Lawyer, Be Thyself: An Empirical Investigation of the Relationship Between the Ethic of Care, the Feeling Decisionmaking Preference, and Lawyer Wellbeing

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Attorney distress is an empirically-documented phenomenon. Depression and alcoholism, for example, appear to occur among attorneys at about twice the rate found in the general population. Existing empirical research suggests that certain personality attributes and decisionmaking preferences predominate among attorneys. Previous commentary has argued for the value of an ethic of care and a Feeling decisionmaking preference in the law, yet these traits are often underrepresented among lawyers. This study investigated whether these arguably atypical traits were empirically linked to attorney distress or work dissatisfaction. This study found no relationship between these two traits and attorney distress and dissatisfaction, but there was a strong correlation between psychological distress and work dissatisfaction among attorneys. Implications of these findings for the profession are explored.
“Resolve to be thyself; and know that he who finds himself, loses his misery”—Matthew Arnold.

I. INTRODUCTION

Mental health problems appear to abound in the legal profession. Empirical studies suggest that approximately one in five lawyers is suffering from clinically significant levels of alcoholism, substance abuse, depression, anxiety, or some other form of psychopathology.

Benjamin and his colleagues report that about 18% of attorneys are significantly depressed, while only about 3 to 9% of adults in Western civilized countries exhibit this level of depression. Benjamin 1990, supra note 1. See also Richard Gater, Michele Tansella, Ailsa Korten, et al., Sex Differences in the Prevalence and Detection of Depression and Anxiety Disorders in General Health Care Settings, 55 ARCHIVES GEN. PSYCHIATRY 405 (1998), abstracted in Gender, Culture, and Psychiatric Symptoms, 15 HARV. MENTAL HEALTH LETTER 7 (1998) (average rate of depression was 7% in men and 12.5% in women in 14 countries studied).

See generally Matthew M. Dammeyer & Narina Nunez, Anxiety and Depression Among Law Students: Current Knowledge and Future Directions, 23 LAW & HUMAN BEHAVIOR 55, 63 (1999).

Beck and her colleagues found in their study that about 9 to 30% of attorneys suffer from clinically significant levels of various problems, such as obsessive-compulsiveness (19%), anxiety (30%), paranoia (12.5%), depression (23%), hostility (8.7%), and social isolation and alienation (26.6%). See Beck et al., supra note 1, at 18 (Table 1). On measures of global psychological distress, about 18.5% percent of lawyers score at a clinically significant level. Id. (meaning that 18.5% score more than two standard deviations above the mean and above the "clinical cutoff"). They note that one would statistically expect
These studies conclude that alcoholism and depression exist among lawyers at a rate that is often twice the incidence of these troubles in the general adult population – almost 20% of lawyers report that they suffer from each of these conditions. Clinically significant levels of other forms of psychopathology including obsessive-compulsiveness, anxiety, insecurity, social alienation, isolation, and general psychiatric distress are found in about 19-30% of lawyers. Similarly and perhaps relatedly, about 24% of lawyers report work dissatisfaction.

Not only are these levels of distress, alcoholism, substance abuse, and depression uncomfortable for lawyers and expensive for their health insurers, they also affect clients and malpractice carriers. Some authorities believe that psychological dysfunction and distress among attorneys are related to or responsible for the vast majority of attorney malpractice or disciplinary actions. Despite the high incidence of only 2.27% of the general population to score this far above the mean. Id. at 4.; James R. P. Ogloff et al., More Than “Learning To Think Like A Lawyer:” The Empirical Research on Legal Education, 34 CREIGHTON L. REV. 73, 125-27 (2000).

5 Beck, et al. supra note 1; Benjamin 1990, supra note 1, at 241.
7 Beck, et al., supra note 1, at 18. This data suggests that about one in five attorneys is therefore “walking wounded.”
8 In stark comparison, similar levels of these difficulties are expected to be present in only about 2.27% of people in the general population. Beck, et al., supra note 1, at 4.
10 Carol Langford, Depression, Substance Abuse, and Intellectual Property Lawyers, 53 U. KANSAS L. REV. 875, 902 (2005), asserting that “An ABA survey in New York and California determined that 50 to 70 percent of all disciplinary cases involved alcoholism” and that substance abuse or chemical dependency was involved in 50 to 75 percent of “major attorney disciplinary cases,” citing Rick B. Allan, Alcoholism, Drug Abuse and Lawyers: Are We Ready to Address the Denial?, 31 CREIGHTON L. REV. 265, 268 (1997) and citing Report of the AALS Special Committee on Problems of Substance Abuse in the Law Schools, 44 J. LEGAL. ED. 35, 36-39 (1994).
psychopathology among lawyers and its devastating consequences upon attorneys, clients, and society in general, as well as the fact that studies reporting these disturbing rates of lawyer distress have been published, available, and widely discussed since at least 1990, very little is known about the causes and correlates of these problems.

At the same time, fifty years’ worth of empirical research on the “lawyer personality” refers to traits, attributes, attitudes, preferences, and characteristics that appear to predominate among lawyers and differentiate them from nonlawyers. Because there are a handful of traits that appear to be typical of lawyers, as a rough generalization, a few researchers have investigated whether having traits “atypical” to the legal profession correlates with being dissatisfied with one’s work as an attorney.

and stress-related mental illness to disciplinary actions and malpractice suits) [hereinafter “KEY”], and Warren County Bar Association v. Bunce, 81 Ohio St. 3d 112 (1998) (lawyer’s neglect of client matter found to be related to major depression).


The author attempted to summarize this research in Daicoff 2004, supra note 1, and in Daicoff 1997, supra note 1.

No studies, however, appear to have investigated whether any traits or attributes correlate with attorney distress. The most recent empirical research on distress in the legal profession investigates the relationship of distress among law students, not practicing lawyers, to the value system espoused by those students. Therefore, prior to the instant study, perhaps no reported studies had investigated the relationship of lawyers' internal traits, attributes, preferences, and decisionmaking styles to the striking phenomenon of attorney psychological distress.

Instead, most of the commentary on lawyer distress has focused almost exclusively on the external, environmental pressures of modern law practice. This leaves open the question of whether a "diathesis stress" model of causation is more accurate, meaning that some combination of external, environmental stress and inner, internal factors is responsible for so many "walking wounded" in the legal profession.

Much has been written about the value of two decisionmaking preferences or personality traits -- the "Feeling" dimension as measured by the Myers-Briggs Type Indicator and an "ethic of care" – in the legal profession. Commentators have called for lawyers to practice with an ethic of care and for law schools to attend to concerns relevant to Feeling-oriented approaches, rather than concentrating solely on Thinking-oriented analyses, arguing that a focus on the concerns and sensitivities valued by these two humanistically-oriented preferences would improve the legal profession. Yet these traits appear to be less

15 Sheldon & Krieger, supra note 12 (investigating the relationship of law student wellbeing and distress to intrinsic versus extrinsic values or motivations).
17 Daicoff 1997, supra note 1, at 1416-17, (citing and expanding on AMIRAM ELWORK, STRESS MANAGEMENT FOR LAWYERS 3-5 (1995) for the concept of a dual causation model of lawyer stress, based on external pressures of law practice as well as internal personality factors unique to lawyers.)
18 Richard 1994, supra note 14, at 250 (empirically linking the Feeling preference to attorney job dissatisfaction; this trait and his study are explored in detail in Part III, infra).
19 Weissman, supra note 14, at 81 (empirically linking the "care" decisionmaking preference to attorney job dissatisfaction among female attorneys; this trait and her study are explored in detail are Part III, infra).
prevalent in the profession and they have been linked to attorney work dissatisfaction.\textsuperscript{21} If indeed they are also linked to attorney distress, it is important to discover this, before advocating their widespread acceptance in the law.\textsuperscript{22} This study was conceived, therefore, to explore the relationship of these two preferences to work dissatisfaction and psychological distress among lawyers, in an attempt to determine if these two traits in the legal profession have any relationship to the disturbing phenomenon of attorney distress.

Part I of this article documents the existence of lawyer distress and dissatisfaction. Part II explores the existing research establishing factors correlated with attorney distress and dissatisfaction, such as general demographic features, attitudes, and personality traits, while Part III discusses the Feeling decisionmaking preference and the ethic of care and then explores their importance in the legal profession. Parts IV – VII report and comment on the results of the instant study and their implications for the legal profession.

