self…. (Participant #7)

A few moments later in the conversation, Participant #7 added “…to be obligated and to be obliged. Ya know, and that those are two different ways of viewing what the law does.”

Another attendee pointed out during the town hall debriefing and feedback session that accountability and enforcement are not just a matter of abiding by the Rules Regulating The Florida Bar (The Florida Bar, 2013c).

I don’t know if everybody’s aware here, but we can be prosecuted for violating the oath, and lawyers have been prosecuted for violating our oath, just so you know. (Appendix F: World Café CLE Town Hall Debriefing and Feedback Session Transcript, p. 276)

While the formal sanctions of The Florida Bar include diversions, admonishments, public reprimands, suspensions, and disbarments (The Florida Bar, 2013d), public reprimand and disbarment were the only two sanctions that were explicitly discussed. Early on in the town hall debriefing and feedback session Participant #10 mentioned how The Florida Bar Board of Governors sometimes engages in public reprimands of Bar members found guilty of egregious acts. The participant further related how the public reprimands are filmed, noting that in the past he has suggested and promoted the idea that the digitally recorded public reprimands be posted publicly online and publicized to serve as a deterrent for law students and Bar members alike. The topic of public
reprimand proved to be one of the most popular topics of the program’s end-of-the-day debriefing and feedback session.

So... so the advantage of, ya know, the public reprimand is the fact that it then moves, I think, some of those people who are, ya know, the rule get-arounders and... and help... helps them to see that there is an important consequence. I think that would be very valuable... (Appendix G: World Café CLE Post-Event Focus Group Transcript, p. 312)

Attendees emphasized the “shame” and “embarrassment” that would accompany the act of “public shunning,” highlighting the consequences and value of publicly documenting such enforcement measures.

Notably, however, with regard to expectations and accountability, during the town hall debriefing and feedback session Participant #7 commented,

I have to tell my students all the time, um, about the data on enforcement. Ya know, you’re likely not going to get caught, and even if you get caught the consequences are small. So we’re talking about what you do when nobody is looking... what you do because you’re a member of a profession. (Appendix F: World Café CLE Town Hall Debriefing and Feedback Session Transcript, p. 275)

In response, Participant #10 retorted, “They’ll be disbarred. I think we disbarred like 62 lawyers in 2011. That’s a lot.”

3. The Practice of Law in a Market Society.

The third thematic category that emerged from the data addresses comments and observations that broadly referenced “The Practice of Law in a
Market Society.” This category includes conversational topics like viewing law as a business versus viewing law as a “higher calling;” references to the differences and distinctions between “business ethics” and “service ethics;” references to the profit motive and profit imperatives that accompany practicing law in a market economy and market society like the United States (Sandel, 2012); references to the systemic corruption resulting from money in the equation of practicing law in a market society; references to the impact of money on motivations, expectations, and definitions of success among law school students and legal practitioners; and references to the “social contract” between the profession and the public it serves and the loss of self regulation that could occur if the public were to find the legal profession to be in breach of contract.

During the town hall debriefing and feedback session, several participants lamented the changes they’ve witnessed in their lifetime and called for a renewed commitment to and emphasis on the profession and its members engaging the practice of law as a “higher calling.” Participant #11 commented,

We have to have ownership about professionalism. We have to take ownership of this. It’s not just ??? [unintelligible, 0:22:10]… we didn’t come into this to just make a living and pay the bills. We came into this cause it’s a higher calling and that has to be re-created ??? [unintelligible; 0:22:22]…, that has to be re-created ??? [unintelligible; 0:22:23]…, cause it’s not just about winning or losing cases or a transaction but in fact there’s a higher calling for this and that has to be a new commitment to
Another participant (#13) related how the impact of the day-to-day practice of law has changed his perspective,

...when I was in law school and I became an attorney so many years ago, I had the belief then, ah, maybe it was an ???: [unintelligible, 0:25:18]... or an ill gotten belief or unfounded that being an attorney was a dignified, noble calling... profession. I don’t have that belief now. And... um, it's, I think partly because of what I've seen from attorneys that I deal with and the process of... of what we see in the day-to-day work... And so to me there’s very little done, I think, from the standpoint of what the Bar is doing, to... ah... enable us to have those roles and that perception amongst society and among ourselves of being professionals, dignified, noble. We have a higher calling what we do, whatever it is in our day-to-day dealing with our clients and our causes. And that gets lost. And I’d like to see that be actually re-emphasized a lot more. (Appendix F: World Café CLE Town Hall Debriefing and Feedback Session Transcript, p. 281)

A sticky note written by one participant succinctly summarized the matter. It simply read “Profession? or Business?” This note was accompanied by another note from the same participant that read “Business ethics vs. Service Ethics.” Both notes were written during one of the table’s conversations early in the afternoon in which the participants discussed the differences they perceived between “business” ethics and the ethics of practicing law as a service
profession. A third sticky note collected at the end of the day expressed one participant’s belief that “Business ethics are different than profession ethics.”

An extension of the debate framing legal practice as a business versus a “service profession” involved references to the impact of practicing law in a market economy and a market society. The notion of profit is at the heart of capitalism, and the influence of profit motives and the profit imperative on ways the attendees made sense of ethics and professionalism was evident in their discussions. Talking about law school during the post-event focus group, one participant (#15) acknowledged, “…it’s a business. I know it’s a business… that’s what we’re here for… yes we want to educate, but we make money… It’s a business just like the law.” To this another participant (#7) who also happened to be a law school faculty member responded, “We’re a non-profit institution, just in defense of this law school…” To this, participant #15 shot back, “But even non-profits still have to make money, ??? [unintelligible; 1:26:28]… they still have to bring in the… the scratch to run everything.” Moments later in the conversation, the third participant in the post-event focus group (#5) added, “…there are thirteen law schools now whereas there used to be five. …the fact is that all the law schools can’t be selective because they need to fill out their rosters in order to pay the bills.”

The impact of practicing law in a profit-oriented market economy was also evident in several comments that emerged during the pre-event interviews. During one interview, Participant #6 noted the impact of the recent downturn in
the economy on his business representing lawyers in defense of Bar disciplinary matters.

…Sadly, because the economy’s been bad, my business has been… because lawyers are… are having economic issues and they’ve been doing… they’re doing certain things they shouldn’t be because of the economy, ya know, including trust accounting issues, the most serious ones that you can have… (Appendix A: Pre-Event Interview, p. 204)

Another interviewee related a story about a lawyer he knew who was found guilty of violating an ethics rule related to trust accounting, explaining how “…in times of down economies, well people get stuck and, though living within the legal milieu, people are gonna be tempted maybe to do something because their economic circumstances have driven them there.” A table note left by another participant (#11) expressed that participant’s frustration related to the impact of practicing law in a market society. “Moneys’ corrupted the system.”

As I sat observing one table’s discussion early in the afternoon, I jotted several table notes related to motivations, expectations, and definitions of success at play with regard to making sense of ethics and professionalism in the practices of law. A law school faculty member (Participant #2) related a story about how she routinely asks her first-year students, “Why did you go to law school?” She explained that one of the most common responses is “I want to make money.” To this Participant #5 commented that that’s how law students envision their lives, how it’s supposed to be. My table notes included a third participant’s contribution and obvious frustration. “There’s too much money,” he
exclaimed. One pre-event interviewee (Participant #6) offered a parallel observation with regard to the impact of practicing law in a market economy and how attorneys define success. “We... we make money, and we buy the cars and great big houses, and we’re successful. That’s how our society defines success.”

With regard to concepts and ideas the legal community uses to make sense of the ethics and professionalism of its members, the notion of the profession’s “social contract” with the public it serves and the profession’s ability to self regulate were also topics of conversation among the World Café event attendees. One participant’s table note read, “Self regulation (fears). You’ll now be regulated as a business.” During the town hall debriefing and feedback session, that same participant (#11) explicitly addressed self regulation and the profession’s social contract, ominously warning the other program participants that “…sooner or later the Bar… professional regulation is going to say, ‘No more self regulation.’” [unintelligible, 0:21:03 – 0:21:07; at this point a number of people started talking]… you have a social contract that’s been breached.” After the program I noted where that participant (#11) had written a table note that read, “We have become our worst enemies.”

4. Community & Demography

The fourth thematic category that emerged from the data I’ve labeled broadly as “Community & Demography.” It includes references to law school students and legal practitioners identity formation and development; informal ways in which practitioners defined ethics and professionalism and distinctions that emerged in conversation about the differences between community ethics
and individual ethics; the impact of historic demographic changes in the composition of the profession; the ways in which historic changes in the definition of the legal community have impacted some members’ sense of camaraderie and community; the ways in which expressions of ethnocentrism emerged in conversation exposing implicit discriminatory practices and highlighting a perceived shift in the nature of trust among legal practitioners; the influence of media portrayals of lawyers on perceptions and expectations; as well as ways in which community expectations regarding proper attire impact perceptions of professionalism.

During the town hall debriefing and feedback session, Participant #7 related how she felt ethics and professionalism efforts were better served by focusing on lawyers’ membership in a community of practitioners and on their identity formation and development as members of that community rather than focusing on punitive, regulative enforcement measures. “So for me,” she explained, “the professionalism and the ethics component is really about developing an identity you have as a lawyer, not about the ways in which we can enforce it as much.” This was in stark contrast to several other attendees who expressed frustration with the judiciary, citing a lack of enforcement as one of the primary problems at the root of increasingly unprofessional behavior among attorneys.

In terms of informal definitions of ethics and professionalism, cooperation and civility were commonly cited as defining features of professionalism. Notably, during the town hall debriefing and feedback session, the majority of the
discussion centered around issues of (un)professionalism, with "ethics" only mentioned three times. In two of the three instances where it was mentioned, ethics was referenced purely with regard to the “formal” Bar definition of ethics as “the rules by which lawyers must abide in order to remain in good standing before the bar” or “the law of lawyering” (The Florida Bar, 2009a). During the first course of the World Café in which participants were asked to explore their individual meanings of the term ethics, conversation at one of the tables involved a perceived distinction between “business” ethics and “service” ethics. At that same table, one participant (#7) wrote a table note drawing a parallel distinction, “‘Community’ ethics vs. ‘Individual’ ethics.”

In an effort to explain the profession’s changing sense of ethics and professionalism, Participant #7 offered her own theory with regard to historic demographic changes that have occurred over the last century. In support of her theory she cited legislation in the 1960s “that opened the doors to professions” giving “access to careers that weren’t generally available” to women and people of color. Earlier in the day Participant #11 had related a story in which a judge before whom he was arguing a case pulled him aside during a recess. The two left the courthouse and stopped by a local coffee shop where the judge told him that he’d “make a good lawyer in time” and offered some ex parte advice and mentoring. That participant then proceeded to explain how he lamented the loss of community and collegiality that’s occurred over the last few decades and the concurrent loss of mentoring opportunities such as the one he had just
described. In stark contrast, Participant #7 saw this as emblematic of ethnocentrism and discrimination.

During the post-event focus group Participant #7 reflected on Participant #11’s story from earlier in the day.

…when you lament a day that said, oh we used to be able to do things on a handshake, we used to be able to… ya know it was a very honorable profession. Part of what we can read into that is, it was great when we were all part of the same boys club, same class, same gender, same color, because we could all trust each other, and there were outsiders and insiders. And so then… by the way, the ABA’s done this before. Ya know, it originally um… went to having requirements of having legal education to… because some… ah… some religious groups were getting in that they didn’t like back in the turn of the century anyway. (Appendix G: World Café CLE Post-Event Focus Group Transcript, p. 321)

Where Participant #11 saw the passing of intimate judge-lawyer mentoring, camaraderie, and community, Participant #7 saw structural discrimination, ethnocentrism, and bias. Participant #7 continued,

So now you have the entry of women, of various minorities, of people disposition [sic], different class coming in, and now I don’t know you the same way I knew the person I had a handshake with. My close club is now bankrupt. So what do we have to do to address that? We’ve got to regulate it. We’ve got to have lots of rules because we don’t trust
anymore. *(Appendix G: World Café CLE Post-Event Focus Group Transcript, p. 322)*

She went on to explain that one of the ramifications of the diversification of the profession was that,

…we have less professionalism because I have a… less of a sense of trust… There is something that happens at that point because it is a shift of power, it is a shift of access, and so the controls now become different… *(Appendix G: World Café CLE Post-Event Focus Group Transcript, p. 322)*

A short time later in the post-event focus group conversation, Participant #7 offered one additional observation about the impact of historic demographic changes, noting how “that longing for the way it used to be prior to the diversification of the profession also has some negative implications as well because it suggests sort of homogeneity, similarity, exclusion, in a way that we don’t have today…”

Participant #11 wasn’t alone in lamenting a “loss of community.” In fact, another participant left a table note with just those words. In my field notes taken during the “working” break/fourth course I observed still another participant (#14) lamenting the “loss of a collective mentality” and a collegiality that he believed pervaded the profession in the past, citing the rise in the number of practicing attorneys as the source of the problem. Where before lawyers had an incentive to act nice and be civil since there was a high likelihood that they’d run into the same judges and same lawyers repeatedly, now there are so many lawyers that
this isn’t so common. As such, according to Participant #11, it seems like many lawyers no longer feel the need to be or see the value of being civil in their interactions with their peers.

With regard to the influence of media on perceptions and expectations, I wrote the following in my field notes based on one table’s conversation during the second course. “Clients create the image of ‘unprofessional’ lawyers at least in part due to their expectations.” Here the discussion revolved around how the public’s perceptions and expectations emerge at least in part through their consumption of media images of lawyers. A representative example of this cited by participants was a television advertisement by a Tampa Bay law firm with the catch phrase “Aggressive, Tenacious. Culpepper Kurland.” Among the table’s participants (#14, #9, and #12) there was agreement that lawyers’ behaviors both in and out of court were impacted at least in part by their clients’ expectations informed by media portrayals of lawyers. Participant #16 succinctly summarized a common sentiment that emerged during the discussion regarding clients’ expectations in a table note that read, “They want a bulldog.”

Another topic that surfaced during the World Café conversations was that of clothing and community expectations. Participants not only discussed the community-defined expectations with regard to attorneys dress habits as representative of professionalism but also the impact of judges wearing robes in court. Participant #7 commented that, “robes cloak the judges’ passions” thus contributing to “objectivity” by “taking the body out of it.”
5. Pedagogy & Mentoring

The fifth thematic category that emerged from the data I’ve labeled “Pedagogy & Mentoring.” It includes references to the standards, expectations, and perceptions that surfaced with regard to legal pedagogy and mentoring. It also includes comments lamenting a lack of uniformity and guidance with regard to ethics and professionalism both in Florida and nationally. Additionally, this category encompasses references to the teaching and learning of "soft" or relational skills as they relate to ethical and professional behavior among legal practitioners.

During the post-even focus group, Participant #7 mentioned a book, *What Money Can’t Buy: The Moral Limits of Markets* by Harvard Professor of Government Michael Sandel, which offers some insight into at least one of the reasons why mentoring has severally decreased among legal professionals.

…what he talks about with respect to mentoring, right, he said we have moved from a market economy to a market society where everything is evaluated in market terms. So let’s take mentoring, right. From a professional point of view, mentoring is hugely important and you would ??? [unintelligible; 1:15:05]… it. From a market point of view, it has no economic value, so you don’t… He’s talking about how much those market notions have permeated everything in society, not just the economy. …What you’re talking about with the problem of kicking off mentoring is it has no obvious, I guess, economic value, and so that
presents a problem when everything is permeated… I think that’s what
directly affects lawyers. (Appendix G: World Café CLE Post-Event Focus
Group Transcript, pp. 307-308)

While Participant #7’s comments obviously might also fall under the thematic
category “The Practice of Law in a Market Society,” I have included it here
because of its specific relevance to mentoring and the conversational
significance of mentoring among the participants.

Throughout the course of the World Café CLE event, participants related
how the decrease in mentoring has directly impacted attorneys’ ethical and
professional behavior, particularly among new attorneys just entering practice.
Several participants commented about how, without adequate mentoring, many
new attorneys are at a disadvantage in terms of understanding the cultural
norms, standards, and expectations of the profession. During the post-event
focus group, Participant #5 and Participant #15 commented about not having
“time to talk” in terms of mentoring at least in part due to billable hour
requirements, particularly in large firms. Reflecting on his time working in a large
law firm, Participant #5 succinctly stated, “…your value was measured by the
numbers.” Lamenting the current state of mentoring, during a pre-event interview
Participant #6 remarked “…you don’t have time. And… and it’s demanded that it
not happen…,” adding how he believed that the profession and society have “the
entire capitalist system to blame for that.”

Addressing both legal pedagogy directly and the decline in legal mentoring
indirectly, Participant #6 elaborated on how the practice suffers from a lack of
uniformity with regard to how the legal community pragmatically interprets and enacts ethics and professionalism both in Florida and nationally.

…there’s just a lack of uniformity now because everybody’s doing things differently. And… and I still get the lament from my clients saying, ‘Well I’m not really taught how to really practice law in law school.’ Ya know, I get that all the time and I’m goin’, ah… well… I guess that’s just gonna be endemic. I mean ah… the ah… the… what’s gonna happen all the time, because I don’t know how that can… I don’t know that you can actually teach the real parts of law in law school… I don’t think you can really teach somebody how to practice law and it’s kind of unfortunate because lawyers that come out, that go… that… that hang their own shingle, ya know, they’re, a lot of times, they’re the ones that get in trouble.

(Appendix A: Pre-Event Interview Transcript, pp. 208-209)

In his practice defending attorneys facing Bar disciplinary matters, Participant #6 noted how he has become a de facto mentor for hire. “Half the time I’m a mentor when they call me and they’re in trouble with the bar. Ya know, I’ve become their mentor…”

Participant #6 also pointed out how more and more attorneys and law firms are engaging in multi-state practices.

…We need to have a conversation and… and try to, and I know we’re just doing Florida here, but… Florida ??? [unintelligible; 0:36:00]…, right… we’re just doin’… but… but I think the conversation needs to be goin’ on everywhere, so that we have a defining of the… of the… of these types of
issues so that lawyers can have guidance as to what, ya know, what they should be doing, ya know, essentially, and have a uniform idea as much as we can, and as much as we want, of… of what’s expected of lawyers, both with ethics and professionalism I think. (Appendix A: Pre-Event Interview Transcript, pp. 205)

In this light, the need for a national dialogue addressing uniformity with regard to standards, expectations, and perceptions as they relate to ethics and professionalism becomes even more relevant.

While Participant #6 expressed the opinion that the practice of law could not be taught in law school, he did, however, also acknowledge that some law schools offer coursework in topics like counseling, interviewing, and ethics. The dearth of legal pedagogy addressing “soft” or relational skills was also a topic of conversation during the post-event focus group, with Participant #7 explicitly commenting on the absence of and need for communication coursework in law school curriculums emphasizing context-specific applications, “In other word, there isn’t a course called interpersonal communication for lawyers and maybe there ought to be… or organizational communication for lawyers and maybe there ought to be…”

6. Psychology

The sixth thematic category that emerged from the data I’ve labeled broadly as “Psychology.” It includes references to attorneys’ personalities, personality types, and psychological problems as well as pathological behavior (including sociopathic and psychopathic behavior). This category also
encompasses references to practice area differences and observations regarding how some personalities seem to be drawn to specific areas of legal practice.

During a pre-event interview, Participant #6 explained how he felt different legal practice areas tend to attract specific personality types and how the study and practice of law tends to amplify unprofessional personality characteristics.

I think some of the characteristics of lawyers who are unprofessional are developed when they’re younger. They just have that personality, or they have that personality where they’re just obnoxious, ya know. Some people in the world are just totally obnoxious about everything and anything and certain areas of practice draw that. But then the law, I think, even makes it worse in a lot of ways for lawyers that already have that type of personality because it amplifies it to where they feel that they’re right and they’re obnoxious.  (Appendix A: Pre-Event Interview Transcript, p. 198)

A specific example of this that surfaced during the town hall debriefing and feedback session was the difference between civil and criminal practice.

At one point, Participant #9 and Participant #16 related how, in their experience, criminal practice doesn’t tend to have the same level of incivility and “unprofessional” behavior as civil practice. They cited the community’s small size and frequent interactions among criminal attorneys as likely sources of the behavioral differences. Participant #16 also felt that money not being involved likely contributed as well to more civil behavior in criminal practice. One unidentified male quipped, “I did find it more civil in the criminal practice, um, but civil just lends itself to abuses.” Participant #6 noted that another factor likely
contributing to increased civility in criminal practice is that criminal judges are “used to dealing with sanctions, cause their sentencing defendants all the time…” and as such they’d be more likely to impose sanctions on attorneys who misbehaved in their court.

One particularly informative exchange regarding how members of the legal community engage psychological concepts to make sense of ethics and professionalism took place during the town hall debriefing and feedback session when Participant #6 commented, “I think the psychological issues underlie a lot of the conduct… I think those people are always going to be around... we’re gonna have a certain… percentage of the number of people that are sociopaths that we can’t correct.”

To this, Participant #11 replied, “I think that... there needs to be a sense of urgency because if it’s only one percent that are, as [Participant #6] would say, psychopaths…”

“Sociopaths…” Participant #6 corrected.

“Sociopaths… or psychopaths… but if it’s one percent, it could very well be that one percent that tips us over to breaching the social contract we have and takes us to legislative regulation… ah… like every other business organization,” Participant #11 continued, “and then we’ve totally lost the profession. So... so we… there’s… there’s a sense of urgency to this that must concede.”
Research Question 2: Responses and Emergent Themes

The following section addresses the themes that emerged from keyword coding of the data in response to my second research question (RQ2), “What concepts and ideas does the legal community have for evaluating the compliance and competency of its members with regard to ethics and professionalism?” Thematically three categories surfaced, though admittedly the thematic categories were by far not “clean” and distinct insofar as several items failed to fit neatly into any single category. The categories included (1) “Formal” Organizations, (2) “Formal” Procedures and Documentation, and (3) Community & Identity.

1. “Formal” Organizations

One of the most obvious ways in which the legal community evaluates the compliance and competency of its members with regard ethics and professionalism is through “formal” organizations. According to The Florida Bar’s website, “the Supreme Court of Florida created The Florida Bar as its investigating arm to enforce the standards of ethical conduct” of its lawyers (The Florida Bar, 2011). Bar organizations which evaluate the compliance and competency of members of The Florida Bar include the Board of Governors who administer public reprimands; the Attorney Consumer Assistance and Intake Program (ACAP) which fields questions regarding attorneys’ unethical behavior, helps members of the public decide if it is appropriate to file formal complaints, and processes professionalism complaints; Circuit Court Professionalism Committees which oversee ethics and professionalism compliance and
competency programs at the circuit court level (with 20 judicial circuits constituting the court system in Florida); and local grievance committees which are comprised of volunteers in local communities (with at least one committee per judicial circuit) who review complaints “with much the same purpose as a grand jury” deciding “whether there is probable cause to believe a lawyer violated the professional conduct rules imposed by the Supreme Court of Florida and whether discipline against the lawyer appears to be warranted” (The Florida Bar, 2011).

2. “Formal” Procedures & Documentation

A second way in which the Florida legal community evaluates the ethical and professional compliance and competency of its members is through “formal” procedures, including the accompanying documentation. This includes regulative enforcement procedures such as the issuing of admonishments for minor misconduct by local grievance committees; assignment by a grievance committee to a practice and professional development diversion program; being “placed on probation for a period of time of not less than six months nor more than five years or for an indefinite period determined by conditions stated in the order” (The Florida Bar, 2012a); being publicly reprimanded in person before the Florida Supreme Court, The Florida Bar Board of Governors, or a designated judge; having one’s license to practice law suspended; and even being permanently disbarred from the practice of law in Florida.

While there is ample documentation to accompany all of the procedures listed in the previous paragraph, there were only three documents actually
referenced in the data. The first was the Rules Regulating The Florida Bar (The Florida Bar, 2013c), the second was the American Bar Association’s *Model Rules of Professional Conduct* (13th ed.) (The Florida Bar, 2013), and the third was Florida Supreme Court Opinion “SC13-688: Code for Resolving Professionalism Complaints” (Florida Supreme Court, 2013). As noted previously, attendees at the World Café CLE program brought hard copies of the *Model Rules of Professional Conduct* and the Supreme Court Opinion with them as ready reference materials.

3. **Community & Identity**

The third thematic category that emerged from the data in response to the second research question I’ve labeled “Community & Identity.” It includes references to conceptual ways in which members of the legal community evaluate the compliance and competency of its members’ ethics and professionalism through individual and communal identification. One of the best examples of this was offered by Participant #14 during the town hall debriefing and feedback session in the form of an analogy comparing the anonymity of road rage and the increasingly common relative anonymity of practicing law.

One thing that, that really helped the profession is that lawyers had a collective mentality. In other words, lawyers now a days tend to think, ‘I’m my own person. Screw the rest of the Bar. I’m gonna do what I’m gonna do to get whatever advantage I can get for my client.’ And it’s so harmful to the profession… it’s easy to become discourteous to someone who’s not real, someone who is not really a person. And it’s sort of become that
way in the profession just with the sheer number of attorneys that there are nowadays. Where I don’t have to worry if some attorney said something awful to me and I respond with something awful back, I may never see him or her again, ya know.  

(Appendix F: World Café CLE Town Hall Debriefing and Feedback Session Transcript, p. 282)

As an anonymous table note observed, the practice of law involves a reflexive relationship between the individual and the communities of practice in which he or she engages. “We operate from our own frame of reference and w/in the communities in which we function.”

Another telling exchange occurred during the post-event focus group, subtly addressing ways in which ethnocentrism, identification, embodiment, and (dis)trust factor into the evaluation of ethical and professional compliance and competency. To provide some context, understand that we had been discussing the historic demographic changes that the profession has experienced over the last half century. In particular, Participant #7 had noted a perceived absence of common denominators that accompanied the diversification of the Bar. Where the Bar had previously been united by the commonality of Judeo-Christian religious beliefs, this was not necessarily the case anymore. Participant #5 commented,

…the reason I don’t really see a significant difference between morals and ethics is because my morals are based upon a strong faith background. Ah… so therefore as a result, ya know, so many people don’t have that anymore, so therefore they need the rules because they don’t want to
have an underlying… (Appendix G: World Café CLE Post-Event Focus Group Transcript, p. 322)

At this point in the conversation I added, “This is one of the major challenges facing the Bar right now is diversity…” Participant #7 then interjected,

I think they have a different underlying one, right. Based on how I’m embodied, I probably see the world a little bit different than you do and we lack a certain amount of identification with each other just because of our embodiment and that creates distrust… (Appendix G: World Café CLE Post-Event Focus Group Transcript, p. 322)

Thus, the evaluation of ethical and professional compliance and competency at least in part hinges on one’s perspective, embodiment, and relational identification. This poses a pragmatic challenge for an exceedingly diverse profession. Note that embodiment in the data involved both primary physical attributes of the body (including gender) as well as external physical attributes such as professional (or unprofessional) attire.

Research Question 3: Responses and Emergent Themes

The following section addresses the themes that emerged from keyword coding of the data in response to my third research question (RQ3), “Given the legal community’s existing concepts and ideas regarding ethics and professionalism, what kinds of behaviors are encouraged or discouraged?” Thematically just two categories surfaced. I’ve labeled the first thematic category “Encouraged Behaviors” and the second thematic category “Paradoxical Behaviors: Stories Told vs. Stories Lived.”
1. **Encouraged Behaviors**

In reviewing the data only three behaviors emerged that are consistently encouraged in the legal community. The first behavior is a healthy respect for existing power structures and institutions, role authority, and hierarchy. Participant #15 related a story in which he was conducting a CLE program wherein he wanted to insure “assigned randomness” such that friends would not sit next to each other. This also included separating judges such that they would not sit together as well. When Participant #15 mentioned this, Participant #7 interjected, “…that’s a challenge for a distinctly hierarchical profession.”

The second behavior that is encouraged emphasizes meeting client expectations. Early in the World Café, numerous conversations addressed the influence of media representations of lawyers and the resulting impact on clients’ expectations. Several participants noted that because their clients expected them to act aggressively, they often found themselves inhibited from working with co-counsel to seek equitable outcomes for fear of retribution from their clients in the form of being fired or being reported to the Bar for providing ineffective counsel. In effect, they explained, working together with co-counsel would be perceived by their clients as working with “the enemy” and would be deemed wholly unacceptable behavior.

The third behavior that is consistently encouraged in the legal community is a respect for tradition insofar as attorneys are expected to wear conservative attire. For men this translates into an expectation that they will always wear a suit and tie in court. For women this translates into an expectation that they will
never wear clothing that is too tight or that overtly emphasizes their sexuality.

Skirt lengths should extend below the knee and heels should not be overly high.

2. Paradoxical Behaviors: Stories Told vs. Stories Lived

In light of my third research question’s focus on behaviors that are encouraged or discouraged, I’d initially expected to find some behaviors that would fit neatly into the category of encouraged behaviors, some that would fit neatly into discouraged behaviors, and some that wouldn’t fit “neatly” into either category. As I iteratively reviewed the data during the keyword coding process, however, it became apparent that there were no behaviors that I could identify that the legal community unanimously and uniformly discouraged (at least that emerged in the data). I did, however, find numerous instances of what I’ve herein labeled “Paradoxical Behaviors” involving a disparity between the profession’s stories told and the practitioners’ experientially informed stories lived.

One of the most prominent areas wherein I found paradoxical behavior involves the matter of accountability and enforcement. On the one hand all attorneys in Florida know that violating Bar “Ethics” (a.k.a. The Rules Regulating The Florida Bar) can result in disbarment (i.e., their inability to continue practicing law in Florida). On the other hand, however, it’s common knowledge among lawyers that attorneys break the rules all the time. As one participant related on a sticky note, “Lawyers are taught to get around the rules.” During the town hall debriefing and feedback session Participant #7, a law school faculty member, stated, “I have to tell my students all the time, um, about the data on
enforcement. Ya know, you’re likely not going to get caught, and even if you get caught the consequences are small.” An anonymous table note expressed a similar sentiment, “Not enough significant consequences for bad behavior to make a difference.” Participant #10 summarized the general consensus among the World Café attendees during the town hall debriefing and feedback session when he stated, “Well… what I sensed about this topic is that most people don’t feel they’re ever held accountable for their behavior, that it’s sort of hidden.”

Yet another paradoxical behavior emerged with regard to the reporting of bad behavior. At first glance it would seem obvious that attorneys would be encouraged to report their colleagues unethical and unprofessional behavior. Early in the World Café one table discussed the value of reporting such behavior insofar as it helps to establish a record of events and can help in the identification of patterns of bad behavior which are more easily acted upon by ACAP (the Attorney Consumer Assistance and Intake Program), circuit court professionalism committees, local grievance committees, and ultimately The Florida Bar. If there are no reports, however, it’s much more difficult to make a case that a lawyer’s behavior is deserving of regulative action and punitive measures.

Upon closer examination, however, there are a number of reasons why an attorney may choose to not report such behaviors or to postpone reporting such behaviors. One thing to consider is the relative size of the communities in which attorneys practice. Despite processes and procedures to insure anonymity, many lawyers operate in relatively small communities. Participant #6 succinctly
summarized the cultural norms at play during the town hall debriefing and feedback session when he stated, “‘Nobody wants to be a snitch. We… we grow up not wanting to be a snitch. So we’re fighting some of that cultural stuff.’

During his pre-event interview Participant #6 also noted that it’s not uncommon for unscrupulous attorneys to lodge complaints with the Bar as a strategic litigation technique. Several World Café participants referenced this as a litigation tactic particularly common among attorneys employed at large law firms. As Participant #6 related,

…of course the problem with Bar complaints is if there’s a contentious litigation going on, a lot of times the lawyer… and I get these calls all the time, the lawyer is being aggrieved or the client whose having this happen doesn’t necessarily want to be filing a Bar complaint because it looks like that lawyer’s using that to gain leverage in the litigation. (Appendix A: Pre-Event Interview Transcript, p. 200)

As such, attorneys must be mindful with regard to the timing of any Bar complaints they may choose to lodge in order to avoid any appearance of impropriety.

An additional factor that attorneys must consider before reporting unethical or unprofessional behavior is the relative severity of the opposing counsel’s infraction(s). After years of budget cuts, the court system in Florida is already taxed to capacity. During the town hall debriefing and feedback session, one participant (#13 or #14) noted, “really in a day-to-day situation with many judges, you’re dealing with their dockets, their cases, they have people waiting
for them. It is not high on the list of priorities.” Insofar as enforcement is concerned with regard to unprofessional behavior, while it’s not discouraged outright, the day-to-day realities of limited resources discourages increased, extensive enforcement. This point was made explicitly clear during a pre-event interview with Participant #6 when I asked him “...if these things were actually to be enforced, even with the existing rules, do you think it would over burden the system?” To this he responded without hesitation,

I absolutely think it would. I think if every Bar... if every Bar violation was investigated and prosecuted by The Florida Bar there’d be... there’d be... they don’t have enough resources. So it’d be totally chaos... total chaos.

And probably the same thing applies to the court system. If all the, ya know, all this stuff was litigated, so you do have that balancing act.

(Appendix A: Pre-Event Interview Transcript, p. 201)

Insofar as increased enforcement would exacerbate an already overburdened system coping with extremely limited resources, the reality is that enforcement is limited (i.e., it’s a behavior that is implicitly discouraged).

Another paradoxical behavior that emerged from the data involves the stories told by the profession about the value of and need for mentoring in stark contrast to the stories lived by the professionals themselves. This topic surfaced during the pre-event interviews, the World Café “course” conversations, the World Café town hall debriefing and feedback session, as well as the post-event focus group. Numerous participants cited the demands of the billable hour and the rise of a business or market mentality in the practice of law as dominant
reasons behind the drastic reduction in mentors and mentoring over the last three decades. As Participant #7 observed during the post-event focus group, “From a professional point of view, mentoring is hugely important and you would ?? [unintelligible; 1:15:05]... it. From a market point of view, it has no economic value.” In a market economy and a market society in which behaviors are judged according to their impact on the bottom line, since mentoring doesn’t directly and explicitly contribute to the bottom line it’s discouraged (or more accurately it’s given lip service and praised as a valuable part of the profession but not supported in deed).

With regard to legal pedagogy, while the profession’s trade literature often laments a decline in the civility and professionalism of legal practitioners, law school professors are apparently not of the same opinion. Despite the Florida Supreme Court’s Opinion of June 6, 2013, stating that “surveys of both lawyers and judges continue to consistently reflect that professionalism is one of the most significant adverse problems that negatively impacts the practice of law in Florida today” (Florida Supreme Court, 2013, p. 2), at one point during the town hall debriefing and feedback session Participant #10 observed,

I asked the professor a moment ago, [Participant #2], um, Professor [Participant #8], ‘Do faculty members view the decline and the lack of professionalism as an issue or concern?’ She said, ‘Well those who practice probably do some, but the average probably don’t.’ And I suspect she’s right... but for those who haven’t practiced, they don’t,
maybe, take ownership of the issue. *(Appendix F: World Café CLE Town Hall Debriefing and Feedback Session Transcript, p. 277)*

This quote suggests that despite the survey data on the matter, law school faculty who do not or have not practiced law do not have a sense of ownership and do not view the perceived decline in professionalism as an issue or concern. In turn, those faculty members likely do little to nothing pedagogically to attempt to address what they perceive to be a non-issue.

Another pedagogical matter involves the perceived value of relational skills to the practice of law. On the one hand, per The Florida Bar’s Oath of Admission and the professionalism standards established by The Florida Bar, attorneys are encouraged to engage in civil relationships with their clients, co-counsel, and the court. During a pre-event interview, Participant #1 (a former Florida Supreme Court judge) commented that “the fair operation of the justice system” depends upon attorneys’ ability to develop and maintain quality relationships,

...a few of those relationships are the lawyer and the client, that’s a critical one, obviously, and uh... and the lawyer and other lawyers is a critical one too, and lawyers and a judge, and lawyers and a jury, and lawyers and witnesses, uh... just lawyers in the general public uh... can really be added to this, all these relationships. *(Appendix C: Pre-Event Interview Transcript, p. 243)*

On the other hand, however, a common sentiment among law school faculty is that the teaching of relational skills is *not* the teaching of law and as such it does
not belong in law school curricula. During the post-event focus group an exchange between Participant #15 and Participant #7 highlighted the existence of such biases in law schools and among law school faculty. Noting Participant #7’s position as a law school faculty member teaching legal research and writing skills, Participant #15 remarked, “Ya know she’s doing legal… legal research and writing skills and that’s… that was a hard thing for a lot of professors… say, ‘Well that’s not really law professors, those are…”

To this Participant #7 responded facetiously, “Right. And communication is not really law.”

Participant #15 replied, “I mean… it…”

Just then Participant #5 spoke up. “But it’s all part of law… I mean, and the fact is…”

Participant #7 emphatically interjected, “How is it not the most central part?”

While all three participants of the post-event focus group acknowledged that law schools are increasingly offering opportunities to develop relational skills, it was also pointed out that such skills are generally relegated to clinical programs and internships and rarely if ever are they made the focus of entire classes in law school curricula. This is the case despite practitioners’ commenting on the implicit need for such coursework like when Participant #13 contributed a sticky note that read, “The decline of professionalism has impacted our relationships with our clients.” At least in part such coursework is discouraged insofar as it challenges the pedagogical and cultural norms of the
last century in which technical, instrumental rationality have dominated law school curricula. Change is threatening to individuals and institutions, and changing something as entrenched as legal pedagogy is understandably discouraged insofar as doing so disturbs the status quo threatening the distribution of resources and existing power structures and practices.

One final paradoxical behavior that emerged from the data involves The Florida Bar’s Continuing Legal Education (CLE) programming. On the one hand The Florida Bar has explicitly expressed a desire for CLE courses that “encourage the habit of reflection” (The Florida Bar, 2009a) and “strive to cultivate [the capacity for critical and] reflective judgment…” (The Florida Bar, 2009a). On the other hand, however, when I’d originally contacted the Bar about hosting a CLE program and asked for a list of approved ethics topics I was sent a list of ten topics titled “Florida Bar Ethics Credit Topics.” The list included (1) “Rules of Professional Conduct,” (2) “Trust Accounting Rules,” (3) “Advertising Rules,” (4) “Attorney-Client Privilege,” (5) “Attorneys' Fees,” (6) “Unethical Discovery Tactics: delay, incomplete information,” (7) “Electronic Discovery: ‘making sure you’re not unknowingly transmitting privileged information,’”, (8) “Conflicts involving attorneys changing firms,” (9) “Grievance,” and (10) “Malpractice.” Despite their call for reflectivity, the topic of “ethics” itself was noticeably not an approved ethics topic. Nonetheless, gratefully, my proposed program was granted ethics credits.

When I shared this observation with Participant #1 (a former Florida Supreme Court judge) during a pre-event interview, he remarked,
…you’re dealing more with a bureaucratic organization that has set out
with certain things and tried to address the… the subject and what
happens afterward is that those things get hardened. And so when you
talk to the administrators that, uh… are in charge of approving these
things or whatever, they’re st… they’re stuck and limited. You know, that’s
how they see these things. And so that is clearly a, uh… you can have
whatever list they have and as… as far as approved talks or whatever
kind of thing but you should always have, of course, an… a category that I
could loosely call ‘And Other.’ And the ‘And Other’ often could prove to be
the most challenging and uh rewarding topic; and that’s where you come
in. You ought to fall into the category of ‘And Other’ because you’re really
approaching this thing from a more fundamental and broad-based way.

(Appendix C: Pre-Event Interview Transcript, p. 250)

Just before we concluded the interview one of the last things he added was,

“while you’re engaging in this… you perhaps should discuss with John [Berry]
that they… they cure that in some way, uh… by having that ‘And Other’
category, uh… so and you can be the first example… for having that.”

Curiously, when I submitted my application for accreditation of the World
Café CLE program, while it was approved for 4.5 hours of general CLE credit and
4.5 hours of ethics CLE credit, it failed to receive approval for ANY
professionalism CLE credits despite its having 195 “minutes of instruction”
devoted to the topic of professionalism. After learning that the program had been
denied professionalism credits, I contacted the Bar to inquire why it had not
received ANY professionalism credits. The Assistant Director of the Henry Latimer Center for Professionalism emailed me the following response.

I was informed that you inquired why your program tentatively scheduled at Stetson College of Law featuring the World Cafe model was denied Professionalism CLE credit. In short, we needed more information regarding the credentials of those that will be facilitating or speaking at the program and your application lacked this information. It appeared that you had two individuals ("Participant #3" and "Participant #10" and possibly others) that committed to participating, but you did not provide any background or discuss their particular role in the program short of conversing with other participants attending the program on professionalism related topics. Generally, the best practice is to attach the bio's of those that will be speaking or facilitating at the program so that the Center for Professionalism can evaluate their credentials and describe their role in the overall program. If you have any further questions or concerns regarding the denial for professionalism credit, please do not hesitate to contact me. (Appendix G: World Café CLE Post-Event Focus Group Transcript, p. 300)

Understand that I had attached an 11 page addendum to my application for accreditation including a "Course Description: Overview" explaining the World Café format as I intended to employ it; a “Course Description: Goals and Objectives" section outlining 25 ways in which the proposed CLE program would address The Florida Bar's goals and objectives as outlined in its Ideals and
Goals of Professionalism, CLE Guidelines, 2010-2013 Strategic Objectives, and 2013-2016 Strategic Objectives; a detailed agenda for the half-day program; as well as a section titled “Information About the Speakers and Their Credentials” in which I explained that the World Café format “is distinctly different from more traditional lecture-oriented meeting formats with speakers” and as such I could not know with any certainty who would be attending until the actual day of the event. Nonetheless, since I had failed to “attach the bio’s of those that [would] be speaking or facilitating at the program,” the program was denied professionalism credits.

During the post-event focus group I mentioned this fact to the three participants in attendance. Participant #7 insightfully observed,

This is such an important point for the Center for Professionalism because the lens they are viewing this through says that you have to have credentialed people doing transmission versus a collective community building identity… why I’m saying that sort from a theoretical or academic direction is that if you continue to view professionalism that way you’re going to have the same status structure that you always have… In other words, only certain people are qualified to talk about professionalism and they must… and… and I think that reflects, and I know you’re recording this so I… I’m not trying to be critical, but I think that reflects a view that the Bar as a whole is not professional and only certain people are professional enough to transmit that knowledge, and I think there’s worth in turning that on its head to say, ‘Wait a minute. Maybe everyone has a
certain sense of professionalism and can participate fully in this discussion.’ Ya know, we don’t have to screen based on credentialing of who’s going to have voice, right, versus be the recipient of the information. I think that’s a really important… now, I don’t think that they will see that as broadly as I do, but I think that’s an important point to make about how they want to treat the question of professionalism and who gets to speak and who doesn’t. (Appendix G: World Café CLE Post-Event Focus Group Transcript, p. 301)

Due to the distinctly hierarchical nature of the profession, expertise is assumed to reside in experience (i.e., hierarchy and authority). As such, programs such as the one I proposed (and ultimately facilitated) are discouraged insofar as the CLE structure assumes a specific meeting format (generally lecture or panel) in which experts “transmit” knowledge. As such, programs with alternative meeting formats designed to honor all stakeholders’ voices on the matter of professionalism are discouraged. This in turn discourages active ownership of the “professionalism” problem by all members of the profession.

Research Question 4: Responses and Emergent Themes

The following section addresses the themes that emerged from keyword coding of the data in response to my fourth research question (RQ4), “How might increased awareness of the behaviors that are encouraged and discouraged prompt different choices of terms, concepts, and ideas?” In light of the question’s wording, I employed the same two thematic categories that surfaced in response
to the third research question: “Encouraged Behaviors” and “Paradoxical Behaviors.”

1. **Encouraged Behaviors**

   While respect for power structures, role authority, and hierarchy are constants in the legal community and as such would be unphased by increased awareness of such behaviors, I believe the same cannot be said for attorneys’ behaviors related to meeting client expectations. More specifically, increased awareness of the influence of media (including TV ads) on client expectations (a behavior that is explicitly encouraged by clients demanding “bulldogs” because that’s what they’ve been “taught” to expect) might prompt different choices in terms of promoting conversations about the influence of media on client expectations which in turn impact attorneys’ expectations about how they feel they need to be perceived and how they need to advertise themselves (i.e., the impact on the profession as a whole in terms of its public perception and public image).

   Another behavior that is encouraged within the profession is dressing conservatively. The practice of law is a communal activity and as such there are communal expectations with regard to dress. While these may differ by geography and practice area, practitioners need to be cognizant of such localized standards. The decrease in mentoring, however, likely contributes to many new lawyers not knowing how to navigate the waters with regard to localized expectations. As such, increased awareness of local community standards might facilitate a smooth entrance into that legal community for attorneys who are just
entering the profession or who have recently relocated into a new locale. This holds true not only for attorneys relocating geographically but also for attorneys who might consider switching practice areas as this also influences community expectations with regard to attire.

2. Paradoxical Behaviors

In terms of how increased awareness of the profession’s paradoxical behaviors might prompt different choices of terms, concepts, and ideas, five categories emerged from the data in response to the fourth research question. Topically, they include accountability and enforcement, legal mentoring, legal pedagogy, how the legal profession talks about ethics and professionalism, and continuing legal education and community expectations.

With regard to accountability and enforcement, if The Florida Bar promoted increased awareness of the ways in which reporting is encouraged (to help establish patterns of behavior which then are more easily acted upon by The Florida Bar’s regulative bodies) or discouraged (when reporting is employed as a litigation tactic), this might prompt its members to make different choices or at a minimum make more informed choices. Such choices might include anonymous calls to the Circuit Court Professionalism Committees to report unprofessional and/or unethical behavior (and to help establish patterns of bad behavior), anonymous calls to the Ethics Hotline to seek advice about how to handle complex cases involving perceived unethical and unprofessional behavior, postponing reporting until after a trial is concluded (thus avoiding any possible accusations of strategic procedural manipulation), or the anonymous reporting of
instances where attorneys believe their adversary is attempting to “play” the legal system by using reporting as a tactical tool during litigation.

Another way in which increased awareness of a paradoxical behavior might prompt different choices of terms, concepts, and ideas involves P.R.—Public Relations and Public Reprimands. Participant #10 observed during the town hall debriefing and feedback session, “Frankly I think, I think the Bar does a better job of policing its members than any other profession, but nobody knows that.” Public reprimands are already digitally recorded, and Participant #10’s suggestion that The Florida Bar make such reprimands freely available online was enthusiastically embraced by nearly all of those in attendance at the World Café. By more actively publicizing the Board of Governors’ public reprimands of attorneys found guilty of egregious acts, The Florida Bar could effectively focus attention and conversation on its policing efforts including how the Bar polices its member, when the Bar polices its member, and why the Bar polices its members (i.e., what are considered the most serious infractions). Increasing awareness of the unethical and unprofessional behaviors that are discouraged could likely go a long way with regard to The Florida Bar’s public relations, increasing the standing of the profession both in the public’s eyes and in practitioners’ eyes. In turn, this could prompt different choices on the part of practitioners (i.e., they’ll think twice before acting inappropriately because they’ll be more conscious of the consequences of acting inappropriately) as well as different choices on the part of the public (inspiring confidence that the profession as a whole is trustworthy and that their social contract is being upheld and therefore should remain intact).
Another proposal that received widespread approval among the attendees was to make viewing of such public reprimands a routine, collective act. Participant #7 raised an interesting distinction with regard to the framing of public reprimands. During the town hall debriefing and feedback session, Participant #7 commented how “…all the enforcement in the world doesn’t take the place of creating identity…” On the one hand is the framing of public reprimands as regulatory enforcement, reminding new lawyers of the consequences of violating The Florida Bar’s rules and standards. On the other hand is framing the collective viewing of public reprimands as identity development, a symbolic ritual that would unite new lawyers as they transition into the profession and the legal community. Increased awareness of membership in a community (i.e., identity development) would simultaneously signal ethical and professional behaviors that are encouraged as well as unethical and unprofessional behaviors that are discouraged as new lawyers ritually enter the practice of law and become members of a community of practitioners (i.e., emphasizing community expectations).

Participant #10 emphasized that for the viewing of public reprimands to be most effective, it should become part of the “annual conversation.” To do so, he suggested the idea of an “ethics contract” which law schools and law firms would endorse as a sign of solidarity with The Florida Bar. It was also suggested that viewing of public reprimands become part of the ritual for all new attorneys joining the profession. For maximum effect, it was suggested that such viewings always be done collectively in groups (be it in law schools, law firms, or as part of
The Florida Bar’s mandatory “Practicing with Professionalism” seminars for new attorneys) and that the viewings be followed by discussion to allow for those in attendance to reflect on what they’ve just seen. By regularly showing video of public reprimands, The Florida Bar, law schools, and law firms will increase awareness of unethical and unprofessional behaviors that are discouraged, and in doing so they will also be encouraging law school students and legal practitioners to actively reflect on their accountability and the consequences of engaging in discouraged behaviors. Regularly showing video of public reprimands followed by discussion would also facilitate ownership and identity development among both experienced and inexperienced members of the legal community.

Legal mentoring is yet another behavior that is paradoxically both encouraged and discouraged. Increased awareness and acknowledgement of the lip service mentoring receives by the profession in contrast to the economic realities that in effect discourage mentoring might prompt more lawyers to seek out assistance through programs like the Ethics Hotline and the Professionalism Committees’ programs that the various circuit courts maintain as well as “mentoring for hire” services from ethics and professionalism experts like Participant #6 before actually getting into trouble. Increased awareness and acknowledgement of the dearth of mentoring due to economic constraints (i.e., mentoring being sacrificed at the alter of the bottom line) might also prompt the profession at large and law schools to take a more proactive stance with regard to clinical opportunities, internships, and pedagogies of practice, both including
where absent and increasing where present the teaching of relational skills, trust accounting skills, and other business-related skills that constitute ethical and professional behavior among attorneys. By acknowledging the proverbial elephant in the room with regard to mentoring, The Florida Bar would be aligning word and deed, in effect owning the issue and in turn prompting attorneys to engage and benefit from other existing non-traditional mentoring resources.

Nearing the end of the post-event focus group Participant #7 shared a story about a senior partner at a large law firm where she worked inviting one of her male peer associates to play golf but not her. Her story exemplifies the ethnocentric thinking and “in crowd” familiarity that encourages discrimination. The male senior lawyer that invited the younger male associate to play golf probably considered his invitation as quite professional insofar as he might have considered it mentoring (just as Participant #11 fondly considered a judge’s ex parte communication with him as professional mentoring). In other words, what one individual might consider “professional” (in an everyday, lay sense of the word) another individual might consider quite unprofessional (per The Florida Bar’s technical definition). As evidenced by the ways in which many of the World Café CLE attendees used the term, many Florida lawyers reference professionalism in a “lay” sense, remaining largely if not wholly unfamiliar with The Florida Bar’s technically-bounded definition. By increasing awareness of such behaviors (i.e., ethnocentric bias and discrimination), “in crowd” practitioners like the judge in Participant #11’s story and the senior partner in Participant #7’s story might be prompted to more carefully reflect on their
actionable choices taking into account how their actions might be viewed as professional or unprofessional by others, particularly in light of the diversity of practitioners working in the profession today.

Legal pedagogy is still another behavior that is paradoxically encouraged and discouraged. By increasing awareness of the primary importance of communication and relational skills and increasing awareness of the ways in which the development of such skills is actually discouraged among both the Bar in terms of CLE programming content and among law schools in terms of faculty attitudes about communication not being an “appropriate” topic of study, both the Bar and law schools might be prompted to make different choices in terms of identity development and the acquisition of relational skills among their members and students.

A fourth paradoxical behavior that would benefit from increased awareness involves the way lawyers and The Florida bar talk about ethics and professionalism. Based on Participant #6’s comments during a pre-event interview, multi-state practice is becoming more common (i.e., a behavior that is implicitly encouraged in terms of generating new business through expansion). In response to the pre-event interview question, “In what ways does our even asking the questions matter reflexively?” in the sense of “How do you think asking these questions matters?”, Participant #6 stated,

Well I think that it helps immensely to have separate individuals give their perspective as to what they believe different things mean and how ???

[unintelligible; 0:35:10]… I think it’s very important to establish a dialogue
nationally as to how we approach these issues cause it's... The
prosecution of, ah… of Bar violations… Bar prosecution and Bar ethics, as
you said so aptly earlier in our conversation, is so different in every
jurisdiction… Here’s the thing… many lawyers are now going over…
they’re… they’re, ya know… they’re multi-state lawyers, ya know, they…
and... or they belong to multi-state firms… (Appendix A: Pre-Event
Interview Transcript, p. 204)

As such, by increasing awareness of this trend, this research highlights the need
for increased uniformity or at a minimum increased appreciation for and
acknowledgment of the lack of uniformity in discussions locally, regionally, and
nationally regarding ethics and professionalism. This might in turn prompt
different choices among authors about how they engage the terms in the
literature and different choices among Bar associations about how they engage
the terms in practice.

Consideration of the ways in which the terms ethics and professionalism
get defined also needs to take into account the disparities between the Bar’s
technical definitions and the public's “lay” definitions. Increased awareness of
the profession’s penchant for group think (i.e., lawyers ethnocentrically talking
only to one another) might prompt the Bar to make different choices in how it
uses, defines, and engages the terms ethics and professionalism.

The final paradoxical category of behaviors that would benefit from
increased awareness prompting different choices of terms, concepts, and ideas
involves continuing legal education programming and community expectations.
While CLE programs traditionally employ lecture or panel formats, discussion groups are also employed. During the post-event focus group Participant #15 reflected on his own experience using dialogue and discussion groups in a CLE setting. “The problem that I found with table moderators is they will typically then moderate, not listen… You want everyone equal at the table whether they’re young or they’re old.” Participant #15’s comment highlights the unique value of the World Café format insofar as it invites everyone into the conversation by removing assigned table moderators from the equation. The following is an exchange that took place during the post-event focus group highlighting the World Café’s value with regard to promoting identity formation.

The people who were here, I mean, frankly, I got more in… out of this kind of professionalism discussion than I do at, ya know, almost all the lectures. Ya know, I thought the interactive nature of it was… was terrific, and it got me thinking, ‘OK, what can we do?’ Ya know, it got me thinking, ‘What…’ as opposed to just sort of… (Participant #5)

But can you imagine if this was replicated… (Participant #7)

…ya know, turning it off. (Participant #5)

…the ownership that lawyers… ya know… (Participant #7)

Yeah. (Participant #5)

…You probably have to require it or make it part of that initial introduction to the profession, but the ownership one might take or the likelihood that you would have some ownership in this question would change versus… ya know, my students look at me, ‘Here we go again.
You’re gonna talk… You’re gonna lecture me about… You’re going to give me a sermon about…’ right. (Participant #7)

This exchange highlights ownership as part of identity formation, both for the individual and for the individual as part of a larger community of practitioners and practices. Increasing the Bar’s awareness of the ways in which the more traditional lecture, panel, and discussion formats discourage ownership and identity formation may prompt them to adopt a more accepting view with regard to the formats used for interactive, dialogic, relational CLEs. Instead of promoting meeting formats based upon information transfer and transmission modeling of communication, it might prompt them to adopt a more complex approach to facilitating dialogue about these issues including the promotion of relational, conversational meeting formats such as the World Cafe (Parrish-Sprowl, 2013).

Nearing the end of the post-event focus group I asked the participants if they had anything else to add in terms of how to utilize the data I’d collected that day. Participant #15 replied,

I think that it’s… it’s easy to support what The Florida Bar does, but it… it… it ??? [unintelligible; 1:21:52]… further solidifies the need for ethics and professionalism to be discussed and not lectured about… Ya know, this shows the interaction of it, and… and truthfully an important factor is getting young and old in here, ya know, getting students in here is real important if the school could do this.
Increasing awareness of the limitations of “the archaic traditional approach to the program” as Participant #15 described it involving lecture and panel formats (which are encouraged by the very structure, process, and standards for CLEs currently in place) just might prompt The Florida Bar to make different choices in the future about the meeting formats they promote and the topics they approve, facilitating their ability to be reflective and tap into their members’ collective wisdom. Increasing awareness of the entrenched, bureaucratic state of affairs with regard to their treatment of ethics and professionalism CLE content and structures might also encourage change within The Florida Bar prompting different choices on their part with regard to the topics and formats that get approved. The perfect example of this would be the Bar’s adopting an “And Other” category as recommended by Participant #1.

Many of the comments that emerged in the post-event focus group emphasized the value of using the World Café format in the context of CLE. The use of a completely new meeting format for CLE increased awareness of the behaviors that are encouraged with regard to the way CLEs are generally run—both topically and structurally (lecture and panel formats emphasizing the transmission of knowledge biasing individual experts as opposed to “social” and conversational meeting formats like the World Café that honor collective knowledge and individual knowledge/voice). The following comments surfaced
during the post-event focus group in response to the question, “What did you experience moving through the World Café today?” Participant #5 commented, I… I thought it was, ya know, I thought it was real interesting… I tend to be an idea person, I throw out a lot of ideas, so… so the opportunity to share ideas with… with other people who, ya know, I came to… to know enough about to really respect their opinions… ah… I thought was… was very much worthwhile. Ah… it also allowed me to see a number of things in a slightly different way with a different perspective as well… (Appendix F: World Café CLE Town Hall Debriefing and Feedback Session Transcript, p. 296)

A short time later Participant #7 added,

But I can see this… ya know, what… what this suggests is a way… is a different way for CLE to work… you talked about the difference of transmission of knowledge and creation of, sort of, community. Ya know, if something like this were part of… I know The Florida Bar has sort of that bridge to practice stuff that they have for new lawyers… in these kind of formats with engagement with lawyers who are more experienced, could allow for that creation of community that brings more richness to professionalism or ethics versus transmission. ‘Here we are on a panel. We’re going to tell you how to be.’ I… I don’t think that works as effectively for this kind of identity formation, right? It’s the… it’s the communication between new person and more experienced person and sort of creating that notion of… OK, what does it mean to be an ethical lawyer? What
does it mean to be a professional lawyer? Sort of creating that together.

So I can see a format like this as being a really wonderful way to initiate new members into the bar through CLE.  (Appendix G: World Café CLE Post-Event Focus Group Transcript, p. 298)

Participant #15 observed, “This is a wonderful format for delivery because actually the Professionalism Center wants this dialoguing and participation by us.”

Participant #7 also offered the following insight.

And the other thing that’s great about this too Eric is… No one in this room told me something that I thought was way outside the range of right with respect to what professionalism means or what ethics means or any of those things, and that would be great for… that’s great for identity formation, particularly if you’re new. That you can hear a range of right answers about how to concede both these things and pull one in for yourself. Again, I didn’t hear anybody say something like, ‘Oh, that… that’s really nutty. I just absolutely disagree with that.’ And I think there’s enough community still that you would get that no matter your composition… and if someone said something really crazy, you probably would have enough responses to that to offer the countervailing view. So, that’s why I think it… it’s good for that question of, ‘How do I become an ethical and professional lawyer? What does that mean?’ It allows you to kind of choose sort of what your view is… (Appendix G: World Café CLE Post-Event Focus Group Transcript, p. 305)
The participants’ responses highlight how the current methods of CLE delivery (lecture and panel formats) have limitations, and how alternative dialogic methods like the World Café can be used to tap into the profession’s collective wisdom and to honor the range of experiences and voices of its myriad members. By making The Florida Bar aware of this limitation, it can prompt them to make different choices about what gets approved, how to build professional identity, and how they might foster better discussions about ethics, professionalism, and civility.

Rather than closing my results chapter with my own words, I’ve chosen to end with a quote from Participant #5 highlighting just how the World Café CLE format directly contributed to community building and civility, two of The Florida Bar’s stated objectives.

One thing I have to say at least about the way we did this program, ya know, there are people here I didn’t know, most of ‘em I didn’t know. And now I’ve had a chance to build a little relationship with some of these folks, so I’ve got a better opportunity to have that kind of civility with these people… now that these are folks that I have something in common with… so that aspect of it I think is very positive.  
(Appendix G: World Café CLE Post-Event Focus Group Transcript, p. 325)
Chapter Five. Discussion

This study originated from a single question Scott Hawkins (then President-elect of The Florida Bar) asked me on Saturday, July 17th, 2010, in Fort Lauderdale, Florida. “What can be done about incivility in the practice of law in Florida?” For the last three years, my research has focused on answering that one question. Initial research into civility quickly led me to explore ethics and its metaphorical counterpart in Florida jurisprudence professionalism. Recall that according to The Florida Bar’s metaphor, ethics is “the floor” (i.e., the rules or law of lawyering) and professionalism is “the ceiling” (i.e., aspirations).

According to many, lawyers simply aren’t as “professional” as they used to be, and the practice of law has devolved and become downright uncivilized. Some reference a professionalism problem; others call it a civility problem. Either way, a significant portion of the profession has identified its current practices as problematic. This dissertation is the primary product of trying to address a pragmatic interpersonal and organizational communication problem facing the Florida legal community. “What can be done about incivility in the practice of law in Florida?”

Where some scholars and practitioners currently frame the professionalism problem as one of civility, manners, and ethics requiring clarification, regulation, and enforcement, a very few have acknowledged the polysemy of language and in turn called for the pragmatic reconstruction of legal
practices (Sullivan, 2005). Where some scholars and practitioners are embroiled in debates over normative definitions of ethics and professionalism emphasizing the values and traditions of their noble profession (Hamilton, 2008; Minkoff, 2009), a very few have begun acknowledging the origins of their troubles in the very pedagogy that currently dominates law school curriculums (Sullivan, Colby, Wegner, Bond, & Shulman, 2007). It’s a pedagogy modeled after positivist science promoting an instrumental rationality that obfuscates matters of morality (Sullivan, 2005). From a communication perspective the problematics of ethics and professionalism in the practice of law can be understood at least in part to originate in the inherent polysemy of language and the incommensurability of moral orders deriving from alternative forms of communication.

The following key findings struck me as particularly compelling. I’ve grouped them under the headings: polysemy and public relations, identity development vs. regulative enforcement, “loss of a collective mentality,” and the locus of expertise. (I’ve also included an observation regarding ethnocentric stories lived vs. modernistic stories told. I feel it merits inclusion herein despite a lack of substantial evidence emerging from the World Café data.)

**Summary of Key Findings**

**Polysemy and Public Relations**

The Florida Bar needs to be cognizant of a paradox of its current practices. As a professional organization, The Florida Bar talks about and defines *ethics* in one very specific way that doesn’t necessarily parallel lay
definitions of ethics. As a result, a lawyer can be unethical just so long as he or she doesn’t break an ethics rule.

Despite The Florida Bar’s best attempts to define ethics and professionalism, any attempt to “fix” meaning once and for all, to achieve a “final solution” when it comes to meaning, is impossible (Eisenberg, 1998; Rommetveit, 1974). As such, the Bar would be well served to consider lay public uses and definitions of the terms ethics and professionalism in contrast to how The Florida Bar organizationally defines and engages the terms in contrast to how many Bar members themselves define and engage the terms (i.e., synonymously). The Bar should carefully consider polysemy with regard to its public relations and regulations.

Identity Development vs. Regulative Enforcement

A second finding that was particularly compelling involves two alternative approaches or framings that surfaced during the event with regard to defining the problem or need. On the one hand, numerous attendees expressed an opinion that punitive, regulative action was needed. Several attendees expressed frustration with the judiciary, citing a lack of enforcement as one of the primary problems at the “root” of increasingly unprofessional behavior among attorneys. For them, stricter enforcement was the answer.

On the other hand, some attendees suggested that rather than framing ethics and professionalism efforts as regulative and punitive, they might alternatively be framed as identity formation and community development opportunities. By making public reprimands a part of the conversation when
every law student passes the Bar and every new lawyer gets hired into a firm, an idea proposed by one attendee and well received by most everyone in attendance, the conversation can be made to emphasize the role of identity development and ethics, community development and professionalism, honoring each participants voice and expertise/experience in the larger professional conversation about ethics, professionalism, and civility.

“Loss of a Collective Mentality”

Yet one more key finding of this research emerged when one attendee lamented the “loss of a collective mentality” and a collegiality that he believed pervaded the profession in the past. According to the attendee, now there are so many lawyers that there isn’t a high likelihood that the same lawyers and the same judges will cross paths often. As such, there’s a certain assumption of anonymity. With anonymity, the incentive to act nice and be civil is gone. According to this reasoning, many lawyers no longer feel the need to be or see the value of being civil in many of their interactions with their peers.

In many ways, taking into account the demographic diversification the Bar has experienced over the last half century, it should come as no surprise to hear such sentiments. Once upon a time, when the Bar and the profession were more homogenous (i.e., Judeo-Christian male heterosexuals), it’s easy to appreciate how legal communities of practice might have engendered a collective mentality and a collegial familiarity. Today, however, as an association of diverse members and as a professional organization, The Florida Bar is faced with
managing dialectics of change and stability, individuality and collectivity, diversity
and equality.

The Locus of Expertise

One of the last and perhaps most intriguing findings emerged in a conversation between World Café attendees over the locus of expertise when it comes to matters of ethics and professionalism among Florida attorneys. The Florida Bar’s position with regard to the dominant CLE formats (lecture and panel) for ethics and professionalism work from the assumption that one or more people in the room are “ethics” experts or “professionalism” experts, implying that everyone else in the room is not an expert, is not qualified to talk about ethics and professionalism. A parallel pedagogical assumption is that some people are expected to do most of the talking while the remaining attendees sit passively listening (an assumed/implied audience of “non-experts”).

If we frame the more traditional CLE formats using a transmission model of knowledge from credentialed “professionalism” experts to implied/assumed non-experts, we are modeling a normative pedagogy which implicitly assumes that only certain people are qualified to talk about professionalism (i.e., with the implicit assumption that the Bar as a whole and its members individually are not “professional” enough to talk reflectively among themselves about professionalism).

Alternatively, this conversation might constructively, transformatively be framed as a community individually and collectively building identity in conversations about ethics and professionalism. This alternative framing locates
each and every practitioner as a *standpoint* expert, an ethical stakeholder with a
unique set of skills, experiences, and history—a *voice* when it comes to ethics
and professionalism. Instead of hierarchically honoring some voices over others
in defining professionalism, why not honor the plurality of voices that constitute
The Florida Bar’s diverse membership? The Florida Bar would be well served to
engage more dialogic, interactive meeting formats. Such programs are designed
to honor *all* stakeholders’ voices, promoting active, democratic ownership of the
challenges facing the Bar membership and the Florida legal community.
Pragmatically, professionalism should be an engaged conversation, *not*
something to be lectured about.

**An Observation: Ethnocentric Stories Lived vs. Modernistic Stories Told**

[The following is an observation that’s weakly supported by the data
gathered during the pre-event interviews, the World Café event, and the post-
event focus group. Nonetheless, it’s an observation made in the course of my
three years of doctoral research, and I feel it merits inclusion herein.]

Something I found particularly compelling rhetorically and pragmatically
was a disjunction between the *practice* of law (dominated by ethnocentric stories
lived) and the *rhetoric* of ethics and professionalism (dominated by modernistic
stories told). Moral orders arise out of the forms of communication—here we’re
primarily concerned with ethnocentric and modernistic. To practice law in this
country is to engage in an adversarial process, an inherently ethnocentric form of
communication. It’s an “us” vs. “them” form in which resources are at risk. As a
Bar and as a profession, however, lawyers are also tasked to engage in a
rhetoric of ethics and professionalism populated with modernistic stories told (promoting ideas like truth, identity, diversity, equality, and progress).

Examples of this disjunction include a publicly professed organizational rhetoric of democratic equality while many lawyers readily acknowledge that not everyone gets treated equally in a capitalist society where money matters with regard to the quality of legal representation. Additionally, there’s the disparity between a publicly professed rhetoric of professional unitary wholeness among lawyers and the pragmatic practicality that there’s more than a little diversity among the roughly 1,250,000 lawyers nationally.

Depending upon the context (be it in the court room or the board room), legal professionals are called upon to enact patterns that are either ethnocentric or modernistic. Having to change forms of communication to conform to the appropriate context(s) means that attorneys are at times confronted with moral conflicts and incommensurate moral orders deriving from the alternative forms of communication. By becoming aware of these disparate forms of communication and the disparate moral orders they entail, the Bar and its members can more reflectively consider the impact of legal pedagogy and jurisprudence predominantly engaging in ethnocentric forms of communication (in comparison and in contrast to modernistic or cosmopolitan forms of communication).

**Practical / Theoretical Implications**

Insofar as practice and theory are dialectically interdependent, I’ve identified the following five items as having “practical / theoretical significance.”
Generally speaking, I see this research impacting two professional communities of practice—the legal and the academic.

**#1: Introducing the Florida Legal Community to the World Café Methodology**

For all of the participants involved, this was their introduction to the World Café—a method for organizing inquiry, creating hospitable space (fertile places) for large group dialogue, and for facilitating interpersonal conversations, professional/organizational learning, and professional/organizational development. In effect, by hosting a World Café CLE this research directly addressed the “general goal of the professionalism CLE requirement to create a forum in which lawyers, judges and legal educators can explore and reflect upon the meaning and goals of professionalism in contemporary legal practice” (The Florida Bar, 2009a), a call for reflective inquiry harkening back to Dewey and American Pragmatism (Dewey, 1910/1991; Hookway, 2008; McDermott, 1981; Rorty, 1982; Schön, 1983; Sullivan, 2005; Sullivan et al., 2007).

**#2: Professional Community Building**

By design, the proposed event created and fostered “an inclusive environment in which lawyers, regardless of gender, race, ethnicity, religion, sexual orientation, physical or mental disability [were] motivated to succeed professionally and contribute to the goals of their profession” (The Florida Bar, 2010) as evidenced by their voluntary participation in the event and their conversational contributions—the “data/capta” that was harvested in the form of written feedback, table-top notes, sticky notes, digital audio transcriptions, etc. As a group, we engaged a conversational approach to inquiry tailor-made “for
addressing key organizational and societal questions in the service of positive futures” (Brown et al., 2005, p. 229). Additionally, we collectively nurtured the emergence of generative conversations—cultivating collaborative creativity and collective intelligence. In doing so, this research helped members of the Florida legal community appreciate the phenomenon of collective intelligence—a “system thinking together” (Brown et al., 2005, p. 62). Our conversations constituted embodied, engaged community building among the disparate members of the legal community in attendance (associates and partners; public defenders and prosecutors).

### #3: CLE Ethics and Professionalism Credit

Insofar as event attendees were able to earn both general and ethics CLE credit, the event met a very pragmatic professional need. Pedagogically and methodologically the event also improved diversity in legal education (The Florida Bar, 2010b) by introducing attendees to the World Café dialogic/conversational meeting format (method/form of inquiry and analysis) and generating “thought-provoking and introspective discussion among participants about the meaning of professionalism in contemporary legal practice” (The Florida Bar, 2009a, Accreditation). The event also pragmatically improved diversity in The Florida Bar by uniting, honoring, and cultivating diverse critical and reflective judgments regarding meanings of terms like ethics, professionalism, and civility in contemporary legal practice (The Florida Bar, 2009a, General Purposes; The Florida Bar, 2010b). In hosting a World Cafe CLE, I facilitated the legal community’s cultivation of systems of hosting
conversations, a “continuous process of reflection and sensemaking” (Brown et al., 2005, p. 183). This directly compliments The Florida Bar’s professionalism CLE desired result to “inculcate a habit of talking with colleagues and engaging in dialogue that is essential to a healthy professional life” and to “encourage the habit of reflection (or the ‘stop and think’ rule of morality)” (The Florida Bar, 2009a, Results Desired). While I’m not sure what to make of the “‘stop and think’ rule of morality” part of that last quote, the World Café methodology definitely works to inculcate a habit of talking and reflection, meta- communicatively engaging in reflexive practices.

Additionally, to carry The Florida Bar’s floor-ceiling metaphor, insofar as any discussion of professionalism (“the ceiling”) also involves a discussion of ethics (“the floor”), this event was deserving of both ethics and professionalism CLE credit, explicitly acknowledging the matter of moral complexity and the competing/conflicting cases for “the ethics of principles or rules versus an ethic of virtue or character” (Sullivan, 2005, p. 262).

During my dissertation defense, one of my committee members asked, “When they talk about professionalism and they talk about ethics, do you sense that the conversation is really about behavioral expectations or do you think it really is about character?” Another committee member asked, “Is the Bar really interested in regulating behavior or are they interested in regulating character?” After re-reading the transcripts from my dissertation defense, I wanted to respond to the committee members’ questions with several additional questions. “Why does it have to be an either/or proposition? Why can’t it be a ‘Yes… And…’
framing (to borrow from improv)? Why can't it be about both behavioral expectations and character? Ethics of principles or rules (i.e., behavioral expectations) and ethics of virtue or character?” In this case, while I would say the dominant rhetoric biased behavioral expectations, character was also part of the conversation for several interviewees and World Café attendees. One of my committee members offered the following observation regarding behaviors versus traits during my dissertation defense, “…I think it is the behaviors because for them those behaviors are visible and the traits are invisible.”

### #4: Honoring Stakeholders’ Collective Voice(s)

Honoring stakeholders’ collective voice(s) requires cultivating conversational leadership; it “requires leaders to become active connectors—of diverse people and stimulating ideas” (Brown et al., 2005, p. 190). Throughout the planning and execution of this research, I carefully considered the following two questions. “Whose voices need to be included in this conversation?” and “Who’s not here who should be?” (Brown et al., 2005, p. 190) I identified the following voices as possible stakeholders in the event and extended invitations accordingly as best my timetable and the parameters of my doctoral research would allow.

- The Florida Bar Voluntary Bar Association
- The Florida Bar (Members and Leadership/Administration)
- The Florida Bar Board of Governors
- The Florida Bar Henry Latimer Center for Professionalism
- The Florida Supreme Court
- The Florida Supreme Court Commission on Professionalism
- Local and Specialty Bar Associations
Pragmatically, meeting space limitations, scheduling conflicts, and practical marketing realities precluded inviting everyone, by design and necessity leaving some voices underrepresented and other voices unrepresented and voiceless. The World Café methodology, nonetheless, attempts to mitigate the matter by honoring both individual expertise and the conversationally emergent collective wisdom (knowledge, insight, and experience) of the varied stakeholders who ultimately participated. The end result was a World Café that included a relatively diverse group of legal scholars and practitioners. (I emphasize relatively to acknowledge that there can only be so much diversity among a group of twelve people.)

#5: Expanding and Extending Existing Interpersonal and Organizational Communication Theory and Practice

How has my research (and how did our conversations) serve to expand and extend existing interpersonal and organizational communication theory and practice? This research extended and expanded upon existing organizational communication scholarship through application of CMM as a “practical theory” in the context of the practices and profession of law. Additionally, the research extended and expanded upon existing interpersonal and organizational communication scholarship through application of the World Café format as both
a meeting and a research methodology. Lastly, this research extended and expanded upon existing legal communication scholarship through application of Mashburn’s critical-cultural approach (1994) to the contextual sensemaking of ethics and professionalism in the practices and profession of law.

What’s to be gained by studying the contested definitions of such terms? We facilitate the ability to conversationally move forward. We gain knowledge and insight into the plurality of emergent meanings-in-use, highlighting how use of the terms not only describes and represents but also constitutes, constructs, and inscribes our social worlds (Foster & Bochner, 2008; Rorty, 1979, 1989; Shweder, 1986).

**Study Limitations**

No study is perfect, and this study (like all research) had its limitations. One of the first limitations was the sample size. As of September 1, 2013, 96,412 lawyers were licensed to practice law in Florida (i.e., are members of The Florida Bar). Despite my best efforts to engage a representative sampling of the Florida legal community with regard to gender, racial, ethnic, practice area, and legal role diversity, the final composition of the CLE workshop attendees (at nine males and four females; 12 Caucasians, 1 African-American) left many a stakeholder voice unheard.

A second, “complimentary” limitation of engaging the World Café format was the difficulty I encountered trying to do applied research within the chronological confines of doctoral work as part of a dissertation. I couldn’t make any hard and fast meeting plans until the University of South Florida Institutional
Review Board approved my research. From that point forward, however, I had to find a location where I could host the World Café CLE, invite prospective participants, approach local and specialty bar associations about co-sponsoring the CLE, coordinate five pre-event interviews, and then host the half-day event within the span of just a few months (leaving little time to market the event). Since many legal professionals and bar associations have schedules booked weeks and months in advance, previous commitments and collaboration opportunities were limited based upon my timetable. As one law school professor also pointed out, it didn’t help that the event was held right around the same time that many law school students would be studying for the bar exam.

One final limitation worthy of note was the paradoxical need to have “a workshop before the workshop” just to confirm that we would be asking relevant, evocative questions. To get the maximum value out of a World Café, in my opinion, you’d ideally need a series of workshops (at least two or three). The first workshop would focus on deciding what questions are to be asked at the second World Café. At the second World Café you’d ask the pre-determined questions, then a third World Café would re-visit and debrief the progress and products of the second World Café. Unfortunately, the limitations of attempting action research as a doctoral student necessitated a single workshop in this case.

In an attempt to vet my World Café questions as thoroughly as possible, I had several informal pre-pre-event interviews with legal professionals to assess what questions might be most evocative among their peers. From these informal interviews, I developed a set of four “Original World Café Questions.” I then
shared that original set with my dissertation committee. The committee offered some feedback that generated a second set of “Updated World Café Questions.” To find out which set of questions would be most evocative I presented each of the five formal pre-event interviewees with both sets of questions and asked for their opinions. I asked which set of questions they thought would be most evocative among their fellow legal professionals. The responses from those interviews then resulted in a final, third set of questions which were ultimately asked during the actual event. Nonetheless, despite my three-tiered vetting of the World Café event questions several attendees explicitly commented that they felt I wasn’t asking the right questions.

**World Café Lessons Learned**

The following are lessons learned in the process of designing and facilitating this World Café event. In terms of what worked I felt the World Café format’s emphasis on conversations and interpersonal relationships was successful at engaging the attendees in conversation. In fact, on several occasions I had trouble corralling the group back together.

The World Café format was also successful insofar as it challenged attendees’ notions of how a CLE might be presented and how an issue might be addressed collectively in engaged, emergent conversations (in contrast to the more traditional CLE formats involving linear lectures and panel presentations). As one of my committee member’s noted during my dissertation defense, I mean the whole idea of conversations about framing concepts to the one guy was just a waste of time, and it would be interesting to know what he
would NOT think of as a waste of time. What would have been the alternative thing that could have happened that he would have said, ‘Yeah, this is exactly what we should be doing?’ (Dissertation Defense, 2013)

Here I responded, “Root cause analysis. That’s what he kept repeating.” The committee member continued,

To me what that says is that they were very uncomfortable, or at least some of them, were uncomfortable with an open space kind of process that didn’t have a familiar sort of sense of security associated with it. I mean there’s no magic to root cause analysis either. You know what root cause analysis is? It’s just a conversation but it has a very, kind of, rigid methodology to it so it makes you feel like you’re doing something that’s logical and so there’s that sort of desire for that, right? But I’m not so sure that what you did isn’t actually more valuable because you did something disruptive. The question is, ultimately can that change and expand the way they think about CLE if they were to do more things like that?

(Dissertation Defense, 2013)

The World Café’s emphasis on honoring both individual and collective voices stands at odds with two hallmarks of the performance of legal professionalism: performing authority and performing hierarchy. In terms of encouraging everyone’s contribution (Principle 4), attendee’s were asked to identify themselves by their first names only on their nametags in an effort to keep the conversations personal and honor each individual’s voice and expertise (implicitly
challenging authority and hierarchy). Several participants ignored this request and wrote their full names and titles on their nametags. One of my committee member’s commented during my dissertation defense,

It’s not that people just don’t want to do it. It’s that they don’t know how to do it. They don’t know who they are in the room if they’re not a judge. The judge is the judge wherever the judge goes. (Dissertation Defense, 2013)

Here the committee member was highlighting how the legal professionals who were present had arrived with preconceived notions of and accompanying expectations regarding how to “do” or “perform” authority (or the lack thereof) and hierarchy (or the lack thereof) in the context of legal education. They had preconceived notions and expectations regarding what qualify as “appropriate” CLE topics and CLE pedagogical formats (i.e., monologue vs. dialogue). They had a very strong frame of what it meant to get further education in their field. The World Café challenged their preconceived notions and expectations. Using the World Café meeting methodology, I took a group that was accustomed to rigid advocacy and linearity and brought them into a more ill defined dialogic conversational process.

Several months after the event, Participant #7 emailed myself and the other World Café attendees informing us that during the second week of her “Professional Responsibility” course she’d shown over 60 of her law school students the single public reprimand video available on The Florida Bar website. The World Café’s seventh principle is to harvest and share collective discoveries,
and her follow up is representative of this pragmatic principle in action (community building and relationship development).

If I ever engage the World Café for research purposes again, however, I would likely do several things differently. First, I would make detailed seating diagrams for each round (numbering each table and each seat at each table, then noting who sat where when). To some extent I did this, but my seating diagrams and notes were limited. It really helped when I went back later and tried to make sense of my notes, specifically trying to account for individuals’ comments and tables’ conversations.

Second, I would make sure to label and number each of the pieces of butcher-block paper (noting corresponding seat numbers and table numbers). Again, it would make it easier to know who might have written specific comments as well as the general tenor of the various tables’ conversations during each of the courses. As is, in my haste to gather the papers off the tables and get out of the room at the end of the day, I didn’t note which pieces of paper went together (since there were two pieces of paper per table). Nor do I know who sat where and thus who wrote what.

I think it’s worth noting here that one of my committee members raised an interesting point which was to question the value of or need to identify what gets said with who said what individually. “Why does it matter who said what?” he asked during my dissertation defense. “If you’re interested in what gets said, does it really matter who said what?”
Third, if I were to facilitate another World Café with legal professionals in Florida I might consider incorporating a brief introductory lecture to help contextualize what we’ve come together to do and to help frame the conversation. During the post-even focus group, Participant #5 suggested that instead of just launching into the four courses of conversation, it might have been better to provide a short one-hour lecture at the start of the event articulating how The Florida Bar already defines ethics as the floor and professionalism as the ceiling. Based on the attendee’s feedback, I now realize that I had errantly assumed that all Florida lawyers would already have learned and thus be familiar with the Bar’s instrumental definitions of ethics and professionalism metaphorically contrasting the floor and ceiling.

Before concluding, I have two stories that my dissertation committee felt deserved re-telling. The first has to do with Participant #11. He’d recently had a book published, and he wasn’t shy about telling anyone (and everyone). In fact, when he first sat down in the morning, he put the book face up squarely in front of him on the table for everyone to see. As the day progressed, I noticed that every time new people would join him at his post, he was quick to mention his new book. He didn’t move. He stayed in the same seat, at the same table, nearly the entire day. It was only in the late afternoon when snacks were served during the working break that he left his post to mingle (taking it up again shortly thereafter). During my dissertation defense, when I mentioned how he put his book in front of him and referenced it casually during every single round, one of my committee members commented “That’s data!” (Dissertation Defense, 2013)
The second story involves Participant #8. When I arrived an hour early to insure that everything was set up properly at the event location, I noticed that there was A/V equipment including a projector and screen. Puzzled, I asked the woman who was managing the catering for the event about the equipment, explaining that I had not ordered any A/V equipment and that there must have been some mistake. She politely explained that Participant #8 had requested the equipment for his PowerPoint presentation. I explained to her as politely as I could that the format of this meeting did not involve any PowerPoint presentations. She then said politely but bluntly explained to me, “I’ll let you tell him that” (as if she already knew his personality and knew that it was not her responsibility).

When he first arrived before the event had begun, I approached him and attempted to politely explain that the format of a World Café and the day’s CLE agenda did not involve/incorporate any PowerPoint presentations (or any “individual” presentations at all). He was visibly upset and seemed to take my remarks as a personal affront. I did my best to try and explain that this was a completely different meeting format than the normal lecture and panel presentations of most CLEs, but he didn’t want to hear it. At one point he even said something like, “Well I guess there’s no reason for me to stay then…”

Since I didn’t know how many people would actually show up and was terrified that I wouldn’t have enough participants, I quickly attempted to assuage him by asking how long his video clip was. He said it was very short. To this I offered that he could show it at the start of the second course since that’s when
we’d be specifically addressing professionalism. “So long as the clip doesn’t take too long…” I said. “Oh it should only take a minute,” he replied. (When he finally did show the clip, it actually took more than three minutes.) He also wanted to make a few remarks following the clip. To this I once again explained that the World Café format doesn’t really afford time for individual presentations. When I saw that he was once again upset, however, I asked, “Could you keep your remarks extremely short?” “Of course,” he replied. Luckily, in the end he just showed the clip and made no remarks, I think at least in part because by then he’d started to appreciate the round-robin conversational nature/format of the World Café. He realized that his making remarks would be out of place in front of his peers since no one else would be making remarks. When I mentioned this story during my dissertation defense, one of my committee members commented, “You should put that in too” (Dissertation Defense, 2013). So there it is.

**Conclusion**

As a communication scholar-practitioner with intimate knowledge of every word, paragraph, comma, and quotation mark in this study, having reflected on this endeavor as an embodiment of applied interpersonal and organizational communication scholarship spanning over three years, I feel affirmed that there is value in looking at the constitutive, generative, and transformative nature of language, in looking at how we come to make sense and making meaning in communication.

By employing the models that CMM provides, The Florida Bar and the
Florida legal community can start to move up an order of recursion in their conversations, which then allows them to move from incommensurate ideas that are incompatible to incommensurate ideas that are comparable. It’s moving up that order of recursion such that there is a move from incommensurability, not to commensurability per se but to discuss-ability. Cosmopolitan communication (postmodern, post-structural social constructionist dialogue) involves framing the conversation such that we can compare conflicting incommensurate moral orders and then discuss them, which following Rorty is moving the conversation forward not to “solve” it once and for all but rather to continue the conversation.

For me the real “Aha!” finding of this research involved this going meta-. The Florida Bar and the Florida legal community would be well served to move up an order of recursion when looking at the problems that they are facing to better see and discuss the patterns they are making, how they are making them, and who they are becoming as they make those patterns (individually and organizationally).

Discussions of ethics almost always involve considering what is the right thing to do in any given situation, assuming and expecting that there is AN answer—a right versus a wrong. Often, however, life just isn’t that simple. Situations arise, decisions are made, choices chosen often with little or no significant reflection. Life happens, and it’s a messy affair.

With that said, I hope that I have adequately responded to the original question posed to me back in the summer of 2010. “What can be done about incivility in the practice of law in Florida?” Given the opportunity, I see numerous
additional research lines extending and expanding on the lessons learned and observations made herein. The present analysis examined the way The Florida Bar defines and enacts ethics and professionalism. It would be fascinating to explore how other states (or even entire geographic regions in the United States) professionally define, engage, and enact terms like ethics, professionalism, morality, and civility. What might a “thick read” of state Bar associations’ websites in the southeast reveal (in Florida, Mississippi, Alabama, Georgia, and South Carolina) in contrast and comparison to websites in the northeast (Maine, New Hampshire, Massachusetts, Connecticut, and Rhode Island)?

Another line of research might explore how other professions and professionals use language in similar ways, fashions, and means. How do ethics, civility, morals, and professionalism get defined and enacted in the practices of medicine, design, art, engineering, etc.? Might there be parallel patterns of stories lived and stories told, and if so what might it tell us about that profession in comparison to the law? Might we find similar stories focusing on identity development versus regulative enforcement with regard to professional rules, codes, and ethics?

Still a third line of research might explore the pedagogical implications of these findings with regard to law school curricula, students’ identities, and community development working with law school administrators and professors instead of lawyers and law firms, legal associations and their members.
Endnotes

i As ethical/moral stories are socio-culturally and socio-historically shared among individuals as members of speech communities, they also become part of the individuals’ neuronal pathways (Siegel, 2010a, 2010b). There is a growing body of research that highlights how this process is both social and neurobiological. Over time and with repetition of the stories, those patterned neuronal pathways and neural networks become entrenched. As neurobiologist Daniel J. Siegel quipped, “neurons that fire together wire together” (2010b). In slightly more technical neurobiological terms, “When we establish synaptic connections, through the growth of synapses linking existing neurons or newly developed neurons from neurogenesis, we are laying the foundation for an integrated circuit. When the neurons in that circuit become repeatedly activated, the oligodendrocytes and astrocytes (the supportive glial cells) sense that firing and wrap myelin around the interconnected neuronal circuit. Here is the essential issue: Myelin can increase conduction speed by 100 times. And while all neurons need to rest after firing, myelin can reduce that resting time—called a refractory period—by 30 times. The end result, you can imagine, is that if you and I are neurons in a circuit and we’ve been training well, our communication with each other will be 3,000 times faster than an unmyelinated pair of connected neurons” (Siegel, 2010b, p. 218-219). In effect, over time and with repetition, communicative patterns become “hard wired” into our brains. Interpersonal neurobiological research, however, is beyond the scope of my dissertation. As such, I’ve provided this endnote to highlight promising directions for future research.

ii The “hard wired” neuronal patterns are forever subject to change due to the brain’s neuroplasticity. While it was once believed that the “wiring” of the brain gradually and developmentally became fixed, recent neurobiological research has found that the human brain is constantly changing and evolving. “Neuroplasticity is the term used to describe this capacity for creating new neural connections and growing new neurons in response to experience” (Siegel, 2010a). In effect, this means that in conversation, in communication, our brains can change and our thinking can change. While one’s ethics/morals (i.e., one’s habituated logics of meaning and action) may in time become reified (i.e., neurally entrenched), in conversation our brains can become “re-wired” and our habits and customs (i.e., ethics/morals) can change.
References


⁴ *Note*: Chapter 2, "From Technical Rationality to Reflection-in-Action."


https://www.google.com/url?q=http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/DEBE92EEA339478785257B0A005A3239/%24FILE/2013-16%2520Strategic%2520Plan.pdf%3FOpenElement&sa=U&ei=1htkUZP7JdPa2wWdxYGoBA&ved=0CAoQFjAB&client=internal-uds-cse&usg=AFQjCNFczms6Zj01kfWy9xbd75uPT0qM6Q


The Florida Bar. (June 2011). *Inquiry concerning a Florida lawyer pamphlet.*
Retrieved July 31, 2013, from http://www.floridabar.org/tfb/TFBConsum.nsf/0a92a6dc28e76ae58525700a005d0d53/c5b7d247a0c9c45a85256b2f006c6186


The Florida Bar. (June 25, 2013b). *Oath of admission to The Florida Bar.*


Transforming Communication Project. (2008). About Us: The ideas with which we work. Retrieved on August 6, 2011, from
http://tcpcommunity.org/about.html#ideas


Appendices
Appendix A: Pre-Event Interview (Participant #6)

The following is the transcript for pre-event interview conducted with Participant #6 on Wednesday, 8 May 2013.

Eric Paul Engel: Okay. So that’s recording. Okay, perfect. So here’s what I brought, and then the first we’ll just go over, I’ll read it out loud so that it’s on the recorder, um… in terms of… ah… on the afternoon of Friday June 7th, 2013, I intend to host a voluntary half-day continuing legal education event inviting members of the Florida legal community to the Tampa Bay area to consider how they collectively make sense of, evaluate, and enact the concepts of ethics and professionalism. Employing a conversational meeting format known as a World Café, the CLE will simultaneously serve as the focus of doctoral research being conducted in the communication department of the University of South Florida - Tampa. With this in mind, I’m gonna… contacting you cause I’m interested in your unique experiences and perspective as a law student or a legal practitioner obviously. Ideally, your participation will involve one informal interview that will last between 30 minutes and an hour… that’ll be today… attendance and participation in a half-day, um… CLE workshop and then participation in a one-hour informal focus group immediately following the workshop. Recognizing you’re an extremely busy professional, however, you need not be able to participate in all three events, though ideally this would be the case for the collective conversations to be of maximum value. The meeting is slated to be held in the Mann Lounge on the campus of Stetson University College of Law in Gulfport. The research has no risks, while the research is designed to benefit Florida’s legal community by facilitating professional community building, increasing knowledge and awareness of diversity and cultural competency, by providing ethics and professionalism CLE credits, by aligning with The Florida Bar’s 2010-2013, actually 2016 now, strategic objectives, and by honoring the various stakeholders’ collective voices, I cannot be sure if the individual participants will benefit from the study. Ahh… Know that I will do everything I can to protect your privacy. Your identity and personal information will not be disclosed to any publication that may result from this study, and any notes that are taken during the interview will be stored in a secure location. With all that said, would you be willing to be interviewed, and if so, would it be alright if I audiotaped our interview to insure reliability and accuracy.

Participant #6: Yes.

Eric Paul Engel: Okay, perfect. And then there’s a contact information at the bottom if you wanted to follow up about the Internal Review Board. It’s got the case number.

Participant #6: Good. Okay.
Eric Paul Engel: So, with those formalities out of the way, one thing that I would want you to know is, depending upon what... oh that’s yours. And then the oth... next page is the script basically...

Participant #6: I saw that.

Eric Paul Engel: Um... if you are interested, for purposes of the dissertation, everything will be kept confidential. If you are interested in writing something or working together writing something, that’s still a possibility – it would just be done once the dissertation is done...

Participant #6: Okay.

Eric Paul Engel: ...because everybody who’s part of this has a voice in it, and so it’s not uncommon for multiple articles actually to come out of accounts like this.

Participant #6: Got it. Got it. Great. Great. Yeah, because it’s, ah... multi-faceted.

Eric Paul Engel: There’s a lot of conversations going on. Ah... It’s funny because it doesn’t meet most of the requirements of the CLE...

Participant #6: Right.

Eric Paul Engel: ...and so they... they weren’t really sure of how to classify this and they gave us 4.5, ah... general hours, 4.5 ethics hours, but no professionalism hours, even though we’re talking about professionalism.

Participant #6: That’s interesting. Oh well, it’s... it’s... it’s all good, though, because ethics and professionalism is mixed together so it’s... it works for the lawyers.

Eric Paul Engel: Exactly...

Participant #6: It’s part of the CLE.

Eric Paul Engel: ...which... it seemed weird that they wouldn’t give both credit...

Participant #6: Yeah...

Eric Paul Engel: ...but it works perfect because we know how they work together. That... the way that the... the law has been defined by the... The Florida Bar.

Participant #6: Exactly. Exactly.

Eric Paul Engel: So, essentially, with what I’m doing today, what I’m hoping to get out of these pre-event interviews... you’re the first of hopefully between five
and seven... Um... it's nice, it looks like I might be able to actually interview a major... have you heard of, uh... Chief Justice Major Harding?

Participant #6: Sure. I know him personally.

Eric Paul Engel: Oh... Okay.

Participant #6: Yeah, I've known him for many years. He's a great guy.

Eric Paul Engel: John Kerry... John Berry, rather, put me in touch with him...

Participant #6: Awesome.

Eric Paul Engel: ...and it looks like he may be able to attend and be interviewed.

Participant #6: I'll be looking forward to seeing him again. That's great. That's awesome. He's a great guy too, very... very intelligent.

Eric Paul Engel: Essentially, before you go into a World Café, one of the things that you really want to do is you want to try and, ah... make sure you're asking questions that matter, because it... you could host any number of events, but if you don't ask the right questions, you're never gonna know if you've achieved what you need to achieve. If you ask just the right question, you can get to the sol... the problem a lot easier, even defining the problem. So part of what I wanted to do is start off with... and the first question, which is... um... I've come up with some original questions that were my first draft version. Then I came up with a second set of questions working with my dissertation committee, but none of them are lawyers, and so part of what I'm gonna do is talk to roughly five to seven lawyers or people who are active in the legal system and ask, “Of these questions, do they work?” Here's...

Participant #6: Thank you.

Waiter: Do you want any bread or anything?

Participant #6: Um... Yeah, bread would be great.

Waiter: I can bring out some bread.

Participant #6: That'd be great.

Waiter: It's not really on the menu, but I'd kinda' recommend it if you have, like, soft...

Participant #6: Yes. Thank you.

Eric Paul Engel: Um... So essentially, the first thing is, I want to know do the questions as we've... as you can... as you've seen them. Do you think they
work? And if not, how may they work better? Or what thoughts might you have about… are these going to ultimately evoke productive responses?

Participant #6: The first three I thought were good when we talked about ‘em last time, so I… ya know, I think those are still good. Um… As far as the next set, the updated ones, I think that they’ve… they’re better… or they’re good because they focus more on the individual, um… caus… because, ya know, individually we may… when we say what ethics and professionalism is, we may be referring to, um… outside of our experience. Whereas the… the… the… the updated questions on… based on a person’s own experience, I think it may, ah… narrow it down, ah… like you’re… you’re just discussing, narrow it down to the person’s individual, ya know, thoughts.

Eric Paul Engel: Okay.

Participant #6: Okay, I mean just real quickly, but from looking at it.

Eric Paul Engel: Okay.

Participant #6: But I think these are good questions.

Eric Paul Engel: Okay.

Participant #6: So let me know when you want… when you want me to… or if you have any other que… preliminary questions or we can just talk about them… them, uh… The ones you have.

Eric Paul Engel: Yeah, essentially for these, the things I wanted to you to know is is reflecting on these, and if we… it’s weird because in a sense we first need to have a meeting to have the meeting…

Participant #6: Right.

Eric Paul Engel: …to make sure that the meeting is gonna be on track, which is what I’m trying to do now.

Participant #6: Yup.

Eric Paul Engel: So with these, do you think that they are questions that matter, and if so, how? Um…

Participant #6: Sure.

Eric Paul Engel: Coming from your perspective, someone who’s so active with these specific issues, do you think I’m really trying to get at something, and have I asked it and framed it right to where I’m really gonna get people involved in a good conversation? Because you understand, there’s some things we don’t need to be talking about, and others nobody is talking about.
Participant #6: Uh, it... And... and I think this is... this... and I'll tell you, Major Harding is big on this, and I think you'll get a lot from him. There is... the, the Supreme Court has... has, um... and we talked about this, ah, before, has essentially said that professionalism needs to go hand in hand with ethics. Ba... it needs to... there needs to be professionalism because, without professionalism you... you move into the unethical conduct. Because, in my... in my mind, professionalism is being civil, being cooperative, um... you know. For instance, moving a case along properly for the clients is professional. But if the lawyer doesn't properly move a case law, then it's unethical as well as being unprofessional because, not only does it inconvenience the other party and... and the, ah, other attorney because it's obstructing their ability to take... to put on their case, but it's also unethical because it's... it's either intentional if it's intentional it's a violation of bar rules. If it's not intentional, it's negligence. Ya know... It's a... It's a lack of diligence of the rules say... So I think they go hand in hand and I agree with the Supreme Court. Um... ya know, the professionalism, though, traditionally is considered to be civility, ya know. More like, "We're all professionals here. We should be acting like professionals towards each other." Where ethics was the... kinda' the black-letter law. Ya know, you're unethical because you did this, this, and this, whereas, you know, and... and kinda based, rule based more than anything else. In... in... at least in the law. You know, in other areas, I don't know if it's the same way, but in my... in, in my... to my understanding, and... and that's what I do everyday. You know, it's funny, in my practice defending lawyers, a lot of times I'm saying to the, for instance, the bar prosecutor, "Well this lawyer may be unprofessional but he... did he violate the Bar rules? Was he unethical?" So I'm actually making those distinctions everyday, by... by... most everyday, by practice. Is this just unprofessional or is it a violation of Bar rules? So my perspective is more like, ya know, should this lawyer be sanctioned for the conduct, not whether it was professional... not whether, ya know, not defining... kind of defining it in the negative, ya know. Professionalism is this because it's not this...

Eric Paul Engel: Right.

Participant #6: ...you know. And... and... and so, ya know... so, so to me...

Waiter: Here's a little bread for ya.

Participant #6: That's awesome, thank you. So my perspective is... is that way, and... and... my individual, ah, thought is, and I try to do this in my practice, is I want to be as professional as possible, no matter how, ya know, contentious the case is. But there are lawy... ya know, there's lawyers, you know, ah... that are involved in certain areas of practice, and I think you and I've talked about that, where the... where it's that kind of expect that they would be unprofessional and uncivil. In certain areas of the state, it's that way too. So... but I think these are good questions, and I think that your discussion'll go well when you go... Now you don't want me to get into the meat of these, right, in my responses?
Eric Paul Engel: That's really up to you. I mean essentially, all I have is three things that I wanted to do for this entire interview...