I. LAWYER DISTRESS AND DISSATISFACTION\textsuperscript{23}

A. DEPRESSION

About 19% of attorneys reports clinically significant levels of depression.\textsuperscript{24} About three to 9% of adults in Western civilized countries...
typically reports depression of this severity. Thus the incidence of depression among attorneys is roughly twice what one would find in the general adult population. This is not simply the blues or transient sadness, but is a level of depression warranting psychological or psychiatric intervention. It is important to note, also, that depression can sometimes masquerade as irritability, hostility, or anger, and can be masked by self-medicated substance abuse, including alcohol abuse. This may explain why these problems are not readily observable among lawyers.

At least four studies report on lawyer depression. A methodologically thorough study in 1996 found that 23.4% of attorneys in Washington state reported depression levels more than two standard deviations above the mean. In 1986, Benjamin and his colleagues reported that 20% of young lawyers in Arizona "developed depression levels that exceeded two standard deviations above the normal population mean." Benjamin, Darling, and Sales reported in 1990 that 19% of Washington and Arizona attorneys were clinically depressed. Of this 19%, most were thinking about suicide. These findings are consistent with a poll of North Carolina attorneys in 1991 which asserted that 11% "admitted they consider taking their lives once a month." A common reaction to this research is that all professionals must suffer from depression, stress, and other forms of distress; that stress "comes with the territory" of having the responsibilities of an attorney, physician, accountant, pharmacist, politician, etc. In fact, one 1983 study did find that medical students and graduate students committed suicide more frequently than did age-matched law students. However, one extensive study by Johns Hopkins in 1990 tends to debunk the "professional/depression" link. This study found that, among 100

25 Benjamin 1986, supra note 1, at 247.
26 Benjamin 1986, supra note 1, at 236.
28 Beck, et al., supra note 1, at 18 (using the BSI); see text accompanying notes 71-80, infra, for a fuller discussion of this study, its measures, and its findings.
29 Benjamin 1990, supra note 1, at 240.
30 Of these individuals, most were thinking about suicide. Id. at 240-41.
31 Id.
33 M.J. Hamilton et al., Thirty-Five Law Student Suicides, 11 J. PSYCHIATRY & L. 335, 342-43 (1983) (comparing suicide rates of law students, medical students, and other graduate students).
34 Eaton, et al., supra note 6.
occupations, only three emerged as the "top three" professions in depression. These three were: typists, attorneys, and "other teachers and counselors," meaning pre-kindergarten and special education teachers, education and vocational counselors. After adjusting the data for demographics, race, gender, and other variables to eliminate the possibility that certain occupations simply attract depressed individuals, lawyers still scored among the top three professions in depression. This study asserted that the incidence of depression among lawyers was up to four times that found in other professionals. It also reported that ten percent of the lawyers it studied met standard psychiatric criteria for major depressive disorder (the most severe form of clinical depression), whereas 3 to 5% of the general population typically meets these criteria.

The researchers went on to confirm that lawyers frequently feel out of control of their work and explored whether a perception of "lack of control" explained the depression rate among lawyers and confirmed that lawyers frequently feel out of control of their work. However, they also found that physicians frequently felt a lack of control of their work, and yet they had an almost zero depression rate, in this study. In addition, one of the other top three depressed professions, "other teachers," felt in control of their work. Thus, they concluded that "control" over one's work did not explain the results regarding lawyers and depression.

The high levels of depression among lawyers do not appear to exist prior to law school. A 1986 study specifically investigated the depression rates among pre-law students two weeks before beginning law school, after the first six months, after the third year, and two years

35 Id. at 1085-86.
36 This was a "catch-all" category for pre-kindergarten and special education teachers, education and vocational counselors. Eaton, supra note 6, at 1081.
37 The other two professions were secretaries, and "other teachers," not physicians or other professional individuals.
40 Id.
41 Eaton, supra note 6, at 1081.
42 Id. at 1086.
43 Id. at 1081, 1086.
44 Id. at 1086.
45 Id.
post-graduation. Depression rates among the pre-law students were nearly normal (10%), they rocketed to an amazing 27% after the first six months of law school, rose to 34% in the third year, and never returned to pre-law school levels, post-graduation. Two years after graduation, 17.9% of the graduates and 19% of all lawyers, regardless of length of practice, reported clinically significant depression. This study, conducted by psychologists, utilized clinically reliable measures and methods to assess depression.

One might conclude, from this study, that law school "breaks" some people in certain ways and they never recover. Certainly, law school has a number of empirically documented effects, but only one has been linked to the development of psychological distress among law students. This effect will be explored in Part VII, infra.

B. ALCOHOLISM

Alcoholism as measured by standard clinical instruments is consistently present in about 18% of United States attorneys, based on studies in various states. In contrast, about 10 to 13% of the adult

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46 Benjamin 1986, supra note 1, at 237-46 (summary on 46).
47 Id. at 236.
48 Id.
49 Id at 228-33. In contrast to the Dolan study, supra note 32, which utilized a simple poll about frequency suicidal thoughts, this study assessed depression via a well-known, well-used, multiple item self-report instrument designed to measure and identify depression.
50 See generally DAICOFF 2004, supra note 1, and Daicoff 1997, supra note 1 (both summarizing studies reporting the effects of law school on individuals, such as a decreased ethic of care, increased rights orientation, increased extrinsic motivation, decreased intrinsic motivation, increased cynicism and protectiveness of the profession, increased interest in private practice, decreased interest in public interest work, an increase in depression and anxiety, and a decrease in wellbeing, among others).
51 Krieger & Sheldon, supra note 12 at 263-64, 283 (linking law student distress to a shift in values from intrinsic satisfactions to an extrinsic reward system).
52 Benjamin 1990, supra note 1, at 241 ("This percentage is almost twice the approximate 10 percent alcohol abuse and/or dependency prevalence rates estimated for adults in the United States.") citing National Clearinghouse for Alcohol and Drug Information, The Fact Is . . .1 (Oct. 1988); Id. at 240 (asserting "...alcoholism among the male attorneys is likely to be occurring at the same rate in the two states," referring to Washington and Arizona. Informal estimates of alcoholism among attorneys range from three to thirty times the incidence in the general population. Michael A. Bloom & Carol Lynn Wallinger, Lawyers and Alcoholism: Is it Time For a New Approach?, 61 TEMP. L. REV. 1409 (1988) citing Maher, Addicted Professionals: A Growing Problem, PA. L. J. REP., Mar. 7, 1988 at S1. Some suggest the incidence of chemical
population in the United States is alcoholic. In 1987, this translated to an estimated 50,000 to 95,000 alcoholic lawyers and judges in the United States.

There are at least four published studies of alcoholism among lawyers. An ABA study in 1990 found that 13% of attorneys reported that they "drink six or more alcoholic beverages a day." Beck and her colleagues in 1996 found that 13% percent of newly practicing male attorneys and 10% of newly practicing female attorneys scored above a clinical "cutoff," suggesting current alcohol-related problems. They also found that more than 20% of male attorneys in Washington state scored "above the cutoff for current alcohol-related problems." Finally, she reported that 70% of Washington state lawyers were likely to develop alcohol problems sometime during their life, compared to an estimated base rate of 13.7% for the general population. A 1990 study stated that alcoholism rates among Arizona lawyers and Washington state lawyers were about the same. A survey of Wisconsin lawyers in 1989 asserted that 32.5% of Wisconsin lawyers reported regularly using alcohol regularly as a stress-reducing strategy; 46.5% reported using it sometimes for this reason, thus it appears to be a coping strategy used to manage stress.

Alcoholism is often called a progressive disease, meaning it worsens as time goes on. For example, in 1990, 25% of attorneys who had been in practice 20 years or more were problem drinkers, compared to 18% of dependency in legal professionals may be 50 percent higher than for the general population. Andrew V. Hansen, Alcoholism in the Lawyer's Context, 7 LEGAL REF. SERV. Q. 231, 236 (1987).

53 Bloom & Wallinger, supra note 52, at 1413. See also Benjamin 1990, supra note 1, at 241.


55 Hansen, supra note 52, at 236

56 Dowell, supra note 54, at 170.


58 Beck et al., supra note 1, at 45.

59 Id. at 29, 45.

60 Id at 29, 51.

61 Benjamin 1990, supra note 1, at 242, but also see Beck et al., supra note 1, at 45-46.

62 Dennis W. Kozich, Stress is Taking its Toll on Wisconsin Attorneys, Wis. LAW., Apr., 1989, at 12.
attorneys who had practiced 2 to 20 years. Unfortunately, problem drinking may appear as early as law school. Fifteen to 24% of law students in 1990 reported concern about their own drinking. In addition, this concern steadily increased from pre-law (8%) to alumni (26%). In 1994, 81.7% of law students had consumed alcohol in the last month, 8.2% admitted to using marijuana, 1.3% admitted to cocaine use, and 8.8% admitted to using "some illicit drug." Use within the last month is sometimes considered to be a reliable indicator of regular use.

Attorneys' usage of other drugs has not been well-studied. While one commentator in 1995 estimated that "the incidence of chemical dependency in legal professionals might be as much as 50 percent higher than for the general population," in 1990 fewer attorneys reported cocaine abuse (1%) than did American adults generally (3%). However, 26% of attorney admitted having used cocaine in their lifetime, compared to 12% of the general population.

C. General Psychological Distress

After the depression and alcoholism studies were published, Beck and her colleagues undertook an extensive study of general psychiatric distress among lawyers. Using a well-respected clinical test, Derogatis' Brief Symptom Inventory ("BSI"), which measures distress on two general scales and nine subscales, Beck found that a large percentage of male attorneys (often as high as 20% or more) scored more than two standard deviations above the mean on almost all of the scales of the BSI. It is important to note that this instrument measures distress by self-report, not by clinical observation, so it is possible that this method of data collection overreported the attorneys' symptoms of distress.

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63 Benjamin 1990, supra note 1, at 241.
64 Id. at 240.
65 Id. at 241.
67 In some cases, it may be even more reliable than self-reports about regular use, as individuals may seek to minimize (or deny) regular use, but reporting usage within the last month may be less threatening.
68 Dolan, supra note 28.
69 Benjamin 1990, supra note 1, at 233, 241.
70 Id.
71 Beck, et al., supra note 1.
72 Id. at 23.
73 This cautionary note was developed from a few personal conversations the author had with researcher and professor Connie J. A. Beck, who was the lead
However, attorneys are not generally the type of population one would expect to exaggerate or overreport psychic distress, as lawyers are usually more comfortable being seen as dominant and socially ascendant, rather than vulnerable and needy.74

The study by Beck and her colleagues also appears to be the only distress study that adjusted its data for a phenomenon that Beck asserts is generally known: that men tend to underreport stress and women tend to overreport it.75 After Beck adjusted her data to take this phenomenon into account, she actually found that more male attorneys than female attorneys were distressed, on the general measure of global distress.76 This suggests that other, casual survey-type research on attorney stress reporting greater stress among female attorneys should be viewed with caution, if it does not adjust for this gender effect.

The results of Beck's study are as follows (Table 1, below, reports the percentage of lawyers scoring more than two standard deviations above the mean on the indicated measures):

<table>
<thead>
<tr>
<th>Symptom of Distress</th>
<th>Female Lawyers</th>
<th>Male Lawyers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interpersonal Sensitivity*</td>
<td>26.7%</td>
<td>30.2%</td>
</tr>
<tr>
<td>Anxiety</td>
<td>19.8%</td>
<td>27.8%</td>
</tr>
<tr>
<td>Social Alienation &amp; Isolation</td>
<td>19.3%</td>
<td>24.6%</td>
</tr>
<tr>
<td>Depression</td>
<td>16.0%</td>
<td>20.8%</td>
</tr>
<tr>
<td>Obsessive Compulsiveness</td>
<td>15.0%</td>
<td>20.3%</td>
</tr>
<tr>
<td>Global Distress</td>
<td>10.7%</td>
<td>18.3%</td>
</tr>
<tr>
<td>Paranoid Ideation</td>
<td>8.6%</td>
<td>13.2%</td>
</tr>
<tr>
<td>Anger</td>
<td>12.0%</td>
<td>8.0%</td>
</tr>
<tr>
<td>Phobic Anxiety</td>
<td>3.2%</td>
<td>7.3%</td>
</tr>
<tr>
<td>Hostility</td>
<td>11.2%</td>
<td>6.8%</td>
</tr>
<tr>
<td>Somatization</td>
<td>1.6%</td>
<td>4.1%</td>
</tr>
</tbody>
</table>

*This does not refer to good interpersonal skills; it "centers on feelings of inadequacy and inferiority, particularly in comparison to

researcher in Beek, et al., supra note 1, between 1995 and 2001, about the significance of her results.

74 Martin J. Bohn, Psychological Needs of Engineering, Pre-Law, Pre-Medical, and Undecided College Freshmen, 12(5) J. of C. Student Personnel 359 (1971).
75 Beck et al., supra note 1, at 22.
76 Id. at 25.
77 Id. at 23.
others. Self-deprecation, feelings of uneasiness, and marked discomfort during interpersonal interactions are characteristic ...

One would expect only about 2.27% of a normally distributed population to score this high (two standard deviations above the mean, or average), thus these results are quite dramatic. Beck and her colleagues noted that, in a general population, depression is found in 8.5% of males and 14.1% of females, obsessive-compulsiveness is found in 1.4-2% of adults, and generalized anxiety disorder is found in 4% of adults.

One study of law students in 1991 reported greater stress-related anxiety among law students compared to undergraduates. The study found this to be true for both male and female law students at Loyola University School of Law in New Orleans. However, there are conflictual data comparing medical students to law students. There are studies finding that medical students are not as distressed as law students

78 Id. at 3-4, citing LEONARD R. DEROGATIS & PHILLIP M. SPENCER, THE BRIEF SYMPTOM INVENTORY (BSI), ADMINISTRATION, SCORING & PROCEDURES MANUAL §1 (1982) at 12.
79 Beck, et al., supra note 1, at 49. For example, a basic text on statistics advises that, in any sample of measurements, regardless of the shape of the distribution of the measurements, at least 75% of the measurements will fall within two standard deviations of the mean., JAMES T. MCCLAVE & FRANK H. DIETRICH, II, STATISTICS 43 (1994). However, in a normally distributed set of measurements (that is, a bell-shaped curve), even more (approximately 95%) of the measurements will fall within two standard deviations of the mean. Id. at 43-44. Therefore, about half of the remaining 5% will fall more than two standard deviations above the mean and the other half will fall more than two standard deviations below. This suggests that, in a normally distributed population, only about 2.27% of attorneys would be expected to score two standard deviations above the mean on these measures of psychological distress. Beck, et al., supra note 1, at 23. This makes the fact that 20-30% of attorneys scored, in Beck’s study, more than two standard deviations above the mean on some measures in Beck’s study, quite alarming. Id. at 15, 18-19, and 49.
80 Beck, et al., supra note 1, at 50. These percentages are not, however, comparable to Beck’s Table 1 in the text, because they are not based on the BSI; they are simply an estimate of the base rate, or percentage of adults suffering from these diagnoses, in a general population.
81 Roseanna McCleary & Evan L. Zucker, Higher Trait- and State-Anxiety in Female Law Students Than Male Law Students, 68 PSYCHOL. REPORTS 1075-1078, 1077 (1991) (also finding higher trait- and state-anxiety among female law students than male law students and noting that women tend to score higher than men on these scales anyway).
82 Id.
and other studies finding the opposite; the differences may be caused by different definitions of "distress."\textsuperscript{83}

\textbf{D. CAREER AND WORK DISSATISFACTION}

Commentators often focus on provocative data such as the following: in 1991, the American Bar Association found that "48\% of lawyers in private practice who stay with their firm ‘but are not happy...would change jobs if they had a reasonable alternative.’"\textsuperscript{84} Seventy percent of the lawyers responding to a “1992 California Lawyer magazine poll said they would change careers if the opportunity arose."\textsuperscript{85} "...California attorneys were 'profoundly pessimistic' about the law, with only half saying that they would choose again to be a lawyer."\textsuperscript{86} In 1998, the American Bar Foundation’s researchers reported that “[60\%] of the lawyers who responded to a poll by the Michigan Lawyers Weekly said they would not choose to become lawyers again if they had the chance to start their careers again.”\textsuperscript{87}

A survey of 800 lawyers across the United States commissioned by the American Bar Association in 2006 reported that 55\% are satisfied with their careers. Forty-four percent would recommend a legal career to a young person, but 80\% were “proud to be an attorney” and 81\% found the practice of law “intellectually stimulating.”\textsuperscript{88} This is consistent with a study in 1995 that found 51\% of lawyers reported being “satisfied with their lives, compared to 78\% of federal judges.”\textsuperscript{89} Despite finding pride

\textsuperscript{83} A group of medical students was studied in an earlier study using the same test, for comparison, and overall they scored lower than the law students on these measures of distress (but ten to 20\% of the medical students also scored more than two standard deviations above the mean and above the "cutoff" on five such submeasures, indicating significant distress among medical students as well). Beck, et al., \textit{supra} note 1, at 4 and n.11 & 15, \textit{citing} Stephen B. Shanfield \& G. Andrew Benjamin, \textit{Psychiatric Distress in Law Students}, 35 \textit{J. LEGAL EDUC.} 65, 68-69 (1985).