Participant #6: Um hmm...

Eric Paul Engel: ...cause I wanted to keep it very focused. One is asking, “Are the questions I'm asking…?” The second set is what I'm looking at going...

Participant #6: Right.

Eric Paul Engel: …Q1 to Q4, and each of these will be like a course in a meal.

Participant #6: Okay.

Eric Paul Engel: And you'll sit together, and then you'll get up and one person stays and everyone else moves.

Participant #6: Mmkay.

Eric Paul Engel: And so it's just a series of conversations but each conversation builds on the last. And... and I really wanna know, if I'm bringing these people together from all over the state, I wanna have a different kind of conversation than has had... than has happened. It's funny, if you look at the way that professionalism and ethics get defined for CLE credit, which is really where I've come from in a sense, they have a list of like ten things and yet, ironically, ethics is not on there. So you can't talk about ethics in a general sense. It must be about the rules.

Participant #6: I remember, yeah. It's gotta... scuse me... It's gotta be tied to a... to the rules.

Eric Paul Engel: Exactly.

Participant #6: Exactly.

Eric Paul Engel: ...so you can’t just talk about ethics. You have to talk about ethics as the rules of... And it’s very... yet they call for reflectiveness in the practice of law.

Participant #6: Right, right.

Eric Paul Engel: This is one of their strategic objectives, and yet they’re not reflective.

Participant #6: No. And that’s because it’s a bureaucracy. I mean unless it’s... unless, um... discussions like this occur, it doesn’t necessarily change. I think that’s one of the ways that I see this, ah... being important, it’s because, you know, the... the Bar, John Berry, considers research when he’s developing long-
term goals and when he’s instructing, ya know, the Bar, advising the Bar on how to… he’s a long time guy, he’s been around forever…. since back when I was there, and he’s a very… he’s now involved in their strategic, you know, planning and all that kind of stuff. Is he actually gonna be there?

Eric Paul Engel: Oh yeah.

Participant #6: Cause he’s gonna be very… very, um… I think, instructive… informative from his perspective for the many years… He’s done studies…

Eric Paul Engel: Oh yeah.

Participant #6: …as you know. And he was the director of Bar in what? …Michigan and some other states, so...

Eric Paul Engel: He was on the McCrate Report Committee...

Participant #6: Um hmm… Um hmm… So he’s gonna be great, but… I think this… these questions are important because these lawyers, because personally, I was struggling with this and the more we can make people aware of these issues and these questions, I think it’s good. So I think these are great questions. And I think, like I was saying, that yo… a person’s individual experience is important to… to… to draw out. And you know, you may want to, as the discussion goes, maybe… “What do you think the lawyer’s perception is of ethics and professionalism? What is your perception of professionalism?” And then maybe throw in there, which I don’t know, “What does the public consider to be ethics and professionalism?” I think that’d be an interesting… I mean if you want to throw that, I know you’re… you’re kind of… pretty far in your… in your research… in your, ah, questions, but that… I think that would be interesting, and… Are… you’re gonna have some folks that are not lawyers on the… on the… uh… at the seminar, right?

Eric Paul Engel: It’s interesting. Originally, my intent was to do just that. To have a mix of lawyers and non-lawyers. But based on notion that we’re doing research, and you want to keep it very focused… It’s like having a control group and a non-control group...

Participant #6: Okay.

Eric Paul Engel: …so rather than inviting lay people in… the way that lawyers define ethics and professionalism, especially in Florida, is very unique, and so part of what I’ve noticed is even you and I can talk about ethics and professionalism as the floor and ceiling, but if we go to a different state, they could talk about it totally different. So it’s...

Participant #6: And they do!
Eric Paul Engel: And they do... And so it's not even that there's a national discussion that can take place that's consistent, and yet people at national levels write articles as if there's this consistency.

Participant #6: True.

Eric Paul Engel: And so they're... they're just revealing things that as I've studied this from an... as a... from an outsider's perspective I've realized that there... there is... there are cracks in... in the masonry that need to be pointed to in terms of, if we want to create a Bar that really *is* reflective, that does honor the notion of ethics in *all* its meaning, because if you're bringing together over a million lawyers and you're gonna try and talk about something, you can't count on a webpage being clarity, and yet, in many ways, it seems like that's the way they're acting. And... and so part of what I wanted to do is ask these questions of people who are serious about it and say, "Okay, why don't we have ethics on the list of things that could be..." But I had to do it in such a way that, with this, hopefully, and from the way you described it, the initial question is trying to get at your personal experience. The second question that I asked in the... in the one-two punch is, "How is this used in the legal field?" So I'm asking... because each of us, before you became a lawyer, I became a graduate candidate, we had lives... we have perspectives, so you come... and it's like a lot of people in law school say, "You can't teach ethics..."

Participant #6: Right, right.

Eric Paul Engel: ...because by the time you get to law school, you *have* your ethics.

Participant #6: Right, right. Interesting.

Eric Paul Engel: It's fascinating cause I can actually show with some of my research that, it won't make it into this, but the book I'm gonna write when I finish my dissertation... I can show how, from a neural-biological level, that you actually *can* teach an old dog new tricks, and that technically...

Participant #6: That's good to know.

Eric Paul Engel: ...you *can* learn ethics much later in life.

Participant #6: That's interesting, good. And I think some of my clients have learned ethics later in life after they've gotten into... into difficulty, and they've actually had a... a sea change in their personality and in their, ah... in their approach. Some don't. Some just throw up their hands and say...

Eric Paul Engel: Right.

Participant #6: ...you know, that I've been pros... I've been persecuted and others will say... They'll have a... They'll have a... a... an epiphany,
essentially, and say, “I’ve learned my lesson.” My goal with my clients is always to be, like… don’t… don’t come see me again except for maybe in a social setting, ya know. So… although a lot of ‘em hire me as, ah… for ethics advice after they… after I represent them, you know, to… to help them through the difficult times.

Eric Paul Engel: And being proactive about it?

Participant #6: Being proactive. So yea… No… No, these are really good. I think you’re… like I said, I think you’re gonna get some very good, ah… very good, ah… feedback on… on these questions, and I think the updated questions are even more important as far as… because, like I say, individually, you’re kind of… you’re probing even more based on their experience, ah… defining… defining the term I think is important. And I just gave you my, kinda, off-the-cuff definition of professionalism and ethics and how I look at it from my perspective, ya know, and Major Harding will probably have a different perspective, I’m sure he will. John Berry, ya know…

Eric Paul Engel: Everybody has different experience, so that… I mean…

Participant #6: And… and his experience is not in my field. Ya know one of the things that’s gonna be… Ya know, not many of us ???[unintelligible; 0:16:05]… this area of practice on a regular basis.

Eric Paul Engel: Right.

Participant #6: So I think my job is to ???[unintelligible; 0:16:10]… unique in the sense there’s probably about, I don’t know, ten of us who do this on a regular basis in the… on the defense side, ya know… and so…

Eric Paul Engel: In what area? Like how far? In just the Tampa Bay area or…

Participant #6: In the entire state that do it on a full-time basis. Yeah, they… maybe at most a doz… not even maybe a dozen… um...

Eric Paul Engel: Wow.

Participant #6: There’s a… There’s a couple in Tallahassee. There’s three or four of us here. Now there’s some associates and other, uh, practitioners that are with firms that do it, so that would… that would certainly increase the number, but I’d say between a dozen and… and at the most, ah, two dozen, twenty-four, that do it on a regular basis.

Eric Paul Engel: Full-time.

Participant #6: Full-time. Now mine… mine isn’t a full time practice with this Bar, this one, because I do, ah… I’ve got, ah, three hearings on Friday before the
Board of Bar Examiners, for, ah, what I call “lawyer wannabes,” the ones that filed their Bar applications to become admitted to practice.

Eric Paul Engel: Um hmm.

Participant #6: It’s a whole separate organization. They have to go in front of the… the Board of Bar Examiners and plead their case basically to be admitted if they’ve got things that happened… happened in the past that may disqualify them from practicing law.

Eric Paul Engel: And is that stuff that normally would happen right when you finish law school or… or… as… or… or was it stuff that happens at the beginning, when they’re, like, vetting you basically?

Participant #6: If a… If an applicant is a law school student when they file their application, then the process, ya know, continues through and then typically, either be… it can happen either before or after they graduate, but there… a hearing is scheduled and they go before the Board. But also, um… out-of-state lawyers, when they apply for admission to Florida, you know there law… a lot of ‘em are… like I’ve got some… I’ve got one actually on the calendar on Friday, been practicing for over ten years in another jurisdiction and she’s applied to Florida, and had a practice for many years, more than 10 years I think, and… and she’s going to a hearing on some issues that the Bar… the Board of Bar Examiners, ah… identified, and they’ve… she’s… they’ve scheduled for a hear… her for a hearing. So really… And then I also represent licensed professionals, anybody that’s licensed in the state of Florida I defend.

Eric Paul Engel: For anyone?

Participant #6: Any license.

Eric Paul Engel: Really?

Participant #6: Yeah. Contractors, ah… CPAs, lawy… doctors, nurses, barbers. Anybody that’s licensed.

Eric Paul Engel: Interesting…

Participant #6: So… And I defend them in disciplinary cases, administrative discipline, and also when they’re trying to get a license I go before the Boards with them just like from the Board of Bar Examiners, so…

Eric Paul Engel: I imagine that gives you a really good perspective on the nature of professional practice, because you… I mean, one of the things I studied initially I started by studying the socialization of doctors. And what changes you, from being a regular human being to a doctor and invariably… they actually have research that shows when you have to cut open… take the class on cadavers, that is what changes you. That class, you are different after you take it.
Participant #6: Serious…

Eric Paul Engel: Like something about you changes and people around you notice it, and then it's a severe change of having to step away. Lawyers have the same thing but there's no one class that does that.

Participant #6: Same thing about the, ah, stepping away and being, um… being basically a different person than when they started, right. When they were when they were growing up. Cause I'm completely different, ya know. I know I'm different. I've been told by many people that I'm different now than I was then.

Eric Paul Engel: It teaches you how to be a certain way.

Participant #6: Um hmm…

Eric Paul Engel: But it's fascinating because in my studies…

Participant #6: Analytical…

Eric Paul Engel: …I noticed looking at the socialization of medical schools students and doctors and the parallels of studying lawyers… obviously cause of Jowita I focus on lawyers…

Participant #6: Right, right, right.

Eric Paul Engel: …but I can see how in many ways you could move to any profession… architects, and you’re gonna find certain patterns of behavior.

Participant #6: I’m done, thank you. Yes… I think with lawyers, a lot of time it’s being more argumentative, being less tolerant of someone who they… who I think isn’t right. You know, that’s… and I don’t like that, you know. I try to fight that. Because, I don’t know all the answers but I try not to be less tolerant of other people’s perspectives, but I always… It’s funny, Eric, I always think I’m right, ya know. I… I rarely am swayed because that’s just what I think the law’s done to me… Because I analyze everything and look at it from all angles and I feel pretty… in my mind, comfortable, not that I’m obnoxious about it, and I have changed. Ya know, I’m being really general here, obviously, but if it’s something that I think is important, and I’ve looked at all the angles and the issues, I have a hard time being swayed to a different position and I pretty much… And my wife’s told me this many times, you know, you… and I’ve tried to, you know, basically, “Well… honey… I’ve already… ya know, I… if you want me to change, if you want me to agree with you.” You know, “I will, but then I’ll tell you that, but… but I can’t not believe what I believe.” Ya know, so it’s… it’s… it’s a struggle. I mean with me and my personality, it’s… I… I… I’m constantly trying to, and of course you’re recording this and I’m getting a little personal, so I’m sorry, but, ah, you can delete that out, but I’m… but I’m constantly trying to um… trying to ah… ah… you know, hold back, so I change myself when I leave the office, ya know, because I’m… it’s different… ya know, it’s personal. It’s not work. So I’ve got to
pull back and you’ve probably… some of the commentary about ethics and professionalism, I think some of the characteristics of lawyers who are unprofessional are developed when they’re younger. They just have that personality, or they have that personality where they’re just obnoxious, ya know. Some people in the world are just totally obnoxious about everything and anything and certain areas of practice draw that. But then the law, I think, even makes it worse in a lot of ways for lawyers that already have that type of personality because it amplifies it to where they feel that they’re right and they’re obnoxious. So what I like to say when I’m talking about this is I… I… I… I… maybe I think I’m right, but I’ll try… I… I try my darnedest not to be obnoxious about telling people that I think I’m right, ya know. You know how that goes, so… that’s kinda my… my thought… I’m kinda just thinking about this because I’ve actually had these experiences where I’ve had to... But… But I’m, in my practice, I consider, um… ethics and professionalism to be hand-in-hand as I was saying, and I think they’re… I think they both have to occur for a lawyer to be, um, acting properly and, ya know, doin’ the right thing and… and… and… and, ya know, being a good lawyer.

Eric Paul Engel: When you say they’re hand in hand, I’m curious if you choose, personally, because I won’t have a chance to talk about this during the World Café, so right now I want to use this opportunity to ask you, “Do you choose that metaphor both visually and mentally, intellectually, because that’s what the Bar has defined it as, or do you feel like before you were part of this, did you define ethics and professionalism as the same thing? Did you use the same metaphor? Or is it primarily because of how you’ve been trained to think about it and to talk about it?”

Participant #6: I think I have been trained to think about and to talk about separating them, because, in my practice, you have to separate them, because one would not be sep… Professionalism as… as it’s traditionally defined in my… in my… to my knowledge and my experience, is not the violation… somebody who’s unprofessional is not being… if I say, “This lawyer’s unprofessional,” I’m not saying they’re unethical necessarily.

Eric Paul Engel: Cause they haven’t broken any rules.

Participant #6: Exactly.

Eric Paul Engel: Oh yeah.

Participant #6: But I may say some… some lawyer’s unprofessional and mean that they are unethical, but I’ll just use that word because unprofessional… a lawyer who’s unprofessional can, and I said this earlier, can, I believe, violate the Bar rules because of their actions. For instance, you know, if they’ve… if they’re unprofessional in the sense that they don’t tell the truth, or, ya know, I think that’s unprofessional. I think a lawyer who makes up… for instance there’s something
scheduled for… on a certain day for hearing, and the lawyer makes up a reason that they can’t attend so they want to get a continuance.

Eric Paul Engel: Right.

Participant #6: Now that… that is unprofessional because it’s thwarting the… the… ??? prejudicing [unintelligible; 0:24:16]… the administration of justice… ??? [unintelligible; 0:24:17 – 0:24:18]… It’s also a lie so it’s a violation of Bar rules. So, as I was saying earlier, a lot of times unprofessional behavior will move into the area of ethics. And ah…

Waiter: Is there anything else I can get for you guys?

Participant #6: You want any more, Eric… anything more?

Eric Paul Engel: Mm Mmm.

Participant #6: I’m good. I’m good. Thank you very much. So that’s where… that’s where ??? [unintelligible; 0:24:33]… But… but when I say somebody’s… purely if I’m saying they’re unprofessional, and I’m… and I’m saying that because, ah… they… they… they’re obnoxious when I talk to them on the phone, right… that’s… that’s not a violation of Bar rules, so that’s a separate… but they can… my point is only that a lack of professional can be a violation of the Bar rules, but it’s not always. It’s kinda one… ya know, you draw a circle… Here’s Bar violations. If you… Here’s pro… professionalism kind of going into the Bar rules but not always.

Eric Paul Engel: Just overlapping a little bit.

Participant #6: Exactly… or maybe even sometimes more. Probably more. A little bit of overlapping in other… to me, my experience, from my… from my, ah… perspective individually, that’s… that’s how I perceive it. So that’s how I… I… I consider it in my mind.

Eric Paul Engel: It’s interesting in all of my research looking at civility, professionalism, and ethics, one of the things I’ve noticed is the fuzzy areas like you’re describing where they touch, it’s fascinating because it seems like there are lots of stories from lots of lawyers about people who pull discovery crap.

Participant #6: Yeah… yeah… crap.

Eric Paul Engel: And… and… and like there’re tactics that you learn at big law firms how to create problems and so people… everybody knows about this, and it does get done, and it is totally unethical. I mean it’s breaking rules, and yet it seems like in a system that is so overburdened that that’s the stuff that frequently can just get swept away, that doesn’t get addressed in articles, that doesn’t get acknowledged as really happening.
Participant #6: Or... or sanctioned by a court, or, ah... or... in any way, ah... it's just anecdotally discussed.

Eric Paul Engel: Right.

Participant #6: Not necessarily... But there are some... I've... I've got a... a couple cases right now where a judge has issued a... an order, ah... and... and said this is going to... copied The Florida Bar with it, and asked them to look into it. I'm tryin' to think of the case that I've... I think there's a conf... It'd be a confidential topic, so I couldn't give it to you, but it's a case where the... and that's... I've gotten into these kinds of discussions too, where the judge’s authority ends and where the Bar's begins or vice versa. In others words, if something's sanctionable, 57105, you know the... the san... the chap... chapter... chapter seven, one oh five, is... 57.105 is the statutory authority for sanctions to be imposed on a lawyer for filing a bad faith motion or a frivolous motion. And, see, those are filed in court and a lot of times, those 57105 motions are granted by the judge and then the Bar never hears about 'em, because it imposes sanctions and the lawyer pays whatever the fee and, a lot of times, the client and the lawyer have to pay half and half. It's... the clients half... It's 50-50.

Eric Paul Engel: Really?

Participant #6: And the reason for that is because they want to have the clients suffer but not all the way, if they're... if they hire a bad lawyer. I mean, I think that's what the legislature, ya know, anticipated.

Eric Paul Engel: Interesting.

Participant #6: So... Yeah... So the... But... but then also a 57105 motion, if it's granted, could form the basis of a Bar investigation because if the lawyer files a frivolous pleading, a pleading in bad faith or a motion or whatever, it could... it could be the basis of a Bar violation, right. Ya know, because it's a... it's a... under the Bar rules, chapter 4 of the Bar rules that you know, um, provides for sanctions for a lawyer that files a frivolous pleading, ya know, and does things like that.

Eric Paul Engel: Right.

Participant #6: So it can... it can be both, but it doesn't... it isn't always though. Sometimes... and of course the problem with Bar complaints is if there's a contentious litigation going on, a lot of times the lawyer... and I get these calls all the time, the lawyer is being aggrieved or the client whose having this happen, doesn't necessarily want to be filing a Bar complaint because it looks like that lawyer’s using that to gain leverage in the litigation.

Eric Paul Engel: Right.
Participant #6: And... and... it's all about the timing, and I've told lawyers many, many times, think before you file, you think it should be filed... the timing of it, there's no limitations period on filing a Bar complaint. So if it continues on and the case is over, then somebody could file a Bar complaint at that point, and have the... the condu... ya know, the lawyer's conduct investigated.

Eric Paul Engel: Um hmm.

Participant #6: Yeah, so that's... that's another, ah... ya know, another kinda quandary that lawyers have, ya know, when... when... another lawyer's... doing things that they think are improper and may be a violation of the Bar rules.

Eric Paul Engel: It seems if... if these things were actually enforced, which I know there's been discussion about ethics versus professionalism and enforcing professionalism...

Participant #6: Right, right.

Eric Paul Engel: ...if these things were actually to be enforced, even with the existing rules, do you think it would over burden the system?

Participant #6: I absolutely think it would. I think if every Bar... if every Bar violation was investigated and prosecuted by The Florida Bar there'd be... there'd be... they don't have enough resources. So it'd be totally chaos. And probably the same thing applies to the court system. If all the, ya know, all this stuff was litigated, so you do have that balancing act. Well here's an example... The Florida Bar, um... It's kind of off topic but...

Waiter: Thank you so much.

Participant #6: Oh thank you. Thank you very much.

Waiter: Thanks again. You guys have a great day.

Participant #6: Yeah, you too. Thanks Eric by the way. Um...

Eric Paul Engel: Thank you.

Participant #6: The advertising, ah... rules, one of the Bar's arguments was, "If we require every website to be filed by lawyers, it would... it would be inundated with not only filings but also Bar... potential Bar violations." We don't have enough staff in the world to process those types of Bar... Bar... ya know, those types of reviews and investigations. It's kind of the same thing; if everybody filed a Bar complaint... ya know, there's... there's enough of 'em filed...

Eric Paul Engel: Oh yeah.
Participant #6: Yeah, you know… What is it? Ten thousand a year I think is now what they’re up to.

Eric Paul Engel: It was interesting, the other day when I was at the um… they had a Grievance Committee Institute, which is a great idea.

Participant #6: ??? [unintelligible; 0:30:22]… right?

Eric Paul Engel: Yeah.

Participant #6: Yeah, yeah.

Eric Paul Engel: And, and it’s nice because they’re having them all over the state, and it was that opportunity as an outsider to step in and to see how the system goes, so they’re actually going to continue that…

Participant #6: Good.

Eric Paul Engel: …but it’s weird because I had to step into it where I didn’t have that, and have to start making sense of it all, and he was talking about how they have more people working the system now than they did 20 years ago. There are fewer cases and yet it takes more per case. So if you look at it, the load is the same as it was 20 years ago, but it’s fewer cases but a lot more depth in what they do. They’ve streamlined the system so they can look at it and go “Is this just a frivolous complaint?” and move that “…or is this a serious issue?” And so, from what they talked about, like… there’s a… and… and even with the streamlined system, it’s huge. Like the number of people with complaints, the number of people involved in investigating it at… at every level – at the bar level, at the committee level, like… I appreciate that now.

Participant #6: And I was there 20 years ago, and I know exactly what they’re saying because we all investigated our own cases. Now they send it up to the ACAP\(^5\) department up in Tallahassee which you know well… well… and the frivolous ones are… are just gotten rid of there. And then the serious ones are more extensively investigated because the Bar counsel has more resources and more time to focus on cases that should be investigated.

Eric Paul Engel: Right.

Participant #6: At least that’s the theory. So that’s why I think you’re right. The resources, and then they spend a lot. They spend more money now because they have expanded lawyers in Tallahassee. There’s seven lawyers I think in the ACAP department.

Eric Paul Engel: Right.

\(^5\) Attorney Consumer Assistance Program
Participant #6: Seven or eight, whatever they have now, and then there’s at least five in every… in every local office. Five or six now actually.

Eric Paul Engel: They’ve got staff… I mean, it’s…

Participant #6: Yeah, yeah… It’s big… It’s much bigger than when I was there, and it was fairly big when I… well it was considered to be growing when I was there. It was like an expanding timeframe during the 90s.

Eric Paul Engel: Do you think… having been there 20 years ago, do you think it’s working better than it was? One of the things I’m constantly reflecting on is professionalism in the sense of “Oh the old days…” Was it really better back then versus what it is now? Like how much of it is a yearning for the old times and golden oldies?

Participant #6: I think that, 20 years ago, the lawyers were less fractured in the community, and so there was more of a camaraderie and a community than there is now. As far as whether the system works better, I think that sometimes with the added resources and time that certain bar counsel have blinders on and then they over prosecute cases because they have more time to do it. So they look for things, they try to turn up anything they can, and I… For me… that’s frustrating for me because they’re just… it’s… it’s… the process needs to end sometime. So, whether it’s better now than it was then… Gosh, I wouldn’t pretend to… He must be new. I wouldn’t pretend to know whether it’s better or not, but I can tell you that there is much more zealous prosecution in certain instances than I think there would have been 20 years ago. So I’m dealing with that. Of course, you know, what’s funny is that it doesn’t hurt my practice to have stepped up enforcement because I have more clients. So it’s not like I’m… and… and… and… and I’m not lamenting it, I’m just saying I see that as being a difference in the way the process works. So…

Eric Paul Engel: Yeah, it’s like my aunt who’s a therapist says, “When things are bad, I’m in business.”

Participant #6: Yeah. Exactly.

Eric Paul Engel: Sadly.

Participant #6: And sadly, because the economy’s been bad, my business has been… because lawyers are… are having economic issues and they’ve been doing… they’re doing certain things they shouldn’t be because of the economy, ya know, including trust accounting issues, the most serious ones that you can have, right, so…

Eric Paul Engel: And I know about that.

Participant #6: Yeah, yeah exactly. So…
Eric Paul Engel: So, let me ask you one last question in terms of overall... This helps in a general sense of, “Okay, I'm on the right track,” which is really what I wanted from this interview for the most part...

Participant #6: Sure.

Eric Paul Engel: ...especially because you've been part of this from the very beginning.

Participant #6: Yes.

Eric Paul Engel: All the way at the bottom, one of the last questions I ask is, “In what ways does our even asking the questions matter reflexively?” in the sense of, “how do you think asking these questions matters?” So it's one thing to ask are we asking the right questions, and another to ask how does asking them matter in the sense of what could be the repercussions of this conversation but then the series of conversations that will take place at the event and conversations that come after that?

Participant #6: Well I think that it helps immensely to have separate individuals give their perspective as to what they believe different things mean and how ??? [unintelligible; 0:35:10]... So I think they matter in the sense that people, especially when you have Bar associations, who I'm sure are gonna refer to this research once you get it done, and it'll be communicated nationally. I think it's very important to establish a dialogue nationally as to how we approach these issues cause it's... The prosecution of, ah... of Bar violations... Bar prosecution and Bar ethics, as you said so aptly earlier in our conversation, is so different in every jurisdiction. And so, I mean I don't know if we want... if we want to have that... Ya know, here's... here's the thing... many lawyers are now going over... they're... they're, ya know... they're multi-state lawyers, ya know, they... and... or they belong to multi-state firms.

Eric Paul Engel: Right.

Participant #6: So we need to have a conversation and... and try to, and I know we're just doing Florida here, but... Florida ??? [unintelligible; 0:36:00]..., right... we're just doin'... but... but I think the conversation needs to be goin' on everywhere, so that we have a defining of the... of the... of these types of issues so that lawyers can have guidance as to what, ya know, what they should be doing, ya know, essentially, and have a uniform idea as much as we can, and as much as we want, of... of what's expected of lawyers, both with ethics and professionalism I think.

Eric Paul Engel: Do you think it's realistic that that could happen? I mean in the next... like looking at decades, 30 years, of starting to unify this, in the hope of actually making the Bar nationally a stronger professional entity... association?
Participant #6: I think there could be movement towards it. Whether they would ever be accomplished is an open question. I think there can be movement towards it, ya know, toward that goal. And… and I think that if you talk to the Bar professionals and lawyers in each jurisdiction, I think they would like to have more guidance. I’ve had that question asked of me. I know a guy in Georg… that’s… that’s a Georgia lawyer, um, whose goin’… ah, ya know, who we’ve had kinda similar conversations, ya know, how different it is in Georgia???

[unintelligible; 0:37:05 – 0:37:06]... how they approach their… their ah… their ethics slash Bar… Bar cases, and things like that, you know, and the way lawyers, ah… interact with each other. Georgia’s more of a community from what I understand than we are. And it’s more… there’s more of a… there’s less of a… Miami lawyers down there…

Eric Paul Engel: Right.

Participant #6: …Tampa lawyers here, ya know, Jacksonville lawyers there, the Panhandle lawyers over there, ya know… We’re… Florida’s definitely not even close to having uniformity in the state as far lawyers are concerned.

Eric Paul Engel: Yeah… And it’s funny, that actually was one of the original things that sparked conversation when I first started talking about… talking to Scott Hawkins about this. He was like, “Well I’ll tell you, down in… down in Miami…”

Participant #6: And then he probably shook his head and said, “Down in Miami.” He’s from there.

Eric Paul Engel: Yeah… very quickly realized there are distinctions in terms of place and also where you have transplants. There are lots of transplants in Florida. And they’re in different areas. They’re coming from big, big cities so you bring a certain mentality of practice.

Participant #6: And… and… I’ve been… And it’s said, it’s like a jungle down there. Literally. I mean I’ve heard that said, ya know, and of course I’ve experienced it a little bit because I’ve handled cases that came out of Miami, but it’s a different story. I mean I… I gotta… I gotta tell ya, from my experience, I can tell that the Miami Bar lawyers are much more wary of other lawyers than they are in other jurisdictions. They’re more wary of how to approach the new ones, they’re stand-offish to me, much more say than in the Panhandle or in… or in Tampa, until they get to know me, and then they kinda relax a little bit. But I can see that they… they have a wariness more than, ah… and even other lawyers that I’ve… that I’ve met and had experiences with. They are much more wary of, ah… of being burned.

Eric Paul Engel: Really?

Participant #6: Careful what they say, careful… not… not real friendly to start with, that kinda thing, kinda feelin’… feelin’ you out. I just got that impression.
It's anecdotal. I don't remember specifically how I got this impression, but I seem to have it.

Eric Paul Engel: Right.

Participant #6: ...and I think that it's true. So... Miami Fort Lauderdale more than anywhere else.

Eric Paul Engel: Yeah that area is distinctly, in talking to different people over time, I'm noticing that's an area... this area's an area, like you said, the Panhandle. Each one is distinct and different ways.

Participant #6: And Orlando's different because it's got all the, ah... it's got kinda all the trappings of a Miami-Dade, but it's not the same. It seems like it's different to me, Orlando is. Although it's getting' kinda more like Miami-Dade...

Eric Paul Engel: Yeah.

Participant #6: ...We walk where we go.

Eric Paul Engel: Yeah.

Participant #6: As far as population, number of lawyers, and that kinda thing, so...

Eric Paul Engel: And traffic.

Participant #6: And traffic.

Eric Paul Engel: So one of the things I'll be curious about, and I... this I totally agree with you, is that national dialogue, of moving this from something's that local into something that's national.

Participant #6: Yeah.

Eric Paul Engel: And in my research, one of the things that really did fascinate me was how I would read articles, and they would talk about professionalism and all... and yet they almost decontextualized it in a way that was like, “Well, I'm just not gonna acknowledge that.” And nobody was really saying, “Well, this is different in every state.” Like it was this... nobody talked about that.

Participant #6: No. It's like our state. Have you read the professionalism articles that were written by like Canady, the Supreme Court Ju... ah... Chief... Current Chief Justice? There's some... If you go on... If you can't find them, it's Just... I think Justice Canady wrote, I... I... I have the article somewhere. I... I don't know where on my ?? [unintelligible; 0:40:31]...

Eric Paul Engel: Can you spell his last name?
Participant #6: CANADY.

Eric Paul Engel: CANADY.

Participant #6: Charles Canady. And then the Supreme Court, ah… might have that as a resource on their website, if you look on their ??? [unintelligible; 0:40:45]... report, or you could follow up with the clerk or with somebody at their… at that office to see if they’re aware of the, ah… professional ??? [unintelligible; 0:40:52]... And there’s also, as you… I’m sure you well know, there are some cases that the Supreme Court has ah… ah… Bar cases where they’ve specifically addressed the fact that professionalism is one component of a… ya know, of a lawyer’s practice that needs to be examined and that needs to be brought up to the forefront as far as the practice of law. It’s a very important component of the practice of law. So… but check it out. See if you can find those, and if you can’t, I may be able to dig ’em up. I did a… a thing… and if you shoot me an email, I think I did an article at some point, you know how I do those ethics… the ethics alerts… it might either have been an ethics alert or an article on that topic, and I may have copies of those articles, so if you shoot me an email, I’ll look. I can’t promise anything, I can’t remember where the… cause I… my system… might have been before I changed my system around.

Eric Paul Engel: Okay. Yeah, one of the things that I’m definitely hoping my dissertation will do initially is it’s going to be so focused on these terms that it doesn’t have a lot of applicability, but I’ve already started thinking about the question that Scott Hawkins originally posed to me, which was, “How do we deal with this?” And in a long-term perspective, I was able to actually look at interpersonal neurobiology, I was able to look at communication, I was able to look at pedagogy… legal pedagogy, and look at how you actually have to start changing it from the law school up and in the cultures, because if you’re going to think about it, you could deal with it on a small scale, but that’s not the way it works.

Participant #6: Yeah.

Eric Paul Engel: You have lawyers that go to schools all over the country…

Participant #6: Yeah.

Eric Paul Engel: …then go other places and practice. So it really does need to be thought of nationally…

Participant #6: Uniformly…

Eric Paul Engel: …the discussion needs to be there.

Participant #6: Yeah, I totally agree with that. Yeah, because there’s just a lack of uniformity now because everybody’s doing things differently. And… and I still get the lament from my clients saying, “Well I’m not really taught how to really
practice law in law school." Ya know, I get that all the time and I’m goin’, ah… well… I guess that’s just gonna be endemic. I mean ah… the ah… the… what’s gonna happen all the time, because I don’t know how that can… I don’t know that you can actually teach the real parts of law in law school. I thing they’re… they’re… they’re… they’re contra-text [???.] You know, they’re… they’re just… they’re the… they’re just… ??? [unintelligible; 0:42:57 – 0:42:59]… you know they have counseling classes now where… how to… how to interview a client, ah… they have, ah… ethics and… and things like that but they really, I don’t think you can really teach somebody how to practice law and it’s kind of unfortunate because lawyers that come out, that go… that… that hang their own shingle, ya know, they’re, a lot of times, they’re the ones that get in trouble.

Eric Paul Engel: Which I’ve heard is happening more and more now, because more and more people are doing it.

Participant #6: There’s no mentoring anymore. There is a little bit, ya know, with some of the firms, but not… not a significant amount of mentoring at all. Half the time I’m a mentor when they call me and they’re in trouble with the bar. Ya know, I’ve become their mentor, ya know.

Eric Paul Engel: My research has definitely supported that in the sense of in the old days, when the billable hour wasn’t the overall ruler and dictator, you had people who actually took the time to work together, and so you had an older lawyer working with a younger lawyer on a case, even if they weren’t in the same firm, talking about it, and there was that… you just don’t have time for that.

Participant #6: Yeah, you don’t have time. And… and it’s demanded that it not happen.

Eric Paul Engel: In a sense, the system builds it out of it.

Participant #6: It does. And it’s… unfortunately ??? [unintelligible; 0:44:02]… capitalist fields, the entire capitalist system to blame for that, because they want to make money, ya know, because that’s how we live. We… we make money, and we buy the cars and great big houses, and we’re successful. That’s how our society defines success. But… see that’s what I lament is I don’t know that that’s gonna… we’re gonna be able to change that, although… bits and pieces, we may be able to make that happen, so… I think this’ll be a step.

Eric Paul Engel: It seems interesting, looking at the history of the law, one of the things that I’ve noticed was that when it first moved over from Europe, you had the aristocracy who in a sense were running things, and yet now we want to have an egalitarian democracy and yet the people who are founding it are aristocracy, and so how do you balance that?

Participant #6: Yes.
Eric Paul Engel: And what we have is the system that resulted from it which is imperfect, um... trying to hold up ideals on the one hand of professionalism where you're supposed to act and be a certain way and, on the other hand, acknowledging that we have certain fights like civil rights where you need to be unprofessional almost.


Eric Paul Engel: In a sense, yeah. And so there is no perfect answer.

Participant #6: There really isn't. That's a very good point. Really good point. I hope we can talk about that a little more when we have out a... our get together. Our... our, ah... seminar.

Eric Paul Engel: Yes... In a month. So this is perfect. This gives me everything that I need.

Participant #6: Awesome.

Eric Paul Engel: I know I'm on track.

Participant #6: Good, good. That's great. That's great.
Appendix B: Pre-Event Interview (Participant #3)

The following is the transcript for pre-event interview conducted with Participant #3 on Tuesday, 21 May 2013.

Eric Paul Engel: Uh... let me go ahead, and because this is part of my dissertation—this interview—one of the things that I’m required by the institutional review board is to do some form of consent recognizing that lawyers, generally, don’t like to sign things. I have a verbal consent form; so is it okay if I read that to you and then we can start talking?

Participant #3: Sure.

Eric Paul Engel: Okay... um... On the afternoon of Friday, June 7th, 2013, I’ll be hosting a voluntary half-day Continuing Legal Education event, inviting members of the Florida legal community, um... to the Tampa Bay area to consider how they collectively make sense of, and evaluate, and enact the concepts of ethics and professionalism. Employing a conversational meeting format known as the World Café, the CLE will simultaneously serve as the focus of doctoral research being conducted in the Communication department at the University of South Florida, Tampa. With this in mind, ah... I’m contacting you because I’m interested in your unique experiences and perspective as a law student or legal practitioner ah... or, in your case, the head of The Florida Bar. Um... ideally, your participation will involve one informal interview that will last between thirty minutes and an hour, attendance and participation in a half-day, uh... four-hour CLE workshop, and participation in a one-hour informal focus group immediately following the workshop. Recognizing that you’re extremely busy, however, you need not be able to participate in all three events; though, ideally, this would be the case for the collective conversations to be of maximum value. The meeting is uh... slated to be held in the Mann Lounge on the campus of Stetson University College of Law in Gulfport. To be clear, this research has no known risks. While this research is designed to benefit Florida’s legal community by facilitating professional communica... community-building, by increasing knowledge and awareness of diversity and cultural competency, by providing ethics and professionalism CLE credit, by aligning with The Florida Bar’s 2010-2016 strategic goals, and by honoring the various stakeholders’ collective voices, I cannot be sure if the individual participants will benefit from being in this study. Please know that I’ll do everything I can to protect your privacy. Your identity and personal information will not be disclosed in any publication that may result from the study. And any notes that are taken during this interview will be stored in a secure location. With all that said, would you be willing to be interviewed, and if so, would it be alright if I audiotaped our interview to ensure reliability and accuracy?

Participant #3: Yes, you may uh... audio um... you can uh... record it. Um... I’m fine with all of that. But I don’t know if you got my email, but um... I’ve got a
serious personal problem that’s come up, that may or may not allow me to be there on the seventh. Um… I’m trying to do everything I can to work around it because I know it’s coming up close. Um… but um… I… I did send an email out on my iPad this weekend uh… to let you know that. I’ll know within the next day, or two at the most, whether that’s gonna occur. Um… and, if not, I can try to get somebody from my office or from the uh… Bar down in uh… Tampa uh… to cover for me. I know that won’t be as satisfactory I don’t think as me being there, but I would try to get somebody to cover that would have a knowledge-base of many of the things that I would be interested in. And I would also talk in great detail with them before the uh… before the program. So I’ll just have to let you know.

Eric Paul Engel: Okay, yeah, I got your email and I figured since we were gonna talk today and you said you would know by either today or tomorrow, uh… you know, I’ll see how the… how the chips fall and hopefully you’ll be able to make it. But I completely understand things come up.

Participant #3: Okay, now, but you got me for whatever you need for now. I did read ahead of time the information you sent out to give me a little bit of an idea where you’re going. Um… so let’s do it.

Eric Paul Engel: Okay, so, the agenda that I’d sent you back on May 14th, this is pretty simple, there are three questions I’d like to go through. The first one, essentially, is looking at two sets of questions that I came up with. The… both of them were done with my committee. The initial set of questions was done prior to talking to any lawyers about this. The second set of questions was done after doing some pre-pre-event interviews and then also conferring with my committee with the initial set of questions. So my question to you would be, in terms of the original questions that I have listed, and there are three of them, in comparison to the updated questions, which I have four, which set of questions are most likely to evoke productive responses based on your experience?

Participant #3: Let me… I don’t have your… your notes. I mean, first of all, either I… I’m gonna have to go back… let me find it on the computer. I forgot you were going to be comparing rather than just asking me questions. It was June 14th, I mean uh… May 14th that you sent it, right?

Eric Paul Engel: Yeah, May 14th at 5:23 p.m.

Participant #3: Alright, just one second, let me get to my uh… uh… computer here.

Eric Paul Engel: Not a problem.

Participant #3: Okay, um… Okay. Okay, now, got the email that you sent me on the 14th at 5:23 and read me the question you want again, now. I’m sorry, Eric.
Eric Paul Engel: Well, it's just the first question I have, the two sets of questions, um... the original World Café questions and the second set of updated World Café questions and a large part of having a very good World Café is about asking the right questions. My problem is, I'm not actually a lawyer. So I can come with all the questions in the world but one of the things I'm hoping to do with these pre-event interviews is to ascertain whether or not the questions that I have created are going to evoke productive responses on the day of the event. So I just wanted to see, in terms of speaking with people who are actually practitioners and involved in the law, which set of questions do you think that I've got on that email would evoke the most productive responses?

Participant #3: Um... You know, you would think that the term that would be more specific on the definition of professionalism would be the better one. But having studied this for about thirty years, there are so many definitions of professionalism, I think the more general questions about what do you mean by or eh... or talking about it in more general terms will evoke better responses than a definition of it. Um... so I tend to ... I think, like the first set of questions rather than the updated um... set.

Eric Paul Engel: Okay.

Participant #3: And I think either one will probably get you where you wanna be, so uh... I'm not um... I just think uh... I... I... I think you're gonna get yourself into a trap if you just try to get uh... lawyers to define ethics and professionalism. I think from one standpoint, what you're gonna get is you're going to get something that I have... I've spoken about and against for a long time that that fixes the foundational rules by which you can be prosecuted. And professionalism with the aspirational guides for how we deal with each other... civility, interpersonal relations... and I think that's a problem because I think that's all a matter of character. It all strikes as to how you relate to people and whether we define one as prosecutable or not should not be the definition. So you may get that from a lot of people and um... eh... then if you try to get in the definition, you're gonna get a thousand different responses as to the exact words you're gonna use to define it. So I think you're better off by getting the more general concept down.

Eric Paul Engel: Okay. Yeah, part of what we were trying to do, based on experience of talking with my committee members, is um... that I actually have one of my committee members is an expert in the World Café and he had said in terms of looking at the idea of asking, "What do you mean," he felt that it was a bit... and that was my original intention when I designed the questions is to try and get at what do you mean or what does it mean to you, not necessarily how has it been defined by The Florida Bar. But he felt that was a bit direct, and in his experience di... wasn't sure if that would work which is why I'd come up with the second set. And you'll notice I don't actually say, "How would do define this,"
but rather, ask about how the term is used because one of the unique distinctions I’ve noticed is, if I speak to lawyers in Florida, almost invariably… invariably, they define ethics and professionalism the way the Bar has, floor and ceiling. But part of what I’m trying to get at is, well, that’s not the only context within which these terms have meaning. They have meaning in your daily life as well, above and beyond just being attorneys or judges or law school students.

Participant #3: Well, and… and… and… I tend to agree with your first analysis, whether or not your experts who reviewed it agree or not. And there might be a middle ground. You know, in your updated ones, you do co… talk about coming defined. You say, “Please describe, based on your own experience, how you have come to define the term professionalism.” Now um… on the first question, you’ve got, “What do you mean when eh… when you reference the terms ethics and professionalism? I think the first one is going to get you better responses than the second one. I really do…

Eric Paul Engel: And that…

Participant #3: Uh… so, you know, you asked me my opinion, so I’m gonna go with your first analysis. Now, if you change the updated version to say, “Please describe, based on your own experience, how you have come to,” um… and I don’t know how you change the word define. “how you’ve come to,” um…, “understand,” or, “how you’ve come to uh… apply,” or, “how you’ve come to compare um… the two terms,” or, “how you… how you… co… come to uh… de… uh… I like that… dichotomy.” I think what you’re gonna get from your members, though, is you’re gonna get that floor and ceiling thing and I… I personally may be the only one, but I’m starting to win converts, that that is a… and it sounds like you agree… that that’s a bad way of approaching it.

Eric Paul Engel: Very much so. And this is part of what my committee wanted me to do these pre-event interviews for. Just because he’s an expert in the World Café doesn’t mean he sees how the community of practitioners sees it. And so this is exactly why I wanted to talk to some uh… uh… people who are involved in the community because you have a much better understanding of how this will be perceived and received by the audience members then… then my committee members do and than I do.

Participant #3: Eric, I… I’ll share with you something else that’s going on uniquely in Florida, but it’s also uh… now a national… there’s going to be a panel in San Antonio, The Center for Professional Responsibility of the ABA and I… I’m on the committee that set that panel up. And it’s on the issue of enforcement of, quote unquote, professionalism. And as we study this, there’s a lot of misunderstanding amongst lawyers and others about the en… quote unquote, enforcement of professionalism as applied to defining professionalism as aspirational and ethics as being uh… sanctionable. And this is how it occurs, I’ve tried to convince us, when we analyze the issue, to look at fact patterns. Um… it,
Eric Paul Engel: Right.

Participant #3: ...better term, what’s the appropriate professional identity on how you relate to clients, other lawyers, and people. And that’s... that’s the term I’d like to use.

Eric Paul Engel: I’m curious, in terms of the meeting that you’re gonna have in San Antonio, one of the things that really struck me, uh... when I first started doing research on ethics and professionalism in the practices of law is that there is no uniformity at a national level. Do you have any thoughts on that because you’re obviously involved in it at a national level?

Participant #3: Well, there’s a couple reasons for that. One is we regulate our profession at a state level. We only make recommendations... I’m a member of the ABA House of Delegates, and we make recommendations what individual states should have as rules, um... but those are gonna differ from each state as to h... not only what the fact patterns are that might lead to enforcement but also how that enforcement occurs: to what extent, to what rules, and how it’s done. I’m gonna throw in another segment that I’ll probably throw a lot of people off and that is I think one of the factors we have to deal with is the issue of, um... what
are the values, mores, um... that we are going to both live by as a society and a profession and by which we are going to enforce? And in some regards, that requires us to agree that certain things are bad and that certain things are good. And how do we arrive at what’s good and what’s bad? That goes to a more fundamental question. For somebody like myself, who has a faith in God, you look back at the old Blackstone uh... Era, which many people probably don’t wanna go back to, but Blackstone was the main leader in sort of defining the law prior to the eighteen hun...prior to the late eighteen hundreds, and looked to eternal truth in Judeo-Christian beliefs. And... and you go back and you say well it’s Proverbs or someone else says this kind of activity is a good activity or it’s a bad activity. Not only because God says it is, but because it leads to bad results. So, um... um... uh... the former Alabama Bar President once said before you can define something as being good or bad, you gotta decide whether it is good or bad. And um... and where do you go to make those decisions and do you combine uh... different approaches, which I think we do in our society, find common denominators between different faiths and different life philosophies, and then we say okay, this is the way it’s gonna be. And I think part of the problem we have is... is defining what it is and why we think these are... are things that should be followed.

Eric Paul Engel: Very much so. Uh... I... the... the level of complexity at which you and uh...you describe this and analyze this is refreshing to me because those are the same kind of things that I’ve been thinking about. The deeper I read into this, the more I realize that it isn’t a simple...

Participant #3: No.

Eric Paul Engel: Definition of meaning.

Participant #3: It’s... it’s very complex. Uh... you know, I’ll give you an example that I use a lot in my speeches. That is, if you watch the English parliament um... when they have debates, they can invite the Prime Minister down there and have a debate and they’re hooting and hollering and booing at him, okay? Now, in our country, such behavior would be considered unprofessional, uh... it would not be civil. It would be wrong. In their society, they say, “Well, that’s um... that’s fine, that’s how we debate. You know, nobody takes it personally if we boo at ‘em or do whatever else.” If you look at it at a deeper level, you know, is that something that’s fundamentally wrong? Is that something that eh... somebody that reads the Bible or Quran or something else says uh... looks at and says, “Well, you’re never to boo somebody when they are speaking in a public forum.” Well, probably not. So there’s some of this stuff, it’s things that we sorta divide out as cultures and how we wanna relate to each other. Other things are more fundamental, um... violations as we as human beings feel. And... and as... as individuals, we’re gonna decide that that violation it comes from a source, be it God, or it comes from just common denominators of what we think is the way we should get along with each other. And those kinds of decisions are decisions
that filter into all of this stuff we’re talking about: about what a lawyer should be and what a lawyer should be under certain circumstances and what it is we should prosecute and say, “Okay, you’ve crossed this line. We’re gonna... we’re gonna take your license away.” It’s very... As you say, Eric, I’ve appreciated your approach. You do a much better job than many lawyers do because you’re approaching it at a much more deeper, philosophical, societal context than as just in a legal context.

Eric Paul Engel: Speaking of which, one question I would have t... for you is, based on my own experience and my research, it seems that the complexity in terms of the makeup of the Bar... both in Florida and nationally, has radically changed over the last hundred years. Do you think that that’s impacting it in terms of the... the larger i... th... i... it’s... the basis of the system is Judeo-Christian and yet now you have a complex mix of diversity. Do you think that’s impacting the ability to try and deal with these issues?

Participant #3: Oh, I don’t... I don’t think... I don’t think there’s any doubt to it. I think the more... the more... uh... diversity that you have concerning what... where you go to find these answers is going to cause you to, either one, to try to convince other people that where you’re goin’ is the right place, and we can be evangelical about that, whether Christians or otherwise, or we make a decision that we want to say, “Okay, we agree to disagree. Uh... but you bring what you believe to the plate, I'll bring what we bring... I bring to the plate, and let’s try to find a common denominator. You, know, if you look back... have a lot of study of the foundation of our country, if you look back when we fore-founded, we can argue over how, quote unquote, Christian they were. But most of the fundamental, philosophical approaches were along those lines and so it was easier to say, “Okay, we’re going reach this conclusion and that conclusion,” versus you bring uh... more of an atheistic approach or you bring more of uh... a different faith-basis approach to it. And it’s... then you gotta make some decisions. You know, how as a society and a profession are you gonna bring some sort of common denominators of behavior? And as you point out, those changes of who be... become attorneys affects that dramatically as well as different generations. Uh... lot of surveys are being done that uh... and the surveys aren’t just by old folks like me just sayin’ that young people are going to Hell in a hand basket. It’s... it really is studies of generations and whether or not they approach life differently, if they approach the profession differently. And as more and more young people be... come in to mix with more old people that are staying in the profession um... there’s a lot more for us to try to work out in a civil way uh... what we’re supposed to be about. Very complex stuff, it’s neat stuff, Eric, I mean because it’s... it’s not just about, you know, regulatory rules of lawyers, it’s about the very fundamental what the profession is uh... Justice Veasey once said, when he headed up Ethics 2020, that we’re... that the profession is in search of its heart and soul. And I think that might be a very good statement—we’re in search of who we are.
Eric Paul Engel: It’s fascinating to me because I… in exactly that vein and the more I looked at this more, I realized that there are conversations that are more fundamental that need to be taking place in terms of CLEs which is one of the reasons why I really wanted to host this CLE specifically. Because when I first started looking into and I suggested that I wanted to have this idea of a discussion about ethics, the initial context with The Florida Bar were, “Well, it’s not on our list of ethics things.” And so, even though the Bar calls for reflectivity and wants reflectivity in their processes and practices, most people are focused on, “Is this a rule, and am I gonna break it?” or, “How do I keep from being sanctioned?” And very few people seem to want to have those larger conversations even in the sense of the list that I was sent by Bar of here are ten things that are approved for ethics. Actual discussions about ethics, not in the sense of ethics as defined by the Bar, but ethics in the larger, social sense which provides the foundation for then how the Bar, as a community, acts, were really absent.