\textsuperscript{84} \textit{A.B.A., THE REPORT OF AT THE BREAKING POINT: A NATIONAL CONFERENCE ON THE EMERGING CRISIS IN THE QUALITY OF LAWYERS’ HEALTH AND LIVES -- ITS IMPACT ON LAW FIRMS AND CLIENT SERVICES,} (Apr. 5-6, 1991) at 10.


\textsuperscript{86} \textit{Id.}


\textsuperscript{89} Arian Campo-Flores, \textit{An Ambivalent Profession.} The American Lawyer (April 1998) at 26, reporting results of a 1995 survey by Professors Amy Black
and intellectual challenge in the law, therefore, for lawyers, satisfaction appears to be a bit more elusive.

Work or career dissatisfaction among lawyers has been relatively consistent across several empirical studies; between 20 to 27% of lawyers usually reports being dissatisfied or very dissatisfied with their work. This finding was reported by the American Bar Association's Young Lawyers Division ("ABA/YLD"); it conducted three surveys of lawyer work satisfaction, in 1984, 1990, and 1995, and found a slight increase in dissatisfaction over this decade. It also found that, in 1984, the percentage of attorneys that was very satisfied was 41%; this dropped to 33% in 1990.

Similarly, Richard found in 1994 that, among a sample of over 1200 lawyers across the United States, 23% of the attorneys he surveyed was dissatisfied (21%) or very dissatisfied (2%), 4% was “neutral,” and 73% was satisfied (51%) or very satisfied (22%). He exhaustively reviewed the existing studies of lawyer satisfaction and concluded that "[c]onvincing evidence exists regarding the increasing levels of job dissatisfaction of the legal profession," "there is considerable consensus" among studies from 1984 to 1991 that "approximately 20% of all lawyers are quite dissatisfied with their jobs," and that dissatisfaction had increased over time.

One exception is a study by researchers Heinz, Hull, and Harter at the American Bar Foundation ("ABF") in 1998, which found a much
more positive result. In this study, 84% of Chicago lawyers in 1994 and 1995 were satisfied or very satisfied, compared to only 6.6% who were dissatisfied or very dissatisfied; 10% were neutral.

Very little comparative data has been presented in the studies, comparing dissatisfaction among lawyers to that of individuals in other professions. Richard in 1994 claimed that professionals in general (including lawyers) usually report higher work satisfaction than do other groups, suggesting that the above findings for lawyers are not in line with what one would expect. Heinz, Hull, and Harter also noted that previous general research has found that most employed people are satisfied with their careers. Few published studies directly compare work satisfaction among lawyers to other professions.

II. CORRELATES OF ATTORNEY DISTRESS AND DISSATISFACTION

Little evidence exists to suggest the correlates or causes of becoming one of the “walking wounded.” This is an area ripe for new research, particularly among the practicing bar.

A. CORRELATES OF ATTORNEY DISTRESS

While the attorney distress studies have been available for over twenty years, still relatively little is known about why the legal profession suffers so. A 1995 study found that many forms of attorney psychiatric distress were related to high levels of stress, anger, unsatisfactory primary relationships, and low levels of social support. Male lawyers more often reported feeling stressed, while female lawyers

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97 Heinz, et al., supra note 87, at 1.
98 Id.
100 Heinz, et al., supra note 87, at 1.
101 Nancy Levit and Douglas O. Linder report in Happy Law Students, Happy Lawyer at 1 n.2 (http://ssrn.com/abstract=1095271) (visited September 9, 1008) a National Opinion Research Center study in 2007 finding that 52.4% of lawyers were very satisfied with their jobs, which was higher than roofers or gas station attendants but lower than repair persons, housekeepers, butlers, and clergy. The 1990 Johns Hopkins study by Eaton, et al., compared depression among lawyers to depression among individuals in ninety-nine other professions. See supra text accompanying notes 33-36.
102 This Part II draws heavily from earlier discussions in DAICOFF 2004, supra note 1, at 121-30 and accompanying notes.
103 Beck, et al., supra note 1, at 6.
more often reported being unhappy in their primary relationships.\textsuperscript{104} The anger in this study may have been similar to the “hostility” examined by these researchers, which includes resentment, irritability, aggression, and rage.\textsuperscript{105} The researchers also noted that there is often a link between anger and alcohol use.\textsuperscript{106} These researchers opined that perhaps this anger was related to the adversarial, hostile environment in which lawyers work.\textsuperscript{107} They suggested that lawyers, being steeped in this culture, may have difficulty turning it off at home, thus causing problems in their marital relationships.\textsuperscript{108} Also, the researchers explained that dissatisfaction in one’s primary relationship is known to predispose one to be more susceptible or vulnerable to stress.\textsuperscript{109}

A 1990 survey by the American Bar Association found a rough correlation between mental and physical distress among attorneys and work dissatisfaction.\textsuperscript{110} The researchers asserted that this suggests that attorneys’ work environment may be one cause of attorney distress, but there was no data to establish a causal connection between the two.\textsuperscript{111} This data was reported simply as a table with percentages of lawyers who had high or low levels of distress, and were satisfied or dissatisfied with their jobs.\textsuperscript{112} No statistical analysis was made to establish any correlation between distress and work dissatisfaction.\textsuperscript{113} Further, distress was measured simply by asking the attorneys if they were mentally or physically distressed, not by any accepted clinical instrument measuring psychological malaise.\textsuperscript{114} Finally, this finding suggests merely that distressed attorneys are also likely to be unhappy with their work; it does not explain why the distress and dissatisfaction arose in the first place.

To summarize the existing research, distressed attorneys are likely to be feeling stressed, angry, dissatisfied with both their work and their spouses or partners, and unsupported by others. This is a fairly sparse amount of information on a phenomenon as surprising and important as attorney distress. Not surprisingly perhaps, these feelings are echoed in the attorney work satisfaction studies discussed below.

\textsuperscript{104} Id. at 29-31.
\textsuperscript{105} Id. at 14, 53.
\textsuperscript{106} Id. at 53.
\textsuperscript{107} Id. at 53-57.
\textsuperscript{108} Id. at 57.
\textsuperscript{109} Id. at 58.
\textsuperscript{110} ABA/YLD 1990, supra note 9, at 74.
\textsuperscript{111} Id. at 75.
\textsuperscript{112} Id. at 74.
\textsuperscript{113} Id. at 74-75.
\textsuperscript{114} Id. at 1-3.
B. CORRELATES OF ATTORNEY WORK DISSATISFACTION

There is a bit more information on lawyers' work dissatisfaction. Many studies have investigated whether dissatisfaction is linked to any factors such as age, gender, area of specialty, practice setting, size of firm, years in practice, and income level, attitudes, and personality traits. Few consistent findings emerge, however, and there are many isolated or conflicting results.

1. Demographic Attributes

Several studies confirm the established phenomenon that age is correlated with greater satisfaction; generally, the older an individual is, the more satisfied he or she is with his work. This has been reported in studies from 2007 to 1989. For example, a 1998 study by the American Bar Foundation ("ABF") reported a link with age; the older the lawyer was, the more satisfied he or she was as a lawyer. The age/satisfaction link was also reported by Richard in 1994. The 1990 ABA/YLD survey also reported that more new lawyers (those who graduated from law school after 1967) were dissatisfied (31%), compared to all lawyers in private practice as a whole (19%).

This finding also appeared in a 1989 national study of lawyers who followed in a lawyer-parent’s footsteps.

115 Stephanie Francis Ward, Pulse of the Legal Profession: 800 Lawyers Reveal What They Think About Their Lives, Their Careers and the State of the Profession, 93 A.B.A.J. 30, 32 (2007) ("[O]f the lawyers with six to nine years of experience, only four in 10 reported career satisfaction. [S]ix in 10 of those in practice a decade or more said they were satisfied with their careers – a 50 percent higher rate of satisfaction").


117 Heinz, et al., supra note 87, at 1, 7-8. See also Richard 1994, supra note 14, at 224 (asserting that this is a "well documented trend").


119 ABA/YLD 1990, supra note 9, at 55.

120 Wasby & Daly, supra note 116, at 355-395, 358, & 391-393, finding the following:

<table>
<thead>
<tr>
<th>Percentage Quite Satisfied With Law as a Career</th>
</tr>
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<tbody>
<tr>
<td>Graduated before 1953</td>
</tr>
<tr>
<td>Graduated 1953-1963</td>
</tr>
<tr>
<td>Graduated 1964-1973</td>
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<tr>
<td>Graduated 1974-1989</td>
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</tbody>
</table>
One might expect the age finding to be explained by income level, such that attorneys with greater income (i.e., those that graduated earlier) are more satisfied. However, conflicting data exists about the link between income and satisfaction. A 1999 study reported that income was inversely related to work satisfaction, meaning that those attorneys who earned the most money were the least satisfied and vice versa.\footnote{Kenneth Dau-Schmidt & Kaushik Mukhopadhaya, The Fruits of Our Labors: An Empirical Study of the Distribution of Income and Work Satisfaction Across the Legal Profession, 49 J. LEGAL EDUC. 342, 344, 348 (1999) (reporting the results of an empirical study of the work satisfaction of University of Michigan Law School alumni).} However, the 1998 ABF study found that the more money a lawyer made, the more satisfied he or she was as a lawyer.\footnote{Heinz, et al., supra note 87, at 9-10.}

Some isolated findings regarding gender and race are as follows: (1) more female than male attorneys in private practice were dissatisfied with their jobs in the ABA/YLD studies,\footnote{ABA/YLD 1990, supra note 9, at 53-54.} while work satisfaction was identical among female and male attorneys according to two studies in 1994;\footnote{Richard 1994, supra note 14, at 174-75, 119, 211, and Weissman, supra note 14, at 70 (both finding no gender differences in satisfaction among attorneys).} and (2) the ABF researchers found that African-American race was associated with dissatisfaction.\footnote{Heinz, et al., supra note 87, at 6, 9.} However, these findings have not been confirmed by other studies.

There are also some isolated findings regarding practice area and setting. For example, Richard found no significant differences in satisfaction in practice setting (meaning private practice, government work, etc.),\footnote{Richard 1994, supra note 14, at 175.} but the ABA found greater (66%) satisfaction among public sector lawyers compared to “big-firm” lawyers (44%).\footnote{Ward, supra note 115, at 34. More public sector lawyers in this study reported satisfaction with their careers (68%), their work-life balance (62%), and the “appreciation they feel in the workplace” (70%), compared to big-firm lawyers, 48% of whom said their firms valued their contributions to the workplace, id. Big firms in this study meant firms of 101 lawyers or more, id. at 33.} Richard also reported that military lawyers and legal aid/public defenders reported the highest work satisfaction.\footnote{Richard 1994, supra note 14, at 121-24.} His categories were: military, legal aid/public defender, corporate counsel/legal department, government agency, private practice, judicial clerkship, and other.\footnote{Id.} In contrast to Richard’s results, the ABF study found that government
practice was associated with dissatisfaction.\textsuperscript{130} Again, the conflicting nature of the data suggests caution in relying on these findings.

Regarding practice area, Richard found that attorneys practicing in labor law, matrimonial/family law, and criminal law reported greater work satisfaction than real estate lawyers, corporate/business/commercial lawyers and general practitioners.\textsuperscript{131} He found that criminal lawyers reported greater work satisfaction compared to litigators and lawyers who did not specify an area of practice.\textsuperscript{132} Finally, he concluded that the greatest work satisfaction was found among criminal and family lawyers while the lowest work satisfaction was found among real estate and corporate/commercial/business lawyers.\textsuperscript{133} Again, however, these are relatively isolated findings and should be viewed with caution.

The 2007 results on large firm dissatisfaction\textsuperscript{134} are echoed in a 1993 study of the University of Michigan class of 1987. This study found that size of law firm was inversely related to work satisfaction.\textsuperscript{135} A greater percentage of those working in firms of fewer than 50 attorneys was satisfied, compared to those working in firms of 50 or more attorneys.\textsuperscript{136} This study reported that “only 28 percent of those working in law firms of 50 or more attorneys report being ‘quite satisfied with their careers overall,’” compared to 39% of those working in smaller firms (less than 50 attorneys).\textsuperscript{137} In addition, there was less satisfaction among the class of 1987 as compared to the classes of 1976 and 1977 – 28% compared to 53% in large firms and 39% compared to 45% in smaller firms,\textsuperscript{138} suggesting a decrease in satisfaction over this decade.

Some of these findings may be amplified by exploring the features of working in various settings or firms. For example, the ABF study found that high work satisfaction was more often found among "lawyers who indicated greater latitude in selecting clients" and "respondents who

\textsuperscript{130} Heinz, et al., \textit{supra} note 87, at 9 (noting that African American race may be associated with lower work satisfaction in general (not just in attorneys)).
\textsuperscript{131} Richard 1994, \textit{supra} note 14, at 122.
\textsuperscript{132} \textit{Id.}
\textsuperscript{133} \textit{Id.}
\textsuperscript{134} Ward, \textit{supra} note 115, at 34.
\textsuperscript{135} Jill Chanen, \textit{Class of '87: Big Money, Less Satisfaction}, 16 Chi. Law. 1 (1993).
\textsuperscript{136} \textit{Id} at 1 (39% of those working in firms with less than 50 attorneys were quite satisfied; 28% of those working in firms of 50 or more attorneys were “quite satisfied with their careers overall”).
\textsuperscript{137} \textit{Id.}
\textsuperscript{138} \textit{Id.}
had expressed no conflict between career and personal demands." The researchers theorized that autonomy and lack of perceived role conflicts may be related to attorney work satisfaction, these attributes may be more readily available to attorneys working in smaller firms.

Finally, exposure to the practice of law via having a lawyer in the family may be associated with attorney work satisfaction. A study of multigenerational lawyer families across the United States in 1989 found that having a lawyer parent was associated with greater attorney work satisfaction. Eighty-seven percent of attorneys who had a lawyer parent said that they would choose law as a career over again, if they could. Over 90% of these lawyers were very or somewhat satisfied with their choice of career. Only about 9% of these second-generation lawyers were neutral or dissatisfied with their careers, while less than one percent were quite dissatisfied and only 3.6% were somewhat dissatisfied.

Other factors were surveyed, such as specialty, when one first thought of law as a career, going directly to law school or taking time off before law school, staying in one's first job, and having a public job. Only one factor was correlated with satisfaction: those who had worked with their parent in the same firm were more likely to be quite satisfied.

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139 Heinz, et al., supra note 87, at 8.
140 Id. Similarly, the ABA surveys also found: "There is also a significant relationship between the length of one's legal career and the level of satisfaction expressed with regard to expectations as to financial remuneration. Those respondents who are new to the profession are less likely to indicate that their expectations have been met. For example, 48.5% of the respondents admitted before 1989 report that their expectations as to compensation have meshed very well with their experience. On the other hand, only 19.5% of those admitted in 1994 and 1995 indicate that this is the case." ABA/YLD 1995, supra note 9, at 12. With regard to the concern about the balance between available time for personal life "[a]bout 70% of the respondents express some level of satisfaction and . . . about a fifth are very satisfied with the balance between work and their personal life. Seventy-one percent of those who experience at least some dissatisfaction indicate that they do not feel that this situation will improve in the near future." Id. at 15.
141 Wasby & Daly, supra note 116.
142 Id. at 391.
143 Id. at 392. This contrasts with the 24% of lawyers who were either neutral, somewhat dissatisfied, or very dissatisfied as found by the 1990 ABA/YLD survey of all lawyers, ABA/YLD 1990, supra note 9, at 52.
144 Wasby & Daly, supra note 116, at 392.
145 Id. at 393.
than those who had not. Almost half were working or had worked with their parent.

2. Attitudes

Several studies have linked attorney work dissatisfaction to dissatisfaction in other areas of their lives. This could be interpreted as simply finding that feeling unhappy with one’s work is correlated with feeling unhappy with other areas of one’s life. For example, a 1997 study by a team that included one of the leading researchers in attorney distress linked attorney work dissatisfaction to perceptions of unsupportive colleagues and unavailability of social support. Lawyers who perceived social support, the support of their colleagues, and collegiality to be scarce and unattainable were more likely to be dissatisfied. These findings are very similar to the feelings associated with attorney distress, described above. However, this study went a bit deeper. Further analysis revealed two interesting results: first, that the attorneys’ self-esteem predicted work satisfaction and, second, that cynicism predicted whether the attorney felt a lack of collegial support. These findings suggest that satisfaction may be more dependent upon internal factors than on external constraints.