Participant #3: You know, I… I... and I think… I think it goes to more of a fundamental problem that we have in our society, my opinion, and that is we’re afraid to get into the nitty-gritty of the foundational issues. We’re so into separation of church and state that we somehow say, “Oh, wow, we don’t wanna get into a disagreement over this so we’re gonna have the default position as we’ll just talk around it.” So we won’t talk about fundamental truths and, more importantly, how do we, when we differ in the fundamental truths, how do we decide we’re gonna come together and find some common denominators? So, instead of having a discussion about um… I’ll give you the example, Eric, another good example. There’s a great book by Bruce Kimball about C. C. Langdell—I think I told you about this before—C. C. Langdell was the dean at Harvard in the eighteen seventies. And prior to him coming up on board, he made a lot of good changes of how we train lawyers to think analytically and everything, but what he came to Harvard with was this feeling that um... but really to be a successful lawyer, to be the best professional lawyer, what didn’t matter how smart you were. If you went to Harvard and you learn how to train analytically and you knew how uh… to analyze an issue, rule, analysis, conclusion of a case, and you did it well, you were gonna be a great attorney. Years later, the Carnegie Institute came out, looked at legal education, and said, “Wait a second. You are doing a great job at teaching people analytically how to think, but you’re doing less in the way of how to train them skill-wise and you’re doing a horrific job of the formation of the professional identity that you feel is appropriate for lawyers and also judging people based upon that.” And I think it’s because we’ve tried to avoid it. We’ve just gotten away from… as long as you’re smart, that’s all that matters, like, analytical. As long as you can represent your client to the best of ability on a legal, technical basis, you’re a great lawyer. And uh… you’re looking at things much more fundamental and until we get into those issues, we’re always gonna be sorta dancing around uh… the more important issues that we’re trying to decide.
Eric Paul Engel: Oh, very much so. Once I’ve finished my dissertation, I definitely am looking forward to getting your feedback on it because one of the things I identified in the educational system in the pedagogy of law is the way that it… going back to when things were starting to really change and become solidified in the teaching of law, you saw the rise uh… I… I… I… within our nation and as a society and a culture of technical rationality.

Participant #3: Yes.

Eric Paul Engel: And yet it’s fascinating because the down side of focusing on that technical rationality is that it creates less opportunities for reflection and it actually focuses you so fine that you start to miss other things. And so, we’re… I feel like… and you’ll see this in my analysis when I write up my dissertation, one of the things facing the law is the pedagogy itself and how law gets taught and that the focus over decades and decades on this notion of an expert who is technically rational and yet, in many ways, amoral is starting to come home to roost in the sense of there are problems that are borne if you do anything, too much of it, you can start to see problems. If you drink too much water, that can be a problem. And looking at the legal pedagogy, that struck me as something that the history of it becomes significant, which is… but this isn’t stuff I see a lot of discussion about, other than in the Carnegie report, but even beyond that I don’t find a lot of discussion of these things which is one of the reasons why it fascinates me so much.

Participant #3: Yeah, Neil Hamilton, uh… who I referred you to up in Minnesota…

Eric Paul Engel: Right.

Participant #3: …done a lot of work in this area. And he’s really a guy you need to talk to. And of the… of the Carnegie report, William Sullivan is a friend of mine—you can contact him—you really need to talk to him in detail. He was a philosopher before he got into this work and now he’s out trying to uh… get an institute to try to help sorta implement some of the ideas of the Carnegie… and that’s exactly what he’s talking about. Um… and i… it’s… in the… the pedagogy that… that started in the 1870s and went forward, in my opinion, has dramatically not only changed legal education but our approach to the law and thus, since the law is so important, it has dramatically impacted our society as well. And we’re… we’re starting to reap the negative connotations of it um… and then… and suddenly we’re surprised when you take the humanity and heart out of our profession that suddenly we start having problems.

Eric Paul Engel: E…Exactly, exactly. So, the second question that I’ll move onto on my list um… in terms of asking, “Do the questions that we’re asking actually matter,” from your perspective, you see these questions as, obviously, mattering. So I can answer the first one, but in terms of the second one, from your
perspective, which I think is far more broad and complex than most people who
think about this, o... other than uh... Mr. Sullivan and... and... um... Mr.
Hamilton, i... what would you say our... d... h... how do these questions matter,
actually?

Participant #3: Well, I... I... I think they matter, they matter in a number of
contexts. One is, in our country and in our democracy, um... how we perceive
our judicial system and its officers is the glue that holds together how our society
is to act. Um... if... if we change uh... the fundamental sort of concepts of how
we became a country—the concepts of separation of powers, the concepts that
uh... too much power in one location leads to evil—if we change, um... where we
came from, then either we have to replace it with something else or we end up in
chaos. And we may be sort of in that cha... chaotic kinda situation where now
where... where... either thoughtfully or without thought, we’re sort of stumbling
around trying to figure out what we’re about. And we’re relying more on tradition
and rules and stuff... that’s the way we did it, and everybody says, “Well, we’re
supposed to be... do this and do that. That’s the way it’s supposed to be.” But
unless you have it in your heart and you know why you wanna deal with this...
Somebody the other day told me something about what are your non-
negotiables? And I thought that was a wonderful statement. What are your non-
negotiables? What does the profession have that’s non-negotiable to you? Uh...
is it just the... they’re not to steal, rob, commit felonies, or are they also... it’s
non-negotiable that people are expected to treat other people with respect, even
in advocacy situations. Is that a negotiable? Um... there may some... be some
reasons why you don’t do it in certain circumstances, but it... really, is that
negotiable? And... and how we define what’s non-negotiable... so all these
questions to me are both vitally important to the profession, but more importantly,
they’re vitally... they’re vitally important to our society as a whole.

Eric Paul Engel: So that really would get at my third question of part two which
is, in terms of to or for whom the questions matter, the relevant stakeholders. It
isn’t just the profession but, in fact, the society as whole.

Participant #3: No question. No question. And... and... and it goes both
directions. Soci... society as a whole is gonna have an impact on us but we
should as, I hope, thoughtful uh... leaders have an impact on society. Now, one
of the statements I dislike the most is, “Well, you know, your law students are,
well... they’re just a reflection of your society.” So if our society’s going to Hell in
a hand basket so is... so is it. Partially that’s true um... you sort of select from
the pool you’ve got, but otherwise, we’ve always had great leaders in this
country, whether they’re lawyers or non-lawyers, who’ll lead us, who inspire us,
rather than uh... reflect us. And uh... and I think that’s a major part of what our
profession’s about. I’m looking right now at a book um... I got propped up on my
uh... bookstand here, American, Lawyer, President. Um... there’s a reason why
a lot of ’em were lawyers. Um... they have the skill sets to be able to lead and...
and influence. So uh... it goes both directions. Society influences us but I hope we also have an influence on our society.

Eric Paul Engel: Very much so. A... actually thinking about that same notion of... of reflectivity and reflexivity, in what ways does our—and this something that I feel like I really haven’t seen a lot of, but in talking to you, I know that you think about it at this level of complexity, so this question I’m... I’m particularly interested in your response. In what ways does our even asking questions like this matter? So what would be the value if I were to be discussing to the Bar, “Okay, you shouldn't be sending out a list of here are ten things that are approved for ethics credit,” but in fact if the Bar does want to be more reflective about its practices and processes, in what ways does even asking questions like this matter, in your opinion?

Participant #3: Well, I think the first thing is, you've hit on it already, I don’t... eh... we’re such busy people and we also, particularly as lawyers, we tend to get to where we think we know most of all of the answers in this world. I think this...the first thing is causes to put the breaks on and make us be self-reflective: if it’s done well. Now, I think you can ask a lot of lawyers these questions and you’re gonna get the superficial, sort of conclusory, statements out of them. But if you really start to get to them to think and keep... It’s sorta like a child that keeps asking you why. I love that, you know, a four-year or five-year or six-year old, “Well, uh, don’t cross the street.” “Why?” “Because you're gonna get hurt.” “Why?” You know, and you keep going into it and eventually you start thinking, “Well, maybe these why questions aren’t so stupid.” And we need to I... I... look at the why questions and keep going deeper and deeper into the issues. Um... I will say there’s something about you and me that we have to be careful about, and that is we can over-complicate a lot of really simple concepts. You know? Some of this isn’t too complicated; it’s just being decent human beings and uh... reacting well to each other. Um... I’ll say one of the things, too, that I think our profession’s had trouble getting a hold of, but they’re just now starting to do it, and that is, if we see... let's just assume we really do reach some, and we have some already, conclusions about what we should be. When we see this, the outward signs that people are not meeting those... those uh... expectations, we tend to want to punish or we tend to want to just reach a conclusion it’s bad rather than look at the causative factors. Now, I’m not one that looks for excuses for causative factors because you are held accountable, but uh... if somebody is unprofessional, unethical, it could be caused by um... the fact that they're just bad... bad people. They just got bad character and however we want to define... it may be caused by their... well their character’s pretty good but they’re just jerks, their personalities are just rough. It may be caused more fundamentally by the fact that they have personality disorders or they have psychological problems or they don’t know how to run a law office and they can’t handle the stress and so the outward symptoms of professionalism is really caused by the fact that they’re just outta control. They can’t run an office. Maybe, maybe the outward symptom all looks the same, but the reason for it is completely different. And so I
think Bars have gotten better at looking, is this person on drugs? Are they on alcohol? Do they have stress? Do they have psychological problems? Were they trained appropriately? Do they just think this behavior's okay? Um... and that's what makes it even more complex there because now, once you've sort of defined what it is, now we gotta deal with what it is and we can do to try to change human behavior. And that's why by... I... I'm throwing a lot out, I'm sort of almost a stream of consciousness, but one of the reasons why I like to see you doing this work is we can, as a profession, set up a commission of mostly lawyers and judges who sit around a table to decide how we're gonna change human behavior. Now, what's wrong with that picture? We're not experts on changing human behavior; we're not psychologists, we're not sociologists, we're not rabbis, we're not priests, we're not uh... a people expert in maybe uh... eh... um... criminal penalties and what effect that has or does not have on activities. Um... and we sit around a table and decide, "Okay, here's a new program," to where we're gonna make lawyers better people. And I think we need much broader uh... discussions and you're doing that, so I applaud you for what you're doing. I think it's great.

Eric Paul Engel: It's funny with what you said about children asking the why question. One of the most significant uh... turning points in my life happened when my aunt started dating my uncle. They were both doctoral students studying communication and I was in fourth grade. And I would ask my mom and dad, just like every little kid, "Why? Why? Why?" And they would go, "'Cause I said so." And I hated that answer because it didn't really answer what I was asking.

Participant #3: Yeah.

Eric Paul Engel: And my aunt started dating my uncle at the time, and um... it was fascinating because I can remember distinctly asking him, "Why? Why? Why," about one specific thing. We were talking about why the sky was blue, and he started to give me the scientific answer and the refraction of light. And I just kept pressing, not because I wanted an answer, but because I wanted to see how he would respond to that "Why? Why? Why?" pattern. And it was neat, because, at some point, he eventually just stopped. And he goes, "Eric, I don't really know. But I'll get back to you."

Participant #3: Well, you know, uh... that is... that is good because there is a component of the fact that you can't treat a child like an adult. There's some parents who are constantly trying to explain to them why they're making decisions. It is better to just say "Because I know better," and "I'll let you know later," but um... I've had similar experience... I remember asking my dad—I'm a big sports nut and so is my dad—and I asked my dad, "Why do they have four balls and three strikes in baseball? Why don't they have three balls and four strikes? Or why don't they have four balls and four strikes?" And I think smoke started coming out of my dad's ear and he just... he started saying things like,
“Well that’s ’cause that... that they... they made... they made the rules that way, John.” And I said, “But why?” And uh... like you, I’m not sure I ever really wanted the answer. A better answer might be, “Well there’s really no set reason, they just have a game and they decided to do it that way. But that’s a great question. That’s really a great question. Maybe someday you wanna suggest that they have four balls and four strikes.” But um... it’s uh... I don’t think too many folks spend a lot of time worrying about four balls and three strikes like I did or with you, with your aunt uh... and uh... uncle, trying to ask questions like that at the age that you ask it.

Eric Paul Engel: Well, it’s fascinating because based on my meeting him... that was in fourth grade; that was also the exact same year I decided I wanted to get my Ph.D. because my temperament is definitely asking questions.

Participant #3: No question about it. Uh... and uh... and I’ve loved sort of watching your transformation in this whole process. I remember the first time I saw you when you were asking some of those questions, I could tell a lot of people didn’t understand where you were coming from uh... particularly how we... how we use the language. And that uh... maybe we were using it improperly and uh... you saw some people that just sorta looked up like, “What is this guy talking about?” And uh... and you’re right, it’s uh... and that’s why I... I... I think what you’re doing is tremendous. I’ll look forward to your uh... ultimate dissertation. Uh... and uh... I think it’s going to be really, really good. Y... you’re asking the right people questions when you get to William Sullivan and Neil Hamilton. I’m sort of a trench-level fighter um... but I do love this area and it’s uh... I’m blessed to be able to work at it.

Eric Paul Engel: Well, I definitely, after reading tha... uh... William Sullivan’s work with the Carnegie report, I... I have a number of questions that I wanted to ask him. The fact that you know him and I can contact him... I’m gonna follow up on that one.

Participant #3: Yeah, he’s uh... i... in... and... and he and you would probably get al... along very, very well academically. I... I do a lot of reading in this field um... and I do a lot of thought and then I do a lot of application in the various jobs I’ve had. No one would uh... consider me to be anybody that Harvard would wanna hire as an academic to research right in the field, but I think I can contribute a lot. But I... I... I’m just not at that I... I... that’s not how I uh... where my skill sets are. But with William and you, I think you could really talk on the same level about some of this. And uh... and he’s a great guy. I mean, he’s just really a great guy.

Eric Paul Engel: Wow! Thank you for the compliment. Um... I... I... I would definitely like to talk to him about it because th...there aren’t many people that are excited about this.
Participant #3: But you know what’s surprising uh... there... there is more and more than you think and they come from all kinds of directions. Um... there’s a guy named Bob Sylvester out of Notre Dame who um... is... is really a bright guy and he writes a really neat blog and... and he... his career has been both combination of writing thoughtful things about his Catholic faith and how the application... but he’s also been in the trenches trying to help lawyers who have really gotten on drugs, or they’ve gotten into problems, and trying to just help them through it in a loving... loving way. And, you know, you’ve got people like him in the trenches, you got people like Daisy Floyd and uh... Tim Floyd out of uh... Georgia who are writing about these areas. You’ve got uh... people throughout the country that are doing it, there’s a thing called the National Institute for Teaching Ethics and Professionalism, uh... Clark Cunningham out of Georgia, we started that together, I started when I chaired the ABA Professional Committee, that brings together some of the best... you may want to get interested in that um... it brings together the best um... thoughtful professors and um... uh... writers in the field of ethics and professionalism. You have to actually be invited to it, it’s once a year. And you discuss some of these issues and uh... this year’s that’s coming up in November, Clark and I gave a guest lecture at uh... Harvard on the issue of the new standards for uh... accreditation and basically um... how we can enforce professionalism or not. And I think you’d really enjoy that. I’ll be glad to send you the uh... the link to applying for that meeting if you’re interested.

Eric Paul Engel: Absolutely! I... in... in...

Participant #3: I’ll have that sent out by the end of the day today. And since I have a little input, I was one of the founding members, I would try to get him to uh... uh... approve... I can’t promise it. But it’s ultimately his decision, but since you haven’t been to others and he’s looking for new, thoughtful people, and because you’re working right on the cusp of all of this um... and because you have an academic background as he does there at Georgia State, I’d... I’d think you’d have a crack at it. So I’ll send that out to you today.

Eric Paul Engel: Yeah, that would be wonderful. One of the things that really recharged my batteries was when I was uh... testifying in front of the commission last summer, and afterwards you and I spoke—that’s when I first met you—and y... and you said I think you’re on the right track.

Participant #3: Mmm hmm.

Eric Paul Engel: I had been doing this for years in isolation. And really, that one conversation made me feel... it was... it was as if my batteries were instantly recharged and I felt like I am on the right track. And I... I... that... that made a huge impact on me. So the ability to actually be speaking to others or to go to a meeting like this would just be mind-bogglingly good because where I am in my career, I feel like I’ve been doing a lot but I don’t feel like I’m applying it yet. And
so being able to interact with people who’re actually out there doing things would be wonderful.

Participant #3: You have some exciting… And thank you for that. That means a lot. I uh… I think one of the areas of my life that I hope I’m good at and I try to be an asset and encourager. I uh… I’m not a stupid guy, but I’m not the most brilliant guy in the world, but I believe strongly in my faith and believe strongly in the work that we do. And I love to give encouragement to others so that together we all can move forward. And to say that I gave you some encouragement means a lot to me, Eric, it really does. And I… I will try to keep you connected with as many people, but you are on the right path. You’re asking the right questions um… it’s a… it’s a as you say a very complicated and complex area in some respects; in other areas it’s pretty… pretty simple. And um… and I think you’re… this is probably the best time I’ve ever seen in my career for change in legal education, for… for considering these questions. Um… courts are frustrated with where we’re at… at as uh…as a profession. There’s… there’s recommendations flying near everywhere about what to do about it. Um… I don’t think there could be a more exciting time to be involved. You’re young. You have a number of years where you can really dive into w… what I think is gonna be some exciting stuff down the road. And uh… couldn’t be in a better field as far as I’m concerned.

Eric Paul Engel: Th… that definitely makes me feel better cause you’re an expert. And it’s hard when I talk to my committee members because, in many ways, I’m veering outside of the norm trying to apply communication, scholarship, and research but into a profession that’s uh… a very specific profession. And so when I talk to my committee members I just don’t get the same feedback from them. They can tell me that I’m on the right track and that I understand my area of expertise—communication—but I’m trying to bridge fields and industries and that’s just… they can’t offer the same support so thank you very much for that.

Participant #3: Well, you know, one of the things too, I remember I had a big meeting somewhere in the ABA one time and it was a bunch of professors there and practitioners and everybody and we were talking about professionalism and ethics. And… you know… and I had this, I’m sorry but it was just an arrogant professor, and came up and said, “Well, Mr. Berry, you know, I don’t see how we can really get into this stuff because what is professionalism? And what is ethics? And we all are gonna disagree over this.” And he, and in essence it was a typical kind of slicing and dicing to prove that, you know, he was smart and this was so complicated that nobody could ever do anything. And I just looked at him and said, “Well, why don’t we just start with this: would you agree it’s wrong to steal?” And… and maybe we if… if… do you think it’s okay to steal?” And he said, “Well, probably not.” And I, “Well, okay, now we’ve got a starting point. Let’s work from there and work our way forward.” And… uh… and in many regards, i… it… one of the challenges you’re gonna have, candidly, is, in my
opinion—I’m just gonna give you personal opinion about this—is that a lot of academia uh... as Carnegie report showed in legal education, a lot of it believes that much of what you and I are talking about is the sort of messy, human dynamic and we need to get away from it and we need to get to the more concrete, logical, intellectual analysis of all this. And there’s a human dynamic to it and... and... for those professors who can combine strong analytical uh... analysis and strong writing but can also wanna look for fundamental truths um... and hum... and bring the humanity to it, and care about the humanity of it, I think that’s exceptional rather than... rather than the rule. I... I have not found a lot of that. I have found a lot... even in those schools that say they’ve got a professionalism effort um... or professionalism uh... concentration, if you really look at it, it’s more or less the analytical combining all these articles and trying to find some sort of technical definition of what this is and that is versus bringing it back to the fundamental thing about who we are as human beings. ??? [unintelligible 48:18], I’m not much of a... a law review article, but I... I’ve... I’ve boiled it down is that uh... that uh... good people make better lawyers. And we can argue over what that means but that’s sort of simply how it is. Good people, they care about people, and uh... care about the issues, and they’re competent, and they work hard. Good people make better lawyers and bad people don’t.

Eric Paul Engel: It’s fascinating, I was actually reflecting about what you were talking about in terms of the law schools and the ways that they see the teaching of ethics and professionalism, an... and they say, “Well, by the time you reach law school, your... things are set.” Um... but one of the things that really struck me, in terms of how pedagogy in law schools... how they can be teaching this information is that you’ve got generations of law professors who were raised on technical rationality, that that was the end-all be-all of law school and legal pedagogy. And I saw a parallel in... in... the way that listening is the number one thing we do on a daily basis. We do... we listen more than we speak, read, or write, and yet it is the thing that is taught least in communication programs around the country. And I... I... did research on this one semester and you will... you will not find a major called listening. And in fact, go to any communication program in the country and you probably won’t even be able to find a dedicated course, a single course, semester-long, on listening. It’s incorporated into all these other things. But one of the reasons I also identified that you probably won’t find it is, is that people aren’t taught that. There are no courses to teach it; therefore, the people who end up becoming professors, like I hope to someday... well if you’re not taught that, it’s really hard to turn around and to teach that. And so, in many ways, it seems like the legal uh... educational system is suffering from... its own... its own structure, in that, you don’t have law professors who could about the... the human aspect, as you’re describing it, because they... they were never taught that, and so it’s very difficult. And one of the things that I definitely see as a challenge, like you identified, is in terms of trying to go in and talk to people about this, they weren’t taught it, so it’s hard for them to teach it; therefore, to ask them to teach it is like asking to teach something that they never learned which is really frustrating.
Participant #3: Yeah, I think that's true. I think one of the points you just made is really a fundamental one on this whole approach to professionalism ethics, that's the concept of whether people, by the time they get into their... their early-adulthood can, quote unquote, change. And I've done a lot of thought about that, work in that area. I finally convinced my... the ex-Bar president, who is a criminal defense lawyer, I said uh... who didn't believe that, he said, "Well, you know, however mommy and daddy brought you up, that's what you were gonna be."
And though I believe genes and how you're brought up and the influences in your early life do have a dramatic impact on your life um... as a Christian I believe that um... that you are... that you have the potential of completely renewing your life to your faith and also as a practical person looking at the outside world, I told my ex-Bar president, I said, “Aren’t you a criminal defense lawyer?” He said, “Yeah.” I said, “Every time you go in front of the judge, aren’t you trying to claim that your defendant is somehow changed, or will be changed, or could be changed? If not, why don’t we just throw them all in jail and leave them there forever?” He sorta laughed, and I said, "Let me go a little bit beyond that." The Carnegie report actually speaks a lot in chapter four to the issue of the impact that people had... that law school has on students. Um... in fact, Eric, uh... I had somewhat of a disturbing discussion once with, I won’t mention the school because I don’t wanna... I don’t wanna... I mean, but it was supposedly a faith-based school, a sec... uh... private institution um... with a strong undergraduate emphasis upon its faith. But in the law school, the guy was a wonderful guy and had strong faith, but he took that position as well that, you know, why the time you get to whatever age you just can’t be changed. And I gave example after example of people, for instance, in the law... lawyer’s pro... lawyer’s assistance programs that not only get off drugs, but they actually turn their lives around and they change their lives. Um... people like, I don’t know if you’ve ever been though basic training uh... in the military, but young adults, they go into basic training and... and... as... are different people when they come out. And for the cynic, they’d say, “Oh yeah, you turned them into real murderers.” But n... no... they... they have a respect for um... being part of a team and respect for, maybe, putting your life on the line for your fellow man that they maybe didn’t have before they went there. Um... change is what we're about. A fact that you need to talk to Neil Hamilton about that, he talks about growth. He... he's very good with words as you are. He said you don’t wanna use red flag words, so, he said, people can sort of agree with growth rather than your gonna completely change. And um, I think that's a fundamental issue you gotta deal with. Why are we even worried about all this stuff cause by the time you reach law school, you're pretty well whoever you are. I don't agree with that at all.

Eric Paul Engel: It’s fascinating, even though I’m focused on my dissertation right now, based on the research I’ve been doing, I actually have the next book that I wanna write on this topic. And one of the other areas that I’m trying to bridge and bring together, because my aunt has her Ph.D. in communication, she used to be a professor of communication, then she went back and got her
Masters of social work and she became a therapist. And recently, she’s gotten involved in the study of neurobiology and specifically this notion of interpersonal neurobiology and the way that the brain works and also how the brain changes based on social interaction. And it’s fascinating because I actually can show with solid research um… that’s more scientific as opposed to social-scientific, that the… the… brain actually can change it changes every time you have a conversation. And so, in fact, when people say, “Well, you can’t change.” There’s not only anecdotal evidence like you were talking about and like many people talk about but, in fact, now you can tie it to scientific research looking at the structures of the brain and show that, in fact, we are constantly changing and so that entire argument doesn’t hold water. And… but…

Participant #3: I… I… I would think that those people, and even those that don’t have a faith, can look at it from an academic standpoint and go back and look at the studies. I would probably think that those people that used to be tortured by Saul might have noticed the difference in Paul. Oh um… it’s uh… we have great capacity to be able to change in our lives, and we do for the better fo… and at times for the worst. And uh.. I’m constantly uh… feel like I’m… I’m growing and changing. Um… but we lose credibility if we… if we ignore the fact that yes, certain people tend to be born with certain personality traits, and yes, certain people have some real struggles that affect them psychologically that stick with them and cause them to have certain problems. But, to me, it’s a defeatist approach and it’s not in compliance with reality to say that people can’t dramatically change in their lives all throughout their lives.

Eric Paul Engel: Yeah, very much so.

Participant #3: Well, have I answered your questions?

Eric Paul Engel: Well the only other question is the last one. Uh… do you have any additional recommendations as to how I might best proceed based on your understanding of the proposed collective exploration particularly with regard to inviting additional attendees?

Participant #3: Well you’ve got… Did Paul Lipton agree to show up? I think he did, didn’t he?

Eric Paul Engel: Yes, he did.

Participant #3: Paul’s wonderful. Um… he is a very thoughtful man. He just wrote a new book that just came out. Um… having Paul there will make a big di… a big difference. You know, the only idea of attendees is I don’t know how many um… what mix you have of people as far as lawyers, non-lawyers, other areas of expertise. Um… as I mentioned before, the better mix you have of both lawyers and others, of course, part of your… part of the purpose of yours is to sorta get the lawyer take on all of this. Um… but I would suggest that I don’t
have any particular names uh… I think I gave you a couple, some of which worked out and some of which did not.

Eric Paul Engel: Right.

Participant #3: Um… that I tell that… I tell you what, though, down in Stetson um… did I mention Bobby Flowers to you?

Eric Paul Engel: No. Uh… yeah, actually…

Participant #3: Bobbie Flowers and Becky Morgan are professors at Stetson College of Law. Um… th… and they work now in the Center for eh… eh… Aging. Basically, it’s one of the m… best known centers in the country for dealing with elder law and dealing with aging issues. Bobby previously had taught ethics and professionalism there at uh… Stetson and also had taught trial advocacy. Um… she i… Beck… uh… Bobbie, I know better than Becky—I know them both—Bobbie is very reflective on these issues, she’s very uh… educated on the issues of professionalism and ethics um… and she would be excellent. Um… it may be sort of a late day t… to see whether she would there. But since she’s right down there at Stetson, that might work. And she’s excellent. But I’d try Bobbie. Um… there’s a lady uh… a friend of mine at the University of Florida by the name of Amy Mashburn, and tell her I gave you her name. She’s very interesting because um… she once wrote an article years ago about the fact that all of our ethics rules were really in essence a… an account of the um… I can’t remember how he put it but I… I think it was in just the… the power-brokers that are now running the distance to try to keep down anyone else so it was like the good-ole-boy network to try to prevent the younger and other minorities and other people from succeeding. And I thought, “What a… what a bunch of junk.” Well, I met her and we became friends and she said, “Well, I did sorta probably step over the line there. I was trying to be provocative.” And I said, “Yeah, Amy, you were provocative all right—ticked me off.” But um… she um… has… is very interested in professionalism from an academic and teaching standpoint. She’s seen the negatives of law students coming in and, if they don’t like the professors, gang up and trying to write bad evaluations of them. She has seen the worst of law students, but she’s also worked very hard to promote professionalism, ethics, respect of each other, and she’s a very bright academic. Um… and she might add a little punch to your group, I… you know, sometimes I never know where Amy’s coming from uh… which is good um… so Amy Mashburn would be great. Bobbie would be tremendous um… so that’s two academics that I would suggest to you.

Eric Paul Engel: It’s funny cause the article that you’re talking about from Professor Mashburn was one of the earliest articles I read. And it definitely sparked an interest for me in terms of doing more research about this. I’ve been in contact with her and unfortunately she won’t be able to make it. I’ve also um… i… i… i… not from a recommendation from you, but in my own research, I
discovered Bobbie Flowers and actually sent an email invitation to her as well. And unfortunately she said she’ll be out of town that day.

Participant #3: Oh rats. She may be in Colorado, now that I think of it ‘cause I was trying to get her to add the meeting ??? [unintelligible 1:00:22]. That’s too bad because she’s really... she... both of those ladies are tremendous um... if you ever need, even as a follow up, Bobbie would be good to sit down with. Um... she’s got a lot of practical experience. She used to tell me the stories about Stetson is one of the top uh... trial advocacy programs in the country. They won all these national awards for trial advocacy, she used to be the professor for that and she would tell all of the situations she saw where literally other teams would cheat. And uh... I said, “You are kidding me.” And she said, “No.” And she gave the examples, and she said, “It’s so frustrating because students realize it’s going on and, you know, they’re trying to compete on a... on a level playing field and... and it’s not working.” So, yeah, she’s... I’m sorry neither one of them can make it, they’re good. Amy um... I think i... you probably found out with Amy that initial article uh... she’s come a long way from that initial article. I was offended by it because I’ve spent my career in the... in the promulgation of these rules, and, frankly, I’ve never ever seen it as even a... a... not only not directly, but even subconsciously as an attempt to use it in a political sense or trying to cause something. It really, the bad results of it is, as we mentioned before, is we just don’t have a fundamental self-reflective idea of what it is we’re trying to accomplish. You know, we’re just trying to be do-gooders uh... rather than figuring out where it’s all coming from. But um... she’s a good lady. Ah... if I think of anybody else I will. And I’m gonna do everything I can to make it, Eric. I feel very... that it’s very unprofessional and I’ll tell you that soon that I’ll have that close it that I might not be able to make it, but I can’t, I’ve got a personal commitment that’s come up and that I just can’t let go of.

Eric Paul Engel: Oh, completely understood. Um... thus far, just to give you some... some idea of the... the composition, when I originally put together my list of invitees, I had about sixty different people. And they...

Participant #3: Wow!

Eric Paul Engel: ...were highly diverse representative from across the board in terms of the state of Florida. And I mean that both in the sense of judges, lawyers, uh... as well as law students—so people at different stages of their career—but also uh... th... various ethnicities and just trying to get a good representative sampling of the diversity of the Bar so that my research would reflect that. Out of the uh... over sixty people that I invited initially, I’ve only received back seventeen responses that were positive uh... in the sense of that they said that they would attend. And I’ve received about nineteen responses of people who said they wouldn’t. And then the rest I’m still trying to contact.
Participant #3: Well, actually, if you're getting almost one-third show up... oh, and that was across the state, right, not just in the Tampa area.

Eric Paul Engel: Right.

Participant #3: That's probably not a bad... bad sampling because I... you know, we are almost inundated with studies and... and... discussions about professionalism and everything. And... and to travel and to do it, um... I think if you get seventeen to twenty, twenty-five people there, I think you've done a good job. Paul Lipton, in and of himself, is gonna be awesome. He is just a very thoughtful guy um... well do y... what ar... are you at liberty to tell me some of the names of the people that have accepted or any of them that I might know?

Eric Paul Engel: Absolutely. Uh... Scott Hawkins, because he initially started the ball rolling on all of this research, he's going to be there. Uh...

Participant #3: Perfect.

Eric Paul Engel: Let's see, former Florida Supreme Court Chief Justice Major Harding has agreed to attend.

Participant #3: Oh, awesome!

Eric Paul Engel: Kirstin Davis, who is at Stetson University College of Law, a professor there, she's agreed to attend.

Participant #3: Good.

Eric Paul Engel: Uh... Nicole Booth-Perry, who is a representative for The Florida Bar Standing Committee on Professionalism, has agreed to attend.

Participant #3: Good.

Eric Paul Engel: Uh... then it starts to switch over, I've got a number of lawyers in the area who have agreed to attend. Um... cause my significant other is a lawyer, her law partners have agreed to attend. A few law firms I've contacted in the area, some lawyers there have agreed to attend. I'm still trying to get some law school students, but thus far it's nice because I... I have achieved my goal which is I'm gonna have, at least, a few judges, and a whole lot of attorneys, and then I'm still try... and... and... various uh... people with various backgrounds in terms of ethnicity an... and so it's... it's not what I'd hoped for in the sense of a full fifty, but I still have a couple of weeks to work on that. But the nice thing is is that I had gotten what I was really hoping for in the sense of um... I... I've got a judge or two and then I've also got uh... people who are actively involved in the Bar as opposed to just...
Participant #3: What judges, which judges do you have, Eric?

Eric Paul Engel: Uh... thus far it’s ju... uh... Major Harding and then Sonny Im.

Participant #3: Okay, I don’t know Sonny.

Eric Paul Engel: He was a Pinellas County judge previously, now he’s in private practice.

Participant #3: Well, I wi...I will tell you Major Harding is uh... the crème de crème. He is just such a gentleman and has done much, so much, for our profession uh... just a wonderful person. You’ve got... If you’ve got him, and you’ve got uh... Scott Hawkins and you’ve got Paul um... You’ve got a great, great representation there. I mean you... you’ve... you’ve done very well.

Eric Paul Engel: Yeah, I feel pretty lucky. And the nice thing is is I know by the time we get there, I will be able to have at least twenty people which is plenty to do a good World Café and it will very intimate and... and... so... I... I feel like it’s worked out a lot better than it could have. I’ve s... I’ve seen things go horribly wrong on other people’s dissertations and their work. With mine, I’m actually very happy thus far.

Participant #3: Well, you... and with the people that you’ve got uh... the kind of people that give credibility to what’s going on. You didn’t just throw some names together and get a hodge-podge of people; you’ve got good people. If for some reason my situation breaks, even if it’s at the last minute, I’ll let you know ‘cause I wanna be there. It bothers me I’m not. Um... we... we’ve been working on this together now for a long time. But if uh... if it doesn’t, then I sure wanna find out how it hap... how it goes. I’ll probably talk to Scott and some others afterwards. Um... Scott’s... was just a class president, uh... a wonderful guy. He uh... for your own information, he set up the Hawkins Com... well, you know, the Hawkins Commission to look at discip and uh... boy, you really did well to get those folks because they’re hard to get to go anywhere.

Eric Paul Engel: Well it’s fascinating ‘cause I met uh... Scott Hawkins before, the summer before, he actually became president. And it was a conversation with him that set... I actually changed my entire dissertation topic—I was previously studying generational rationality—but it just didn’t turn me on. But once I started talking to him, and doing research into this, I found something I could really sink my teeth into long-term. So, an... and that fact the he is going to be there and he’s been consistently providing feedback throughout this process. He was the one who actually recommended I contact a couple of other judges. I... I’ve been in contact with j... uh... former Supreme Court Justice Anstead, and I might be interviewing him actually just like I am you right now as part of this process. He said he couldn’t attend the actual event, but he was willing to be interviewed, so um... Scott’s been hugely influential on my research.
Participant #3: Well tell me uh... uh... I will uh... say hello to Justice Anstead. He’s a mentor of mine and a friend of mine that goes back a lot of years. Um... did I ever mention to you Justice Cantero?

Eric Paul Engel: Yes, I actually reached out to Justice Cantero. Unfortunately, he said he wouldn’t be able to attend.

Participant #3: Okay, was he able to be interviewed by you by any chance?

Eric Paul Engel: I'm actually trying to follow up with him right now. I put in another call yesterday to his office and haven't heard back from him.

Participant #3: What you might do is just say that... that I asked him if at all possible he could help out with this, that you talked to me, and you might want to mention the fact that Scott Hawkins and Justice Harding are involved uh... cause again, he’s a very busy guy, he gets pulled in a lot of different ways, but he might very well be willing to talk to you for a little bit if um... uh... if you mention my name and some of the other folks that might give some credibility to what you're doing. You really would like to talk to him. I... I can’t remember if I told you about him before, but um... he’s probably one of the top two or three people I’ve ever worked with or for, he’s just an incredible man.

Eric Paul Engel: That would... that ... definitely. Once I speak to him, I’ll mention that cause I really—even if he couldn’t attend—I still very much would like to interview him based on our previous conversations as well..

Participant #3: Yeah, I think it would be well worth it to do that. He’s a... and I'll tell you one of the things... I'll just shorten my normal discussion cause I probably told you about this before, but uh... he walks the walk. He could’ve been Chief Justice of the Supreme Court of Florida and he left the year before he was gonna become chief because his family had some health problems. They’ve sort of overcome the health problems, but they missed Miami so much, their home so much, and uh... and he gave up the Chief Justice of the Supreme Court to take his family back south to Miami and we had a little going-away party for him at uh... at the Supreme Court. And his daughter had everybody in tears when she got up and thanked him for putting family first and really putting family first, and uh... that's the kind of guy he is. So, if you can get him interviewed, you need to interview him.

Eric Paul Engel: He is one of the one’s I’m working on right now.

Participant #3: Tell him hello... hello... hello for me, and uh... if I can make it, I'll be there, and if I can’t, uh... I can't wait to hear how it goes, Eric.

Eric Paul Engel: Outstanding. Thank you so much for your time today.
Participant #3: Good luck to you. Yes, sir.

Eric Paul Engel: Ok.

Participant #3: Bye-bye.

Eric Paul Engel: Bye-bye.
Appendix C: Pre-Event Interview (Participant #1)

The following is the transcript for pre-event interview conducted with Participant #1 on Thursday, 23 May 2013.

Participant #1: —this accomplishment. There are lots of people that set out on the road to receive a doctorate and a large percentage of them, you know, unfortunately, never reach the end of that. So, it’s quite a compl—an accomplishment that you’re so close.

Eric Paul Engel: I’m in my eighth year of working on it so I really appreciate exactly that.

Participant #1: And, uh, tell me a little bit about yourself, first of all. Uh, where, where were you born and raised?

Eric Paul Engel: Uh I was born in Sparta, New J—

Participant #1: Ok, well the uh—that’s a beautiful area up there. The uh military has a way of uh turning out to be good news or bad news with reference to children; and that is, it either has uh that wonderful effect of the sort of an education of all the places that you live and uh you soaking up all that, making you a stronger person, or sometimes it has a disruptive effect on families. And uh so it looks like you fall in that first category for sure. And so how did you end up in Florida?

Eric Paul Engel: Well I actually was looking for a PhD program focusing on qualitative communication. Um and I looked around the country and the best program was in uh Tampa at the University of South Florida. So I had applied a few years earlier and been accepted once I finished my Masters, but at the time, I wasn’t able to move down here. So later, once I decided I wanted to go back again, I moved down here with the assumption of if they’d accepted me previously, I would be able to probably get back in. So I moved here from Washington, D.C. and took one course in the department and then applied to get back in and they did accept me.

Participant #1: Terrific! And where did you do your undergraduate and Masters work?

Eric Paul Engel: I started off by attending the University of Massachusetts at Amherst where my aunt and uncle were both professors; and then ended up moving to the University of Virginia where I got my undergraduate degree. And then following that, I proceeded over to Purdue University, in Fort Wayne, where my uncle was teaching at the time there, as well.
Participant #1: Ok. Well you’ve had a variety of environments, then to uh also, to—excuse me, hold on just a moment—I had to take a uh drink of water. I just finished a cup of coffee this morning. Uh so you had a variety of educational uh surroundings, too, to steer you here. And so... and of all those, which one would you pick out as the best experience?

Eric Paul Engel: Uh fundamentally, I would have to say (for the educational portion), being at the University of South Florida because I’m working with the best in my field. And I’ve been lucky enough to be in a small program so I’ve gotten a lot of one-on-one attention and I feel like I’ve had outstanding mentoring. Um I didn’t quite get quite the same student experience because, obviously, I’m much older and I’m not living in dorm or on campus. But in terms of the educational experience, University of South Florida’s been excellent.

Participant #1: Well that’s won—well that says a lot about you, too because when it uh comes to having to be the individual who motivates yourself, such as the situation that you’re in, it takes somebody with a lot of passion for what they’re trying to accomplish to do it. So, uh, congratulations on that note, too. That’s a real feather in the cap of South Florida that you... [unintelligible 3.53] because those are all wonderful institutions that you’ve uh studied in before: all the way from UMass to Purdue to UVa, where I got an advanced law degree uh a number of years ago. Uh so that’s a great uh setting with uh with the mountains nearby; uh it’s got a great historical setting, and then a great uh environmental setting. Alright! Well, enough beating around the bush, uh you tell me how I can help you.

Eric Paul Engel: Ok. Well, I just sent over an email uh in response to you sending me the phone number. Um I’m not sure if you have access to that: if you do, great; and if not, we can proceed forward. Um essentially, for the interview, there are only three basic questions that I wanted to go through.

Participant #1: Ok well I’ll let you restate those questions to me so that we can work our way through them as opposed to looking at them on the email because uh I had those from your previous email. But you restate the questions uh and then we’ll visit our way through one and you can go on to the next and we’ll see how we do.

Eric Paul Engel: Sounds good. Before we proceed, one of the requirements (because this is for my dissertation) is that I get verbal consent from you because I let my institutional review board know lawyers don’t tend to like to sign things and I would be doing many of my interviews over the phone. So would it be alright if I read you the script that they require me to read and then we can move forward?

Participant #1: Right, it’s—it’s not something that will take twenty minutes, right?

Eric Paul Engel: Oh, no, it’ll just take a minute-and-a-half.
Participant #1: Yeah, you go right ahead.

Eric Paul Engel: On the afternoon of Friday, June 7th, 2013, I intend to host a voluntary half-day Continuing Legal Education event, inviting members to the Florida legal community to the Tampa Bay area to consider how they collectively make sense of, evaluate, and enact the concepts of ethics and professionalism. Employing a conversational meeting format, known as a world café, the CLE will simultaneously serve as the focus of doctoral research being conducted in the communication department of the University of South Florida. With this in mind, I am contacting you because I am interested in your unique experiences and perspective as a legal practitioner and former justice in Florida. Ideally, your participation will involve one informal interview that will last between thirty minutes and an hour. Attendance and participation in the half-day, four-hour CLE workshop, and participation in a one-hour informal focus group immediately following the workshop, recognizing that you’re an extremely busy professional, however, you need not participate in all of the events. The meeting is slated to be held in the Mann Lounge on the campus of Stetson College of Law in Gulfport, Florida. To be clear: this research has no known risks. While this research is designed to benefit Florida’s legal community, by facilitating professional-community building, by increasing knowledge and awareness of diversity and cultural competency, by providing ethics and professionalism CLE credits, by aligning with the Florida Bar’s 2010-2016 strategic objectives, and by honoring the various stakeholder’s collective voices, I cannot be sure if the individual participants will benefit from being in this study. Please know that I will do everything I can to protect your privacy. Your identity and personal information will not be disclosed in any publication that may result from the study; and any notes that are taken during this interview will be stored in a secure location. With all that said, would you be willing to be interviewed. And if so, would it be alright if I audio-taped our interview to ensure reliability and accuracy?

Participant #1: Yes.

Eric Paul Engel: Ok, great!

Participant #1: Good. Alright.

Eric Paul Engel: So, the first question has to do with the questions that I’m going to be asking. And just to give you a little bit of background information so you understand the context within which this is going to take place, most CLEs that I have talked to people about (um and the ones that I’ve attended, actually) are generally of more of a panel format or a presenter format. So you have a panel of people or a single presenter who present to the audience and the audience is quite passive: this format is called a world café meeting format. And essentially, what it does is it recognizes that there’s a whole lot of knowledge in everyone who attends something like this, not just in the presenters. And so, rather than having a single panel of presenters, you actually will be—well I’ll be bringing together between twenty-five and fifty lawyers, uh judges, former judges, law
school students. And what we do is we start off, there are ten tables and at each table there are five chairs. If you think about it in the sense of an extended meal, it's kind of like a four-course meal. We start off with people seated wherever they feel comfortable and I pose a question. And that first question is for the first course, essentially. And people will be asking the question and then answering it and having a conversation about. And that will take roughly thirty minutes to forty-five minutes. Once we feel like the question has been answered sufficiently, and there's been good discussion, then one person at each table will remain at that table and everyone else gets to move wherever they want to different tables. Then we pose a second question that builds off of the first question and we ask them to continue the conversation. And so the person who's the anchor, who stayed behind, explains to all of the new people who arrived at their table what was discussed previously. Then they begin a new discussion and they talk about the second question. That continues for, again, thirty to forty-five minutes. And then you do the same thing: you have one person stay behind, and they're the anchor for that table, and it could be the person who was the first anchor or the anchor that was for the first round, they could move to a different table—so it doesn't have to be a consistent anchor—and you pose another question. So, essentially, it's just a series of questions that are open for discussion. After the third round, we take a break, but it's a working break where we offer about forty-five minutes for people to have informal discussions about any of the topics that have been discussed that morning. 'Cause sometimes you strike a tone with someone and you want to continue the conversation but not necessarily about any one of those specific questions. And during this um working break, we're going to have post-it notes; and all of the observations and thoughts that you're having, I'm going to encourage everyone there to write them on post-it notes and stick them on a wall called "The Wall of Inquiry and Observation." Then, once that's done, we come back together and you have a fourth and final round where everybody returns to the final question, which is usually more of a summary question. And once that's done, then we have a debriefing and I'll go over what was on The Wall of Inquiry and we generally just spend another hour talking about, "So where are we? And what did we learn? And what can we do with this?" So with that said, one of the primary things of a world café that's of importance is asking the right questions. 'Cause, if you don't ask the right questions, no matter what answer you get, it's not going to be as valuable. Not being a lawyer myself, but being surrounded by them (and being married to one), um, one of the things I've run into is I can create the questions, but I want to make sure that I'm asking the right questions which is part of why I'm doing these pre-event interviews. So I'll go ahead and I can read to you—I have to sets of questions that I've created. And I'd like to get your opinion as to which set of questions you feel would be the best to be evocative in the sense of pulling out quality discussion among the people who will be attending as representatives of the Florida legal community. So the first questions are what do you, individually, mean when you reference the term ethics and professionalism? Then, in the second round, we would ask, "How might we explain the diversity of definitions: where do they originate and how
can they co-exist? And then the third set of questions might be, “What have we collectively learned in our conversations today and what do we do now? What might we do with the information, insight, and inspiration resulting from our collective inquiry? What might we do with this knowledge and perspective?” So that’s the first set of questions that I originally came up with. When I gave these to my committee—and the questions that I created were based on my talking to a lot of lawyers—my committee came back and said, “Well, we think that you might want to re-think some of these questions,” and they gave me specific reasons and feedback. And so I came up with a second set of questions; and I’ll read you those right now. Question one: “Please describe, based on your own experience, how you have come to define the term professionalism. How is the term used in the legal field in general?” Second question: “Please describe, based on your own experience, how you have come to define the term ethics. How is the term used in the legal field in general?” Third question: “How might we explain the diversity of definitions, if, indeed, there are; and where do they originate, and how can they co-exist?” And then the fourth question: “How have we collectively learned—or what have we collectively learned in our conversations today; and what do we do now? What might we do with this insight and information, this new knowledge and perspective?” So with that in mind, which of the sets of questions do you think would be the most evocative in terms of evoking productive responses: the first set or the second set?

Participant #1: Uh Probably the uh the second set: but uh what would be more important to me would—you now had your session, is that correct?

Eric Paul Engel: No, the session is actually—the CLE is going to be held on June 7th.

Participant #1: Oh, ok, it’s not until June the 7th. Alright. What would be uh more helpful to me in terms of being responsive would be for you to take advantage of what you’ve learned about this, up to this point, and to refine and sharpen your questions, to me, uh so that hopefully I can be more helpful uh to you. Ok, so uh, do you have the ability to do that?

Eric Paul Engel: I’m not sure I understand your—your question.

Participant #1: Ok, you’ve been working on this now for some time.

Eric Paul Engel: Correct.

Participant #1: And part of what you just described to me was that, as you were in contact uh with uh lawyers and judges, or whoever you’ve, uh so far, been in touch with, that you have been refining the process. And so, is that correct?

Eric Paul Engel: Yes—not in a formal sense; it’s more when I informally speak to lawyers at Bar events, and things like that, where I I generally ask, “Well this is what I’ve been thinking about doing. What do you think?” So it hasn’t been very formal, but, yes, it is speaking to a number of lawyers.
Participant #1: Ok, well, in going through that experience, ok, and you have been educated about this already. I’m sure you did a lot of preparation even, you know, before that. So what I would like to do, since we have a limited amount of time in a telephone interview like this, is to have you make an attempt uh to identify what you believe to be the most important or fundamental questions that you would like answered. And then, you know, give those to me and I’ll be happy to respond to those; or I can give you some kind of an overview uh with reference to uh professionalism and ethics.

Eric Paul Engel: Ok. Well, essentially, the three questions that I emailed over, and the questions that I had established for today’s interview were my attempt to boil it down to exactly that; such that, any of these interviews will only last between thirty minutes and sixty minutes. So if you wou—if it would be easier—

Participant #1: Uh yeah, alright. So let’s let’s—we’ve got your original world café questions and then the updated world café uh questions uh and I’m—I’m looking at the uh this updated, ok, and where you’ve divided it into first course, second course, third course, fourth course, and four questions as opposed to three. And you want to start with the first question?