A study of University of Michigan Law School alumni between 1982 and 1996 similarly revealed that lawyers’ work satisfaction was positively correlated with their family satisfaction, which suggests that attorneys who are dissatisfied with their jobs are also likely to be unhappy at home. Finally, a 1990 summary of surveys reported that more dissatisfied lawyers reported high levels of mental and physical distress, compared to satisfied lawyers, suggesting that attorneys who

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146 Id. at 393-94.
147 Id. at 386.
148 McCann et al., supra note 1, at 183 (finding that attorneys’ work dissatisfaction was related to “low perceived availability of social support” and low perceived supportiveness of colleagues, meaning that the more attorneys perceived social support and collegiality to be inaccessible to them, the higher were their work dissatisfaction scores).
149 Id. at 180-83.
150 See supra text accompanying notes 71-83.
151 McCann, et al., supra note 1.
152 Dau-Schmidt & Mukhopadhaya, supra note 121, at 348 (reporting the results of an empirical study of the work satisfaction of University of Michigan Law School alumni).
153 Linda M. Rio, Time For an Ideality Check: If You Had Your Ideal Work, Would You Be Satisfied?, BARRISTER MAGAZINE, SPRING 1995 at 14 (discussing American Bar Association/Young Lawyers Division National Surveys of Career Satisfaction/Dissatisfaction (1984 and 1990)). This article contained the
are dissatisfied with their jobs are also likely to be experiencing emotional and physical problems as well.

C. SUMMARY

In summary, psychological distress among attorneys has been empirically linked to anger and marital and work dissatisfaction.\textsuperscript{154} In turn, attorney work dissatisfaction has been empirically linked to young age, a perception that one’s colleagues are unsupportive, low collegiality, the unavailability of social support and, indirectly, low self-esteem and cynicism.\textsuperscript{155} Dissatisfaction may also be related to mental, emotional, and physical distress.\textsuperscript{156}

Interestingly, many of these findings refer to unsatisfying relationships with other people, whether they are marital partners or professional colleagues.\textsuperscript{157} Cynicism, anger, and self-esteem may be implicated, as well as autonomy at work.\textsuperscript{158} However, the “chicken and the egg” problem persists; it is unknown whether the distress or dissatisfaction creates these conditions or vice versa, or whether some other variable is the causative factor.

The researchers stated "[i]n looking at this table, it would appear that the work environment or job satisfaction is the key to the level of a lawyer's mental and physical distress" and "However, as discussed in detail in the full survey report, other factors also correlate highly with mental and physical distress. Thus, while we cannot say that the work environment is the causative factor, we can say it is an important contributing factor [to distress]." Id.

\textsuperscript{154} Beck, et al., supra note 1, at 2-3.
\textsuperscript{155} McCann, et al., supra note 1, at 179-83.
\textsuperscript{156} ABA/YLD 1990, supra note 9.
\textsuperscript{157} See, e.g., Beck, et al., supra note 1, at 54.
\textsuperscript{158} See id. at 54-55.
Finally, other studies have linked certain personality traits, including decisionmaking preferences, to attorney dissatisfaction. These are examined in depth in Part III, below.

III. DECISIONMAKING PREFERENCES: “FEELING” AND AN ETHIC OF CARE

Several studies link attorney work satisfaction to various personality traits, including decision-making preferences, which may suggest that certain traits are well-suited to the practice of law. A 1994 study linked satisfaction to two personality preferences, the dimensions of “Extraversion” and “Judging” as measured by the Myers-Briggs Type Indicator (the “MBTI”), a personality test widely used to describe various personality preferences and learning styles.

This suggests that lawyers with a preference for Introversion or Perceiving on the MBTI may be at risk for work dissatisfaction. The finding regarding Introversion is puzzling, since more lawyers in this study indicated a preference for Introversion as opposed to Extraversion; the majority of lawyers in the study preferred Introversion as a general rule. However, the researcher, lawyer and psychologist Lawrence Richard, explained that the finding regarding Judging made sense, since individuals who prefer Judging self-select into the legal profession, are found in greater numbers than Perceivers in the legal profession, tend to enjoy closure on decisions, have a “cut to the chase” approach, and prefer to finish one task at a time before moving on to the next. He thought that this preference should fit well with the practice of law, which may emphasize these features.

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160 Id.; Weissman, supra note 14.
161 This Article and in particular this Part III draws heavily from earlier discussions in DAICOFF 2004, supra note 1, at 31-49, 62, 64-68, 74-75 and accompanying notes. For a more extensive discussion of the prevalence of these personality and decision-making traits among lawyers, see generally Daicoff 1997, supra note 1, and DAICOFF 2004, supra note 1. Some of this text draws from these earlier discussions.
164 Richard 1994, supra note 14, at 74-78 (finding that more lawyers prefer Introversion (57%) to Extraversion (43%), while most adults in the United States prefer Extraversion (75%); also, more lawyers prefer Judging (63%) than do most adults in the United States (55%).
166 Id.
In 1994, two empirical studies investigated whether there was any relationship between certain traits of attorneys and their work satisfaction.\textsuperscript{167} These were: a Feeling preference on the MBTI and an ethic of care.\textsuperscript{168} Both of these traits are essentially decisionmaking preferences; they indicate ways in which individuals prefer to make decisions and the justifications proffered by those individuals for their decisions, when faced with dilemmas.\textsuperscript{169} One found that attorney work dissatisfaction was linked to the Feeling preference.\textsuperscript{170} The other found a possible connection between attorney work dissatisfaction and the concept of an ethic of care as a preferred way of making decisions.\textsuperscript{171} Due to the relevance of these traits to the legal profession, these traits are explored in more detail, below.

\textit{A. The "Feeling" Decisionmaking Preference}

The Myers-Briggs Type Indicator is an extensively-used personality test that was developed by Isabel Briggs Myers.\textsuperscript{172} It renders one's scores on four continua: Introversion/Extraversion, Sensing/Intuiting, Thinking/Feeling, and Judging/Perception.\textsuperscript{173} The Myers-Briggs "type" of lawyers and law students has been studied in several studies, all of which reported the prevalence of Thinking as opposed to Feeling, among law students.\textsuperscript{174} Of the four continua of the test, the Thinking/Feeling decision-making preference of this test is arguably the most important for lawyers, since lawyers differ so dramatically from the general population on this trait.\textsuperscript{175} According to Richard, perhaps the leading researcher on the application of the Myers-Briggs Type Indicator to

\textsuperscript{167} \textit{Id.} at 248 (finding a link between attorney work dissatisfaction and a Feeling preference as measured by the Myers-Briggs Type Indicator); Weissman, \textit{supra} note 14 (proffering an unpublished study linking attorney work dissatisfaction among female attorneys to a preference for an “ethic of care” as distinguished from a rights orientation). See Part III., \textit{infra}.


\textsuperscript{170} Richard 1994, \textit{supra} note 14, at 248-49. This study also linked attorney work satisfaction to the dimensions of Extraversion and Judging on the MBTI, \textit{id.} at 250.

\textsuperscript{171} Weissman, \textit{supra} note 14, at 81, 101.

\textsuperscript{172} \textsc{David Keirsey, Please Understand Me II: Temperament, Character, Intelligence} (1998).


\textsuperscript{175} Richard 1994, \textit{supra} note 14, at 132.
lawyers, about 60% of males and about 35% of females in the general population prefer Thinking, as a decision-making style — in comparison, about 81% of male lawyers and 66% of female lawyers prefer Thinking, as a decision-making style.\(^{176}\)

Richard has explained that the opposite dimensions of Thinking and Feeling both represent:

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

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

Those who prefer to make decisions on the basis of Feeling apply their own personal values to make choices. They seek harmony and, therefore, are sensitive to the effect of their decisions on others. They need, and are adept at giving, praise. They are interested in the person behind the idea or the work. They seek to do what is right for themselves and other people and are interested in mercy.\(^{177}\)

To clarify, the Thinking/Feeling decisionmaking preference refers not so much to emotions or to what one ultimately decides to do, in a dilemma, as it does to the justifications, bases, or reasons one articulates for one's decisions. One test designed to approximate this scale asks a series of two-choice multiple choice questions and assesses which category of answers predominates in the responder's responses;\(^{178}\) a

\(^{176}\) Id.
\(^{178}\) This is the Keirsey Temperament Sorter II, which was used in the instant study, for convenience. It has been reported to have about a 0.75 correlation with the Myers-Briggs categories. See Keirsey, supra note 172.
sample question is: “Is it better to be: (a) just; or (b) merciful?”179
Another is: “In a heated discussion, do you: (a) stick to your guns; or (b) look for common ground?”180 In each of these, (a) is a Thinking response, while (b) is a Feeling response.181

Richard in 1994 completed an extensive study of the Myers-Briggs “type” of over 1,200 lawyers located in 50 states across the United States, working in 12 practice areas, in seven practice settings.182 His results were ultimately published in 1993 and 2002.183 They provide a fascinating picture of how lawyers differ, as a group, from the general population on this test.184