Eric Paul Engel: Well with the two sets of questions, essentially, my question to you is which of those sets of questions do you think would be the best to ask as part of the world café? So it’s not attempting to answer the questions themselves but just wondering, from your perspective, which set of questions do you think is best for lawyers?

Participant #1: Now let me—I’m looking at these right now. Well, uh, either—either set is uh—I don’t think there’s a lot of difference uh between the two sets. So uh—

Eric Paul Engel: Ok.

Participant #1: —you can, you can, you know, you can proceed either way as far as I’m concerned.

Eric Paul Engel: Ok. Ok. So then moving on to my second interview question: one of the things I want to know (because, obviously there, I gave you a choice of two options and that’s very limiting) in terms of the questions that I would be asking, whether it’s the first set or the second set, do the questions matter? And from your perspective, um how do they matter? And this would get at more within the—the professionalism and ethics movement that’s taking place, how—how do you think these questions matter?

Participant #1: Well they matter because they affect the conduct of lawyers uh that provide a service uh to people; and, of course, it’s a very important uh service. Uh to some extent uh, what happens is, when you uh frame a question, ok, you are automatically limiting a discussion uh that you have. And the uh the same thing, you know, is occurring here. From a broader standpoint, uh when
you say, “What do—” or in other words, are you trying—you just said you’re going on to the second set of questions and I’m not sure what you meant by that.

Eric Paul Engel: The second question in my set of interview questions.

Participant #1: Ok, and what question is that?

Eric Paul Engel: Well the primary part would be, “Do the questions that I’m asking matter?”; and then, within that, it’s—it’s wondering, “How do they matter; and to whom do these questions matter?”

Participant #1: And, well, I would say, in a generalized way, that you—you you’ve been too formal with your questions. And when you ask a follow-up question like you just asked, there really is no meat on the bone for somebody to respond to. When you—when you’re asking this uh really value-laden question about uh “do they matter,” and “who do they matter to,” ok, and so the context for that, obviously has to be, uh what is it that we’re talking about uh that you’re asking whether it matters. And so that’s very—that has to build on something that we haven’t discussed. Do you understand what I’m saying?

Eric Paul Engel: Yeah, yeah—

Participant #1: You’re asking whether something matters and we haven’t discussed anything yet. It uh would give rise to a discussion of the values that, you know, might be uh incorporated or represented uh by somebody’s discussion of uh the values of professionalism and ethics.

Eric Paul Engel: Ok, I see exactly what you mean.

Participant #1: Uh, and uh what—what—what’s going to some degree here is that when you approach this uh from this academic structure, ok, you really, in a sense, are creating barriers uh to uh people really being forthcoming on the subject matter. And uh I would say that—that—that this—this—this is a uh limitation that you don’t want to have. You don’t, obviously, you don’t want to have limitations, you want your questions sufficiently uh both educational and provocative enough that they will give rise to all kinds of insights into uh the area of ethics and professionalism. And uh so you’ve got to be very careful uh well uh what I could use is a phrase, “You don’t want to turn people off.” What you want to do is you want to turn people on, ok? And usually the way that people have—lawyers in general, and judges, uh and—and others that have been involved in the legal profession, the justice system really have strong views about the subject of ethics and uh professionalism; but you have to tap into that in a way that relates to the particular uh individuals as far as what their experience in the law has been. They all share a, pretty much, a common experience in terms of uh the formal law school preparatory education. Ok, that—that’s something that you can generalize with to a great degree. After that, ok uh, it’s Katie bar the door because everybody has had now very much of a separate road and a—a separate experience with reference to both their developing a—a view of what
ethics and professionalism mean uh and the consequences of that. So uh breaking into that usually has to do with uh what their legal career is and has been, you know: whether they’re an office lawyer or a courtroom lawyer, whether they’re a judge or a mediator. Uh in other words, what their perspective on this is all uh going to be determined largely by the experience that they’ve had in these varying roles that you can uh play in uh the legal profession and in the justice system. So, I don’t know, does that help you at all uh to uh— as far as your perspective on this subject?

Eric Paul Engel: It does and—and—and with respect—

Participant #1: I can talk to you in terms of generalities and what—what we might do is—I—I can talk to you in terms of generalities about this and then you uh you can sharpen, you know, your questions after that. While I can recognize that there’s a need to sort of be sure that uh we’re playing by the same uh set of questions uh or agreements as to our understanding of what we’re going to talk about and that’s—that’s an important thing in standards with reference to academics, you know, “Let’s be sure that we’re asking the same things of everybody; and then we can compare the wide range of responses uh that we get.” The—the academic also has to be prepared to learn as they go along and uh to uh adjust their inquiries uh based on what they learned. And uh in order to uh to ask more probing questions and get, you know, deeper into the subject which is uh I assume what your goal is in the thing and to get to develop a real insight uh and uh with that insight, you—you can first evaluate the legal profession and the justice system in terms of its treatment of ethics and professionalism and, of course, you can compare it uh to others uh and to other uh professions. And uh, you know that—that’s important. And uh you end up then, when you synthesize all this, you—you make a great contribution when you reduce it uh to some kind of uh written form whether it’s a paper just published uh for its own value and shared with other academics, or whether it ends up, you know, being published in a journal with wide circulation. Uh the more we share our insights and—and—and our own individual views, the more we advance uh as a profession and as a society. So, largely, uh ethics and professionalism, uh when we talk about ethics and professionalism, we’re talking about a code or codes of conduct, ok, and uh those codes of conduct really have a broad application. The practice of law is a service profession, that is, it’s a uh profession that serves people. So lawyers serve people and artificial people (like corporations). Uh and so it—it—there has been an intuitive need, since—since this first rendering of assistance that people have had to appear before chancellors and courts uh that need for uh people that uh were trained uh in—in the conduct before those bodies to assist people in—in their appearances before uh those bodies. Uh and so this is, of course, what gave rise to uh to lawyers uh in the very beginning was to render assistance based on specialized knowledge of—of the law and the procedures uh before judicial bodies. And so what we’re talking about, though, again, is a code of conduct and as I say, the—the law is a service profession and a lot of the—the uh basic principles uh extend out into uh other professions and trades or whatever uh that is that uh the one simple way
uh to define uh standards for professionalism, for instance, uh there’s uh is to
describe at least three of the principles that are important uh in professionalism
and uh and ethics. And uh and in a shorthand sort of way, uh and when I visit
with lawyers as a group and we have these exchanges that you’re talking about,
by the way, uh I talk about competence, character, and civility, ok. And uh the—
the competence which is at the very—should be at the very uh top of—of these
principles and responsibilities is something that applies across the board to uh all
other uh trades and professions: and that is an obligation whether you’re a
doctor, a waitress, a ditch-digger, uh whatever you do, that is you should have
the competence and you should feel the responsibility for having that
competence to—to dig that ditch or to serve somebody in a restaurant; or, uh
obviously, as a—a medical doctor and a lawyer, now we’re talking about elevated
responsibilities because these uh services that you provide have a much greater
impact on the individuals that are served. You can see that uh when a ditch-
digger goes and digs that—that ditch, works on that ditch, that yes, that’s going
to have a consequence (that the ditch should be so deep and the walls of the
ditch should be sound, or uh whatever), but when we’re talking uh about a
lawyer, oftentimes the—the whole future of a person is going to be determined by
the resolution of the legal problem that that person brings to a lawyer. And one
of the visual images that you can uh get from this is that the lawyer is the one
that has to build bridges uh for these clients and for these people to get over
whatever that issue might be that they brought and get on with their lives and
have a—have a fair chance of having a happy life after that. And so the lawyer is
responsible for building that bridge, and it’s not a—there are no absolutes with
reference to that because the—the bridge might look, you know, very different
depending on the circumstances of the case. For instance, in a criminal matter,
the lawyer may well advise a defendant that really they have to acknowledge
responsibility uh for the criminal act they’ve been charged with and just hope that
they can uh moderate the punishment that they may suffer before they can get
on with their lives. Or, it may be a situation where they actually uh feel strongly
that they’re innocent of the accusations and they—they go through a full-blown
procedure of uh of trial whatever and uh with a lot of that, uh then if ultimately
successful, then they can put that behind them. Uh but, again, the lawyer is the
one that has to deal with that and shape that bridge uh that—that might get the
client passed that particular uh incident and to get on with their lives. But, uh
I’ve—I’ve said so uh—but competence is the fundamental uh responsibility of uh
any person in a service profession that—that they owe that competence and for
them to be competent uh to their clients; that is that they—they—they should not
be taking case that they’re uh not educated or experienced in uh that they don’t
feel confident uh that they—that they are competent in, you know. And so that’s,
sort of, a first rule. These other two of character and civility: character is a broad
term which really uh reflects whether people are honest and forthright uh and it—
it—it says something about people’s integrity. Uh and—and integrity goes back
to this thing about honesty, honesty whether it’s honesty in communication uh
or—or—or whatever, but it’s a strong—uh in the legal profession—it’s a very
strong ingredient again because of how important in the lives of people uh the
legal profession and the services that lawyers render is uh both individually and to our society as a whole. And so but basically, we’re just saying uh, “We want you to be honest.” Now, honesty uh, going back to this broad application of ethics and uh professionalism, the ditch-digger—we probably want the ditch-digger to be honest, too. But it doesn’t matter so much as—as it would with a lawyer uh and in our justice system and—and the legal profession. It matters uh because uh if the ditch-digger decides to uh cut corners or something, eventually the ditch could collapse and—and that could have serious consequences. So it matters, it matters with everybody that provides a service uh, you know, to people, again, whether it’s the waitress uh and uh seeing to it that you’re uh, you know, attended to at all times and that you have prompt service, uh quality food from the kitchen, and uh, you know, uh anticipating your needs um there in a—in a restaurant. And then the third one is civility which is especially important in—in the legal profession because there are uh so many relationships upon which the—the—the fair operation of the justice system depends. And uh a few of those relationships are the lawyer and the client (that’s a critical one, obviously), and uh and the lawyer and other lawyers is a critical one too, and lawyers and a judge, and lawyers and a jury, and lawyers and witnesses, uh just lawyers in the general public uh can really be added to this, all these relationships. And uh civility in those relationships is critically important. And eventually the goal becomes to have a very healthy justice system; that is, in any particular community, whether it be in Tampa or Tallahassee or New York City or wherever, that uh you have judges, uh lawyers, all operating pretty much on the same page about their agreement of these standards of conduct uh that—that they’re responsible to. And uh it comes back to uh this the—the concept of communications; and that is, in order to have healthy communications uh you’ve got to have an agreement uh beforehand about these various standards so that—that everybody is fairly operating on the same standards and understands uh that responsibility. And it breaks down when one of the parties to the communications or the necessary relationship uh in the justice system, in the legal profession, doesn’t agree to abide by uh these standards. And so, uh one of the uh I talked briefly about the origin, it goes way back uh to the guilds uh when people did uh, you know, whether they did woodwork or they made shoes or whatever it was that they did and then lawyers formed guilds, too. So one of the places that you can look to uh most pointedly and uh cogently for a description of—that’s a—of a code of—of ethical and professional conduct in Florida you can look to the Florida lawyer’s oath. And uh we’re fortunate in Florida because we have a uh lawyer’s oath that really contains all the essential ingredients in a code of ethics for professionalism. And the oath is simply a pledge to uh to practice, to your life, and to your profession in accordance uh with the standards that are set out in the uh in the lawyer’s oath. Uh it really is just a great uh repository of the gist of all the rules of professionalism and uh ethics. Now, it’s true, what the Bar has done, and uh the legal profession has done, and the judges is supervise the lawyers, is that they’ve uh in uh they have reduced uh the rules of ethics, ok, to a detailed set of rules that attempts, as codes tend to do, that attempts to reduce to a rule almost
every possibility of a relationship uh and an obligation. So there are very detailed rules of ethics uh in the legal profession set by the Bars of the various states and uh those have legal consequences; that is, lawyers don’t have any choice about complying with the—with uh with those prescribed rules of ethics that are set out in very detailed writings uh in a code. There are consequences including uh taking away the lawyer’s right to practice law uh if those rules are violated. And—and there’s a complex uh set of largely voluntary uh participation by lawyers to conduct proceedings uh to determine whether there’s been a violation. But professionalism—a violation of the rules of professionalism, generally speaking—do not have the same consequences. And those—those are more aspirational rules. What—what we uh tend to say is that this is what we expect of people: that is, they should conduct themselves in—in a—in a civil way; uh and they should uh keep up with the law that in the area that they practice to such an extent that they can always be assured of their competence. Uh and uh they should, of course, have the highest of—of—of character. But there’s lots of things that the lawyers can do that the civility issue can break down and they still haven’t violated a rule of ethics that I’ve separated out, but they uh they—they—they’ve been uncivil, and they’ve shouted at a witness, or they’ve cursed their opponent, or they’ve been rude to the judge (and—and vice-versa, by the way, you know that judge may have done the same thing). But that’s a broad division, that is honored in the legal profession, between those rules of ethics (that you must comply with or there will be consequences) and the rules of professionalism (which are aspirational, uh the rules that you should comply with but that don’t have any fixed consequences for their violation). They may have consequences, a lawyer might lose a case because he was rude in front of a jury, a uh a lawyer might be sanctioned by a judge for contempt uh because of his conduct in a courtroom, and those—those may all involve uh application of rules of professionalism. But, generally speaking, those are not rules that are written down very specifically and whose violation has fixed consequences. So uh you might be interested in knowing that the origin of the—of the lawyer’s oath in Florida occurred uh more than a hundred years ago. And back at the turn of twentieth century, uh the lawyers in the country were first interested in forming a national organization of lawyers (and this is how the American Bar Association came about). So lawyers from all over the country uh came together and said we should form a national organization: and—and they did, you know. And that occurred towards the end of the nineteenth century and the beginning of the twentieth century. But one of the important things during the formation of that national association was uh somebody said well we ought to uh have a standard oath that lawyers take uh wherever they are in the country. So there was a committee designated to try to come up with—with an oath. And there were competing versions of oaths that were proposed uh and uh what’s happened now in the country is that there are competing versions of oaths that the—the lawyers take around the country. But what happened is that one of those recommendations of the committee was that in Louisiana there—Louisiana was the only civil jurisdiction in the United States; that is, because Louisiana had been acquired and founded by the French, the—the—
from the continent uh was incorporated in the laws of Louisiana as opposed to the English common law tradition that was largely incorporated in the rest of the country. But one of the consequences, as a result of this discussion about uh codes of ethics and professionalism, is that Louisiana had adopted as its code of ethics a code of ethics that had been prescribed by one of the cantons in Switzerland (again, a civil jurisdiction that had written out its code of ethics and conduct for lawyers) and uh the judicial system in Louisiana incorporated that code uh in whole and both as a code of ethics and as uh the oath that lawyers in Louisiana took. And uh so this was one of the recommendations of this committee uh that was assigned this task by the original ABA uh group that was forming the American Bar Association. And so they recommended that—that states adopt this, what in effect was an entire code of ethics for its uh oath of office for lawyers. And Florida, fortunately, bought into that more lengthy uh oath uh which has its roots in the civil system in Europe, and specifically in one of the cantons in—in Switzerland, that it had evolved from a guild of lawyers that tried to set out what their honorable obligations were with reference to uh ethics and morality uh and professionalism. So Florida’s very fortunate that—that when Florida made that choice because lots of states, and interestingly enough, when you go and uh if you apply to be a member of the Bar of the United States Supreme Court, essentially, uh you have to agree uh to uphold the Constitution of the United States and uh to have good conduct, and that’s it. In other words, it’s like two sentences. Uh it’s a very simple—and some people could say, maybe, that’s great, maybe that simple thing about uh always adhering to good conduct is enough—but I happen to believe that the—the one adopted in Florida, and some of the other states, uh has much more substance to it. And so one of things that I did while I was a uh judge on the Court of Appeals before I became a Supreme Court judge was that uh I lobbied two groups to emphasize the—our oath uh of lawyers in Florida. And uh one of the groups was the publisher and the board of editors of the Florida Bar Journal. And back in the 1980s, I convinced the editors of the Florida Bar Journal that they should publish, with every issue of the Florida Bar Journal, the lawyer’s oath somewhere in the very front of the Bar Journal so that lawyers, every time they picked up the Bar Journal, they had a reminder of—of this oath that they had taken and uh they could see the words again. Uh because, despite the fact that it did, at one time, serve as a complete code of ethics, it’s still not at law. Eventually the—the board of editors agreed with me and I wrote a little piece uh back in, I think, 1984, in an issue of the Florida Bar Journal, introducing the publication of that lawyer’s oath in every issue of the journal. And fortunately, that tradition has continued up—up ‘til today. In that uh introductory piece, that was just a page long, by the way, I explained the origin of the—of the oath and the importance of oaths. Uh and the second thing that I did was I was in touch with the Florida Board of Bar Examiners and I convinced them that with the uh successful application of uh any lawyer to be admitted to the practice of law in Florida that the—that this Board of Bar Examiners should provide the lawyer, the successful applicant, with a copy of the lawyer’s oath suitable for framing uh and encourage that lawyer to frame that—that oath and to put it up on their office wall where they could see it
frequently. And uh and I was successful with that and uh the board agreed to do that. And I regard those two things as the most important things that I’ve done individually to advance the cause of uh of ethics and professionalism. Uh later, this was an interest to me, uh when I served on the Supreme Court, and after first serving as the chair of—of the Bar’s uh Committee on Professionalism and Ethics, I was one of the founders of the Florida Supreme Court Commission on Professionalism and served as its first chair for a long time. Uh and so uh there’s a—a broad description, I’m not sure whether any of that is helpful to you, but I’ve tried to sort of give a history and some content and context to the development of codes of ethics and professionalism. Now, if you want to ask me other questions, go right ahead.

Eric Paul Engel: Ok. That—that very much is—is uh is valuable. When I initially started my research, it actually the impetus was a conversation I had with, at the time, President-elect, uh, Scott Hawkins; and it was about civility. And my initial research for my dissertation was actually on a completely different topic, but I was presenting at a conference and, uh, President-elect Hawkins approached me afterwards and said, “Well, I’m curious. You talked about the value of communication but what about civility? Why do you think people are so uncivil?” And we sat and talked for about forty-five minutes and he put a bug in my bonnet and after I left that conference I went back and started doing research and ended up changing my entire dissertation just to focus on the—to try and help him answer that question because he said, “Civility is a problem and we need to deal with it; and I’m not sure how. And I’m going to be president soon and you might be able to help me.” And so ever since then, since 2010, I’ve been focused on this question because of a conversation I had with him. And what fascinated me, and the reason I ended up focusing now on ethics and professionalism, is that within the literature, civility was always dealt with as a subset of ethics or professionalism. Um but very much, I’ve been working very closely with John [Berry] and Scott Hawkins; both of whom spoke incredibly highly of you and strongly encouraged me to contact you for exactly that reason. Because they had told me you were one of the—the—the founders of the professionalism movement, in many ways, in the state.

Participant #1: Well, see, uh those are two people that I also have a regard for. And let—let me add to the uh the impetus for—for what you’re focusing on: there are a lot of people around the world uh that think that uh our form of democracy in this country is breaking down because of, for one thing, uh because of a—a—a lack and a decrease in civility. Uh now you can, you know, you can say a decrease in ethics and professionalism too, but certainly a uh decrease in civility at the highest levels, ok. So uh what you uh what it’s—it’s—we have a fascinating history in this country. And uh one of the fascinating things to me is a uh fellow that we’re all familiar with uh is the we regard him as the—the father of our country, ok, as the father of our democracy. The father of our country, in this sense, in the important role that he played in so many uh ways: militarily, and in the formation of the government, serving as the first president. And so this fellow that we have this high regard for uh used an important part of his uh good uh
good—goodbye address, ok, to the American people, “Farewell Address” is the formal title put on his address, uh really it was devoted to the danger of the rise of, then of something that—that uh was—was new in the country, and that was the rise of organized political parties. And what he saw already were the signs that people were putting an allegiance to a political philosophy or a political party above their obligation to their country. And—and uh the imp—of course, the importance at that time, really of the formative stages of the—of the country, and to uh really have as the—the first principles, as we were putting those in place and starting to practice those, how important it would be to the future uh that we—that we stick to very high principles as far as our dedication uh to having a successful democracy in the country. So he, and it’s amazing to me, that uh he articulated in such a pointed way, the danger of this allegiance uh to party or philosophy over uh allegiance to the well-being of—the country and the health of our democracy, and that here we are now, more than two centuries later, experiencing uh that coming uh to fruition; and that is that the appearance, at least the people are uh so—so committee to certain political ideologies and—and parties and views, that they’re putting the uh the health and well-being of the country second uh to this allegiance. And so you’re seeing this play out in a certainly—a critical term in—in in evaluating this health is civility. That is, we’re seeing really a strong lack of civility with reference to exchanges now in the national Congress uh and at the highest levels of—of government. And lots of people in uh other parts of the world are wondering whether or not uh this—this—this is going to have very much of a damaging impact on the future health of the of democracy in the United States that they regard as the really the first uh really successful—you can go back to principles of democracy to Greece in ancient times—but the real application of—of broad principles of democracy and—and constructing a uh a government based on those principles occurred in the United States in the modern era. And so uh you are addressing a topic that uh is very timely, it’s very timely. And uh that people, if there isn’t more attention placed on—on the roles of—of—of civility uh in our discourse uh at the highest levels of government, lots of things have or can come unraveled as far as what we depend on uh for our government uh really to administer the form of democracy that uh that we have chosen. So I would encourage you, too, and they’re—they’re clearly, you know, we, at—at—at many points in our history, we have pointed to lawyers and their education and training as getting us through uh difficult times. And most of the time with that, you know, we start with the—the founding of the country and uh how many of the signers and then important figures in our founding were educated and trained as lawyers, ok, and uh that—that uh this—this was an imp—an important ingredient in the successful origin and development of our uh democracy. Clearly, a uh very significant number of—of lawyers had played a leadership role, uh and so Thomas Jefferson, John Adams, many others, uh played uh significant roles. Then, through our history, uh we’ve really seen the same thing occur. Uh we see people like Abraham Lincoln uh who is probably regarded uh, along with George Washington, as our greatest president uh because of his ability to deal uh with the—the—the—the—the terrific issues that he faced as—as president at the time, that he was trained
as a lawyer. And Lincoln, you know, moved forward to examples uh when President Kennedy, John Kennedy, was faced with this Cuban Missile Crisis, that the overwhelming majority of the people that he surrounded himself with were law-trained people, uh that—that—that this—this was the group that debated what do we do, what are we going to do, and uh kind of thing. And then uh, I point to, and believe truly, that there actually was a uh golden age of lawyers during the Civil Rights era. In other words, that era of advancing the rights of—of all Americans uh was a golden age for lawyers because uh lawyers uh like, just like with the founding of the country, really played the critical role uh in uh saying that equal rights was uh recognized all around the country; so it's a time that we can point to and be incredibly proud of our judges and our—our lawyers in the country. And uh and as I say, my personal opinion, is that it—it—it was a golden age uh for lawyers. So these uh issues of competence and character and civility and codes of ethics and professionalism that uh that uh are important to the justice system and to lawyers have also proven to be extremely important to our country and uh all the way from our local communities uh to our state and uh to the nation. And so you are you—you are embarking on something uh that certainly could be looked to as a resource, uh to be one of the factors uh to help change this uh course, uh at the highest levels, that we seem to be on and that is of ignoring uh the rules of—of ethics and professionalism, and especially the rules of civility. Uh and that is that, rarely uh anymore, at least with what—what is publicized through the media, do we see exchanges uh between people in Congress uh at—at the House of Representatives and the Senate and exchanges between uh Congress and—and the uh the administration uh we—we wouldn't come away uh from having those exchanges reported to us or seeing them live uh as saying, “Oh, this—these are—this is the highest standards of civility uh that—that the people that we've uh vested with the responsibility of—of running our democracy are demonstrating.” They’re not demonstrating the uh highest standards of civility at all; and it’s having a uh terrible effect on our ability to govern ourselves. So your paper uh can serve as a uh one of uh the critical insights uh into focusing attention on this uh issue and problem and uh and its consequences. So I—I—I applaud and congratulate you for—for what you've chosen to do.

Eric Paul Engel: It’s fascinating, in many ways, John [Berry] has said roughly the same thing of what you just said which is that my research couldn’t be more timely, that the Bar needs it, and not only at the state level but at the national level, and more importantly, he said society needs it which—I’m often doing my research very often in a library uh by myself and at this point it’s nice, I’m finally starting to be able to share my research with others, and to hear confirmation like that means a lot. So thank you very much for that.

Participant #1: Ok, alright. Is there anything else I can answer for you?

Eric Paul Engel: I have one last question which is a pretty simple question. But I wanted to know, from your perspective um, in what ways does even asking
questions about the meaning and value of ethics, professionalism, and civility matter?

Participant #1: Ok, it matters tremendously, ok, because this is also in the area when we talk about people trying to make a living and uh to uh support and help their families, go to work every day, worry about the traffic, uh, you know, worry about all the things—to pay their bills, and uh whether they get along with their spouses or their neighbors, uh all the things that impact us in life that uh can seem to be overwhelming that we don’t always provide a lot of room (or have a lot of room) in our thoughts and in our discourse to talk about something as important and fundamental as ethics and professionalism. And that when somebody then does bring it up and we get a chance to think and reflect, we realize how fundamental it is—that this speaks to the very essence of who an individual is, and that is that there values speak to that. And so when they then examine themselves and say, you know, “Am I an honest person? Uh do I assure that I’m going to be competent to handle a particular uh legal issue for somebody? Do I consider that I’m somebody of high character? Do I act with civility in my relations with other people?” When they get a chance to really think about this, they realize that this involves the very definition of who they are and who they want to be; that is that everybody—I—well maybe not everybody—but uh most people want to have a—a high opinion of themselves in terms of the values that are important to them and how they live up to those values. And so when these kinds of questions are raised, they inevitably cause people to focus on something that is uh critically important to who they are and uh to their lives, and yet, are things that they haven’t had much opportunity to focus on. So it all goes back, uh to a great extent, to uh this fellow that you read about named Socrates. And uh when one of the sayings attributed to him, you know, has lasted over the uh centuries, and that was, this—this—this—it boiled down to an unexamined life was not worth living. And this—this—this self-contemplation where we are constantly auditing ourselves as to whether we measure up to our own standards of—of—that we want people to think that we are people of integrity, and uh we have to challenge ourselves. So every time you question this or bring this up, it creates that kind of opportunity—uh it might not happen, a lot of people might pass right by though; but a lot of other people will say you—you—you know you’re right, uh we should be thinking and talking uh, you know, about these things. And thank you for creating the opportunity uh for us to do this. So uh again, that’s an aspect of your work that I think is very important.

Eric Paul Engel: Part of the reason I—I ask that specific question and part of the reason—a large part of the reason why I’m actually doing the CLE that I am—originated with my uh I have my own consulting company focusing on professional and organizational communication development and specifically focusing on uh lawyers and the legal profession. And when I approached the Florida Bar about doing a CLE an—on ethics, they sent me a list of ten topics and said these are the approved ethics topics. But what really fascinated me from an academic perspective, and an—and an applied perspective was that the actual topic of ethics was not on there despite the fact that the Florida Bar is
actively calling for reflective thought about ethics and professionalism in the practice. That when I proposed to actually do a workshop where we were not going to talk about ethics as defined by the Bar in terms of the rules as opposed to the aspirational goals um and I said that I wanted to talk about the general idea of ethics in general, I actually got a lot of um it was very difficult because they said, “But that’s not an approved topic,” which struck me as incredibly ironic.

Participant #1: What you tend to do now is—you’re dealing more with a bureaucratic organization that has set out with certain things and tried to address the—the subject and what happens afterwards is that those things get hardened. And so when you talk to the administrators that uh are in charge of approving these things or whatever, they’re st—they’re stuck and limited. You know, that’s how they see these things. And so that is clearly a uh you can have whatever list they have and as—as far as approved talks or whatever kind of thing but you should always have, of course, an—a category that I could loosely call And Other. And the And Other often could prove to be the most challenging and uh rewarding topic; and that’s where you come in. You ought to fall into the category of And Other because you’re really approaching this thing from a more fundamental and broad-based way. Uh but you can be sure that in most of my discussions with uh lawyers and judges uh included very healthy doses of what other—you heard me talking of waitresses and ditch-diggers and all this kind of thing like that—lawyers will always get a heavy dose of that from me uh because I could reach out and use examples uh that they were familiar with. I could tell them that uh when I get up on the uh wrong side of the bed in the morning, I could always count on going to a particular greasing-spoon restaurant for breakfast where I was so well treated that uh all the effects of getting up on the wrong side of the bed dissipated uh when somebody was taking such good care of me at breakfast. Uh and so that I consider it that that waitress there uh to be the ultimate as far as a professional is concerned and that examples like that often uh help us get through these things better. But that’s uh that’s ??? [unintelligible 72.31] and you should call that to the attention of John [Berry] uh because he could be instrumental in having an And Other category added uh to the approved topics.

Eric Paul Engel: It’s funny, last summer I actually was the sole public representative who testified in front of the Supreme Court Commission on Professionalism at their summer meeting in Orlando.

Participant #1: Right.

Eric Paul Engel: And I actually mentioned this exact same thing and a dean of a law school said, “Well I can promise you that if the Florida Bar ever turns this down for ethics credit, you’ve got a whole group of people here who will support you in saying this is definitely on topic.” And afterwards, John [Berry] was in the office and I spoke with him and he said the same thing, he said, “Ok, it’s not on the list, but don’t worry, Eric, you’ve got good people behind you and you’re on the right track.”
Participant #1: Well, terrific, but as I say, while you’re engaging in this uh, you—you perhaps should discuss with John [Berry] that they—they cure that in some way uh by having that And Other category uh so and you can be the first example uh for having that. So, alright! Uh is there anything else that I can answer for you?

Eric Paul Engel: No, sir. Thank you so much, you’ve been so gracious to share your time and your outlook with me today and I really appreciate it. And once I complete my dissertation, part of it will be recommendations specifically for the—for the Florida Bar, so that is going to make it into that. I’ve already discussed it with John [Berry] but I will formalize it in my document. And um and I definitely appreciate what you’ve given me today; it will definitely make it into my dissertation as well.

Participant #1: Alright, well, I congratulate you again. It sounds to me like you’re going to make a huge contribution, as John [Berry] said to you, uh to society as a whole doing this. And this is what you want to do, of course. So, congratulations, good luck, and I look forward to eventually reading your dissertation.

Eric Paul Engel: Thank you so much. Have an outstanding day.


Eric Paul Engel: Bye-bye.
Appendix D: Pre-Event Interview (Participant #10)

The following is the transcript for pre-event interview conducted with Participant #10 Friday, 31 May 2013.

Eric Paul Engel: Ok, so, um… Before we start get started, one of the things that I need to do and thank you again so much for taking the time to do this. I apologize that we have to do it by phone. One of the things that I’m required, because of the institutional review board and because it is research contributing to my dissertation, is to read a verbal consent script. The Institutional Review Board of the University of South Florida usually requires something with a signature, but when I explained that I was working with lawyers “Well, a verbal consent will work for your project.” So can I read you that really quick? It should take less than a minute.

Participant #10: Yeah, yeah.

Eric Paul Engel: On the afternoon of Friday, June 7th, I intend to host a voluntary half date Continuing Legal Education event, inviting members of the Florida Legal Community to the Tampa Bay area, to see how they collectively make sense of, evaluate and enact the concepts of ethics and professionalism. Employing a conversational meeting format, known as a World Café, this CLE will simultaneously service the focus of doctoral research being conducted in the communication department of the University of South Florida, Tampa. With this in mind, I contacted you, because I’m interested in your unique experiences and perspective as a legal practitioner in Florida. Ideally, your participation will involve what a formal interview that will last between thirty minutes and an hour, attendance and participation in a half day, four-hour CLE workshop and participation in a one-hour informal focus group immediately following the workshop. Recognizing that you are an extremely busy professional however, you need not be able to participate in all three events, though ideally this would be the case for the collective conversations to be at maximum value. The meetings are slated to take place in the main lounge of the campus of Stetson University College of Law, in Gulfport, Florida. To be clear, this research has no known risks. While the research is designed to benefit Florida’s legal community, by facilitating professional community building, by increasing knowledge and awareness of diversity and cultural competency, by providing ethics and professionalism seeley credit, by aligning with the Florida’s bars 2010 to 2016 strategic objectives and by honoring various state quarters of collective voices, I cannot be sure if the individual participants will benefit from being in this study. Please know that I will do everything I can to protect your privacy. Your identity and personal information will not be disclosed in any publication that may result from the study and any notes that are taken during this interview will be stored in a secure location. With all that said, will you be willing to be interviewed and also, will it be alright if I audiotape this to ensure reliability and accuracy?

Participant #10: Yes and yes.
Eric Paul Engel: Ok? Perfect. So, in terms of the questions, do you have a copy of the agenda that I sent over or with you?

Participant #10: I do. I have one here. [unintelligible; 0:02:54 – 0:03:00]… But that’s OK.

Eric Paul Engel: Ok. Essentially there are three main questions that I want to ask. It should take easily less than half an hour. Um… The first question has to do with two sets of questions that were created in conjunction working with my, ah… committee. And the first set of questions are very similar to the second set of questions, it’s more a wording issue. Part of the reason I wanted to ask you about that is that I can create the questions that we will focus on during the World Café, but I um… I’m not a lawyer, therefore I can’t see the world the way lawyers do, despite everything I can do in terms of studying the law and the practice of law. So I wanted to read to you the first set of questions and then the second set of questions and see which one will be more likely to evoke a response and productive correspondence between the attendees.

Participant #10: Ok.

Eric Paul Engel: The first set of questions ah… The first set, there are three questions. What do you individually mean when you reference the words “ethics” and professionalism? How might we explain the diversity of definitions? Where do they come from or originate and how can they coexist? And then what if we collectively learned in our conversations today and what might we do now? What might we do with the information, insight and inspiration resulting from our collective inquire? What might we do with this new knowledge and perspective? So that’s the first set of questions. The second set of questions… The first one would be: please describe, based on your own experience, how you have come to define the term professionalism. How is the term used in the legal field in general? Please describe, based on your own experience, how you have come to define the term ethics. How is the term used in the legal field in general? How might we explain the diversity of definitions, if indeed there are a diversity of definitions and where do they come from and what are the consequences of this divergence? What have we collectively learned in our conversations today and what might we do now? What might we do with the new insight and information, the new knowledge and perspective? So…

Participant #10: As to your first question, relative to [unintelligible; 0:05:19]… would be more provocative. I frankly do not have a view. I think they’re both… ahh… effective at provoking response. I think the second set, perhaps, is a little easier to process, because you are asking people to respond in the context of their experiences, um… but I don’t know that I see a preference, actually, between the two sets.

Eric Paul Engel: Ok, ok. Ah, so the second thing I wanted to ask about is… In terms of the reason I asked you the first question is a large part of facilitating an
effective World Café like I’m hoping to do is about asking questions that matter. And so trying to hone down the questions, I actually did a number of pre-interviews, even before speaking with you and [Participant #1], um… and John Berry to try and make sure that I was coming in with questions that I felt were relevant and that would actually contribute to the dialogue that is taking place within the legal community around professionalism and ethics. So in terms of getting to the second part of my… of the three part interview that I want to do today, I wanna get at… about the questions mattering. So, from your perspective as a… as a prospective attendee, how do you feel that the questions that I’m asking matter?

Participant #10: Well, I think the questions matter for several reasons. Number one, I think there is no clear understanding on the part of many practitioners as to meaning to the terms professionalism versus ethical ethics. And I think they are, while very closely related, I think they are different... different paradigms and frankly different sets of subjects. So the question… the question matters in terms of helping to create awareness of the differences, how to create greater understanding of the differences, and perhaps some of the complications with the whole subject of professionalism and the whole subject of ethics. Ethics can be quite complicated, I think. And, um… if you’re... if you enhance understanding, then presumably that will lead to changes in behavior or at least greater awareness of practices that might be interpreted as not professional or less professional than it could be. So I think that the subject… the questions deal with very important subjects, therefore the questions matter.

Eric Paul Engel: Ok. And I’m curious in terms of, ah… focusing on these questions and surfacing the questions, so you’re… you’re creating discussion and attempting to get understanding, I’m curious, from your perspective, what you might foresee as being the direction of conversations such as that I understand, like frequently when I talk to lawyers at social events and I say, “So how do you define ethics?” And… and they may not use the floor-ceiling metaphor, but they frequently will say, “Well, the ethics are the rules and the professionalism are the aspirational goals.” And so in a sense I am seeing them as towing the party line. But one of the things I’m curious about in terms of this workshop is, ah, if people will actually be, and one of the reasons I… I phrased the questions the way I did is that I want to see how people negotiate the professional community-oriented definitions as dictated by The Florida Bar in contrast to the way that they use the terms in their own individual lives and professional lives such that you see that distinction. So that If I ask a lay person what the ethics are, something could not be a violation of ethics, according to the Bar, but a lay person may say “Well, that’s definitely unethical.” And I’m just curious, in terms of the questions I’m asking, what you foresee might happen in the sense of your experience talking to both lawyers and non-lawyers about these topics over the years?

Participant #10: Well, I think there’s certainly going to be umm… quite likely a difference of viewpoint and opinion between an audience of lay persons who are
being asked to consider differences between professional behavior and ethics, as compared to an audience of practitioners, lawyers. I also think that within the community of lay persons, you’re gonna get a variety of views, depending on whether… on the educational levels of lay persons and frankly, the thinking patterns of those involved. Um… what I mean by that is, you can talk to lay persons, perhaps, uh… ya know have a philosophical or religious orientation or perhaps have a sociological background or a counseling background… and they may be more willing to consider professional behaviors as being a subject, while related to ethics, being distinct from ethics. Um… so I think that the difference between lay persons could vary quite a bit based on the experiences of lay persons and their educational backgrounds as well. Within the… within the group of… ya know, a lawyer audience, um… you’re gonna get some lawyers who will be spin into philosophical reflection on how complicated ethics can be, and I think it can be. And then you’ll??? [unintelligible; 0:12:51]… some lawyers who are so black and white that they will not see ethical complications, well they won’t see the nuances readily. The, um… ya know professionalism… is… is a broad word, almost an euphemism that refers to sort of general behavioral matters and principles that pertain to how you treat other lawyers and treat other persons. Ya know, are you courteous? Are you civil? Do you listen? Do you not interrupt? Do you… Do you write letters that accurately re-state what was said? Do you… ya know, are you transparent? In other words, do you practice in a manner that’s straightforward and not ??? [unintelligible; 0:14:03]… Um… are you honest? In your, ya know your day-to-day communications with other lawyers in matters. Are you honest with the court? Or just general behaviors that go to the way you communicate and treat, communicate with and treat others, not just lawyers but… but others in a manner that reflects well of the profession. So, ya know professionalism is… is a lot about how you externally relate and treat others in the broad panoply of issues and circumstances that lawyers find themselves. Ethics is, ya know, often deals with, um… complicating features that arise in cases, ah… where you gotta analyze… ya know, you gotta analyze the rules relative to the facts presented to you in the particular case and it’s not always clear whether there’s an ethical question presented or whether there’s an answer to the ethical question. But for example, um… I may be in a case, and I have an adversary, and I come to learn that my adversary, the lawyer on the other side, may have represented my client at some point in the past, so that creates a consideration and that consideration is, is the adverse lawyer taking an adverse position to a client? And what does that mean. Now, some… ya know, a lay person might say, “Well surely you can’t sue a former client,” but the rules don’t… don’t actually say that. Rules say you can’t take a position adverse to a client, but if it becomes complicated… let’s say you haven’t worked for that client for five years. So, so it’s not a current client, it’s a former client. But let’s suppose you’ve got some information that you’ve learned through the representation of that former client in the prior representation that may bear upon the current representation, such that the adverse lawyer has a… perhaps an informational advantage or information insight that was gleaned as a result of the former representation. Now, just trying to articulate that scenario was
complicated, but requires, ya know, requires the lawyer to analyze, ya know, the
rule and then to analyze how that rule applies to what he or she knows and, ya
know, it requires some sort... some sort of careful analysis. So that's... that's
an example of, ya now, an ethical conundrum that the rule doesn't give clear
guidance to cause maybe it's not clear whether the information that the lawyer
has really bears upon the current case. Or it may be that it doesn't become clear
until late in the case, that the lawyer has information that he's realized was going
to be a significant factor.

Eric Paul Engel: Right.

Participant #10: So, and that's only... that's... that's one side of the ethical
conundrum. The other side is, let's say I'm the lawyer for the current client and
now the lawyer... client says to me, “Well look... ya know, Eric used to be my
lawyer, and when he was my lawyer Eric learned about these things as well. Eric
never learned about this issue. I don't think so. And Eric's an honest guy, I don't
think he ever did, but on the other hand Eric's a good lawyer and I'd like to get rid
of him on the case. So, ah... what do you think? Can we take advantage of the
rule and create an ethical argument that Eric needs to step off the case?“

Eric Paul Engel: Right.

Participant #10: Now... there's an ethical conundrum created for a lawyer who's
identified the problem. And so, ya know... You see this... you see this
somewhat in sophisticated practice where you've got a certain set of
sophisticated lawyers who, ya know, represent clients over time in a small subset
of circumstances and... ya know, that's an example where, ya know, the
professional thing to do is you treat everybody courteously and you treat
everybody well and you write your letters that ??? [unintelligible; 0:20:06]... clear and direct at the same time not un... ya know, are not unnecessarily
antagonistic, that's the professional thing to do, but the ethical thing to do is
much more complicated than that.

Eric Paul Engel: Right.

Participant #10: Um... now some would say, well it's obviously not professional
for the lawyer who represented the former client to, ah... take advantage of that
former representation and what he learned. It's not professional to use that
information in this case, and the only professional thing to do would be to step off
the case. And under those principles that's probably true. The ethical thing is is
that, ya know, instead of apply the rule, the rule may or may not cause him to
have to step off the case. Uh... you have an interview, ya know somebody will
say, “Well clearly the professional thing to do is err on the side of caution" and
you step off the case, um... Some people will say that it'd be unprofessional not
to file a motion to disqualify because you would not be, um... ??? [unintelligible; 0:21:29]... representing the interests of your... even though you know you're
??? [unintelligible; 0:21:34 – 0:21:38]... It would be unprofessional not to present
it. Some would say it would unprofessional to present it, unless you are absolutely certain that this was, um… a strong position. So I'm… I'm saying a lot of words to help illustrate examples of where you get an intersection between professional… what means professional conduct and what means ethical conduct, and then to show where they differ and how complicated these processes can be.

Eric Paul Engel: Right.

Participant #10: Um. Did all that make sense?

Eric Paul Engel: Yeah actually, that… that was… that… I really like what you've done in the sense of it does hit at the intersection of those two concepts, which isn't something I've seen a lot of in practice. I've read a lot about it in theory, but that's a very specific case that actually would make sense. It… it did bring up one thing. I was curious, ah… in terms of the Bar… I know that there's a ethics hotline, that people can call and say "Hey, look, I'm facing a situation like this, what do you think I should do?" I'm curious if you know, obviously I may have to take this question to John Berry, but I'm curious if you know, I'm guessing they log all of that. Do they use that information to then create case studies or do anything with it such that they can circulate, here are the trends of ethical issues being faced by lawyers in the state of Florida and here are the recommendations being made by The Florida Bar?

Participant #10: I don't… I'm not aware of the logs for a database. Um… I do wonder whether there is some sort of very basic log where they take note of the number of inquiries received in the course of a period of time dealing with, uh… trust accounting issues or dealing with conflict issues, ya know, sort of basic topics. But I… I don't know, um, I don't’ know if that's specifically done nor do I know if they, um… if the counselors come together and talk about the questions that have arisen and… and what they're seeing in terms of trends. Um. I have used the ethical hotline a few times. I think it's underutilized. I don't… I don't think on purpose. I think it's probably not as well known and appreciated as it is. And… and I just suspect it's not… people don't realize how user friendly the hotline is. I had an issue years and years ago, over 20 years ago, and the question… Well we had a… We had a staff person in the firm who passed away under very bad circumstances. Her husband… her husband murdered her. Now, her husband lived and was a beneficiary under her um… under her ah… retirement plan with the law firm. Her family wanted to retain the law firm to administer her estate. And her family made clear that it wanted to take legal action to make sure the husband, who apparently has… had some emotional issues and psychological issues, they wanted to make sure that… that the husband never received a dime from the late wife's, ah… retirement plan. Ya know, a… a very logical decision.

Eric Paul Engel: Right.
Participant #10: So we were approached by that family as to whether we could represent the estate of the late wife before [unintelligible; 0:25:47]... person who had been, ah... killed. And, ya know, the Board said, “Well, can we really represent the estate here because we are the plan’s sponsors and the husband is a plan beneficiary. He was her designated beneficiary under the plan. So how can we be in position adverse to him? Since we represent the [unintelligible; 0:26:25 – 0:26:27]... we represent her and he’s the plan beneficiary.” Ya know, so there... I’m listening to all this and I’d say, “Gosh, I see the point... hadn’t really thought about that last point.” Then it was agreed I would call the ethics hotline and explain the circumstance without disclosing my name and without disclosing the law firm or the identities of anyone so as to make, ya know, make... make completely anonymous.

Eric Paul Engel: Right.

Participant #10: Now, when I made that call, I did not have very high hopes that I was going to get any kind of an answer of any clarity, but I was mistaken because the, uh... ethics hotline lawyer listened to me for about an hour explaining the circumstances and then we analyzed the circumstances and his or her advice was, well... there is no conflict of interest yet because you are not yet taking a position adverse to the husband. He said or she said, “There is the potential for a conflict. And the potential is is that if that husband later takes a position, he’s en... he or she’s entitled to his share under the retirement plan then you would have to be representing your client, you’d have to take a position adverse to him, and that may create your conflict. But the potential for a conflict is not the same as a conflict.” Now that advice was correct. It was very... It was helpful. And I took it back to my Board, and we went through and everyone around the table recognized that this advice was correct. And so we made the decision that while there was the potential of a conflict, no conflict had yet formed, therefore we could represent clients. We needed to inform the client that a conflict could form which may necessitate our leaving the matter, but [unintelligible; 0:29:04]... we... we didn’t think we were prohibited from representation. [unintelligible; 0:29:10]... we were confident we were not. That... that’s an example of where, ya know, I talked to a professional in the field of ethics. and got very good guidance, but I was not, frankly, expecting it, and it helped us solve the problem for the law firm and for the client. As it turned out, the husband never made a claim. So we never were in a position of having to grapple with whether a conflict had formed.

Eric Paul Engel: Right.

Participant #10: That’s a little bit off topic, um... but... but you asked the question of the ethics hotline, and I’m giving you an example of where it really was beneficial, even though I did not think it would be. But it turned out to be extremely beneficial. And it actually cost me nothing to do all that.

Eric Paul Engel: Right.
Participant #10: Cost ??? [unintelligible; 0:30:06]... nothing to do all that. Um... I don't think the average lawyer has any appreciation for how user friendly the system is and how the sy... how that can really work. I'll... I'll give you an example. A number of times in talking about it, and ya know, the general response is, “Well, that’s pretty interesting.” I’ve had a few other ??? [unintelligible; 0:30:38]... calls about the hotline and, ya know, it’s ... it’s been beneficial. It hasn’t always given me the clarity I wanted, but it’s been beneficial.

Eric Paul Engel: It’s fascinating when you start providing specific stories, it really does... And I can imagine it would be the same for a lot of lawyers, unless they hear the stories of the specifics, you don’t realize how complex matters can get and how murky the waters could become and how valuable having something like an ethics hotline would really be.

Participant #10: That’s right. Well don’t you see, though, as I described that conundrum, that conundrum is largely about ethics and the... the notion of professionalism is sort a... is... is really subordinate to the larger ethical question, because I really was indicating with anyone, it wasn’t a matter of my being courteous or transparent with any adverse party. It was... I had to figure out first and foremost what was the right thing to do. What... Ethics is about what is the right thing to do, and that’s not always easy to determine. And professionalism is... is often a blend of... how is the right way to behave in coordination with the right way to behave and the right thing to do.

Eric Paul Engel: Gotcha. There was one thing you had said, something earlier about reflection and I know that within the strategic objectives of The Florida bar that they were calling for more reflection when it came to issues of ethics and professionalism. And I’m curious, in terms of the questions that I’m gonna be asking and that we’re gonna be discussing at the World Café, in what way does even our way of asking the questions matter, do you think?

Participant #10: Well I don’t... I don’t frankly think like the average lawyer spend as much time reflecting on ethical questions presented in their day-to-day struggles. I suspect there are a lot of ethical issues that are missed. They just aren’t spotted. Or sometimes they’re spotted and they’re just ignored, but I suspect they’re often missed. Ya know, there is a subtext of our profession of... of lawyers who are really good people, smart, talented people, but they’re really good people, who want to be good professionals in every... every way, and they... they want to be regarded as highly professional and highly ethical. And so that would be choir, singing to the choir. And... but that group, they’re going to, um... ya know, they’re critical bell weathers in their law firms and in their communities. And... and if you help... if you help inform them, then they can become acolytes for the ethical movement. And then there’s that middle ground that’s... of people who wanna do the right thing but may be... may be less cynical, more or less aware, and that’s the group that you wanna influence, but the... the strongest influence comes from the senior lawyers and in a given firm or a given community, who have the high ethical reputation to ??? [unintelligible;
set the tone. Uh... Now I... all across the state Bar associations grapple with how do we enhance the level of understanding of ethics and professionalism, so, you know, despite the profession being so busy, there... ya know, there's a cry from a certain subset of lawyers and clients who want the lawyers... want their lawyers to be highly ethical. So, it's like a never ending topic, frankly.

Eric Paul Engel: Right. In many ways, it's fascinating actually. That observation resonates with my research, because one of the things I noticed is that some of the scholars who write about and the practitioners who write about ethics and professionalism, especially professionalism, say that it's the "professionalism problem," in many ways implying that there's a solution that would "solve" the problem, in contrast to just a handful of legal scholars and practitioners that I've read stuff from, where the research... where they say, "Well, it's not so much that you could solve it. It's that it's an ongoing conversation that needs to, um... be at the top of your mind in a sense, so if we talk about it, we're acknowledging it, we're honoring it as a valuable facet of the practice, and therefore it isn't something that can be solved in a... in a traditional sort of problem-solution manner, but in fact it's about engaging the concept continually such that we don't lose sight of something that is valuable to the profession and the profession's position within society in relation to the public that it serves and its clients.