However, he also assessed attorney job satisfaction: in his study, attorneys who exhibited a Feeling preference were less satisfied with their jobs, overall, than were attorneys who preferred Thinking.185 He also found that attorneys with an Introvert/Intuitor/Feeling/Judging “type” were least satisfied, while those with an Extrovert/Intuitor/Thinking/Judging “type” were the most satisfied, in the law, but he also cautioned readers to recall that, while Feelers might need to carefully choose their practice area and setting to maximize satisfaction in the law, the majority of Feelers did report “job satisfaction” in his study.186

Two possible reasons for the Feeling/dissatisfaction link are that Feeling-oriented attorneys’ values are not emphasized in the law and that

179 Keirsey, supra note 172, at Item 26.
180 Id. at Item 25.
181 Id.
182 Id. at 211. This data was collected in conjunction with the Center for Applied Psychological Type in Gainesville, Florida.
184 See sources cited in supra note 183. For a fuller description of his work and these differences, see generally Daicoff 2004, supra note 1, at 32-36. Lawyers’ Myers-Briggs type did differ significantly from the general population’s, with Introversion, Thinking, and Judging overrepresented among lawyers and the most frequent type among lawyers emerging as the Introvert/Intuitor/Thinker/Judger. Richard 1994, supra note 14, at 211. Other studies have also found that Thinkers make higher grades and have a lower dropout rate in law school, than do Feelers, suggesting a “fit” between Thinking and the legal profession. Paul Van R. Miller, Personality Differences and Student Survival in Law School, 19 J.LEGAL EDUC. 460-67 (1967).
185 Richard 1994, supra note 14, at 212. He found modest correlations between one’s preference for Extraversion, Thinking and Judging, and one’s job satisfaction, among his sample of lawyers. Id. at 212-13.
186 Id. at 177, 250
Feelers, as lawyers, may be less able to adequately divorce themselves from their personal values when representing clients and causes. They may feel as if they are “swimming against the tide,” may be in a psychological minority in the legal profession, and their value-based comments in law school and among other lawyers may draw jeers and ostracism, since their values may not be shared by the majority of lawyers. They may experience more angst than Thinkers when representing repugnant clients and causes, or simply causes they do not agree with, because of their Feeling orientation.

An insight from Professor Vernellia Randall may help to explain these results. In her study of the distribution of Myers-Briggs types among law students, she asserted that “[T]hinking law students are likely to undervalue factors, such as the importance of human relationships in legal problems, the human side of legal issues, the role of values in legal decision-making, and the art of communication,” which might lead them to “objectify and dehumanize the entire process.” The Thinker’s ability to objectify and detach may be adaptive in the practice of law, in that it may insulate the Thinking-preferenced attorney from work dissatisfaction, while the Feeling-preferenced lawyer may be at risk to develop dissatisfaction.

B. THE ETHIC OF CARE

The ethic of care is a decisionmaking preference that emphasizes interpersonal harmony and mercy. It is contextual and its adherents make decisions by avoiding harm, seeking to maintain and restore relationships, protecting others from hurt, and assessing the relative harm of various choices to and the vulnerabilities of, the parties involved. In contrast, a rights or justice orientation makes decisions by weighing conflicting rights and duties, seeking fairness, justice, and equality, and maintaining and applying rules, standards, and role obligations to arrive at clear, absolute answers to dilemmas. Professor

187 Randall, supra note 20 at 93.
188 Id. at 93.
190 Id.
191 Sandra Janoff, The Influence of Legal Education on Moral Reasoning, 76 MINN. L. REV. 193, 222-33 (1991) (finding that law students exhibited a significant decrease in the amount of care orientation and a significant increase in the amount of rights orientation from the start to the finish of the first year of law school).
Carol Gilligan postulated the existence of these two forms of decisionmaking in response to Professor Lawrence Kohlberg’s six-stage theory of moral development. She believed that Kohlberg’s scheme, when used in empirical studies, tended to grade women’s moral stage as generally “less developed” than men’s and she argued that Kohlberg’s theory did not adequately take into account women’s morality. She then asserted that many women espouse an “ethic of care,” in contrast to a “rights” or “justice” orientation, when making moral decisions.

While Gilligan herself does not endorse the use of pen and pencil tests to measure the care orientation as compared to the rights

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Stage 1 Punishment and Obedience--the physical consequences of an action determine its goodness or badness, punishment is avoided, and power is respected; Stage 2 Instrumental-Relativist--pragmatic, marketplace considerations determine right action, i.e., "you scratch my back and I'll scratch yours;" Stage 3 Interpersonal Concordance--good behavior is that which pleases or helps others and is approved of by society; the individual conforms to stereotypes of nice, natural, or majority behavior; Stage 4 Law and Order--behavior is determined by reference to laws, rules, authority, maintaining the social order, and doing one's duty; Stage 5 Social Contract/Legalistic--the individual is aware of the relative nature of personal values and opinions and determines behavior on the basis of social utility. According to some, Stage 5 is the official morality of the American government and the U.S. Constitution. See Landwehr, supra this note, at 40 n.2. Stage 6 Universal Ethical Principle--right behavior is defined by reference to abstract, universal, self-chosen ethical principles which transcend society's laws. See id.

Daicoff 1997, supra note 1, at 1396 n.366.


194 Id.
orientation, others have developed instruments to measure these two styles of moral and ethical decisionmaking. For example, Professor Sharon Weinberg developed the Moral Orientation Scale ("MOS") as a pen and pencil test to measure one's preferences along the care-rights dimension. The MOS asks the responder to imagine that they are the parent of a 12-year-old child and justify various decisions in specific dilemmas; in one question, the child wants to have a birthday party and invite all but one child in his or her class. The parent says "No, you must invite all of the children in your class to your party," but the care-oriented responder would do so because it will hurt the excluded child's feelings or relationship with the partygiver. In contrast, the rights-oriented responder would do so because "that is what is fair; equal treatment for all.”

The ethic of care has been studied among lawyers and law students. There is evidence that it dramatically decreases in law school. In particular, Janoff found in 1991 that individuals who came to law school with an ethic of care tended to shift to a rights orientation.

196 New York University Professor Sharon Weinberg has developed the Moral Orientation Scale, which was used by Lawrence Landwehr in his 1982 study of lawyers. See Landwehr, supra note 192.
198 Id. at 23.
200 See Sandra Janoff, The Influence of Legal Education on Moral Reasoning, 76 Minn. L. Rev. 193 (1991) (finding that law students exhibited a significant decrease in the amount of care orientation and a significant increase in the amount of rights orientation from the start to the finish of the first year of law school); Janet Taber, Marquerite T. Grant, Manny T. Huser, Rise B. Norman, James R. Sutton, Clarence C. Wong, Louise E. Parker & Claire Picard, Project, Gender, Legal Education & the Legal Profession: An Empirical Study of Stanford Law Students & Graduates, 40 Stan. L. Rev. 1209 (1988) (finding contextual concerns, relating perhaps to the ethic of care, expressed more often among female law students than male law students, compared to concerns of logic, rights, and abstract justice).
201 Janoff, supra note 200, at 229-30, 238.
by as early as the first year of law school. In addition, those with a rights orientation tended to become more ingrained in that perspective, during law school.

In 1994, Weissman found that the ethic of care was espoused by only 17% of male attorneys and 43% of female attorneys, placing it in the minority among lawyers. She also found that the ethic of care was linked to career dissatisfaction among female attorneys. In this study, attorneys who espoused an ethic of care in moral decisionmaking were less satisfied with the prospect of a lifetime career in law practice than were attorneys who adopted a justice or rights orientation to moral decisionmaking. Interestingly, in this study, care-oriented attorneys were not less satisfied with their present position or with their choice of law as a career than were rights-oriented attorneys, suggesting to the researcher that perhaps they had found a “niche” within the law that was better-suited to their care-oriented ethical decisionmaking preference. Further, the difference in career satisfaction between care-oriented and rights-oriented attorneys was primarily due to the women attorneys; there did not appear to be such an effect among male attorneys. This study, however, had a relatively small, distinct sample size (43 attorneys in New York City) and may not have been a representative sample of the legal profession as a whole, as a result.

Although the written description of a Feeling preference is similar to that of an ethic of care, empirical evidence exists to dispel the idea that these two traits are really the same. One can prefer Feeling and have a justice orientation or prefer Thinking and have an ethic of care; they are not synonymous.