Participant #10: Yeah, I don’t think... I don’t think it is curable. I don’t think it’s frankly a helpful construct to describe it as a problem that is solvable. I think it’s more like cancer. Cancer is treatable and cancer is curable in some instances, but cancer as a matter... in society will never go away. This problem will never go away.

Eric Paul Engel: Right.

Participant #10: It may treatable in a particular person or subset of persons, but as a... as a chronic issue, it will never go away. It will be a chronic issue because of the nature of what we do.

Eric Paul Engel: Right.

Participant #10: Lawyers are engaged in solving complicated problems, involving complicated information, often involving great sums of money, and the rewards with good outcomes can be significant. So there is a great temptation to... to win. And... and that's what we do, that is our domain. We are in the midst of grappling with these challenges every day. That's what we're trained to do. So to think that the decisions goes away, ever, is just... is naive.

Eric Paul Engel: Right.

Participant #10: So it's... it's... it's that... it's a chronic... it's a chronic persistent aspect of, well... the lawyer milieu. I mean you think about lawyers who get in trouble. Maybe they, ah... ya know, maybe they've got a couple
large contingency fee cases. They’ve invested heavily in those. They think they’re gonna hit and make a big return, and they lose all of them at one time. So they’ve lost all the time that, all their financial investment and they have no cash flow. And so suddenly they… they’re really stuck and to survive they’re gonna be tempted to cut corners. Um… I’m not… I’m not justifying that behavior, but, ya know, in times of down economies, well people get stuck and, though living within the legal milieu, people are gonna be tempted maybe to do something because their economic circumstances have driven them there. I do think that probably happens. I know a young man, um, a well-credentialed lawyer, he got stuck. And, um… he, ah… he misued his trust account. And he got caught. And, uh… lost his license. Um… I knew this guy for ten years before that. Never in my wildest dreams would I have ever expected or ever foreseen it happening to this person. But ya know his marriage got in trouble, his… lost a bunch of cases and clients failed to pay. And… and you know, he… he… he lost his sense of, ah… right and wrong. He thought he could pull from the trust account, put that money back in, nobody’d ever know and nobody would get hurt.

Eric Paul Engel: Right

Participant #10: And, ya know, somehow he rationalized in his mind, “Look, ya know, if I take this money from Eric, a thousand dollars, I’ll use it this week and I’ll put the money in… back… back next week. And Eric’s never gonna know. Nobody’s ever gonna know, so there’s no harm. There’s no foul.” Ya know, that’s highly unethical. But the reason I… I’m going through this is to help… help you appreciate that that, the temptation to behave unethically is a part of the lawyer milieu, and probably becomes intensified, ya know, as economic circumstances compress for people. And so that’s all I’m sharing. I mean this is… it’s… it’s not… this is… this is not a problem that goes away, ya know, our… this is… well…

Eric Paul Engel: It’s interesting. At a recent Grievance Committee meeting that I was at, before the meeting actually started, we were waiting for the last couple of people to show up before we convened the meeting, and we actually discussed exactly this and how trust accounting issues are major problems and that they… it’s… it appears that they’re… they’re… you do see patterns and that there are spikes when economic times get hard, that you do see exactly what you’re describing. And this wasn’t based on any hard evidence, but based on the people who were sitting at the table and… and their time practicing law and being on the Grievance Committee and working with the Bar, that we actually were talking about exactly what you’re describing.

Participant #10: Yeah. It’s a… It’s a hugely complicating issue. Trust account law is, ah, probably the hottest, um… the hottest issue for discipline in the profession right now and that’s probably been the case for some time. Ok, what ah… what other questions can we… can I help you with? I’ve gotta make a call in a minute.
Eric Paul Engel: I got one last question for you then. In terms of, um, asking these questions to or for whom do you see the questions mattering? In other words, who do you perceive as the relevant stakeholders in this discussion?

Participant #10: Well, I mean the word stakeholders is a very big word and, um, covers a lot of, ah… covers a lot of potential interests here, ah… Ya know, I… I think the profession, at large, is a stakeholder. I think the organized Bar is a stakeholder. I think the court system is a stakeholder. I’ll come back to that in a minute. I think law schools are stakeholders. I think the general public is a stakeholder. I’ll make two comments about that list. As far as the general public goes, I think that there is a… a great lack of understanding about all the good work the Bar does to self regulate the profession. I think there is very little appreciation for all the work that The Florida Bar does to police our lawyers. So, the more that can be done to enhance general understanding about that, the better. Cause I think if you probably improve the reputation of the profession it enhances general confidence in the profession. And probably helps the profession, um, ya know if there are articles and studies that talk about good lawyers doing the right thing and being praised for that, that probably spurs on others to become good lawyers doing the right thing. I think. [unintelligible; 0:46:00]… believe it or not. As far as the court system being a stakeholder, I think there’s, um… potential for a schism between judges in the organized Bar. When I was running for president in The Florida Bar I was struck by the number of judges who complained to me that The Florida Bar does not do enough in responding to complaints that they submit, judges submit, regarding bad conduct they’ve observed in the cases before them and in the trials before them. Now, I realized that a lot of those comments are anecdotal and they’re one-sided, but I did come to understand that the Bar doesn’t always communicate effectively with those who make complaints, which would include judges. And, ah… that was one of the issues that I thought needed to be looked at when I formed the, ah… the Grievance Review Commission during my year as president. Um… So I… I… I think, ya know, I think this conversation should resonate with a whole broad array of stakeholders. Uh… And… and I don’t just think there’s one audience.

Eric Paul Engel: Ok. Well, that’s everything that I need from you. Um. Thank you so much for taking the time to speak to me today. Obviously, um, in terms of what we’ve covered, I can tell you, I really appreciate what you’ve offered, because there were some insights just listening to what you were describing that I think are going to be really valuable in terms of my dissertation overall.

Participant #10: Ok, I’m glad to help, Eric. Ah… I would like, um… I would like it if you could send me a very brief, um… email about the nature of the program next week, and just the, ah… ya know, briefly the particulars of what time do I need to be there, where do I need to be, what the format’s gonna be like, um… Ya know, I’ll use it as a reminder for myself and for preparing mentally, but also, I’m telling you, um, I will forward that on to a, ah… colleague of mine who’s special counsel at [Law Firm Name], that’s my law firm.
Eric Paul Engel: Ok.

Participant #10: He is, ah… on the faculty of St. Thomas’ School of Law, and he teaches in the fields of professional responsibility as well as environmental and administrative law and land use. But I told him that I was, ah… communicating with you on this and he was very interested. His name is [Name]. He’s ah… He’s probably in his mid 40s, a very energetic practitioner, a very smart guy. And I just… ya know, he’s publishing in this area, he’s writing about these topics and I thought there would be potentially some opportunity for a… at least dialogue that… that might be useful for you.

Eric Paul Engel: That would be outstanding. Um… I can send you over a PDF of the Executive Summary that has the description, the strategic objectives, the agenda. Um… It’s posted online to a website, so you’ll get the URL, but I’ll send you the PDF. And obviously when you forward that to him, if he’s interested in attending the workshop next week, um, as it stands there are still plenty of openings. So if there’s… either… whether it’s him or anyone else that you may know that might be interested in getting, ah… some General and some Ethics CLE credits for free, this is the opportunity and we would love to have as many people as we can. So, um… definitely forward that to him and if he has any questions, please, have him get in touch with me, cause anyone who’s doing this, it’s… it’s not… there is… it seems like there are a handful of people in the country that are really focused on it but the ones who are are quite passionate. And thus far I’ve been quite lucky in terms of talking to you, speaking with John Berry, Neil Hamilton, um… Amy Mashburn and… and so… Yeah, anyone else that I can talk to about it, I would love to.

Participant #10: Ok, ok. Now what time do I need to be at Stetson Law next Friday?

Eric Paul Engel: At noon.

Participant #10: Ok.

Eric Paul Engel: And then…

Participant #10: Is there a lunch?

Eric Paul Engel: Ah, no. There’s no lunch. It’s… it’s just essentially we’re gonna be getting together and sitting around and talking for about four hours. Um, we’ll have…

Participant #10: Oh. I’ll… I’ll eat… I’ll eat before I get there, but… Ok, very good.

Eric Paul Engel: Outstanding.

Participant #10: Alright, Eric. Thanks very much.
Eric Paul Engel: Thank you.
Participant #10: Ok, bye bye.
Eric Paul Engel: Bye bye.
Appendix E: Pre-Event Interview (Participant #4)

The following is the transcript for pre-event interview conducted with Participant #4 on Tuesday, 4 June 2013.

Eric Paul Engel: "Okay, so, in terms of the verbal script here it is. On the afternoon of Friday June 7th, 2013, I intend to host a voluntary half-day continuing legal educational event inviting members of the Florida legal community to the Tampa Bay Area to consider how they collectively make sense of, evaluate, and enact the concepts of ethics and professionalism. Employing a conversational meeting format known as a World Cafe the CLE will simultaneously serve as the focus on doctoral research conducted in the Communication Department at the University of South Florida. With this in mind, I’m contacting you because I’m interested in your unique experiences and perspective as a legal practitioner in Florida. Ideally your participation will involve one informal interview that will last between thirty minutes and an hour, attendance and participation in the half-day CLE, and participation in the one-hour informal focus group immediately following the workshop. Recognizing that you’re extremely busy, however, you need not be able to participate in all three events. Um, the meeting is slated to be held in the Mann Lounge on the campus of Stetson University of College Law in Gulfport, Florida. To be clear, this research has no known risks. While this research is designed to benefit Florida’s legal community by facilitating professional community building, by increasing knowledge and awareness of diversity and cultural competency, and by providing ethics and professionalism CLE credits, by aligning with the Florida Bar’s 2010-2016 strategic objectives and by honoring the various stakeholders’ collective voices, I cannot be sure if the individual participants will benefit from being in the study. Please know that I will do everything I can to protect your privacy. Your identity and personal information will not be disclosed in any publication that may result from the study, and any notes that are taken during the interview will be stored in a secure location. With all that said, would you be willing to be interviewed and if so, would it be alright if I audio taped our interview to ensure reliability and accuracy?"

Participant #4: "Yes."

Eric Paul Engel: "Okay, great. Okay, so in terms of the questions that I have for you... Um, they’re relatively straight forward and pretty simple. The first question I would have is that, um... I need to explain kind of what the World Cafe is so you’ll have some framework for understanding what I’m attempting to do. Essentially, a World Cafe is a very different meeting format. It focuses on the notion that, uh, people have experience that just comes from being alive and what they’ve done professionally and personally and it taps into that and so far as it focuses on conversations and dialogue. So the way that my workshop is going to work on Friday is that we start off and essentially go through, if you think about it in a... in a dining metaphor, we have four courses. The first course, um, you ask a question and... and we’ll have, uh, basically five or six tables, and at each
table will be seated four or five people. And you ask a question and then the people at the tables discuss this question amongst themselves at each of the tables. And they write stuff down on the table and they take notes and think about it, and then when they’re done with that course, you ask one person to stay behind at the table to be an anchor, and everyone else moves to a different table. Then you start the second course. You pose a different question. The people who had remained behind as anchors briefly share what was talked about in the previous conversation and then they begin the next conversation and they do the same thing. And so when you finish that second round, um, one person stays behind and everybody else moves again and you ask a third question. Um, after the third round, we take a short break where people have a chance to talk independently so they don’t have to necessarily stay at any one table. And also to post their ideas up on a wall in terms of writing the ideas on sticky notes or observations and it’s a wall of inquiry basically. And then after that, we go back into a fourth round or a fourth course where you pose one final question that’s more reflective in nature. And then after that, we have a town-hall style debriefing. So one of the things that’s critically important for running an effective World Café is asking the right questions. And part of what my committee wanted me to do in terms of speaking to a number of, uh, legal professionals in… in Florida before actually running the event was to find out, ‘Am I asking questions that will evoke productive responses from the attendees?’ So, I’d like to share with you the four questions that I’ve got and just get any feedback you have in terms of your thoughts about, ‘Will they provoke effective questions?’ Are there anything that you can think of that I might want to add to, um, what I’m asking just kinda see what your response is."

Participant #4: “Well first, who are the attendees?”

Eric Paul Engel: “The attendees are going to be, um, legal representatives from across the state of Florida. So, as it stands right now I have, um, let’s see, Major Harding is going to attend. And… um… let me pull up my list very quickly… um… I have [Participant #10]. I have Major B. Harding, uh… former Florida Supreme Court justice. I have [Participant #7], who is the [Title] at [University Name] College of Law. Uh… [Participant #2] who is a representative for The Florida Bar Standing Committee on Professionalism. Uh, [Participant #11] who was a partner of [Law Firm Name]. [Participant #9] and [Participant #16] who are partners at [Law Firm Name], a law firm at St. Petersburg, Florida. [Participant #13] and [Participant #14] who are partners in [Law Firm Name], a law firm in Clearwater, Florida. [Participant #6] who is a solo attorney. Uh, Wayne Harper who’s a solo attorney. Amy Bellhorn who’s a solo attorney. [Participant #12] who is a member of, uh, I don’t have the name of the law firm in front of me, um, but a large law firm in Tampa. [Participant #8], who is a professor of law at [University Name] College of Law. Uh, [Participant #15], who is a, uh, [University Name] of Law… College of Law professor. And, um, also, uh, [Title] at [University Name], and then another independent, um, solo practitioner, uh, [Participant #5].”

Participant #4: “Okay.”
Eric Paul Engel: “So…”

Participant #4: “Alright so basically pretty experienced lawyers from around the state?”

Eric Paul Engel: “Yeah, there are some that have less experience but for the most part I tried to get a representative sampling. Some of them have decades of experience.”

Participant #4: “Yeah.”

Eric Paul Engel: “So the first quest…”

Participant #4: “Okay.”

Eric Paul Engel: “…first question is ‘Please describe, uh, based on your experience, what do you individually mean when you reference the term ethics?’ The second round and the second question will focus on, ‘Based on your experience what do you mean individually when you reference the term professionalism?’ The third round will focus on these questions. ‘How might we explain the diversity of definitions if indeed there are a diversity of definitions?’ and ‘Where did they come from or originate? What are the consequences of that divergence?’ And then the fourth question, ‘What have we collectively learned in our conversations today and what do we do now? What might we do with this insight and information, this new knowledge and perspective?’”

Participant #4: “So those are… those are all the questions that are gonna be asked?”

Eric Paul Engel: “Yes.”

Participant #4: “Well I’m not sure how the people are going to have to answer to, uh, ethics and professionalism, but if you’re not getting asked what the definitions are.”

Eric Paul Engel: “What would be your recommendation in terms of perhaps changing that then?”

Participant #4: “Um, I think it would be more interesting to everybody, um… if they had to give examples of a situation where ethics were violated, an examples of a situation where there was a lack of professionalism. And I would also ask how important do they think professionalism is to the practice of law and why. If we know that ethics is required by the rule, but professionalism is a little bit more malleable and, ya know, we [unintelligible; 0:08:54]… professional lawyers who would still get by but not [unintelligible; 0:08:59]… so how important it is to be a… to be professional in order to be successful? Can you hear me through all the rain?”
Eric Paul Engel: “Uh, yeah somewhat. It’s a bit hard at times but yes.”

Participant #4: “It stopped raining somewhat now.”

Eric Paul Engel: “Okay. Okay, so, um, that definitely helps in terms of the feedback this is exactly the reason I’m actually trying to ask people beforehand to try and evoke the most productive, uh… use of our time. Um, the second question I would want to know is in terms of asking questions like the ones that I posed and the ones you proposed, how do you feel that those questions, uh, well do they matter and if so how do they matter?”

Participant #4: “Well I think, uh, ya know the issue of ethics and professionalism matters but it only matters at the starting point. It can’t be the end point. Its gotta be the… the first sentence of the discussion. It can’t be the conclusion.”

Eric Paul Engel: “And to or for whom do you think these questions matter?”

Participant #4: “Um, I think they’ll matter mostly to the people who wanna be ethical and professional. I don’t think they matter much to people who don’t.”

Eric Paul Engel: “Okay. And in what ways do you think our even asking questions like this matters?”

Participant #4: “Um, well, I think it matters because I think, um, that attorneys to me would be picking up on professionalism as part of their practice. And if you look at the surveys, at least the last times I looked at the surveys, of Florida lawyers and what concerns them the most about the practice of law, lack of professionalism was like the number one concern that they had.”

Eric Paul Engel: “Okay. And then my final question would be, um, in terms of thinking about what I’m trying to do, focusing on ethics and professionalism in the framework that I’ve provided, would you have any additional recommendations as to how I might best proceed based on your understanding of this collective exploration?”

Participant #4: “Well, I, uh, I like the format as the basis for discussion. Um, I… I’ve participated in some, uh, conferences where, uh, one member of the group is assigned to give the group [unintelligible; 0:11:56]… to the larger group so that you not only have the small group discussion but also you have the… the large group discussing what all the smaller groups need to put in. Be kinda sharing of some of their stories.”

Eric Paul Engel: “Okay. And I di… the parts where we actually get to the end of the day in the town hall within the World Café design is actually I think somewhat designed to try and get at exactly that. Okay. Uh, well basically those are all of the questions I had for you today. Would there be anything else that you would want to contribute in terms of um… my focusing on ethics and professionalism… professionalism in the practices of law?”
Participant #4: “Um, well, you know the other thing I would mention is uh, when I was on the, uh, the Commission on Professionalism, we recommended that, uh… The Florida Bar adopt a requirement that um, every first year attorney for the first year after passing the bar, um… obtain a mentor. And that was based on something that Georgia had done and which seemed to be working in Georgia. And, uh, the… the committee recommended it to the Board of Governors, and I believe the… the Board of Governors of The Florida Bar rejected that recommendation. Um, I think at some point that should be revisited, uh… because we have, as we have more and more attorneys entering the practice of law and with the economy in the stagnant state that it finds itself in many of the law graduates are entering into the legal world, uh… simply by, uh… going to a… a very small law firm or opening up a firm of their own and not having any guidance as to, um, what the norms are in the practice of law, um, and what the unwritten rules are. Uh, in other words, what… what the professionalism norms are and without any guidance on that, they develop bad habits. And as we get more and more of those young lawyers becoming, uh, older lawyers with those bad habits and then injecting those bad habits into others, uh, we have a real danger that we’re going to lose the concept of professionalism in the practice of law.”

Eric Paul Engel: “In my research, it’s interesting cause that actually parallels something that I’ve discovered which is that the notion of mentoring and the status of mentoring within the profession has radically changed in the last 30 years. Um, not only due to the changes in the economy but in the change… the changes in the nature and the sizes of practices. So, okay. Outstanding. Uh… anything else?”

Participant #4: “Uh, no I think that’s it.”

Eric Paul Engel: “Perfect. Well, that’s all I would need from you today. Thank you so much for taking the time to share with me your thoughts and opinions and your insights.”

Participant #4: “Right. My pleasure. Good luck with your conference.”

Eric Paul Engel: “Thank you.”

Participant #4: “Take care.”

Appendix F: World Café CLE Town Hall Debriefing and Feedback Session Transcript

The following is the transcript for the World Café CLE Town Hall Debriefing and Feedback Session recorded Friday, 7 June 2013.

“…with another lawyer who was highly unprofessional. And so we’re discussing when you bring these things to a grievance committee, what would happen? Or how can you, ya know… How can you not necessarily let the person get away with that, but what are you going to do if it’s just the email? Um, ya know, what do you do in that situation where a person is, ya know, being a habitual offender in those types of things? If, ya know, you tell them, but it doesn’t really have an effect. That’s their nature on it. But is there something that can be done?” (Participant #9)

“OK…” (Eric Paul Engel)

“Just to address that, to… ??? [unintelligible, 0:00:41] There’s an opinion that was issued by the Supreme Court order yesterday that, um, kind of codifies professionalism committees in the different circuits. We have one in Pinellas/Pasco where it’s hugely underutilized in my humble opinion. So one of the things that I’ve talked about in my ??? [unintelligible, 0:01:03] seminars is maybe use that more… You, you guys have probably seen that in some local bar association meetings actually. We had/have ??? [unintelligible, 0:01:10] come up earlier this year, members of that professionalism committee, so… and we were talking about this, um, at our table. Being shamed… that’s probably too harsh a word. Being called out. Even in front of your peers, and having this person know that they’ve been, ya know, you’ve gotta kind of be judicious about it because obviously this is a really, real jerk and they know you’ve reported them, then you’ve got to deal with those consequences. So it’s obviously a case by case basis, but that’s one of the ways, and I think the Supreme Court’s acknowledged that maybe we can have a, even more of a, like maybe a ground swelling, if you want to call it, where people realize, the good lawyers realize, really that there are good lawyers that just do dumb things. And obviously I’m… I’m sure I’m one of them, but… ya know, we could report it to the Professionalism Committee if we have more of an active ??? [unintelligible, 0:01:58]… and I tell you, the judges and the, and the lawyers that are on that committee, ah, that spoke at our Clearwater Bar Association meeting said we want more, we want to be busier, we want to have these cases because we can, we can deal with them and hopefully be a positive force. So, that’s just one of the things I was thinking we could consider doing.” (Participant #6)

“[Participant #10].” (Eric Paul Engel)

“Ah, there’s an idea that I’ve been thinking about for some time, and we talked about it. And it may be something your study would be interested in… Um…
Has anybody ever been to a public reprimand or observed one?" (Participant #10)

“I have…” (Unidentified Female Voice)

“You’ve seen one?” (Participant #10)

“Yes, I’m sorry.” (Unidentified Voice)

“It’s an incredibly powerful thing visually where the person being reprimanded is in the middle of a room like this surrounded by the Governors of The Florida Bar, and the, the bad conduct that’s been found to have occurred is recited, the rule violation is recited, and the reprimand is gone through. And the language is strong, it’s, it’s professional but it’s strong. It’s a lot like being scolded when you’re a child, that’s the wrong word, but it’s, it’s… there’s no real, there’s no real comparable experience that I’ve seen an adult go through. I’ve wondered, I’ve wondered whether there would be a place to use actual footage from reprimands in law schools and in law firms, and the idea I’ve thought about is, what if we had, The Florida Bar had, what we would call “the ethics contract” that every law school agreed to where they would, the deans would agree, that in the course of three years law students would see at least twice per year actual reprimands. The identity of the person would be shielded facially and their name, but you’d actually hear it. So, when you’re a brand new law student, you’re hearing about how you can’t lie, and how you can’t not control your client. They only last three or four minutes, so it’s not a lengthy commitment. So I’ve wondered about that, and I’ve also wondered about whether we can take the same concept and ask law firms to agree to sign on to the ethics contract where they will agree to show at least one or two of these reprimand videos in the course of a year. And every law firm that does that would be on a list… The Florida Bar website. Ya know, Greenberg-Traurig…. Um, gold standard for ethics. And that’s all really… maybe there’d be a few other things, but…” (Participant #10)

“CLE credits… ?? [unintelligible, 0:04:46]…” (Participant #6 commenting on what Participant #10 just said.)

“The thought would be that you’d make the… first of all you’d expose people to these awfully dramatic things ?? [unintelligible, 0:04:54]… But second of all you make it part of the annual conversation, and you make it with some messages. You don’t want to be one of those folks. You’d don’t want your video shone. I don’t know… The table seemed to think that the idea had some merits. Um… I just…” (Participant #10)

“[Participant #10]…” (Participant #6?)

“Like put on video tapes?” (Unidentified Voice)
“Well, we recommend it but they haven’t… I’ve recommended it, and uh I haven’t actually seen them used. But I’ve heard of people…” (Participant #10)

“And, and… just something that I’ll throw in is the thought would be that, that the lawyers… ??? [unintelligible, 0:05:30], it would be mandatory for the lawyers in a law firm, and I know this is kind of interesting, but, and it would have to be the group watching it, not you hand the, hand the tape to ‘em when they first get hired and say, ‘Look at this. This is part of your duties…’ Make it a collective experience so that it’s a more powerful experience because as we all know, you know, collective experiences in a lot, a lot… sometimes, more… mostly more important…” (Participant #6)

“I mean, if there was a reprimand based in all that video we saw a little while ago, I can tell you there are good lawyers in my office who would be thinking about the way they’ve behaved in depositions.” (Participant #10)

“[Participant #15]…” (Eric Paul Engel) [Note: I’m not sure which name I called.]

“One thing is to think about, because a lot of people come from other schools around the country, it would be great if it were shown all around the country, is making it a part of the bar process, you know, the application process, uh, even maybe in your… before you could be admitted to the bar having had to watch this… I know it’s more powerful in a group, but at least it would make them have to see this thing, uh, one way or another before they get sworn into the bar…” (Participant #15)

“…but they’d have seen that it’s from out of state…” (Unidentified Male Voice; maybe Participant #14?; I’m not positive I transcribed this sentence accurately as it was somewhat unintelligible, 0:06:29.)

“…But if you’re from out of state you wouldn’t have seen it in the law schools here.” (Participant #15)

“That’s a good point…” (Unidentified Male Voice)

“Interesting.” (Eric Paul Engel)

“… I guess the questions is have there… have there been… have there been any studies done as to the recidivism rates as a result of… ??? [unintelligible, 0:06:46].” (Participant #11)

“I… I’m not aware of whether there have been studies, Paul. Um, what I’ve been told anecdotally is that people who go through it seldom go through it again.” (Participant #10)
“…And, and I will tell you as part of the process and the commission, [Participant #10], the, diversions showed less recidivism when there’s a diversion… they have less than, than the general population, so maybe that would…”  (Participant #6)

“…??? [unintelligible, 0:07:10]… I think… I think it’s a really interesting concept, um, uh, I’m a contributing member of the circuit ??? [unintelligible, 0:07:16]… um, we’re preparing an action summit, uh, for Dade County on September 10th in Miami…”  (Participant #11)

“It’s a good place to have an action summit.”  (Participant #10 laughing)

“Yes, yes, absolutely…”  (Participant #11)

“I’m down there a lot.”  (Participant #10)

??? [unintelligible, 0:07:31]…  (Here there was some unintelligible banter back and forth between Participant #10 and Participant #11. They were both laughing.)

“I… I agree with you… um… but here’s the concept. The concept is we’re inviting representatives from each voluntary bar association plus all the administrative judges and the chief judge to come to this summit, round table, to… ??? [unintelligible, 0:07:51]… to have this discussion about action, how each voluntary bar can be responsible for its members and have a system set up and then we’re gonna replicate that with the law firms and have representatives of the law firms come in and we’ll break them up into different size law firms, but to have them come in, to have them sign off on something like you just said, that they’re going to be signing off on an action of, ‘we will not tolerate our firm and the following conduct…’ and then they’re gonna be signing off on an action plan.”  (Participant #11)

“I like that.”  (Participant #10)

“Uh, we’re gonna do that, provided John Berry will drop by, hopefully he will…”  (Participant #11)

“You know Gene Pettis is gonna be our next president of the Bar. He’s right in Fort Lauderdale. I mean, you might be able to get him to show up.”  (Participant #10)

“Yeah, I… Uh… What we’re… I’m meeting with my committee on Sept… on June 10th...”  (Participant #11)

“Greg Coleman… ??? [unintelligible, 0:08:41]…”  (Participant #10 speaking over Participant #11)  (Note: I’m not sure I have the right name here.)
“…to set it up…” (Participant #11)

“…lives in Palm Beach…” (Participant #10 speaking over Participant #11)

“Yeah… so, so we’re going to be, we’re meeting on the 10th to start coordinating for the September 10th meeting… Uh, but that general concept though of, of actually having people sign on to an action plan as opposed to having the typical panel, everyone [unintelligible, 0:09:00] … the audience passive listening, get their CLE credits and go home. We want to have people actually sign on to an action.” (Participant #11)

“Well… what I sensed about this topic is that most people don’t feel they’re ever held accountable for their behavior, that it’s sort of hidden. Um, seldom do you see a video like the professor showed us, you just, you don’t see that [unintelligible, 0:09:27]. Seldom is the light shine… shine… shown [unintelligible, 0:09:32]… um, but if it becomes part of the topic of the annual conversation in law school and then in the bar, maybe the, this generation that we’re training will have a different sensitivity to it. That’s what I’m wondering, structurally.” (Participant #10)

“[Participant #7].” (Eric Paul Engel)

“Well, I mean I think it’s an excellent point. I think what you’re talking about is ritual, right? To some degree what you’re demonstrating in that is the ritual of public repri… reprimand. That’s very symbolic what you’re describing. I’ve never seen it. And I think one of the things that happens to our…” (Participant #7)

“Powerful.” (Participant #10)

“Right… and one of the things that happens to our students, I mean those of you who’ve been in a sorority or fraternity, I mean I’ve never been, but that is also very ritualized and ceremonious. The people are very dedicated to the principles of whatever there sorority or fraternity or other secret club or whatever is. The passage of young student… younger students into the bar lacks that ceremony, lacks that ritualization. It’s very regulatory, right? And so they don’t… they already see it as an adversarial process as they’re entering the bar, not as joining a membership to a club. We don’t… other than the swearing in ceremony at the end, we don’t really ritualize that in any way or create ceremony around it or create membership around it. And to me, all the enforcement in the world doesn’t take the place of creating identity, right? Identity as a lawyer with certain things that you’re wedded to because everybody around you says is important. So I don’t know what the right kinds of ritual would be, but I think there needs to be more ceremony about the passage into law school. You know with, with medical schools they do, uh, white coat ceremonies, right? In my opinion we
need to be doing something like that within the law schools as well, but I think you’re passage into the bar needs to have some kind of representation… it represents a transformation. If that were happening today I think you would see less bad behavior but only if it comes from those who are senior in the profession, right? Directly from them as the mentors and leaders, not just from sort of a, a faceless bar, right? It has to come from, from them. So for me, the professionalism and the ethics component is really about developing an identity you have as a lawyer, not about the ways in which we can enforce it as much. Um, and you’re right, I have to tell my students all the time, um, about the data on enforcement. Ya know, you’re likely not going to get caught, and even if you get caught the consequences are small. So we’re talking about what you do when nobody is looking… what you do because you’re a member of a profession.” (Participant #7)

“They’ll be disbarred. I think we disbarred like 62 lawyers in 2011. That’s a lot.” (Participant #10) (Participant #10 actually started talking over Participant #7 at the point where she said, “…you’re a member…”)

“Yeah…” (Participant #7)

“How many?” (Unidentified Voice)

“It’s like 62…” (Participant #10)

“Yeah… when you… when you look at the… when you look at the number of complaints, right, in relation to the consequences and the…” (Participant #7)

“It is a material number of people who lost their license forever.” (Participant #10)

“Yeah, and we talk about that too, by the way, I don’t just sort of say, ‘You’re never gonna get caught.’” (Participant #7)

“Frankly I think, I think the Bar does a better job of policing its members than any other profession, but nobody knows that.” (Participant #10)

“[Participant #5].” (Eric Paul Engel called on Participant #5)

“So that’s, that’s my point, that’s…” (Participant #7)

“Is… This is a public reprimand, right?” (Participant #5)

“Yeah. You can show it and watch it.” (Participant #10)

“Why is… I mean why not put it straight on the internet?” (Participant #5)
“Absolutely.” (Unidentified Male Voice)

“I mean why not… I mean it, it… I mean that’s something that should be available, uh… Frankly.” (Participant #5)

(From 12:57 to 13:10 so many people were speaking at once that it was completely unintelligible.)

“… recommend it for law firms, by law firms to do this, or …??? [unintelligible, 0:13:14]… even before someone is sworn into the Bar, ya know, one of the requirements that they have to do is at least view one of these… Actually see it. And then if it’s available, ya know…” (Participant #5)

(Here Participant #7 began speaking over Participant #5) “…I think you would have if you made that know to people who teach professional responsibility. I’ve always been looking for visuals to use as part of my class, so I…” (Participant #7)

[13:35; Here there were a number of people talking unintelligibly.]

“… One of the key ingredients of what [Participant #10] is saying is that it’s a recurring problem. Whereas everyone here has taken, ah, the oath when we signed on as attorneys, and there… I know, I don’t rec… I don’t remember off the top of my head, maybe others in here do, but I believe there are things in there that speak to ethics… “ (Participant #14?)

“Yep…” (Unidentified Male Voice)

“…and right ??? [unintelligible; 0:13:58]… We all took it. We all did that but how easily we forget. ??? [unintelligible; 0:14:07]… the publics have forgotten this is a noble profession. To see this sort of thing on an annual, ya know, have an annual discussion about this, I, it’s kind of like when, you know, you, you get cited for bad driving you have to go take the course and you get to see all the accidents other people have. So there’s some value in that.” (Participant #14)

“It’s funny, Tim, you mentioned the oath because, I don’t know if everybody’s aware here, but we can be prosecuted for violating the oath, and lawyers have been prosecuted for violating our oath, just so you know. So it is an ethics deal… with the, ah… and, and I actually am familiar with a number of cases where lawyers were prosecuted and were found guilty of violating the oath. So we ??? [unintelligible; 0:14:46]…” (Participant #6)

[Here there was an exchange with at least Participant #6 and Participant #10 commenting, but it was unintelligible.]
“Well I, I asked the professor a moment ago, [Participant #2], um, Professor [Participant #8], do faculty members view the decline and the lack of professionalism as an issue or concern? She said, ‘Well those who practice probably do some, but the average probably don’t. And I suspect she’s right.” (Participant #10)

“Could you say again what you asked? I couldn’t…” (Unidentified Female Voice)

“Whether the average faculty member views the declining… the issue of declining professionalism to be an issue of concern to the academy. She said for those who’ve practiced like Professor [Participant #8]… [Participant #2]… Yeah, they probably do see it as part of what they have to embrace, but for those who haven’t practiced, they don’t, maybe, take ownership of the issue. My thought is that it needs to be part of the annual conversation, and the only way I can see making it part of the annual conversation is to scare people into realizing what happens when it goes wrong because frankly most people have no clue how bad it can get. I mean it can get downright painful for somebody who’s messed up. It’s… it’s humiliating to see these grown men and women who’ve done stuff that they’re ashamed of.” (Participant #10)

“And, and it should be… ??? [unintelligible; 0:16:07]…, I think, letting them take a vacation for ten days or a ten-day suspension and go on vacation and come back, ya know, it’s, it’s, it’s… ??? [unintelligible; 0:16:14]…“ [Participant #6’s voice drops off and the audio was unintelligible from 16:14 to 16:25.] (Participant #6)

“I don’t see any reason why it shouldn’t be put on the internet and, and frankly there’s, ah, ya’ know maybe there should be a formalized system to encourage people…” (Unidentified Male Voice)

(Participant #10 started speaking over the unidentified male voice) “…Well the 11th Circuit Professionalism Committee and the good doctor over here come to a uniform set of principles that are embraced by the academy and it may… ??? [unintelligible; 16:46 – 16:47]… for the Bar.” (Participant #10)

“What I’d like to see ??? [say? unintelligible; 0:16:48], [Participant #10], is… ah, again I’m meeting with my committee on the 10th, uh, Judge Darrin Gayles and I are the co-chairs…” (Participant #11)

“Oh, he’s a wonderful judge.” (Participant #10)

“Yeah, he’s a great judge… ah, Darrin and I are co-chairs and…” (Participant #11)
(At this point, from 17:00 to 17:02 there was an extremely brief exchange between someone, I’m guessing Participant #10, and Participant #11. I could not, however, make out what was said.)

“...Yeah, and what we did was, we set the committee up, we made it a point... it’s a very small... it’s a relatively small, ah, 14 members, that’s all. I asked that each administrative judge of each division, since each division has its own unique problems, and I wanted one more that represented each discipline and practice. So family law, probate, ??? [unintelligible; 0:17:26]... so we have that, so each one brings to the table their unique issue. And, uh, once we have this meeting on the, ah, June 10th to prepare for the September 10th summit, part of the agenda, and I may reach out to see how that works, to make that part of the agenda of what we’ll be discussing with the voluntary bar associations, the chief judge down there wants to have four summits, starting with the voluntary bars and then big law and then some medium law and then perhaps then the small law firms... ???” [unintelligible from 18:00 – 18:10]” (Participant #11)

“Hunh... I was just going to say that I don’t know who to address this to but... I don’t know how it is other places, but here we’re very focused on professionalism, it’s part of our orientation and I think that there are a number of us who are really concerned about that. And one of the things being relatively new to Florida is the information that you’re talking about is hard to come by. So more, more information from the Bar, ah, one of the things I show the Rapner (Spelling ???) video, um, the deposition, and the reason I found that is because the Florida Supreme Court suggested that people show it, that professors show it, and the Bar sent me the information and it was great. So I think the notion of streaming video or more detail about the process or more information about disbarment, I mean I know it comes out in the paper and I require my students to read it in the journal, ah, at least once a semester, the disbarments and suspensions, and so one of the things I think that would be helpful, again the problem is constitutionality, but more things ???” [unintelligible; 0:19:04]... that process so you could view it more easily.” (Participant #7)

(From 19:07 to 19:17 there’s some banter among attendees, but the audio is too faint to discern what’s being said.)

“And one of the things that I would want to point out in terms of what we’re doing today is that if it had been the traditional format of a panel, they’re speaking to the audience but its very passive, one of the things that I really wanted to do in terms of today is not just to have the discussion and not just to talk about it but to really allow for the value of the World Café, for you to see that. So that now [Participant #11] you know that you could talk to [Participant #10], and you know that you could reach out to different people, and so this is one of the things that I wanted to introduce The Florida Bar to a different way of doing business, a different way of meeting, because all of a sudden it’s about relationships. It’s about the relationship between the people who are teaching and the pedagogy
and the people who are practicing, and sometimes you don’t… you have a mismatch where people don’t talk to each other. And when you have a certain format of continuing legal education over and over and over, it misses that.” (Eric Paul Engel)

“And we have to really have the courage to acknowledge that maybe, just maybe, we’ve been having the wrong conversation, that we have to expand the conversation to get at the root issues as I mentioned at the outtake. But I have ??? [unintelligible, 0:20:28] more confidence that we talk about having ??? [unintelligible, 0:20:31 – 0:20:33] professionalism ??? [unintelligible, 0:20:34 – 0:20:35]… and say, ‘Fine… ??? [unintelligible, 0:20:38 – 0:20:41]… finish it, and give me my CLE credit,’ and go home. Now but can we have serious discussion about what we’re doing while we’re doing it, how to redefine, we’ve got to do this, otherwise I mean… [Participant #10] I’m sure you know better than me that sooner or later the Bar… professional regulation is going to say, ‘No more self regulation.’ ??? [unintelligible, 0:21:03 – 0:21:07; at this point in Paul’s monologue a number of people started talking]… you have a social contract that’s been breached.” (Participant #11)

“And part of what I’m hoping that we can… that can come out of this is to set the agenda for the next set of conversations. I didn’t have a chance to contact each one of you individually to try and set the agenda for today. If I had, it would be a very different agenda. But what I can do is use the time that we have while we’re here in part to try and get at, ‘What would be the questions that you would ask if we could do this again?’ So part of what you’ve pointed Paul is, you’d actually ask, ‘What do you see as the root causes of the professionalism issues that we are facing today?’ And so part of it is actually, it’s looking at it in process, recognizing that if we only see them as a series of CLEs where we try and define things, it’s not going to work. But if we start to see that as a conversation and a dialogue over time and trying to figure out what are the questions to ask? What are the conversations we need to be having? That’s where I think progress can really come from.” (Eric Paul Engel)

“We have to have ownership about professionalism. We have to take ownership of this. It’s not just ??? [unintelligible, 0:22:10]… we didn’t come into this to just make a living and pay the bills. We came into this cause it’s a higher calling and that has to be re-created ??? [unintelligible; 0:22:22]…, that has to be re-created ??? [unintelligible; 0:22:23]…, cause it’s not just about winning or losing cases or a transaction but in fact there’s a higher calling for this and that has to be a new commitment to that.” (Participant #11)

“And if you think about it in terms of, you said it’s not just a transaction, from a communication perspective and I’m sure my fellow scholar can appreciate this, there’s one way of seeing things which is if you view communication as transmission. We send and receive messages. If you view it that way it’s very limited and you don’t see the repercussions of what’s gonna to happen. But if
you change it and realize that in conversation we create our identities, we create the reality of what is the community of professionals, we create the reality of 'What is it that we’re doing?’, then you start to see that things actually can be radically different. And one of the things that I’m attempting to do and that I’ve seen is that there’s a whole lot of transmission discussion and not a whole lot of, ‘What are we making? Are we making better social worlds or not?’ Um, and we’re seeing some of the repercussion in the practice of law like when advertising was allowed and the rules changed in 1976 and you see major changes in the practice and now people are having to deal with the repercussions of those decisions... Yeah?” (Eric Paul Engel)

“Question for [Participant #10]... Um, I’m interested about the videotaping of, of the ??? [unintelligible; 0:23:35]... the videotaping, is that an... on YouTube, I mean is it internet...” (Unidentified Male Voice; Participant #8?)

“I don’t think it presently is.” (Participant #10)

“OK. ??? [unintelligible; 0:23:46]... the person’s identity, [Participant #10], in terms of who they are, can you see their face? Is the person... are they named?” (Unidentified Male Voice; Participant #8?)

“I think not.” (Participant #10)

“I think it’s interesting on the distribution arm...” (Note: This last part may be transcribed wrong. It was extremely difficult to hear the speaker.) (Unidentified Male Voice; Participant #8?)

(At this point Participant #10 speaks over the Unidentified Male Voice.) “The idea that I had... the idea that I had would be... would not disclose the person’s face or their name.” (Participant #10)

“But would they perceive it as being actually... ??? [unintelligible; 0:24:08]...” (Same Unidentified Male Voice; Participant #8?)

(At this point, from 24:07 – 24:09, several people started speaking all at once.)

“They’d know it was the real situation.” (Participant #10)

“But would they gain access to that?” (Same Unidentified Male Voice; I’d guess Participant #12)

“But, but it’s a public reprimand... Why, why...” (Participant #6)

(From 24:15 – 24:26 numerous people started speaking and it’s impossible to discern any one person’s voice.)
“I can… I can probably explain it ??? [unintelligible; 0:24:28]… I’m not defending it one way or another. I’m just trying to make it work out.” (Participant #10)

(From 24:33 – 24:38 again numerous people started speaking and it’s impossible to discern any one person’s voice.)

“I think this is all very good and I… I really like the suggestion, ya know, ??? [unintelligible, 0:24:43]… and I think that we should think about that, insuring that the public sees that or has access to it on the Bar website. ??? [unintelligible, 0:24:52]… discipline, yes. Ya know, click here to see, ya know, reprimand, whatever, that… that sort of thing, but ya know the other side of this is… we, we really kind of haven’t discussed, and it kind of came up a little bit with the discussion about the ritualistic aspects of being an attorney. Ya know when I was in law school and I became an attorney so many years ago, I had the belief then, ah, maybe it was an ??? [unintelligible, 0:25:18]… or an ill gotten belief or unfounded that being an attorney was a dignified, noble calling… profession. I don’t have that belief now. And… um, it’s, I think partly because of what I’ve seen from attorneys that I deal with and the process of… of what we see in the day to day work. And so to me going at it from the other side is not just, ya know, identifying the bad apples and people that really don’t want to hold up to the standards that we all expect and demand but looking at it from the standpoint of raising our own expectations of what we need to be as a Bar ??? [unintelligible, 0:26:08]… And so to me there’s very little done, I think, from the standpoint of what the Bar is doing, to… ah… enable us to have those roles and that perception amongst society and among ourselves of being professionals, dignified, noble. We have a hire calling what we do, whatever it is in our day to day dealing with our clients and our causes. And that gets lost. And I’d like to see that be actually re-emphasized a lot more.” (Participant #13)

(From 26:47 – 26:54 an unidentified male voice can be heard but it’s muffled and unintelligible. Then another male voice, Participant #15, starts speaking…)

“Not, not to make it… not to make it sound funny but wouldn’t it be easier to be more dignified and noble if people walked up front in the court or even ??? [unintelligible, 0:27:03]… in robes and wigs. I mean, ya know, when you’re in that kind of ceremonial garb you feel… put on a tuxedo and try and go out… I guess people try to dance in tuxes but… ya know, ya know it’s a ritual… You dress up and you go out, and if lawyers… I mean I know we put on suits, but, hey… I mean come on, suits are suits. If everybody wore the same robe all the time maybe that help us to kind of bring a little bit of ceremony to the…” [27:29] (Participant #15) (Note: At this point Participant #15’s comment trailed off and other people started speaking.)

“…but that’s… that’s good. It’s interesting you mention that cause in, in Dade County ??? [unintelligible, 0:27:34]… Judge ??? [unintelligible, 0:27:35], Judge ??? [unintelligible, 27:36]… He used to require in all jury trials that you wore
And he, he, he supplied the robes to the ??? [unintelligible, 0:27:43]... And when you'd get ready to go to a jury trial, you'd all have to put on the exact same robe. And it did change the entire dynamic of the courtroom. Everyone had ??? [unintelligible, 0:27:54]... had more dignity. They were more polite. It was fascinating as soon as you put the robe on, and Richard did that for probably ten years in trying jury cases. You should talk to him.” (Participant #11)

“What was his name again?” (Eric Paul Engel)

“Richard Feder. F E D E R. He’s a senior judge now in Dade County. But he was a... a wonderful jurist. And he required of all jury trials, he had... he supplied the robes.” (Participant #11)

“One thing that, that really helped the profession is that lawyers had a collective mentality. In other words, lawyers now a days tend to think, ‘I’m my own person. Screw the rest of the Bar. I’m gonna do what I’m gonna do to get whatever advantage I can get for my client. And it’s so harmful to the profession. If attorneys would think, these are my colleagues. These people are just like me, we’re in it for the long haul. It’s a little bit like, and I used this analogy a minute ago at this table. It’s sort of like road rage where you’re on the road and there are other drivers and you can’t see their faces, you can’t look into their eyes. It really appears to you as those they’re anonymous. They’re not real. And so it’s really... it’s easy to become discourteous to someone who’s not real, someone who is not really a person. And it’s sort of become that way in the profession just with the sheer number of attorneys that there are nowadays. Where I don’t have to worry if some attorney said something awful to me and I respond with something awful back, I may never see him or her again, ya know. Rather than us think, ‘We’re all in this together. Let’s make this a pleasant work environment for all of us.’ So whatever we could do to transform our minds into more of a collective, ah, mentality and approach…” (Participant #14)

“Yeah.” (Eric Paul Engel calling on Participant #7)

“Ya know, Paul mentioned something that was really notable. He talked about the notion of transmitting culture and knowledge through stories, through narrative. Alright and then, in the olden days, I guess, is that when more mentoring went on people got that knowledge about what the profession is from someone mentoring them. Watching how they behaved or listening to the stories and that kind of thing, and... and I know some bars, not that this is feasible here, but some bars still conduct interviews of their, of their applicants, right... and they, I’ve gone through a couple of them, and they bring you in and they ask you questions about your application and it’s, it’s all very perfunctory, right, but there sort of making sure you’re not crazy and, and account for some of the things if there’s anything in there. But one of the things that can do too is it can transmit knowledge. Right? I mean... a one-on-one interview with a member of the bar... ya know, you could talk about what it means to be part of the profession, your
experiences, that kind of thing that, that would not only allow you to get a sense of what this person is like but also give them a sense of what it means to be a member. And so, ya know, maybe returning to something like that might be useful. Now I know the bar is huge here and the applicants are a lot.” (Participant #7)

“But Georgia does that ??? [unintelligible, 0:31:04]...” (Participant #6)

(From 31:04 to 31:08 I believe Participant #6 is speaking, but what he’s saying is barely audible and unintelligible. Around 31:07 Participant #11 begins to speak, but his voice is barely audible and unintelligible.)

“??? [unintelligible, 0:31:09]... I could sit down with a member of the New York Bar where I could get sworn in and have that type of discussion.” (Participant #11)

“[Participant #12].” (Eric Paul Engel)

“I still think that ??? [unintelligible, 0:31:19]... enforcement by judges. Judges are not going to enforce ??? [unintelligible, 0:31:23]... have repercussions ??? [unintelligible, 0:31:28]... and enforce the rules. Yes... ??? [unintelligible, 0:31:31]... It will never trickle down to the rest of us. So we can all complain about it. Judges won’t take the bull by the horns and actually start sanctioning the bad offenders, those who are really egregious will repeatedly offend. [31:45] It won’t have any effect, and I think on the whole I understand the reasons why. Politically they just don’t want to do it, but I still think they need to. Maybe a one-term judge ??? [unintelligible, 0:31:55]... but if judges don’t start enforcing bad behavior and start sanctioning people, it will trickle down if we don’t have any enforcement. I guarantee you if judges start ??? [unintelligible, 0:32:05]... with fines and sanctions and other, oth... other repercussions ??? [unintelligible, 0:32:09]... that behavior will stop. All of us can sit here and talk and complain about those lawyers but the courtroom is the place that has the sense of decorum and that’s where the rules are. Everybody thinks of the judicial system and the legal system in terms of judges... walk in a courtroom and there are rules, whether they’re wearing robes or not, that’s where it starts. When judges don’t want to enforcement it, the rest of us can’t ??? [unintelligible, 0:32:32]..., we can’t change people’s behavior without there being some sort of enforcement...” (Participant #12)

“...and part of that might stem from the fact that you have X amount of judges in the 6th circuit. And they see a number of attorneys that come into their chambers every day. And there’s no central judge, there’s no one judge that has responsibility for any circuit for professionalism. I’m just talking about... I’m not talking about the floor here, I’m talking about the ceiling. And if there were such a judge, and you could say, ‘You know what, uh... this attorney, this is really bad conduct. I tried to talk to him about it. Ya know what... I’m gonna set a ten-
minute hearing in front of Judge Schaefer next week and we're going to go talk to whoever the designated judge might be, and we're going to talk to him about that. And we're going to a conversation about it. And maybe he can, ya know, look at that and say, 'Why... How did this get to this point? Where are we with this gentleman? How did we... Where, where are we with this? ' And if it was egregious enough, that judge could say, 'Ya know... I think this bears a referral to the... The Florida Bar.' And have something like that because really in a day-to-day situation with many judges, you're dealing with their dockets, their cases, they have people waiting for them. It is not high on the list of priorities."

(Unidentified Male Voice; maybe Participant #14 or Participant #13?)

“If... if judges are concerned politically about being... about ya know having repercussions from their taking actions, why not assign a senior judge to do that? They don't have to worry about re-election.” (Participant #5?)

“Ya know, one thing I find interesting in this is that I hear all these things that go on in courtrooms and in front of judges, but [Participant #9] and I practice in criminal and this behavior does not go on at all and would not be tolerated. Um, if you, if anybody rolled their eyes at the judge or anything they would be called out right on the spot. I don't know if it's because you have to be there, there's no phone appearances. You're... you have people with guns all over the place. I don't know, ya know, what the difference is, but it... it's... we don't have... there's not name... there's... name calling does not exist, um, it's... " (Participant #16)

“...no fist pounding.” (Participant #9)

“...No. It's very collegial, and if you step... if you're out of line on any... I mean it's been a long time since I heard of anybody, um, get called out on something...” (Participant #16)

“...even, even outside the courtroom between lawyers? So do you have any sense of what accounts for that, or what the difference is?” (Unidentified Female Voice)

“I think it's because you're not fighting over money really.” (Participant #16)

“Yep... But I think that, that... I come from a criminal ??? [unintelligible, 0:35:14]... I think it’s because there’s just more ??? [unintelligible, 0:35:18]...of the lawyers.” (Unidentified Male Voice)

(At this point several people briefly commented at once making it impossible to discern who said what.)

“...I think it’s more common...” (Unidentified Male Voice continued)
“...smaller community...” (Unidentified Female Voice)

“...you’re dealing with a lot of... a lot of really high pressured situations that are much more, ya know, prone to ‘let’s get calm here’ as opposed to ‘let’s get hyped up.’ I... I...” (Unidentified Male Voice continued)

(At 35:32 a number of voices can be heard attempting to contribute to the conversation. Ultimately Participant #10’s voice emerges over the rest.)

“And... and... and there’s a certain aspect of you’re dealing with the same prosecutor over time, so...” (Participant #10)

“Um-hm.” (Unidentified Female Voice in agreement)

“...that’s a good thing.” (Unidentified Male Voice in agreement)

“Right.” (Unidentified Female Voice in agreement; Participant #16?)

(From 0:35:38 – 0:35:39 several people were speaking at once.)

“Ya know, and... and the fact that you have to be there, there’s no, um, ya know, hanging up on someone, or ya know, you’re there, you have to deal with it. And your cases are getting set, whether you... ya know, month to month you’re gonna have to deal with this case, whether you want to or not. There’s nothing, you know, put on the back burner...” (Participant #16 or Participant #9?)

“And the judges are used to dealing with sanctions, cause their sentencing defendants all the time, and ??? [unintelligible; 0:36:02]... there’s a lot of more restrictions on, on the time frame so there’s not as much playing around, maybe. I’m just kinda throwin’ that out, think about that...” (Participant #6)

“Right, I mean it’s ??? [unintelligible; 0:36:10]... in, in and in all the surrounding counties I’ve...” (Participant #16 or Participant #9?)

“So I was going to ask you if you thought it was jurisdictional or if it’s... kinda like...” (Participant #2?)

“To have the lawyers act like that? No. I mean every once in a while you get a prosecutor who’s difficult to deal with or, you know, you just know whose who, but, um, it really, it just doesn’t happen. We don’t have the animosity ??? [unintelligible; 0:36:29]...” (Participant #16 or Participant #9?)

An Unidentified Female Voice (Participant #7?) began speaking at 36:30, but her words were unintelligible. At 36:31 the voice says “...socialized, I mean...” but then once again the words are unintelligible. Another Unidentified Female Voice can be heard commenting with the word “...excited...” standing out, but nothing
more is clear. Starting at 36:33 the first Unidentified Female Voice (Participant #7?) is heard continuing “…Bar organizations where you socialize regularly ???
[unintelligible; 0:36:36]…”

“Well we used to go to the ??? [unintelligible; 0:36:37]… but it’s not there anymore, anybody remember that?” (Participant #6)

“There is ??? [unintelligible; 0:36:40]…” (Unidentified Female Voice)

(At 36:40, several voices can be heard speaking at once unintelligibly.)

“I mean, you have got, um, you do have the kind of coffee table and the cafeteria that people hang out at… in between hearings, um…” (Participant #16 or Participant #9?)

“And it’s a very local practice too, right?” (Participant #7)

“It is.” (Participant #16 or Participant #9?)

“I mean people who practice in this area are very local.”

“Right.” (Participant #16 or Participant #9?)

“??? [unintelligible; 0:36:57]… I used to do a lot of ??? [unintelligible; 0:36:59]… practice work, I was in court almost every day, and there was a core group of people who did this work, who were there everyday, who were in front of the judge do ex-parte every day, and, ya know, ??? [unintelligible; 0:37:11]… because, ya know, we were all, ya know, always there and we knew each other and there was a lot of face time. And that doesn’t happen any more. ??? [unintelligible; 0:37:21]… a small, small group where you’re gonna have to do ??? [unintelligible; 0:37:26]… is, is going to have an impact, and obviously ??? [unintelligible; 0:37:30]… (Participant #5?)

“Well, just about any criminal defense lawyer is going to ??? [unintelligible; 0:37:33 – 0:37:39]…” (Unidentified Male Voice)

“Yeah, but it’s the prosecutors too.” (Unidentified Female Voice)

“Well I know… and I, and I… I appreciate that and over (for???: 0:37:42) ten years I’ve found a big difference ??? [unintelligible; 0:37:44]… civil and uncivil.” (Unidentified Male Voice)

(After this last comment the whole room laughed. From 37:47 to 37:50 the Unidentified Male Voice continued speaking but the content was unintelligible, in part because at least one other person was speaking at the same time.)
(Unidentified Male Voice continued) “...It’s like you said, there’s a... there’s bad apple here and there but for the most part... maybe it’s because there’s more discovery, civil, ???. [intelligible; 0:37:57]... oral arguments and disputes, but I did find it more civil in the criminal practice, um, but civil just lends itself to abuses. I don’t know what the problem is, but there, I... I love the idea of a senior judge. He doesn’t have to face political whims and he ???. [intelligible; 0:38:13 – 0:38:14]... special court ???. [intelligible; 0:38:15]... I know that one of the discussions we had was...” (Unidentified Male Voice)

“So both parties have to agree to that judge?” (Another Unidentified Male Voice)

“No... ???. [intelligible; 0:38:22 – 0:38:31]...” (The previous Unidentified Male Voice responded. Unfortunately this was followed by a number of people speaking all at once.)

“...you rat out the lawyers and have lawsuits against other lawyers and that’s been a problem but sometimes if you’re gonna enforce ???. [intelligible; 0:38:36 – 0:38:40]... take those issues to a court just like you would in any other hearing and have that senior judge figure it out and say, ‘Ya know what... we didn’t ???. [intelligible; 0:38:46]’ I brought a grievance against someone and the judge said, ‘No, it’s not worth it.’ I’ll think twice next time. But some of those bad apples just... they’re not gonna get unless a judge kinda puts that ???. [intelligible; 0:38:57 – 0:38:59]...” (Participant #12?)

(Another Unidentified Male Voice can be heard from 0:38:59 – 0:39:04, but I could not make out what was being said.)

“...???. [intelligible; 0:39:04]... local rules, ???. [intelligible; 0:39:05]... professionalism rules, ???. [intelligible; 0:39:06]... you can’t enforce it.” (Participant #12?)

“Exactly.” (Unidentified Male Voice)

(From 0:39:09 – 0:39:14 Participant #6 can be heard speaking, but I was too far away for the microphone to clearly pick up what he was saying.)

“...and you could even have the... the judge have a good connection with the... the professionalism committee for that particular circuit.” (Unidentified Male Voice)

“It may be ???. [intelligible; 0:39:20]...to the judge if they ???. [intelligible; 0:39:22]...” (Participant #6)

“Exactly.” (Unidentified Male Voice)
(Participant #6 continued…) “??? [unintelligible; 0:39:22 – 0:39:26]… to the… to our senior designated, ah…”

“I think the Clearwater Bar… the Clearwater Bar initiated something similar where an attorney could contact a designated mentor…” (Participant #14)

(At this point, 0:39:39, a number of speakers can be heard responding to Tim’s comments.)

“You’re talking about the Professionalism Implementation Program the whole circuit has.” (Participant #15)

“Yes.” (Participant #14)

“No one uses it. I mean it’s one of the most unutilized, never utilized… I’ve never met anybody that’s even used it in 13 years, but it’s in… each circuit has one. It’s a… it’s an anonymous program that you call and the circuit puts it together. [Participant #6] probably knows all about it ??? [unintelligible; 0:39:57 – 0:39:58]… maybe not that order, but you can look it up on the ??? [unintelligible; 0:40:00]…website. But that could be the referring source to this. This is already set up in every circuit.” (Participant #15)

“Absolutely.” (Participant #6)

“Well this… this new process… I mean there’s a brand new process the Florida Supreme Court set up yesterday for all this. ??? [unintelligible; 0:40:13]… professionalism panels in the circuits, right? Is that right… Is it [Participant #6]? ” (Participant #7)

“Yeah, it’s [Participant #6]. Yeah.” (Participant #6)

“Yeah.” (Participant #7)

“Yeah. Yeah. And I’m looking at the… the opinion now, and it does talk about it. This actually establishes a procedure that could be used by a chief judge or each… all the chief judges to implement what we’re talking about here because it gives them authority ??? [unintelligible; 0:40:31 – 0:40:32]… under this opinion, so I… I think those are great ideas… um… ??? [unintelligible; 0:40:35 – 0:40:38]… It ain’t used, ya know. It hasn’t been used in… in what… 13 years?” (Participant #6)

(At 0:40:42, an Unidentified Male Voice chimed in while Participant #6 was still speaking. This was followed by other Unidentified Male Voices speaking at the same time as well making their voices collectively unintelligible through 0:40:45.)

“You might have.” (Participant #6)
(Note: I could hear Participant #6 saying this, but another Unidentified Male Voice could also be heard talking in the background both before and after Participant #6 said this. Unfortunately I cannot make out exactly what the individual is saying.)

“Exactly… Yeah… We had this discussion 20 years ago when I was overseeing the Grievance Committee… maybe not 20, 15… whatever… with my, uh, some of my… the chairs of my committee, some prominent lawyers, and said, “How would we do this?’ We never really were able to generate enough interest in it. And we ???? [unintelligible; 0:41:04 – 0:41:06]… the other, uh, panel… er, er, table, um, we, the ah, professionalism group… the, the committee for the 6th circuit was sad??? [unintelligible; 0:41:15]… and amazed at the, uh, Clearwater Bar Association meeting earlier this year because they had gone to basically begging people to come and use them, ya know, to resolve professionalism issues and report things. And yet the, the whole thing has been??? [unintelligible; 0:41:29]… snitch, ya know. I’d call it the Bar’s rule… or, or we’re supposed to report lawyers. Nobody wants to be a snitch. We… we grow up not wanting to be a snitch. So we’re fighting some of that cultural stuff when we’re, when we’re ??? [unintelligible; 0:41:41]… plus we don’t want to have repercussions, ya know. ?? [unintelligible; 0:41:43]… report a lawyer that’s, that’s… you know, that… that’s doing bad things… that… am I going to get push back every time I feel this lawyer ??? [unintelligible; 0:41:51]… all that leads to the decision as to whether you’re going to report the lawyer. ” (Participant #6)

“That’s right. Maybe it coming from the judge might make better sense cause I… I… ya know, you mentioned that the program’s underutilized. I tried to think, in what context would I have to finally be ??? [unintelligible; 0:42:06]… to calling one these ??? [unintelligible; 0:42:09]… mentors, ya know, and I can’t… ” (Participant #14?)

“Well this was even set up to be so simple that if a lawyer is rude to an office staff, which I know never happens, ya know, legal assistants and paralegals and secretaries are yelled at all the time, ??? [unintelligible; 0:42:25 – 0:42:26]… this is supposed to come ??? [unintelligible; 0:42:27]… to your office. So if you have a rude attorney, that secretary or that paralegal or anybody is supposed to call this number up and say, ‘Hey, I just talked to a jerk. Would you call him up and tell him quit being such a jerk? They call someone else and they call him a jerk.’ And it’s all anonymous. Says, ‘Look. You’ve been acting like a jerk.’ ‘Well who said so?’ ‘I wouldn’t tell ya. Just quit being such a jerk.’ So ??? [unintelligible; 0:42:49]…” (Participant #15)

(From 0:42:49 – 0:43:01 there are multiple voices speaking at once so it’s impossible to hear what’s being said by any individual voice.)
“…that’s the way it’s set up… to be anonymous, very informal so you don’t rise… so it doesn’t rise to the level of a grievance.” (Participant #15)

“And what’s the name of that process or the…?” (Eric Paul Engel)

“The Professionalism Implementation Program.” (Participant #15)

“The Professionalism Implementation Program. It’s funny cause it actually goes with one of the notes that said, ‘Professionalism. Just be nice.’” (Eric Paul Engel)

“Yes. The golden rule…” (Participant #6)

(From 0:43:20 – 0:43:22 a number of voices are heard but none stands out.)

“The Pinellas… ah… Professionalism Program is actually… there’s a book that, that we have on professionalism rules. I don’t know if you’ve seen that Eric…” (Participant #6)

“Un hunh…” (Eric Paul Engel confirming)

“You’ve seen it.” (Participant #6)

“Un hunh.” (Eric Paul Engel confirming)

“So there’s… it’s… it’s a process that’s been, um, been around for… a book that’s been around for years and years and nobody even knows about it. I mean, if you know about it… nobody ever uses it, but every once in a while it… it comes up, you understand. But there is this… this ah… this… this… this program that it doesn’t… it’s just not used. Ya know, just nobody uses it… at least in our circuit. I don’t know about other circuits.” (Participant #6)

(From 0:43:54 – 0:43:56 I can hear Participant #12 speaking up, but I can’t make out just what he’s saying.)

“Well, ya know, I… I actually ??? [unintelligible; 0:43:58 – 0:43:59]… a conversation about that. You cite those rules to a judge, a judge will a lot of times say, ‘Hey, um, ya know, what about this?’ …and, ya know, if they do it again and the judge see this person coming up ??? [unintelligible; 0:44:09]… professionalism or not compliant, the judge can certainly sanction a lawyer and… and… for… for the offense… ??? [unintelligible; 0:44:18 – 0:44:19]… binding as… as a disciplinary rule or whatever, it can be used certainly as a ??? [unintelligible; 0:44:24 – 0:44:26].” (Participant #6)

(At 0:44:26, Participant #11 can be heard starting to speak.)
“Yeah, I... I guess my, my um, larger take on it is, I think that's all good. Uh... but I'm concerned that it's anecdotal and, uh, and therefore ???. [unintelligible; 0:44:35 – 0:44:36]... drill down to what the root cause is other than just your anecdotal issues.” (Participant #11)

(An Unidentified Male Voice can be heard responding to [Participant #11’s] statements beginning at 0:44:44. Unfortunately I cannot make out what is being said. Additional Unidentified Male Voices can be heard joining into the conversation, but they too are unintelligible. This continues until 0:44:59)

“...But you don't screen... you don't screen for it on admission. You... You don't screen for it on admission. This is a conversation I had at the beginning. So one of the things you do is you ask if people had mental health treatment. Well, you're catch... you're catching some people who've taken that seriously and... and they've been ???. [unintelligible; 0:45:13]... responsible. But you're missing a whole group of people who have never had any mental health treatment in their life. You talk about... would it be more serious for the Bar to require everyone to go through mental health screening before they're able...” (Participant #7)

“Well before they even go forward into law school...” (Unidentified Male Voice)

“Maybe. Might be a good idea too.” (Participant #7)

“Whoa!” (Participant #6)

(At 0:45:29 the room erupted into commentary. As such, I was unable to make out any specific voices. This continued until 0:45:44, at which time one voice stood out enough to hear what was being said.)

“What if I get the wrong result? I'll just hire somebody else. And hire ???. [unintelligible; 0:45:48]...” (Unidentified Male Voice)

(Once again, however, from 0:45:48 to 0:45:52, there were multiple people talking at once. At 0:45:52, however, one voice stood out over the others [though admittedly the rest of the people kept talking and can be heard conversing in the background].)

“If you're serious about a personality-driven approach, right, then... then you wouldn't screen for that.” (Participant #7)

“But... but the underlying problem, you're talking about substance abuse, the underlying problem a lot of times is psychological.” (Participant #6)

“Sure, I ???. [unintelligible; 0:46:01]...” (Participant #7)
(From 0:46:01 to 0:46:06, again a number of voices chimed in but none could be clearly distinguished. I could hear Participant #7’s voice but couldn’t make out what was being said.)

“The issue is… respectfully… saying it so that ??? [unintelligible; 0:46:10]… psychological ??? [unintelligible; 0:46:12]… It’s still looking outward as opposed to inward, and we still have a responsibility to examine ourselves and say, ‘Wait a minute…”’ (Participant #11)

“I blame my self all the time and I find my self wanting…” (Participant #6)

(At 0:46:25 laughter can be heard in response to Participant #6’s statement. Participant #6 continued…)

“…but other than that ??? [unintelligible; 0:46:26]…” (Participant #6)

“…And on that… on that note…” (Eric Paul Engel)

(At 0:46:31 laughter can be heard with multiple voices speaking, but none stands out. This continued until 0:46:40.)

“…but I think a lot of these ideas are really good ??? [unintelligible; 0:46:42 – 0:46:43]… the… the… I think, and we talked about this at our table, a lot of it is putting it in people’s minds the consequences that may happen if they’re jerks, and the only way to do that is to have ways… mechanisms to point out to at least the peers… our… of… of us… so embarrassing… you want to call it embarrassment… you want me to call it… um… and… and the sociopath won’t necessarily be caught here, but there’s ??? [unintelligible; 0:47:11]…” (Participant #6)

(From 0:47:11 to 0:47:20, Participant #6 can be heard speaking, but at least one other Unidentified Male Voice can also be heard speaking. Unfortunately, what they’re saying is unintelligible.)

“Let’s say there’s a university where there’s sa… sociopaths… ??? [unintelligible; 0:47:22 – 0:47:23]… about one percent of our population ??? [unintelligible; 0:47:25]… then you’ve got about five to ten percent really don’t think they’ll ever get caught or they do things because, ya know, ‘Hey, I wanna do but I don’t care.’ Well those people, if they can be changed, if we catch that percentage, and ya know I’ve done this ??? [unintelligible; 0:47:37]… lawyers and bar admission people all the time, I see this… I see the psychological issues everyday in practice, and I’m saying, to them, ya know, ya got to straighten ??? [unintelligible; 0:47:46]… or whatever ??? [unintelligible]… there’s either a therapist, either… ah… ya know, their dad sometimes or whatever… their parent, but the… I think the psychological issues underlie a lot of the conduct and it’s… and it… and those people… I think ??? [unintelligible; 0:47:58]…
unfortunately. I think those people are always going to be around... And then... and then [Participant #10], ah, was talking about as an economist, he said, ya know there’s gonna be a certain amount of people that are gonna be unemployed. Ah... we can never get rid of all unemployment, so we’re gonna have a certain group... group... ah, percentage of the number of people that are sociopaths that we can’t correct. But... but I think there’s a percentage in between, I have no idea how much it is, where if you put the pressure on, and I’ve always said this, ya know, peer pressure, they will react. And I know lots and lots have reacted because they’re embarrassed as hell to go up in front of the Board of Bar examiners and go before a grievance committee. And I’ve had clients that actually fell on the right path. Ya know in my... in my years of practice... embarrassment... have to go in front of the grievance committee to get a diversion... insists they’re embarrassed by it.”

( Participant #6)

“But... maybe those clients would have been successfully rehabilitated had they gone overboard and then publicized a public... ah... reprimand and put it all over YouTube and... all that. Maybe they would have been...” (Unidentified Male Voice)

“If I could bring the conversation back in for a second. This is the joys of having lawyers for these because the conversation continues and that’s one of the things that’s great and it’s also frustrating. I wouldn’t change it for the world. That’s one of the reasons I actually have focused professionally on the legal profession... um, because there’s always good conversation. One of the things that I would ask of you and this veers a little off of where the World Café would go in terms of the formal structure running the event, but it is very much in the spirit of the World Café. Ah, that the conversation will continue. It’s gonna continue individually in your own lives and also hopefully we can continue this in terms of professionally among each other so it wouldn’t surprise me if a number of you keep in touch with each other, build relationships. Again, this was a goal as defined by the... The Florida Bar in terms of it’s one of the 25 goals that I was after is to introduce people who have not met before so that we can build the professional relationships and create the mentoring that is, in many ways, missing. So with that said, one of the things that I would ask, and this... this is the part that veers off, I feel like in recognizing that I, um, I only have a small lapel microphone, I don’t know if it’s going to pick up on all of the good ideas... if you would be willing, and this is not required obviously, but if you would be willing to reflect on what was discussed today, and this is where I really want to go to what Paul said about action and doing something, if you could email me the points that you feel like were the most valuable, the most evocative, that should be delivered to The Florida Bar as advice and action steps, that would be greatly appreciated, because this is going to make it into my dissertation. The dissertation is going to be read, I know by at least... ahh... one or two... Presidents of the Florida Bar. John Berry was supposed to be hear
today and unfortunately could not make it, but he wants to read this and he wants the feedback and he has been a champion of this and has been working with me since the very beginning, so right after we get done within the next 24 hours, if you could just send an email and say, ‘Here are some things, Eric, I think need to be con… to continue the conversation, and more importantly, action steps, things that we could go to… say, maybe this program could be more utilized, could be promoted better, maybe we actually could put the public reprimands on YouTube, so it’s about moving the conversation forward, and I’m gonna be the one who will coordinate that. That’s part of what I’m here to do and it’s also part of my dissertation.” (Eric Paul Engel)

“I think that… uh… there is… there needs to be a sense of urgency because if it’s only one percent that are, as [Participant #6] would say, psychopaths…” (Participant #11)

“Sociopaths…” (Participant #6)

“Sociopaths… or psychopaths… but… but… but if it’s one percent, it could very well be that one percent that tips us over to breaching the social contract we have and takes us to legislative regulation… ah… like every other business organization, and then we’ve totally lost the profession. So… so we… there’s… there’s a sense of urgency to this that must concede.” (Participant #11)

“And I’ve definitely seen that in the literature. And that part looking internationally you’re seeing regulated…. the… the… the legal field being regulated on a global scale, and so that actually I agree completely. It’s one of the reasons where when I started to work on this for a long time I was on my own not connecting with a lot of other people. When I spoke with John Berry, he said, ‘No no. You’re doing something that we need.’ Um… so that’s why I say, if we can continue this, if you could take a little bit of time and send me an email with the things that you think are most cogent, I would love to have that.” (Eric Paul Engel)

“California tried going to the legislature and it was a disaster. I don’t know if ya’ll heard that ??? [unintelligible; 0:52:39]… their Supreme Court. So, yeah, we don’t want that to happen because it was a complete disaster. Money was gone. They spent the money on other stuff… that didn’t, ah… all kinds of community ??? [unintelligible]… John knows all about it. It was a huge problem.” (Participant #6)

“Did that occur by statute or how does that work?” (Participant #14?)

“Well it’s… the legislature enacted ??? [unintelligible; 0:52:58 - 0:53:12]…”

(From 0:52:58 – 0:53:12, several voices can be heard but none is intelligible.)
“What’s fascinating now, to me at least, is that to some extent I would say it’s almost unconstitutional to do that since it’s about three branches of government. You can’t have one branch of government controlling ??? [unintelligible; 0:53:24]…” (Participant #11)

(From 0:53:24 to 0:53:32, several Unidentified voices can be heard. I could Participant #6 saying something, but during this period I was unable to make out just what was being said.)

“So at this point the formal portion of the CLE is concluded. It’s 4:05 so we’re done with that. So what I would like to do now, if you need to head out I understand, um... but if you’re willing to stick around a little while longer, this is the part where I want to learn from the mistakes and... and the successes of what we’ve done and I’ve got three simple questions that I’d want to pose to you. And then you can help me build a better mousetrap in terms of the next time I do this because I do plan on working with The Florida Bar and the Florida legal community for years to come. This is my passion. The first question would be, in terms of what you experienced today, what did you experience moving through the World Café? What was your experience of this in terms of observations and insights…” (Eric Paul Engel)

(Note: At this point there was a mass exodus with nine people leaving. Here I can be heard thanking someone for attending.)

“Thanks....” (Eric Paul Engel)
Appendix G: World Café CLE Post-Event Focus Group Transcript

The following is the transcript for the World Café CLE Post-Event Focus Group recorded Friday, 7 June 2013.

“I… I thought it was, ya know, I thought it was real interesting… I tend to be an idea person, I throw out a lot of ideas, so… so the opportunity to share ideas with… with other people who, ya know, I came to… to know enough about to really respect their opinions… ah… I thought was… was very much worthwhile. Ah… it also allowed me to see a number of things in a slightly different way with a different perspective as well. Um… ya know, in terms of the structure for CLE, um… I could see maybe a slightly more amount of kind of lecture or introduction to focus more on the topic.” (Participant #5)

“OK.” (Eric Paul Engel)

“Um… Or maybe at the beginning whenever a question is asked to actually sort of lay the basis for it. Certain things people are gonna know. You may want to even lay out certain things that are already kind of recognized or established. Ya know people talking about ethics being just a rule versus something more than a rule, and that came up in… on several… several discussions. Professionalism… talking about that being the… the… the floor versus the ceiling discussion. That came out several times. So if you lay that out before at the very beginning so that people don’t spend time on those concepts that are kind of well established then maybe you can guide the discussion into something that’s gonna be a little newer and fresher.” (Participant #5)

“And that was one of the limitations of this being part of my dissertation. My committee actually didn’t want me to do that. So that I lament, and I wanted to.” (Eric Paul Engel)

“You couldn’t… You couldn’t laser in on what you wanted to hit.” (Participant #15)

(0:56:06) “Thank you so much for coming today.” (Eric Paul Engel) [Note: Here I broke away from the post-event focus group and thanked someone for attending.]

“Awesome. I’ll be sending you an email to, ah… confirm what I thought was most important which I thought the public reprimands… ah… on… ah… and you’ve got all that down, because… [Participant #10’s] real big on that, and I think it’s a great idea. And maybe if that’s part of the report…” (Participant #6)

“Oh, all of this will make it in, right.”
“Cause... cause... it's... I think that's a great idea to have those reprimands. So... just... that's my humble opinion.” (Participant #6)

“Perfect. And if... if you can send me the email that would be perfect cause it gives me documentation.” (Eric Paul Engel)

“Yeah. Absolutely. The documentation's coming buddy.” (Participant #6)

“Perfect. Thank you so much.” (Eric Paul Engel)

(At 0:56:41 Participant #7 can be heard making a comment, but I couldn't discern what she said. Right after the comment Eric Paul Engel can be heard laughing.)

“The other things is...” (Eric Paul Engel)

(An Unidentified Male Voice can be heard speaking from 0:56:45 to 0:56:47 but what was said is unintelligible.)

“It’s... it’s... it’s... thank you.” (Participant #11)

“Nice to meet you Paul.” (Unidentified Female Voice)

“Hey Eric, so you can’t... you couldn’t really maybe focus in as much ??? [unintelligible; 0:56:55]...?” (Participant #15)

“Because it's part of a dissertation there were major limitations placed on what I could talk about and not talk about, and because it’s a Communication dissertation there’s a focus on terminology that was created to limit what I’m going to write about... so this is not the CLE I wanted to give... it’s the CLE my committee wanted me to give, um... which as an academic you can appreciate...” (Eric Paul Engel)

“Cause ??? [unintelligible; 0:57:18]... are framed in a different way than ours, right? And so you were telling him what they want.” (Participant #7)

“Well what he’s gonna get is he’s gonna come back and say, ‘I approached it the way you asked. I communicated the way you wanted me to communicate. This was the reaction. This was the result.” (Participant #15)

“And... and what... what the results could be... I could see this being a very effective program with a little more ??? [unintelligible]...” (Participant #5)

“Right...” (Eric Paul Engel)
“Um… I mean, ya know, I could… and frankly I thought… I loved the idea of showing the public reprimands and using that as a… as a jumping off point for…” (Participant #5)

“But ya know what’s…” (Participant #7)

“But… but not if you’re going to blank out the face and not see their name…” (Participant #15)

“No… No…” (Participant #5)

“You’re not gonna ?? [unintelligible; 0:57:54]… John Smith is here being publicly shamed in front of everybody… Shame! Ya know… That’s gonna keep me from… I mean… I’m a big strapping guy.” (Participant #15)

“But I can see this… ya know, what… what this suggests is a way… is a different way for CLE to work.” (Participant #7)

“Right.” (Unidentified Male Voice; either Participant #15 or Participant #5)

“And you talked about the difference of transmission of knowledge and creation of, sort of, community.” (Participant #7)

“Right.” (Eric Paul Engel)

“Ya know, if something like this were part of… I know The Florida Bar has sort of that bridge to practice stuff that they have for new lawyers… in these kind of formats with engagement with lawyers who are more experienced, could allow for that creation of community that brings more richness to professionalism or ethics versus transmission. ‘Here we are on a panel. We’re going to tell you how to be.’ I… I don’t think that works as effectively for this kind of identity formation, right? It’s the… it’s the communication between new person and more experienced person and sort of creating that notion of… OK, what does it mean to be an ethical lawyer? What does it mean to be a professional lawyer? Sort of creating that together. So I can see a format like this as being a really wonderful way to initiate new members into the bar through CLE.” (Participant #7)

“And at every table you have at least one seasoned person.” (Participant #5)

“Right.” (Eric Paul Engel)

“Um… ya know… with… with… ya know… a bunch of younger ones.” (Participant #5)

(At 0:59:17, both Participant #15 and Participant #7 attempted to speak.)
“And… and I wish…” (Participant #7)

“One thing I was going to say…” (Participant #15)

“Go ahead… no…” (Participant #7)

(At this point Participant #15 ceded the floor to Participant #7.)

“Oh… I was just going to say… and I wish… I wish that were my original idea, but the Inns of Court method kind of works that way too. So they have new lawyers and middle level lawyers and really experienced lawyers, but that isn’t in a CLE setting, that’s more of a bar organization.” (Participant #7)

“Right.” (Eric Paul Engel)

“Well I was telling Eric, in order to get professionalism credit for The Florida Bar you have to have interaction, which means you have to have someone in front more or less moderating or facilitating the program. So they want this dialogue. When I… when I ran a… oh about ten years ago I put on the professionalism CLE program for The Florida Bar. We had tables all around and everybody would give vignettes or scenarios and topics to discuss and you gave ‘em brief… like you did overview… they sat and they did the thing at the tables, and then you… and… but you had the table moderator. The problem that I found with table moderators is they will typically then moderate, not listen. And the good ones let everyone else participate but they will sometimes lecture, ‘Hey, you don’t want that issue.’ You want everyone equal at the table whether they’re young or they’re old. So this did not have, even though maybe it would be nice to have a seasoned person at each table, ah… maybe sometimes it’s not that bad. But you don’t want friends sitting together. What I did intentionally at that program, you walk in the door I gave you a number one, I gave you a number two, a number three… there were, I don’t know, maybe 20… 30 tables. So I gave out random seating assignments so friends couldn’t sit next to each other. You don’t want two friends at the same table or moving around the room cause if you do they’re gonna sit and talk. And it’s the same thing. You want them interacting with good people and good thoughts and good ideas.” (Participant #15)

“And you’ll notice one of the things I did was nobody had a name tag with their last name nor did anyone, or were they supposed to necessarily, announce their title. That wasn’t random. It’s because of exactly that which is one of the fundamental parts of the World Café and why it works.” (Eric Paul Engel)

(1:01:10) “Well I mean you didn’t want to give out hokey names or something interesting to somebody like, ya know, Daffy Duck and Bugs Bunny and something but… Sitting around a room in this kind of thing… ‘assigned
randomness’ is basically the way I called it so that you didn’t sit at the same table.” (Participant #15)

“Yeah… And that’s a challenge for a distinctly hierarchical profession…” (Participant #7)

“Yeah.” (Eric Paul Engel)

“…where title, um… ya know, role… ah… accolades, position really… really play to identity. I mean that’s always going to be challenge, particularly for those who are most likely to break your rule. Right?” (Participant #7)

“Like… like judges… like judges…” (Participant #15)

“Yeah.” (Participant #7)

“…and I’ve tried. They were like, ‘Well I don’t care. I’m going to sit at this table.’ ‘Your honor, with all due respect…’ And I said with all due respect so they’re supposed to listen to me… but… ???[unintelligible; 1:01:57 – 1:01:58]… with you’re buddy cause they’re not supposed to, so I even went further… orderly ordered randomness by… I knew that there were ten judges, and I randomly assigned them the different tables to rotate around so that it wasn’t the meant… intent… the… the… there had to be a judge at every table. I didn’t want them all to congregate at the same table cause even with randomness sometimes you get similarities. This is a wonderful format for delivery because actually the professionalism center wants this dialoguing and participation by us.” (Participant #15)

“It’s funny that you should say that. Here is the response that I… I sent an email saying… cause when I submitted this it was given the 4.5 hours of general and 4.5 hours of ethics. And I said, ‘well we’re talking about ethics and professionalism.’ Here is the actual response that I received. ‘Eric… I was informed that you inquired why your program tentatively scheduled at Stetson… featuring the World Cafe model was denied Professionalism CLE credit. In short, we needed more information regarding the credentials of those that will be facilitating or speaking at the program and your application lacked this information.’ Although I did submit a list of every person that would be attending and their title. ‘It… It appeared that you had two individuals (John Berry and Participant #10 and possibly others) that committed to participating, but you did not provide any background or discuss their particular role in the program short of conversing with other participants attending the program on professionalism related topics. Generally, the best practice is to attach the bio’s of those who will be speaking or facilitating at the program so that the Center for Professionalism can evaluate their credentials and describe their role in the overall program. If you have any further questions or concerns regarding the denial for professionalism credit, please do not hesitate to contact me.’” (Eric Paul Engel)
“Was that ?? [unintelligible; 1:03:37 – 1:03:39]…” (Participant #15)

“It came from the Center for Professionalism.” (Eric Paul Engel)

“This is such an important point for the Center for Professionalism because the lens they are viewing this through says that you have to have credentialed people doing transmission versus a collective community building identity.” (Participant #7)

“To their defense, though… to their defense, I served on the committee who set this stuff up. Here’s what they want. I do diversity training, OK. I give about five minutes of talk for a four-hour program, OK. I run through training to supposedly know how to get people to talk, so I arranged them to talk. So what they wanted was your credentials… I’m just… I’m hypothesizing here… hypothesizing, that they want your credentials. That you’re a Ph.D. candidate, you’re an expert in communication, you’re going to set it up to facilitate so that the tables talk. I know where your concept is that we are the presenters, but you are the puppet master so to say, and even though that’s the archaic traditional approach to the program, you can’t say, ‘We’re opening the doors. Fifty people are gonna go in and talk, and fifty people are gonna walk out.’ They want this much structure for this much content.” (Participant #15)

“And I provided extensive details of that.” (Eric Paul Engel)

“I’m sure you did.” (Participant #15)

“Ya know, and… but what I’m saying… why I’m saying that sort from a theoretical or academic direction is that if you continue to view professionalism that way you’re going to have the same status structure that you always have.” (Participant #7)

“Right.” (Eric Paul Engel)

“…In other words, only certain people are qualified to talk about professionalism and they must… and… and I think that reflects, and I know you’re recording this so I… I’m not trying to be critical, but I think that reflects a view that the Bar as a whole is not professional and only certain people are professional enough to transmit that knowledge, and I think there’s worth in turning that on its head to say, ‘Wait a minute. Maybe everyone has a certain sense of professionalism and can participate fully in this discussion.’ Ya know, we don’t have to screen based on credentialing of who’s going to have voice, right, versus be the recipient of the information. I think that’s a really important… now, I don’t think that they will see that as broadly as I do, but I think that’s an important point to make about how they want to treat the question of professionalism and who gets to speak and who doesn’t.” (Participant #7)
“Well now... I'll... I'll... I'll say this. Here's the short cut. It's not necessarily that I'm a skilled diversity train-the-trainer or that any... well you have a Ph.D. in communications and are professors, or that I taught in school too. But they have... they want language, cause I've gotten people approved for professionalism credits that were just a run-of-the-mill lawyer that gave a talk on professionalism and how to run their office by using the right key words that they want to see and... and it's, you know, there's a little format that they like to see that says, 'This program will involve the interaction and dialoguing between the facilitator and the participants through vignettes...' I mean it's almost so basic and rudimentary... maybe what you gave them was... ah... ??? [unintelligible; 1:06:43]... overkill?” (Participant #15)

“If they have those requirements, though, it would seem that to run effective CLE programs they would say that and this is a large part of also what I discovered, when I analyzed The Florida Bar's website, they say, ‘Oh well you could talk about ethics and we want reflexivity. We want you to be reflective about what we're doing and... and us.’ And yet they gave me a list of ten ethics things and talking about ethics was not on there. So there's a complete lack of reflection on the part of the Bar.” (Eric Paul Engel)

“Well sometimes that's... what do they call it... the... you got to make it work still. So if you made it too simple, you don't need the people there anymore to keep... ??? [unintelligible; 1:07:19]...” (Participant #15)

(At 1:07:19, Participant #7 spoke up while Participant #15 was still talking, and I could not discern what each of them was saying.)

“...All of these are hierarchy power...” (Participant #7)

“So...” (Participant #15)

“...rhetoric issue... in my mind, right... hierarchy power rhetoric issues about how this is framed and who's in control and who's not in control.” (Participant #7)

“If you want... If you want my opinion...” (Participant #15)

“So in other words bureaucrats...” (Participant #5)

“I would not... when you give your feedback to the Bar, I don't know if I would necessarily bring up their ineffective way of communicating their requirements to us because you're basically gonna get into as my daddy said a pissing contest with a skunk, and you don't want to do that because they've got issues but they think they're doing OK. And just because you didn't put the right words out getting professionalism credit, I think a good letter is saying, 'Could you spell... They're gonna tell you, if you say, 'Could you spell out the requirements for a
professionalism program?’ They’re going to give you something like they gave you there, which is not much of an answer is it.” (Participant #15)

“Right.” (Eric Paul Engel)

“No.” (Participant #7)

“But if you want more of an answer…” (Participant #15)

“But I mean it challenges… it challenges the paradigm of how professionalism is seen, right. And so… and of course with a dissertation, that’s a great point you want to make, right. I mean… there’s a difference between writing to them about, you know, about tactful about your concerns, and there’s a point you want to make in a dissertation that allows you to ??? [unintelligible; 1:08:33]…” (Participant #7)

“And in your dissertation you can say, just for fun, maybe… put it under somebody else’s name, put Jowita’s name down or something, and apply for professionalism program using a very simple basic description like I just gave and see she gets approved. That’s communication man. You gave them super information, she gives them a little bit, she gets approved and you didn’t.” (Participant #7)

“The people who were here, I mean, frankly, I got more in… out of this kind of professionalism discussion than I do at, ya know, almost all the lectures. Ya know, I thought the interactive nature of it was… was terrific, and it got me thinking, OK, what can we do? Ya know, it got me thinking, what… as opposed to just sort of…” (Participant #5)

“But can you imagine if this was replicated…” (Participant #7)

“…ya know, turning it off.” (Participant #5)

“…the ownership that lawyers… ya know…” (Participant #7)

“Yeah.” (Participant #5)

“…You probably have to require it or make it part of that initial introduction to the profession, but the ownership one might take or the likelihood that you would have some ownership in this question would change versus… ya know, my students look at me, here we go again. You’re gonna talk… You’re gonna lecture me about… You’re going to give me a sermon about, right.” (Participant #7)
“And… and this would work… this works for ethics and professionalism. But could you imagine trying to do a… ah… collections concept…” (Participant #15)

“Yeah.” (Participant #5)

“…a discussion. Some of the people out here don’t know the first thing about collections. They ??? [unintelligible; 1:09:51]… have guides saying, ‘Here’s step A, B, C, and D…” (Participant #15)

“Right.” (Participant #7)

“…and how to do it.” (Participant #15)

“Right.” (Participant #7)

“Now you can follow up maybe two hours into the program with a discussion ??? [unintelligible; 1:09:58]… ‘Has anybody ever experienced this?’ and have experienced people. But for this topic and diversity and practice management and substance abuse, which there’s like five prongs of this…” (Participant #15)

“Um hmm.” (Eric Paul Engel)

“…and this component of The Florida Bar. That’s all that most lawyers care about.” (Participant #15)

“Yep.” (Eric Paul Engel)

“Ya know, I wanna get those five hours. And they always call ??? [unintelligible; 1:10:16]… that you can get it in substance abuse topics, ah… diversity, mental health awareness, whatever you called it...” (Participant #15)

“But… but if you had a group of collections people, newer and more experienced, and the question was, ‘What’s broken about the collections process?’ This would be a great format for…” (Participant #7)

“So…” (Participant #15)

“…and how could we solve it versus, me… I know nothing about collections so I’m coming to this CLE cause I need someone to tell me how the whole system works.” (Participant #7)

“And that’s the difference between information transmission, if you need to know how the system works then one format works great. But when you are trying to answer problematic questions that are challenging a professional community, that’s where this shines.” (Eric Paul Engel)
“That application, um, for CLE says, 'Is this a basic program an intermediate program or an advanced program?' So, something like this in collections would be an advanced program…” (Participant #15)

“Right.” (Participant #5)

“Right.” (Eric Paul Engel)

“This is not something that for basics…” (Participant #15)

“And there’s a comfort with the topic…” (Participant #7)

“…Basics you want a guy up front to say I’m here to tell you something. Intermediate is maybe talking and discussing. And strictly six hours of this to try to solve the collections matters that are at hand now or the new bankruptcy laws that come out or new probate issues or powers of attorney that come… that is where you get the experts to come in here and do this.” (Participant #15)

“And the other thing that’s great about this too Eric is… No one in this room told me something that I thought was way outside the range of right with respect to what professionalism means or what ethics means or any of those things, and that would be great for… that’s great for identity formation, particularly if you’re new. That you can hear a range of right answers about how to concede both these things and pull one in for yourself. Again, I didn’t hear anybody say something like, ‘Oh, that… that’s really nutty. I just absolutely disagree with that.’ And I think there’s enough community still that you would get that no matter your composition.” (Participant #7)

“Um hmm.” (Eric Paul Engel)

“…um… and if someone said something really crazy, you probably would have enough responses to that to offer the countervailing view. So, that’s why I think it… it’s good for that question of, ‘How do I become an ethical and professional lawyer? What does that mean? It allows you to kind of choose sort of what your view is…” (Participant #7)

“Um hmm.” (Eric Paul Engel)

“…??? [unintelligible; 1:12:23]… others.” (Participant #7)

“One of the things that I actually set out to do was to have representative sampling of The Florida Bar, so I set out originally to have judges all the way down to law school students. I had trouble getting law school students in part because Stetson wouldn’t allow me to talk… they wouldn’t allow me to do it. Um, I had trouble getting judges in the sense that we were supposed to have a
former, ah... Florida Supreme Court Chief Justice and his grandson passed away. And so, in terms of... I reached out to over 80 people, and we ended up with 12. Like, one... somebody said early on, you're preaching to the choir, and... but there's a great line in The West Wing at one point he said, 'You know why you preach to the choir? Cause that's how you get 'em to sing.' I know I'm preaching to the choir to some extent in terms of the people who would show up, but the difference is that does initiate a conversation and a different way of talking about it. That you're going to go off and you can think about, and you may use this in a class, you may go, 'I'm going to run a class like this...' And you may be involved in something and think, 'I could bring that into the divers...'' And so it gets at different things because it honors voice. And it honors every person there, and where there's professionalism if you... I looked at professionalism as I was doing my research, you see a drop in professionalism literally starting in the mid-70s because you see a rise in the size of firms, you see the emphasis on the billable hours, and all of a sudden people don't have time for it, and there's not that, like, time to actually walk into a colleagues office and ask about it. That's disappeared, but this is the kind of format that really brings that back in a sense, but in an informal sense. And people can start... so if you have a law school student and they were sitting here, they're going to have a very different of what the profession is, not because they've been taught it, but because they've picked it up... like you said, they pulled the parts that made sense to them. And it's a chance for a Supreme Court Chief Justice and a law school student to have a conversation for four hours off and on. You don't get that. And so this actually... one of my goals was to actually rebuild mentoring. Now, does everybody get that? Mmm... I doubt it." (Eric Paul Engel)

(From 1:14:22 to 1:14:29 Participant #15 can be heard speaking, but what he's saying is unintelligible as he's too far from the microphone. Participant #5 can also be heard saying something unintelligible.)

“...we did online ??? [unintelligible; 1:14:29]... We even kicked it off, and it just fell through.” (Participant #15)

“You know you might be interested in a book that I just finished reading. Michael Sandel is a Harvard? Yale? professor. He wrote, um... the Moral Limits of Justice. And he's written a book called the Moral Limits of Markets. And it's really... it... it's a trade press book. But what he talks about with respect to mentoring, right, he said we have moved from a market economy to a market society where everything is evaluated in market terms. So let's take mentoring, right. From a professional point of view, mentoring is hugely important and you would ??? [unintelligible; 1:15:05]... it. From a market point of view, it has no economic value, so you don't. He... he raises some other thing. Should we pay people not to smoke? Should we pay people to lose weight? Should we pay kids to read? Should we... um... pay for votes? I mean I argue we might already be doing that, but should we pay, ya know, could I... can I go on Craigslist and sell my votes to the highest bidder? And he's talking about how
much those market notions have permeated everything in society, not just the economy. And he... he looks at it as a negative result, the negative results of that. And... I mean... some of it... what you’re talking about with the problem of kicking off mentoring is it has no obvious, I guess, economic value, and so that presents a problem when everything is permeated... to me that’s what happens in the 70s and 80s, is, ya know, the market crisis. That's the rise of, ya know, stock market, and... and market... and the abstraction of cash, right. We go to a really abstract notion of value of services and publicly traded and share holders and you have a lot of rise of that... not that the stock market was invented in the 70s, I know. So... ah... But you see that coming up as being very important. And I think that's what directly affects lawyers.” (Participant #7) [Note: The books Participant #7 is referencing are titled "Liberalism and the Limits of Justice" and "What Money Can’t Buy: The Moral Limits of Markets."]

“And in the research... you see that in the research, like in the papers that I read, you see so many people lamenting the fall of the noble profession and the rise of the market profession. That that’s when... and... and literally I’ve read stuff before and I couldn’t find a lot of things that would talk about it in the same way. And all of a sudden you hear people talking about it and lamenting and... lamenting this idea, it is a business now. It is no longer a noble service profession.” (Eric Paul Engel)

“In fact, if you look at ahh... what is it, Atticus? And that’s their whole training. That’s their... their whole basis for training is to take attorneys and say listen. This is a business. And this is how you treat it like a business. And that... that’s...” (Participant #5)

“So their ??? [unintelligible; 1:17:01]... so you can go home and have a two-week vacation every month. They're really... They tried to tell you to take a week off.” (Participant #15)

“Who is this again?” (Participant #7)

“Atticus. It’s a... like a life counseling, life coaching group for lawyers. They coach lawyers and say, how... we’ll show you how to make your... Is Jowita in that? No. She’s not. But Nora Bergman who used to be Executive Director of the St. Pete Bar, she's moved into Atticus as a counselor coach. And she comes into your law firm, analyzes your law firm, tells you how to turn things over, let go, let the firm run it so you can take off and go home and regroup.” (Participant #15)

“And... and... and it’s based entirely on business principles...” (Participant #5)

“Well...” (Participant #15)

“...where you... well...” (Participant #5)
“…he would say business principles. I work... I work Sundays and I take off Wednesday at 2 o’clock to go do something else if I want to. To me, I don’t... business is... life is fungible. You take time when you can take the opportunity. To me business is grab it when you can, not regimented eight to five.” (Participant #15)

“Yeah... well, I mean, you know what that they try to do is they... they focus on learning how to delegate the right thing, to promoting, you know, staff people, passing as many things off to staff people so that you can focus on the things that will generate more income...” (Participant #5)

“They want it mechanical. They want it step by step, here’s what you do on Mondays... just this... take that Thursday afternoon lunch and you go off and network... I mean it’s important to do that, to do the networking, but their trying to make it almost cookie-cutterish I think.” (Participant #15)

“Well and the other side of that that, you know, with women’s entry into the profession, um, the issue of work-family balance has become bigger and bigger and not just for women, for men too. So there is a side of that that says, boy that would be really valuable if I could create more balance between the two, but that would be for a different principle...” (Participant #7)

“Right.” (Participant #5)

“...right, than economic.” (Participant #7)

“You know, back on the noble profession and you want the cer... and... and you... and I think it’s awesome, the ceremonial concept is wonderful, we really need some of that. I remember how it was back in the 70s and 80s and... and they were guys that literally did work until the midnight hour. I mean these people were serious and always wore like suits and ties. You never would... You walk in their office... It’s stuffy and stiff and very grand and oak and marble. And you do your business and you go home. You walk into a law firm now and there may be a kid crawling around on the floor and a dog and they’re a lot more friendly I think... family friendly offices, which I think is where young people are demanding that. They want this life balance more...” (Participant #15)

“Yeah, but large firms actually... large firms are not. The really large firms still are not.” (Participant #7)

“But there’s not as many large firms as their used to be either.” (Participant #15)

“Right.” (Participant #7)
“You were talking about the large firm thing that’s causing the change of the dynamic today… Well I haven’t done this research, but I get a feeling that there are fewer of those big firms and big law now means small office, big budget for getting people in.” (Participant #15)

“It’s fascinating if you look at the work-life balance issues at the level of the large firms they have policies in place so that they look great on paper. No one uses them. So, can you do that? They like… they can say, like, look we offer this. But the culture is such that people don’t take advantage of that.” (Eric Paul Engel)

“Up… up… up until two years ago I was within a big firm and, ya know, the… the billing demands that I had basically meant that, ya know, there’s no…” (1:20:08)

“You can’t take the time to talk…” (Participant #15)

“…way I would have time to do mentoring or any of those kinds of things because… and… and the fact is I did some of those things anyway but I ended up having to work a lot of late night all the time because it was the only way I could get it all in.” (Participant #5)

“Yeah.” (Participant #7)

“Right.” (Eric Paul Engel)

“And there was, ya know, the… yeah, they… they play lip service to all of these various things, but in order to meet those billing calls, you just can’t… can’t…” (Participant #5)

“Which is purely economic.” (Participant #7)

“Right.” (Eric Paul Engel)

“It’s purely economic.” (Participant #7)

“Right.” (Eric Paul Engel)

“And… and… and… frankly you… your… your value was measured by the numbers.” (Participant #5)

“Exclusively.” (Participant #7)

“Yeah.” (Participant #5)

“Exclusively.” (Participant #7)
“And ah… I mean, ya know, I was with, ah… one firm, Ruden McClosky, that ended up, our office went over to… to Adams & Reese, but at Ruden McClosky I was kind of their expert on making sure the firm complied with certain consumer collection laws, and so I spent a fair amount of time assisting that and really got no credit for doing that. I mean, and that was an important, important benefit to the firm as a whole. I got phone calls from people all over the firm, ya know, from eleven offices, ya know, asking questions about these things. And I did it because I like doing and I like… I enjoy teaching, but, ya know, it did not provide me with any benefit within the scope of the firm.” (Participant #5)

“What other questions do you have Eric that help… that you had here at the end that you…” (Participant #7)

“What worked and what didn’t.” (Participant #15)

“The what… what worked and what didn’t, we got at that. And the only other one was, ‘How… how do you think it would be best to utilize the data that I’ve gathered today?’ But in many ways I feel like the suggestions hit on that. If you have anything else to add though in terms of how to utilize the data…” (Eric Paul Engel)

“I think that it’s… it’s easy to support what The Florida Bar does, but it… it… it ??? [unintelligible; 1:21:52]… further solidifies the need for ethics and professionalism to be discussed and not lectured about.” (Participant #15)

“Yeah.” (Participant #5)

“Ya know, this shows the interaction of it, and… and truthfully an important factor is getting young and old in here, ya know, getting students in here is real important if the school could do this. I know that last spring or last fall I gave a talk here for, um… who was that? Charlie and… somebody else and I gave a talk here. It was a professionalism talk in the great hall, and students came in and sat with the lawyers at the tables. So it was really neat that the students got to talk about these vignettes and ethical considerations with these… running an ethical law firm I guess is what we talked about, so they talked to the lawyer about it.” (Participant #15)

“See, I… I think showing the video of the public, ah… of the public shunning and then having a round-tab… round-table discussion about that will be very valuable because it would… it would then allow people to express how their reaction was to that.” (Participant #5)

“Ya know, I think it was… is it Holmes that the bad man… was it Holmes that… that you write the law for the bad man…” (Participant #7)
“Oh yeah…” (Participant #15)

“…and there’s the countervailing view which is you write the law… you… you follow the law because they want to, right? I mean… I’m trying to think back… those are original jurisprudence things.” (Participant #7)

“Yeah.” (Participant #5)

“And I tend to think that you’ve got to approach it from both sides because I think there are people who will do what they’re supposed to do only because they could be caught. And demonstrating to them, ‘Here’s what happens if you get caught. You don’t want this.’ But I think there are also people who are not motivated by the consequence. They’re motivated by the sense of, ‘Tell me what they right thing is to do. Tell me what the expectations are in this community.’ Um… and I tend to think that ends up being a better way to solve the problem if you can get more at that internal sense of self…” (Participant #7)

“And…” (Participant #5)

“…Now…” (Participant #7)

“But… but not everybody’s like that. I mean that…” (Participant #5)

“See that’s the dispute…” (Participant #7)

“…that’s the problem…” (Participant #5)

“Nope.” (Eric Paul Engel)

“…Some of the people…” (Participant #5)

“Who do you write the law for?” (Participant #7)

“Yeah, exactly. There’s some people who are simply going to be looking for, ‘How do I get around this? How do I… How do I take a look at the… the rule and figure out…” (Participant #5)

“Someone else is ??? [unintelligible; 1:23:53]… ” (Participant #7)

“…a way around it?” (Participant #5)

“…between the oblige… obliga… obliga… to be obligated and to be obliged. Ya know, and that those are two different ways of viewing what the law does.” (Participant #7)
“Yeah… So… so the advantage of, ya know, the public reprimand is the fact that it then moves, I think, some of those people who are, ya know, the rule get-arounders and… and help… helps them to see that there is an important consequence. I think that would be very valuable to ??? [unintelligible; 1:24:22]” (Participant #5)

“Well it ??? [unintelligible; 1:24:24]… that one because point… taking what you said, I was trying to break things into groups. It’s… you’ve got people who want to do what is right…” (Participant #15)

“Right.” (Participant #5)

“…and people who don’t want to get caught…” (Participant #15)

“Um hmm.” (Participant #5)

“Then you have people who don’t care.” (Participant #15)

“Right.” (Eric Paul Engel)

“OK. So you gotta… How… You can’t put a carrot in front of the donkey and have a stick in your hand too because the donkey’s gonna get confused…” (Participant #15)

“Right.” (Eric Paul Engel)

“So you just gotta…” (Participant #15)

“But ‘cha… I mean look at… no one’s serious about it. I mean the big corporations do it already when they hire legal. They give ‘em psychological tests that they… they say are, ya know, statistically significantly correct that will tell them someone who’s gonna lie to them, who’s gonna steal from them, who’s not gonna show up to work on time, and they don’t hire those people. We could do the same thing in the Bar. Say, ‘Here’s your bar application. I want you to complete these tests.’” (Participant #7)

“So here’s a question I have, well what about those people… my sister, for instance, she… every time she takes a lie detector test it comes out that she… ya know, they find that she’s a liar left and right. Ya know, they say that she’s, ya know, ??? [unintelligible; 1:25:19]… drug use, she’s never touched the stuff in her life. She’s just one of those people who doesn’t test well. There are people for those kinds of things who aren’t gonna test well. And you’re gonna be excluding those people who could be very valuable…” (Participant #5)

“Sure. Abso… absolutely. So I guess, ya know, the question is do you have…” (Participant #7)
“False positives…” (Participant #5)

“…false positives or false negatives? Is it better to exclude some that will be OK or include some that won’t be? I… I don’t know. I’m just… I’m just throwing that out.” (Participant #7)

“And who does it?” (Participant #15)

“This is what I do for a living. Just come up with ideas and then figure out why they're wrong.” (1:25:46) (Participant #7)

“Well what about law schools? Now law schools would ?? [unintelligible; 1:25:51]… do that necessarily because they’re gonna lose good… they’re gonna lose income.”

“Right.” (Eric Paul Engel)

“They’re gonna get rid of people who are straight A students but they’re sociopaths. And it’s a business. I know it’s a business, and I’ve said from day one ?? [unintelligible; 1:26:04]… law schools, you better get the alumni people with the freshman and tell ‘em why you’re gonna be a wonderful alum so you can start getting in their pockets early cause if you’re not building future donors you’re missing out on a huge opportunity to keep making money off these people because that’s what we’re here for… yes we want to educate, but we make money.” (Participant #15)

“Education is also a business just like the law.” (Eric Paul Engel)

“It’s a business just like the law.” (Participant #15)

“We’re a non-profit institution, just in defense of this law school ?? [unintelligible; 1:26:27]…” (Participant #7)

“But even non-profits still have to make money, ?? [unintelligible; 1:26:28]… they still have to bring in the… the scratch to run everything…” (Participant #15)

“Right. Everything has to keep…” (Participant #7)

“Given all the big high dollar pays that, ya know…” (Participant #15)

“Clearly.” (Participant #7)

“…?? [unintelligible; 1:26:34]… one of your Maseratis out there.” (Participant #15)
“That’s right.” (Participant #7)

“But ya know ?? [unintelligible; 1:26:38]… do they want to limit who they let in? Do we want to be the ones at law schools that say, ‘We don’t want you crummy people.’” (Participant #15)

“Well that’s what medical schools do. I mean, people are weeded out of medical school before they get to medical school. Law school people are weeded out during…” (Participant #5)

“Well we like to believe that that’s not true. So we think… I mean that… that the… the 70s were the era when it was ‘look to your left, look to your right, one of you will… two of you won’t be here.’ Right… I guess.” (Participant #7)

“When I was… was… I mean I graduated in 84 so it was still…” (Participant #5)

“Yeah…” (Participant #7)

“…at that time…” (Participant #5)

“Now we tell people… I mean this is what we say, ‘We only pick people who we think will be successful here. So we look at your application, your LSAT, your GPA…”” (Participant #7)

“Well the truth is there are thirteen law schools now where as there used to be five.” (Participant #5)

“Right.” (Participant #7)

“…You can’t be as selective in order to have… I mean, if you’re… you’re the more elite law school, yes you can be selective. But the fact is that all the law schools can’t be selective because they need to fill out their rosters in order to pay the bills.” (Participant #5)

“Abso… Right. Ya know, so for example, our incoming class of this year was 60 people smaller, and we did that intentionally, right. To… to match quality of the pool, right, with what we would like to have with respect to quality of our students.” (Participant #7)

“Well ?? [unintelligible; 1:27:51]… just getting’ to be too big at some point.” (Participant #15)

“Well it’s… it’s now… it’s now market constraint. The… the… the supply of law students is declining significantly and about… about half nationally it was five years ago…”
"I heard that too." (Eric Paul Engel)

(From 1:28:05 to 1:28:07 Participant #5 can be heard speaking but I could not make out what he was saying.)

“Well… yeah… I mean, so… you know, there’s some, ah… speculation that over time we’ll… that nationally some laws schools will close because they can’t… what I understand is there are not enough applicants today to fill all the available seats in law schools. And this is because of the… in large part, because of the bad press that law schools have gotten about the expense and the availability of jobs and…” (Participant #7)

“So if law schools became…” (Participant #15)

(From 1:28:33 to 1:28:36 Participant #7, Participant #5, and Participant #15 were all speaking at the same time and so it was difficult to tell what each of them was saying.)

“…?? [unintelligible; 1:28:33]…percent of law students don’t ?? [unintelligible; 1:28:35]… jobs?” (Participant #5)

“Well it’s gonna depend on the school. Ya know, we actually have done well better than that with respect to our students, including law-required jobs, right. Legal-education required jobs cause there are all kinds of ways that schools have been able over time to sort of shape that data to make it work to their advantage ?? [unintelligible; 1:28:52]… That’s what the lawsuits were about… um… at Florida Coastal… ?? [unintelligible; 1:28:56]…” (Participant #7)

“But we couldn’t… but… but… they couldn’t…” (Participant #15)

“…were all dismissed… were all dismissed…” (Participant #7)

“Well yeah, no one from Stetson would come forward. So Stetson’s the ones that are gonna be more or less happy. That’s why the ?? [unintelligible; 1:29:03]… could make the decision.” (Participant #15)

“Yeah, but you know it’s not ?? [unintelligible; 1:29:05]… it’s expensive proposition.” (Participant #7)

“Sure.” (Participant #15)

“Um… and… in the last five years, ya know, the… the earnings for, ya know, the ability to earn has gone down as a lawyer in relation to the amount of debt.” (Participant #7)

“But ya know…” (Participant #15)
“For a while, those tracked pretty well together... So...” (Participant #7)

“If you’re a law school trying to serve the legal community. And we’re... the legal community is trying to improve their professionalism and ethics, couldn’t law schools become... somebody, was it one of the tables or was it a group discussion, where a fellow said, ‘My choice was to become either a lawyer or a minister.’ OK. And he said, ya know, well why’d you go to law? Well... well lawyers are counselors. Lawyers do a lot of stuff ministers do. So couldn’t we try to raise the image of the law and the legal profession by making law schools more touchy feely, more ethical and professional. And so you want business leaders not to get an M.B.A. Heresy... Heresy... But to get a law degree so they can go out and run a business some place some day because they’ve better trained and better scrutinized and better... ah... sifted through to produce ethical leaders some day down the road...” (Participant #15)

“Well I like to think we’re trying to... I mean Stetson has a particularly...” (Participant #7)

“As I mean y’all’s school may be necessarily...” (Participant #15)

“...??? [unintelligible; 1:30:18 – 1:30:20]... I don’t know what’s goin’ on anywhere else with that... we tend to be sort of...” (Participant #7)

“Well we can’t offer the...” (Participant #15)

“...tuned in to that...” (Participant #7)

“...we can’t offer as many inter... interdisciplinary degrees as would be nice. Like if you’re a major university you’ve got sixteen different med... ah... M.B. ahh... min... master’s programs, you can train people to go out and teach hospital administration with a law background cause it’s good to have that. Or public administration, or edu... master’s of educat... all these different master’s degrees so you can have it coupled with something but maybe the ones that are going to ultimately survive will help with this professionalism piece and stability...” (Participant #15)

“I do know from being in touch with other law school professors around the country with my research that you’re seeing more and more schools start to recognize the touchy feely stuff, the soft skills...” (Eric Paul Engel)

“...soft... soft skills...” (Participant #7)

“...are actually valuable and they’re starting to recognize that. You’re seeing this not only in law schools but in med schools. So they’re now starting to require in some med schools that you have to take courses on communication. And I know
within the law it’s slower to adopt at the level of... ah... legal pedagogy as opposed to medical pedagogy, but... but you're... you are seeing that. There's a number of people I've been in touch with.” (Eric Paul Engel)

“Because they’re not teaching somebody to pass the bar necessarily. But now that The Florida Bar in particular and some others are starting to focus more on professionalism, ah... teaching the soft skills, you are teaching the students on how to act... [unintelligible; 1:31:39 – 1:31:40]” (Participant #15)

“Soft skills really kind of came out of the UK as best I can tell, really the notion of soft skills, and it’s really basic things, ya know, decision making, books I’ve read, attire, ah... oral and written communication, ya know, it's very, very much some things that we would think how... how come you don’t know this already, right.” (Participant #7)

“Those skills seem to come out of the clinical program at... [unintelligible; 1:32:03]... law schools...” (Participant #5)

“Yeah... and you’re still seeing that, but the clinical programs are emphasizing it more and more and they’re actually getting more traction from what I understand. I...” (Eric Paul Engel)

“But there’s also a level...” (Participant #7) [Note: At this point both Participant #7 and Participant #5 were speaking at the same time.]

“...[unintelligible; 1:32:09 – 1:32:10]... the one place where you have an interaction with actual, real, like people...” (Participant #5)

“And you can see... but you can also see it as two levels. You can see it as a learned... learned sort of in a... practical way without sort of the... I won’t... I won’t say theoretical understanding but that’s kind of what I mean, understanding the principles, or it being taught so you understand the context and then use, right, and we certainly don’t do a whole lot of that. In other words, there isn’t a course called interpersonal communication for lawyers and maybe there ought to be... or organizational communication...” (Participant #7)

“Um hmm...” (Eric Paul Engel)

“...for lawyers and maybe there ought to be.” (Participant #7)

“If Stetson ever needs someone, that’s exactly the kind of course I’m trying to set my self up to teach. It's funny, when I approached the ah... the Virginia Bar at one point to present a CLE, it was the first one I ever built when I started my company, and it was ‘Listening for Lawyers’ because what is the skill that you use most. It's not reading, writing, or speaking. It's listening. That's what you do everyday. They turned it down. I called up and I said, ‘scuse me but could you
explain why this got turned down.’ She goes, ‘Well what does listening have to
do with lawyers?’ I was like, you’re kid… I almost burst out laughing. I’m like,
‘You’re kidding right?’ And she goes, ‘No. I’m serious. What does listening have
to do with being a lawyer?’ That’s the mentality…” (Eric Paul Engel)

“So… so the notion of soft skills is just really starting to enter in and there are
books written on it and…” (Participant #7)

“We just had that CLE from that brother… that ah… ??? [unintelligible; 1:33:29]…” (Participant #5)

“Oh… ??? [unintelligible; 1:33:29 – 1:33:30]…” (Participant #15)

“Yeah… ah… from a monk.” (Participant #5)

(From 1:33:33 to 1:33:36 both Participant #15 and Participant #5 were speaking
at the same time. As such, I was unable to make out what either of them was
saying individually.)

“Oh wow…” (Eric Paul Engel)

(From 1:33:36 to 1:33:39 both Participant #15 and Participant #5 continued
speaking at the same time… and I was still unable to make out what either of
them was saying individually.)

“It’s different I bet.” (Eric Paul Engel)

“Yeah.” (Participant #5)

(From 1:33:39 to 1:33:41 Participant #7 can be heard talking, apparently to
Participant #15. Unfortunately I could not make out what she was saying. He
can then be heard responding…)

“You’ve never had… You’ve never had any issue with that.” (Participant #15)

“No. No.” (Participant #7)

“She… Ya know she’s doing legal… legal research and writing skills and…”
(Participant #15)

“Um hmm…” (Eric Paul Engel)

“…that’s… that was a hard thing for a lot of professors… say, well that’s not
really law professors, those are…” (Participant #15)
“Right. And communication is not really law. And actually PR in many circles is not really law…” (Participant #7)

“I mean… it…” (Participant #15)

“But it’s all part of law… I mean, and the fact is…” (Participant #5)

“How is it not the most central part?” (Participant #7)

“…the most central part… exactly… and it’s funny, like when I talk to lawyers that there’s this feeling of, well you’re not a lawyer. And yet when I went to my committee, they went, well this is comm, not the law. And so I’m trying to bridge two areas and both areas are saying no, no, no, no, no…” (Eric Paul Engel)

“It’s very ??? [unintelligible; 1:34:15]…” (Participant #7)

“Yeah…” (Eric Paul Engel)

“I’ve done that… I mean…” (Participant #7)

“It’s law.” (Participant #15)

“I’ve just been through this too.” (Participant #7)

“It’s probably the single most important… um… skill. Well, I don’t know about the single most important, but certainly a key important skill that I wish I had learned is marketing.” (Participant #5)

“??? [unintelligible; 1:34:32 – 1:34:33]… it’s one of those kind of basic too and actually ??? [unintelligible; 1:34:34 – 1:34:36]… the whole point is people can’t be so myopic. They can’t afford to be…” (Participant #15)

“But you’re talking about… you’re talking about upending power structures, right…” (Participant #7)

“Oh… ??? [unintelligible; 1:34:45]…” (Participant #15)

“Yeah.” (Eric Paul Engel)

“Are you still recording me?” (Participant #7)

“I’m still recording, yes. I can turn it off if you’d like.” (Eric Paul Engel)

“I’ll… I’ll ??? speak the fight [unintelligible; 1:34:51]… because I had to fight it when I was with an educational institution one time within one degree program between three campuses each campus wanted to take ownership of their own
“As you were saying at one point with your discussions, if I’m cooperative my clients may not like me.” (Eric Paul Engel)

“Yeah I mean I think there is that element, and then someone ??? [unintelligible; 1:35:31 – 1:35:32]… yeah and the unhappy client sues you today in a way that you would not have 25 years ago because we don’t have the same reverence for lawyers. I mean just the same way with doctors. I go in now and I say, ‘Well doctor. This is what I learned on the internet.’ And if I don’t think the doctor… the doctor doesn’t seem to be knowledgeable to me or… I’ll go to another doctor because I… I think, ya know, I don’t have the same reverence because that, sort of…” (Participant #7)

“…information ??? [unintelligible; 1:35:54 – 1:35:55]…” (Participant #15)

“…mystery… that mystery…” (Participant #7)

“Yeah.” (Eric Paul Engel)

“…is gone. The only thing I can think of about… You were talking about what caused this transition, and I’ve had another theory about this. And I don’t want this to come out the wrong way, but um… Ya know, in the 1960s, right, we had legislation that opened the doors to professions and to access to careers that weren’t generally available, so for women of people of color, right. And… and… can’t discriminate on the basis of religion and… right. So all of these things that now gave protections for ??? [unintelligible; 1:36:27 – 1:36:28]… coming up around this time, so for having a lot of the things that changed the way doors opened. And when you lament a day that said, oh we used to be able to do things on a handshake, we used to be able to… ya know it was a very honorable profession. Part of we can read into that is, it was great when we were all part of the same boys club, same class, same gender, same color, because we could all trust each other, and there were outsiders and insiders. And so then… by the way, the ABA’s done this before. Ya know, it originally um… went to having requirements of having legal education to… because some… ah… some religious groups were getting in that they didn’t like back in the turn of the century anyway.” (Participant #7)

“Yep.” (Eric Paul Engel)
“So bring that forward. So now you have the entry of women, of various minorities, of people disposition, different class coming in, and now I don’t know you the same way I knew the person I had a handshake with. My close club is now bankrupt. So what do we have to do to address that? We’ve got to regulate it. We’ve got to have lots of rules because we don’t trust anymore.” (Participant #7)

“Right.” (Eric Paul Engel)

“I… I think that there is a ramification about that sort of diversification…” (Participant #7)

“Yeah.” (Eric Paul Engel)

“…that we…” (Participant #7)

“Absolutely.” (Eric Paul Engel)

“…have less professionalism because I have a… less of a sense of trust. Now, I am in no way saying that the door should be closed to anybody. Don’t anybody take that away from this discussion. But I do think that there is something that happens at that point because it is a shift of power, it is a shift of access, and so the controls now become different…” (Participant #7)

“Yes.” (Eric Paul Engel)

“…and how people relate.” (Participant #7)

“You just described a large chunk of my dissertation. Looking at it in terms of ethnocentric versus cosmopolitan versus modernistic communication, and…” (Eric Paul Engel)

“That I would like to see…” (Participant #7)

“And…” (Participant #5)

“…because I’ve been ??? hoofin’ [unintelligible; 1:38:17]… the around for a while.” (Participant #7)

“That’s… that’s actually the largest part that I can’t bring to bear here but you just nailed it. And… and that I… that’s what the research says too.” (Eric Paul Engel)

“There’s something about that… There’s something about that too and there’s also something about monetization of the profession in relation to that.” (Participant #7)
“Yeah.” (Eric Paul Engel)

“So if you can’t have other common denominators, you’re gonna go to money versus these things that I’d call sort of the honor principles of ???. [unintelligible; 1:38:40]…” (Participant #7)

“The Judeo-Christian background of the system and that’s… that’s shattered.” (Eric Paul Engel)

“Yeah.” (Participant #7)

“Yep.” (Participant #5)

“Absolutely ???. [unintelligible; 1:38:45]…” (Participant #15)

“And that… that to me is… is, ya know… ???. [unintelligible; 1:38:49 – 1:38:50]… to me a lot of my principles a lot of my morals, the reason I don’t really see a significant difference between morals and ethics is because my morals are based upon a strong faith background. Ah… so therefore as a result, ya know, so many people don’t have that anymore, so therefore they need the rules because they don’t want to have an underlying…” (Participant #5)

“This is one of the major challenges facing the bar right now is diversity…” (Eric Paul Engel)

“I think they have a different underlying one, right. Based on how I’m embodied, I probably see the world a little bit different than you do and we lack a certain amount of identification with each other just because of our embodiment and that creates distrust I think, right. And so you’ve got to create a structure. Now I… I’m trying to make that very neutral… not good or bad…” (Participant #7)

“Well no… and… from your perspective there’s also a feeling of I’ve got to prove my self to people that are new into a profession, ya know, immigrants, ah… folks that received rights that they used to not have, so some of that’s kind of bled into this new generation and this new ???. [unintelligible; 1:39:48]…” (Participant #15)

“Well… and Paul was talking about, ya know, when he was a young man in the early 70s, a… well… a judge who he was on the case in front of called him down, ya know, to the… to the restaurant and gave him a little talk about, right. And… and he said… ya know, kind of was lamenting the loss of that and… and I lament the loss of that too, right. That kind of informal mentoring, that relationship where nobody questioned your ex parte communication, nobody suggested that you’re being unethical, but he got the benefit of an identity relationship that other people would not have in this age. And so you’ve got…
you look at that as an outsider and you say, no... Right. You've got to regulate that some way, but then you lose of all of that. Right. You lose all of that connection to someone in a position of power because that person's not gonna do that anymore, at least not be transparent about doing that." (Participant #7)

“So then…” (Participant #15)

“Right.” (Eric Paul Engel)

“…now you have to find like kind judges or like kind lawyers to be your mentor, but I... I think again you’re losing great opportunities when you don’t share across the ??? [unintelligible; 1:40:48 – 1:40:49; 1:40:51 – 1:40:52]…”

(Participant #15) [Note: Here I could not make out what Participant #15 was saying because Participant #7 started talking over him.]

“Well and then the adversary system, right, when you think about being an adversary, ya know, we did business on a handshake. Well because you were alike…” (Participant #7)

“Yep.” (Eric Paul Engel)

“…You were probably members of the same country club.” (Participant #7)

“No... No, not only that, but wait... here’s this old Chinese proverb, ‘Let’s don’t talk about our differences, let’s talk about what we have in common.’ What we have in common is we want to see the law being enforced or we want to see a wrong be righted, right. I mean, we want to both see it be righted. And if that is the crux of your relationship with your other lawyer, and it’s... you try to teach… counsel your clients, ‘Look, you’re hating this other person for this contract. Let’s talk about how you’re gonna resolve it. Let me counsel you, the other lawyer is counseling their client, and let’s all work it out together.” (Participant #15)

“I think there’s really strong biases. So, ya know, when I’m… When I’m clerking at the large… or I’m working at the large law firm and the partner, and this happened, the partner goes to the guy next door and invites him...” (Participant #7)

“…instead of you…” (Participant #15)

“…to go to the… the golf tournament, the big golf tournament in town, and doesn’t invite me and we’re the same… ya know, we both work with this guy and we’re both… ya know, he’s not… he’s probably not doing that with any awareness that I might perceive it that way…” (Participant #7)

“Right.” (Participant #5)
“...or that he’s been ??? [unintelligible; 1:41:52]...” (Participant #7) [Note: Here Participant #7 was still speaking, but Participant #15 began to speak over her and I could not make out the last of what she said.]

“And maybe he’s afraid it’d be sexual harassment...” (Participant #15)

“Exactly.” (Participant #5)

“??? [unintelligible; 1:41:55]... you don’t go...” (Participant #15)

“Right... so... but...” (Participant #7)

“That’s exactly...” (Participant #5)

“...but my point is...” (Participant #7)

(From 1:41:56 to 1:41:59 it became impossible to distinguish what was being said insofar as Participant #15, Participant #7, and Participant #5 were all speaking at the same time.)

“...bias and a little... and some mistrust... and mistrust, and so... what I’m saying is that sort of that longing for the way it used to be prior to the diversification of the profession also has some negative implications as well because it suggests sort of homogeneity, similarity, exclusion, in way that we don’t have today. But there is something about that that is lost...” (Participant #7)

“Right.” (Eric Paul Engel)

“...with respect to identification and relationships, and I don’t know how you sort of...” (Participant #7)

“And in...” (Eric Paul Engel)

“...work that out.” (Participant #7)

“... and what you just said at the end there, ‘I don’t know how you work that out.’ To me that’s what the Bar is struggling with in many ways with when it comes to professionalism, is how are we... how do we deal with this? And literally it’s taken decades to get to where we are in terms of how do we deal with this, and there isn’t an... an answer because in a sense what he was saying, you do lament the loss of but then if you look at it from a different perspective that’s not right...” (Eric Paul Engel)

“No. We ??? [unintelligible; 1:42:52 – 1:42:53]...” (Participant #7)
“And there... and there isn’t an answer, and that’s in... if... that’s very much what I see as being a challenge.” (Eric Paul Engel)

“One thing I have to say at least about the way we did this program, ya know, there are people here I didn’t know, most of ‘em I didn’t know. And now I’ve had a chance to build a little relationship with some of these folks, so I’ve got a better opportunity to have that kind of civility with these people...” (Participant #5)

“Right.” (Participant #7)

“...now that these are folks that I have something in common with...” (Participant #5)

“Right.” (Participant #7)

“...um... so... so that aspect of it I think is very positive.” (Participant #5)

“Then one of my goals was accomplished. And my hope is is in terms of moving forward that you’re interactions... if you see opportunities where we could do this again, this is the self-res... selfless promotion, but that really it is a spring board for people to understand there’s a different way of doing this. Um... and that’s part of what I bring coming from the outside in, and John Berry was very much a... a champion of what I’ve been doing in part because he said we need perspectives from outside to come in and help us...” (Eric Paul Engel)

“And then you get that response from the... from the CLE people.” (Participant #5)

“...a certain amount of irony in ??? [unintelligible; 1:43:55]...” (Participant #7)

“...the professionalism center...” (Participant #15)

“...the professionalism center...” (Participant #5)

“...the Center for Professionalism’s response...” (Participant #15)

“Yeah.” (Participant #5)

“...which is, what are we ??? [unintelligible; 1:43:58]... people to do this?” (Participant #15)

“Right... so... right...” (Participant #7)

“I mean...” (Participant #5)

“...the external perspective didn’t match...” (Participant #7)
“Yep.” (Eric Paul Engel)

“…with how they do it.” (Participant #7)

“This is where I go back to Orville Wright didn’t have a pilot’s license. When… When you go somewhere different…” (Eric Paul Engel)

“Part of what this dissertation does is that it identifies these points of irony and paradox. Alright. And it says, ya know, ‘Look at what’s really going on here. How can you change if you won’t change?’ Right. I mean…” (Participant #7)

“And I have to be very diplomatic, and this is where having a committee helps in terms of, ‘How do I take this now and feed this back?’ It is very much a consulting job and the good thing is is that I actually work with on my committee applied scholars. These are not people who sit in an ivory tower. They go out and do consulting. And I have been from day one an applied scholar. I don’t want to just study stuff. I want to do this. I want to be helping, whether it be at the level of pedagogy or the level of practice. To me, they’re… they’re like this… You can’t break them apart.” (Eric Paul Engel)

“So your report back to The Florida Bar is, ‘Yes, you do have a Professionalism Center to promote it, but nothin’s changing. Your programs are not working.’ I mean I… Sometimes you gotta admit failure and move on to somethin’ else.” (Participant #15)

“We need to…” (Eric Paul Engel)

“They have done wonderful things even ??? [unintelligible; 1:45:08]… started a historical video series in our St. Pete Bar several years ago when I was President. We brought in more professionals and historical people and did videos of them too, and added to it… No one watches ‘em, except for the people who…” (Participant #15)

“??? [unintelligible; 1:45:20]… see I have never heard of this, and I would think, OK…” (Participant #7)

“Right on The Florida Bar’s website… go on the Bar’s website.” (Participant #15)

“I’ve… Ya know, ya know I’ve… I’ve never heard of this…” (Participant #7)

“I believe a few of those were… were free CLE, right?” (Participant #5)

“Some of ‘em are.” (Participant #15)
“And I think to myself, ‘OK. So wouldn’t it be interesting if I could see those and where various ethics issues come up in my course what if I could pick, ya know, a… a snippet of that where someone’s telling a good story about something and how they handled it or something. Right, I could say this is such and such and they… whatever… and frame it. But I don’t even know that those exist.”  (Participant #7)

“See the reas… now, maybe the outreach from the Center for Professionalism, instead of trying to reach out to lawyers, is they should hit the public and professors and start going out to elementary schools. I know they tried that just teaching it and all, but maybe they didn’t take their resources there about mentorship and all and go out and touch the little kids, but that doesn’t sound right… I mean…”  (Participant #15)

“Part of the point is that… that…”  (Participant #5)

“Well where does civility start?”  (Participant #15)

“Right.”  (Eric Paul Engel)

“If kindergarten kids had civility, they’re gonna be civil adults, probably…”  (Participant #15)

“But if… if you ah… Ya know, this is what… when… when John Berry came here with ah… I can’t remember their… another researcher a few years ago to talk with us, and I said ya know… and… and talk about what law schools can do, I said, I think we are very open to doing all sorts of thing but I lose influence over law students in about the third semester because what happens they start going to clinics, internships, and jobs, and… and I… What do I know about ???  [unintelligible; 1:46:47]… I’m not out there in practice, they think. So they look at you and they look at you and they see what you’re doing and they… they listen to what you tell them. And they know what their experiences are and no matter what I say now, what’s more influential to them is what’s happening out there. So I think… sometimes I feel like the Bar gets a little over focused on the law schools because even if we are changing attitudes, they are getting affected and changed another way when they hit the practice, and so I think there’s gotta be a bottom up and a top down…”  (Participant #7)

“Yep.”  (Participant #5)

“…to try to get that change…”  (Participant #7)

“Absolutely.”  (Participant #5)

“…because I can’t…”  (Participant #7)
“And you know what that meets/means [unintelligible; 1:47:24]...?” (Participant #15)

“...and...” (Participant #7)

“. . . that meets at/means it’s [unintelligible; 1:47:25]... CLE. I mean I... I know it sounds heretical to both sides cause lawyers don’t [unintelligible; 1:47:30]... CLE, law schools thinks CLE is something else... I’ve always said CLE is [unintelligible; 1:47:36]... middle grounds where you should marry up the academic theories and the practitioners' theories and maybe somehow give students credits to go to law school to come to CLEs cause that’s learning. If nothing else it’s learning how to learn, learning how to act and interact, not only will John Berry provide [unintelligible; 1:47:53 – 1:47:]...” (Participant #15) [Note: Unfortunately here at the end Participant #15 trailed off and spoke more quietly, so I was unable to discern what he was saying.]

(From 1:47:55 to 1:47:58 Participant #15 and Participant #7 can be heard talking, but I was unable to tell what was being said.)

“Really?!” (Eric Paul Engel)

“. . . I mean I’m not being critical, I’m just saying, ya know, that’s...”

“He was a...” (Participant #15)


“But he was a non-academic who’s a professionalism expert [unintelligible; 1:48:08 – 1:48:09]... try to teach at a law... run a law school, but again, because... oh, for a lot of reasons, accreditations were part of it too, ya know, he didn’t have the strong academic background that [unintelligible; 1:48:19]... schools [unintelligible; 1:48:20 – 1:48:21]...” (Participant #15) [Note: Again, here Participant #15 trailed off and spoke more quietly, so I was unable to discern what he was saying.]

“There’s a part of me that’s considering going back to law school after my Ph.D. just for that because you don’t get the same validation. People don’t see you the same. That’s something I’ve run into already.” (Eric Paul Engel)

“?? [unintelligible; 1:48:30]... right, so until I got my Ph.D. that community said whatever.” (Participant #7)

“Exactly. Exactly.” (Eric Paul Engel)

“Maybe they still do...” (Participant #7)
“One of my law partners, we did HIPAA work years ago in New York, and she was an RN, an MBA, and a JD. And so when she’d be sitting in the room all the lawyers would ignore her until they found out she was a lawyer, and then all the medical people thought, ahh you don’t know anything. ‘Well I am a nurse.’ ‘Oh, good… And, ‘Oh you know about business too.’ So…” (Participant #15)

“Yeah.” (Eric Paul Engel)

“…Unfortunately that’s… that’s the way [unintelligible; 1:48:58]… are perceived.” (Participant #15)

“Well we’ve hit five o’clock. Thank you guys so much for sticking around the extra hour. This… this was really, really valuable for me. Much appreciated.” (Eric Paul Engel)

“Someone said, ‘Should we write anything down?’ I said, ‘I just finished a dissertation. If he wants somethin’ written on a piece of paper, I will write this on a piece of paper.” (Participant #7)

“And you have a lot of pieces of paper there.” (Participant #15)

“It’s terrible when your data won’t cooperate with you.” (Participant #7)

“It’s funny cause…[END OF RECORDING]” (Eric Paul Engel)
Appendix H: World Café CLE Sticky Notes and Table Notes

These are the collected and compiled Sticky Notes and Table Notes that were generated during the World Café CLE workshop on Friday, 7 June 2013.

Sticky Notes (Just 19 sticky notes collected in total.)
- Professionalism. A long range perspective
- Ethics. Truth about right conduct
- The decline in professionalism has impacted our relationships with our clients. (Participant #13)
- Ethics. Basic standard of how to act
- Client control – clients expect attnys to be jerks ??
- Professionalism. “Just be nice”
- Perception of your appearance
- How do you bring unprofessionalism to the attention of the Bar?
- Bar actually taking quick action on obvious misconduct
- Do bad lawyers burn out?
- How to change public’s perception of attorneys?
- Idea: Use a senior judge to act as a professionalism judge – no politics
- Ethics – more than just the Rules
- Lawyers are taught how to get around Rules
- Business ethics are different than profession ethics
- Third branch of government
- Judge’s perspective
- Ethics Rules are too narrow – look for the spirit of the Rule
- 1. Do what is right. 2. Don’t want to get caught. 3. Don’t care
- Do lawyers work for the best interest of the client, or to make a living?
- A Committee is the only form of life with three or more pairs of legs, and no brain. Robert A. Heinlein
- Ethics & professionalism is a matter of identity, not enforcement.
- But, people do not what you expect but what you inspect!
- How do changing logics for practicing law impact the role of ethics & professionalism?

The following Sticky Notes were attached to the butcher-block paper at Seat #15
- Business ethics vs. Service ethics
- Profession? or Business?
- Law has become a game
- 3rd branch of government
- Rules + Overarching Right + Wrong
- Professionalism. Makes society work better
- As is we know how to find way around rules
- Have to want more than “success”
- Ethics more than the rule

Table Notes

- **Seat #1**
  - Following ethics ≠ Rendering justice?
  - Is there a difference between ethics & professionalism? What about new Florida Supreme Court order?
  - Oath: “offensive personality”
  - Civility? “as required by the justice of the cause.”
  - Ethics = legal ethics
  - Professionalism = honesty in communication (no false promises)
  - Professionalism: How much does it turn on how well you know the actors in the system? (sense of community?)
  - What does attire have to do with it?
  - “calling”
  - “uniform”
  - “seriousness”
  - “solemn”
  - “ritual”
  - “removing distractor”
  - “taking on a role”

- **Seat #2**
  - FL Bar Rules of Conduct
  - “Best interest of my client” = bend ethics
  - Circuit has professionalism committee
  - Ethics ↔
  - Professionalism. Attire.
  - In the legal profession is there a difference between professionalism and ethics?

- **Seat #3**
  - Professionalism. A long range perspective.
  - Reputation
  - Under promise over deliver
  - “just be me”
  - Professionalism – contact → return emails/calls
  - Personality in general

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6 Seat numbers were assigned arbitrarily after the fact when I was transcribing the feedback. The only “logic” behind the number will be that Seat #1 will be opposite Seat #2, Seat #3 opposite Seat #4, etc.
Clients effect professionalism? Client control

My Notes (written on the butcher-block paper at Seat #3)
- Baited by opposing council.
- Sucked into the email vortex. (Participant #13)
- Hurt ego.
- Send a copy and report it/him to the Bar. → Reporting unprofessional behavior/conduct to the Bar. (Individual instances vs. emergent patterns)
- It’s so lucrative that the bad conduct is…accepted (?). (Participant #14) [Sub Notes: Here I was trying to quote Tim word-for-word. Unfortunately I couldn’t remember his exact wording (which explains the question mark).]
- End run around solicitation rules (use of social media). (Participant #13)
- What is good conduct? (Participant #14)
- Clients’ (expectations). “They want a bulldog.” (Participant #16)

Seat #4
- [No notes/data.]

Seat #5
- Young lawyers v “older” lawyers
- Ethics. “taught” wrong??
- Stronger enforcement by judges – stop “repeat offenders”
- Floor ethics. Ceiling professionalism.
- Don’t Be a Jerk.

Seat #6
- [No notes/data.]

Seat #7
- First course. Q 1.
- Morals – culturally ??? [illegible]
- Ethics – applies to all.
- Can ethics conflict w/morals?
- ??? [illegible]: a set of standards that all agree to adhere to
- Ethics → golden rule
- Can have competing ideals. Represent your client yet have higher commitment to the truth.
- Lay persons generally do not have appreciation for the profession’s code of ethics – rules of professional conduct.
- We operate from our own frame of reference and w/in the communities in which we function.
- Bad Apples. How can we get rid of them? Too many ways for them to succeed – Advertising.
- **Seat #8**
  - [No notes/data.]

- **Seat #9**
  - Advertising?
  - Change public’s “perception?”

- **Seat #9.5** (Written to the right of Seat #9 and to the left of Seat #10)
  - 1. Ethics
  - What not to do. vs. Golden Rule
  - Context: Mediation. False affidavits
  - Ethics = Truth about right conduct.
  - Attacking accuser’s credibility/reputation as litigation tactic.

- **Seat #10**
  - Diversity of definitions.
  - Where from?
  - Consequences?
  - Root of issue: Advertising?
  - Ethics – What is it? What are they?
  - Operating principle – nothing adverse to a client
  - Not violating duties
  - Engaging in certain conduct
  - Instances where higher principle trumps basic
  - Confidentiality in mediation. Issues that can be advantageous in litigation
  - Same attorneys doing questionable things all the time

- **Seat #11**
  - Win v. Resolve disputes
  - Ethics & professionalism is a question of identity. [Sub Note: The purple sticky notes corresponded with these table notes. In fact, the purple sticky notes were stuck to the table at Seat #11.]
  - Professional logic
  - Entrepreneurial logic
  - Bureaucratic logic
  - Commodification v. Bespoke Lawyering
  - Market Economy v. Market Society
  - Action Step. Bar admission interviews as a means to transmit information about professionalism & ethics.
  - *My Notes* (written on the butcher-block paper at Seat #11)
    - Changes w/regard to advertising. Changed in the mid 1970s.
• “Business” Ethics vs. “Service” Ethics
• (Self Interest) Profit Motive
  • Participant #2. Why’d you go to law school? A question she asks her first year law school students. “I want to make a lot of money.”
    o How prospective law students envision their lives (how it’s supposed to be). (Participant #5)
  • Success = Wealth
  • “There’s too much money.” (Participant #11)
    o I’ll make it, then I’ll justify it. (Participant #11)
• 3rd Branch of Government
  • “The first thing you should be taught is that it’s a government job.” (Participant #11)
• Gregory Peck as Atticus Finch in “To Kill a Mockingbird.” The “golden” image of lawyers.

- Seat #12
  o [No notes/data.]
- Seat #13
  o Peer Review
  o Role of clothing in professionalism
  o PIP. Professional Implementation Program (anonymous)
  o Ethics: procedural ethics, action ethics
  o Standards of Professionalism [Sub Notes: The first part was written with a line under it, under which is written…] Ethics Rules
  o My Notes (Written on butcher-block paper at Seat #13)
    • Turning “off” your personality at home (Being a know it all) (Participant #6)
    • Sociopathic narcissistic personality types. (Personality types) attracted to the practice. (Participant #10 and Participant #6)
    • Social Relativism (Participant #10)
    • Issue. The utilization of existing resources. (Participant #10)
    • Public reprimand. They should show them to law school students. (Shame as a deterrent)
    • Piercing the egos (Participant #10 and Participant #6)
    • Changing roles in society (Lawyers & Ministers)
      • Standards
      • Historically upstanding members of society vs. Today (lawyers in media → 24 hr TV court commentators) Lost respect
      • Not revered today
        o “Dignified”
        o “Composed”
        o “Measured”
“He was an Atticus Finch type” (Participant #10)

- **Seat #14**
  - Need to change public perception!
  - Have to remember that we are partners in the process—your “adversary” is really a ??? [illegible] in the process.
  - Local practice makes difference!
  - Sense of obligation
  - Loss of community
  - Humility & humanity!
  - Must view our adversaries as colleagues
  - Maturity of thought is missing
  - Choices made reflect on you individually & also the profession
  - Not enough significant consequences for bad behavior to make a difference
  - Peer influence
  - Morality – Your personal compass for right & wrong
  - Law – Legislation/Case law that regulates lawyer conduct
  - Civility/Professionalism – “Above the floor” standards of conduct
  - In other contexts, ethics equals morality.
  - Does ethics means [sic] right & wrong or not?
  - Maybe these are overlapping circles? [Sub Notes: Here the author of the notes had written a capital M and a capital P, then circled each with a slight overlap of the two circles. I’m guessing the author was referring to Morality and Professionalism.]
  - *My Notes* (written on butcher-block paper at Seat #14)
    - Legally stealing or illegally stealing? (Participant #15)
    - Morals vs. Ethics
    - The role of hypotheticals in teaching the law (ethics)
    - “Community” ethics vs. “Individual” ethics (Participant #7)
    - “No matter where you shine the light… there’s no way to argue ethics is one thing!” (Participant #7)
    - The role of the constitution
    - “Model Rules of Professional Conduct 2013 Edition” (Participant #7 brought it with her today)

- **Seat #15**
  - “Rule” is defined too narrowly
  - Heroic. What’s the next right thing?
  - Ethics & professionalism bleed into each other.
  - Serious!
  - Trust!
  - 1st thing people think about you?

- **Seat #15.5** (Written to the right of Seat #15 and to the left of Seat #15)
  - We are the third branch of government
  - Cult of personality
- **Seat #16**
  - The meaning of my life
  - Narrative
  - Win \rightarrow Lose
  - *My Notes* (Written on butcher-block paper at Seat #16)
    - Clients’ perspective: Accommodation as a sign of weakness (Participant #12)
    - Burke, Terministic Screens. Identity. (Participant #7)
    - Lawyers in History (Role Models). Use in pedagogy.
    - “We have become our worst enemies.” (Participant #11)
    - Re-Framing the argument (facts) (A lawyer’s job) (Participant #11)
    - The social contract (Participant #11)
    - Self regulation (fears). You’ll now be regulated as a business.
    - “Moneys’ corrupted the system.” (Participant #11)
    - “I love the loss. But we’ve lost the narrative.” (Participant #11)
    - Called for a “re-framing” (What’s a heroic life?) vs. Defining ethics/professionalism
      - Under cover boss TV show (Participant #7)
      - When’s the last time you heard the word “heroic” used to describe the law? (referenced in his book) (Participant #11)
      - “I slept like a baby.” (Told to opposing council) (Participant #11) [Sub Note: Here Participant #11 was relating a story about how he went home one night during a trial didn’t sleep well. The next day, however, when the opposing council asked, “How’d you sleep?” he responded, “I slept like a baby.” The unspoken assumption was that he slept soundly, when in fact he had tossed and turned all night like many a baby do.]
      - Book: “In search of Atticus Finch” (Participant #11)
      - Book: “April 1865” (Participant #11)
    - Judge-Lawyer Mentoring
      - Informal relationships
      - Judge pulled Participant #11 aside (went to a coffee shop)
      - Good Intentions (Participant #11)
      - The judge told Participant #11 a “cowboy story”
      - Structural discrimination impacting access to advice (Participant #7)
• In light of diversity we lost of this [Judge-Lawyering Mentoring]. (Participant #7)
  o Old Boy’s Club
  ▪ Loss of “community.” (The rise of the impersonal community) (Participant #7)
  ▪ “Loss of religion.” “Rise of the regulatory state.” (The rise of religious diversity among a diverse legal community.) (Participant #7)
Appendix I: USF IRB Approval Letter

Attached is a copy of the University of South Florida Institutional Review Board’s letter approving this study dated March 19, 2013.
March 19, 2013

Eric Engel
Communication
College of Arts and Sciences
Tampa, FL 33612

RE: Expedited Approval for Initial Review
IRB#: Pro00011505
Title: Ethics and Professionalism in the Practices of Law

Study Approval Period: 3/18/2013 to 3/18/2014

Dear Mr. Engel:

On 3/18/2013, the Institutional Review Board (IRB) reviewed and APPROVED the above application and all documents outlined below.

Approved Item(s):
Protocol Document(s):
Ethics and Professionalism in the Practices of Law

Consent/Assent Document(s)*:
Verbal Adult Consent form granted a Waiver of Informed Consent Documentation

*Please use only the official IRB stamped informed consent/assent document(s) found under the "Attachments" tab. Please note, these consent/assent document(s) are only valid during the approval period indicated at the top of the form(s). (Waivers are not stamped).

It was the determination of the IRB that your study qualified for expedited review which includes activities that (1) present no more than minimal risk to human subjects, and (2) involve only procedures listed in one or more of the categories outlined below. The IRB may review research through the expedited review procedure authorized by 45CFR46.110 and 21 CFR 56.110. The research proposed in this study is categorized under the following expedited review category:
(6) Collection of data from voice, video, digital, or image recordings made for research purposes.

(7) Research on individual or group characteristics or behavior (including, but not limited to, research on perception, cognition, motivation, identity, language, communication, cultural beliefs or practices, and social behavior) or research employing survey, interview, oral history, focus group, program evaluation, human factors evaluation, or quality assurance methodologies.

Your study qualifies for a waiver of the requirements for the documentation of informed consent as outlined in the federal regulations at 45CFR46.117(c) which states that an IRB may waive the requirement for the investigator to obtain a signed consent form for some or all subjects.

As the principal investigator of this study, it is your responsibility to conduct this study in accordance with IRB policies and procedures and as approved by the IRB. Any changes to the approved research must be submitted to the IRB for review and approval by an amendment.

We appreciate your dedication to the ethical conduct of human subject research at the University of South Florida and your continued commitment to human research protections. If you have any questions regarding this matter, please call 813-974-5638.

Sincerely,

John A. Schinka, Ph.D., Chairperson
USF Institutional Review Board
About the Author

Eric Paul Engel earned a B.A. (Bachelor of Arts) in Rhetoric and Communication Studies from the University of Virginia, an M.A. (Master of Arts) in Professional Communication from Purdue University (Fort Wayne), and a Ph.D. (Doctor of Philosophy) in Communication from the University of South Florida. In addition to serving as a faculty member at the University of New Hampshire in Durham, New Hampshire, at the time of this dissertation’s completion (Fall 2013), he has also served as a faculty member at the University of South Florida, Ringling College of Art and Design, Purdue University, and St. Petersburg College. He has authored one peer-reviewed book chapter, co-authored two peer-reviewed book chapters, and presented 17 papers and panels at national conferences. He has provided organizational learning and communication development products and services to private, government, and non-profit organizations, including the Pentagon’s Information Technology Agency, the National Terrorism Preparedness Institute, and Physicians Committee for Responsible Medicine. He is also a published poet, an avid painter, and a foodie.