C. IMPORTANCE OF THESE TRAITS

The foregoing studies suggest that, among other factors which may be linked with dissatisfaction, there is a possibility that certain internal

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202 Id.
203 Id.
204 Weissman, supra note 14, at 76.
205 Id. at 101.
206 Id. at 81.
207 Id.
208 Id.
209 Id. at 100.
211 Specifically, these factors include attorneys’ dissatisfaction with their relationships with their spouses, partners, children, families, and colleagues and
traits – specifically, self-esteem and two humanistically-oriented decisionmaking styles – are likely to predispose attorneys to become unhappy with their jobs. One might tentatively conclude, from these sparse, existing studies, that preferences for Feeling and an ethic of care as decisionmaking styles, which are generally underrepresented among lawyers as compared to the general population, are rarely seen in the legal profession and are related to attorney work dissatisfaction, which in turn is related to attorney distress. One might conclude that these two characteristics are poorly suited for the practice of law, as they appear to be highly incongruent with the kinds of work lawyers do and the roles they are often required to play, in working with clients.

These two preferences, or traits, are important for two reasons. First, they are precisely the traits that many legal scholars and educators recommend that lawyers develop, in order that they might improve their interpersonal skills and thereby their legal services.212 For example, Randall explicitly advised that Thinking-preferenced law students should be exposed to real clients early in their law school careers, so that they could “develop their less preferred [F]eeling,” “learn to appreciate the problems of people,” and stay “in touch with the role of values” so that they do not “objectify and dehumanize” legal work. Partly in response to low public opinion of attorneys and the legal system, client dissatisfaction with lawyers, and recent scandals involving lawyers, Carrie Menkel-Meadow, David Wexler, and other commentators and scholars have called for lawyers to be more humanistic, attuned to emotions and interpersonal relationships, merciful, wise, and emotionally intelligent.214 These are qualities which might easily be developed by a person with an ethic of care.

Second, these traits are precisely the characteristics likely to be useful to lawyers and judges seeking to approach law and lawyering from a more comprehensive, healing, and humanistic standpoint.215 Since 1990, a “comprehensive law movement” has developed, consisting

\[\text{See supra text accompanying notes 148-153.}\]


213 Randall, *supra* note 20, at 93.

214 See sources cited in note 20 supra and at infra note 213.

of a variety of comprehensive, integrative, transformative, and humanistic approaches to law and adjudication. One of the leading approaches in this movement is known as therapeutic jurisprudence ("TJ"). These decisionmaking preferences mesh well with the skills and sensitivities required of TJ-oriented lawyers, because TJ lawyers attempt to provide legal solutions for their clients that are, at the same time, psychologically optimal. This may require lawyers to take into account interpersonal harmony, relationships, harm to others, and vulnerabilities of parties, in making decisions with and for their clients. TJ is of growing importance in American law; it is important to explore the relationship between attorney distress, work satisfaction, and the decisionmaking styles of practicing lawyers.

D. THE THERAPEUTIC JURISPRUDENCE MOVEMENT

Therapeutic jurisprudence ("TJ") was founded by law professors David Wexler and Bruce Winick around 1990; there are now more than a thousand articles and books on the topic. A concise definition was coined by law professor Christopher Slobogin: "the use of social science to study the extent to which a legal rule or practice promotes the


218 Wexler, supra note 20, at 599.

219 These concerns are the matters valued by individuals preferring an ethic of care, according to commentators writing about the care ethic, Weissman, supra note 14, at 30-32, 36.


221 See, e.g., Center for Therapeutic Justice, supra note 218 (providing an extensive bibliography). Description of therapeutic jurisprudence herein at text accompanying notes 222-233 taken in large part from the fuller description in Daicoff, Law as a Healing Profession, supra note 216, at 11-16.
psychological or physical well-being of the people it affects." Therapeutic jurisprudence explicitly acknowledges that law, legal procedures, and the particular roles of legal personnel have psychological effects upon the individuals and groups involved in each legal matter. Professors Wexler and Winick explain that TJ queries "whether the law's antitherapeutic consequences can be reduced, and its therapeutic consequences enhanced, without subordinating due process and other justice values."

Because TJ grew out of an interdisciplinary, law and psychology viewpoint, they explain that it was first applied to traditional mental health law topics such as "the civil commitment of the mentally ill, the insanity defense, and incompetency in both civil and criminal contexts." However, it rapidly spread into other areas, including the civil commitment of sexual offenders and outpatient drug abusers, sentencing and probation agreements, workers' compensation law, sexual orientation law and disability law, fault-based tort compensation schemes, domestic violence, crime victims, mandatory child abuse reporting, contract law, family law, and the effect of the law on lawyers. Its most dramatic growth has been in the emergence of problem solving courts, such as drug treatment courts, which are explicitly therapeutic in orientation.

223 KEY, supra note 11, at xvii.
224 Id.
225 Id. at xix.
226 Id. at 131-148.
227 Id. at xvii, xix, and Table of Contents.
229 Amiram Elwork, & G. Andrew H. Benjamin, supra note 1.
230 Problem-solving courts were explicitly recognized and their growth encouraged by a Joint Resolution of the Conference of Chief Justices (CCJ Resolution 22) and Conference of State Court Administrators (COSCA Resolution 4) (adopted as proposed by the Task Force on Therapeutic Justice of the Conference of Chief Justices in Rapid City, South Dakota at the 52nd Annual Meeting on August 3, 2000), available at http://cosca.ncsc.dni.us/Resolutions/CourtAdmin/resolutionproblemsolvingcts.html. The website of the National Association of Drug Court Professionals, http://nadcp.org/ (last visited April 11, 2008), documenting 2,100 drug courts in
Therapeutic concerns, however, do not trump legal rights. The author has elsewhere described therapeutic jurisprudence simply as seeking:

to optimize the therapeutic effects of substantive rules of law, legal personnel’s actions, and legal processes without elevating therapeutic concerns over traditional legal concerns such as rights or due process. It simply says, given two different options for achieving a particular legal result, if one option is more therapeutic than the other, the lawyer should attempt to pursue the more therapeutic course of action.

Due to its emphasis on human wellbeing, optimal psychological functioning, and mental health, TJ requires its lawyers and judges to have psychological sophistication and a sensitivity to intrapersonal and interpersonal dynamics presented by the legal matter at hand. As a result, there is a good “fit” between the traits of Feeling and the care orientation and a TJ approach to legal problems. Thus, TJ-oriented lawyers may benefit from having a Feeling orientation or an ethic of care. Therefore, as the legal profession evolves to increasingly include therapeutic jurisprudence concepts, through developments such as problem solving courts and drug treatment courts (which are explicitly therapeutic) and restorative justice approaches to criminal law (which are also consonant with TJ), it is increasingly important to determine whether these two traits are associated with lawyer distress. The current study was, therefore, conducted to establish whether lawyer distress is associated with the lawyer’s somewhat atypical traits of Feeling or an ethic of care; to explain why lawyers have such inordinate levels of

the United States since 1990, is evidence of the rapid growth and prevalence of drug treatment courts.

Daicoff, supra note 216, at 12.

Id.


Wexler, supra note 20, at 599 (noting the fit between an ethic of care and practicing law from a therapeutic jurisprudence perspective) and Susan Daicoff, Making Law Therapeutic For Lawyers: Therapeutic Jurisprudence, Preventive Law, and the Psychology of Lawyers, 5 PSYCHOL., PUB. POL’Y. & L. 811 (1999) (explicitly arguing for the link between Feeling, the ethic of care, and therapeutic jurisprudence).
distress in comparison to others; and to possibly suggest ways to ameliorate the distress.

IV. THE INSTANT STUDY

The current study, therefore, investigated the relationship of Feeling and the ethic of care to attorney distress and work dissatisfaction. It attempted to replicate the findings of the two previous studies that linked these traits to attorney work dissatisfaction and it then attempted to extend that research by investigating the relationship of the two traits to attorney distress. Specifically, it sought to measure the incidence of psychological distress, work dissatisfaction, the Feeling preference, and the ethic of care among practicing lawyers and then to investigate whether any of these variables are related to each other or to any other demographic attributes of the attorneys surveyed.  

V. METHODS

This study consisted of two studies: (1) a pilot study conducted at Capital University Law School among attorneys in Columbus, Ohio in May, 2000; and (2) a study conducted at a conference of attorneys in Lindborgh, Kansas in July, 2000. Unfortunately, the first study (using a mailout strategy) yielded a response rate of about 30%, which was lower than optimal. The second study solicited subjects from among the participants at the lawyer conference because, although they were a self-selected group of attorneys, the response rate was likely to be a bit higher.

In the first study, a random sample of practicing attorneys in Columbus, Ohio (selected through membership in the local bar association) were solicited by mail with four paper-and-pencil tests. A dollar bill was attached to the cover letter, to compensate the attorneys for their time in responding and to increase the response rate, as similar compensation had been previously shown to increase response rates on mailed questionnaires. A self-addressed, stamped envelope was included. The response rate was still rather low, at 30%, but was higher than might have been expected among busy, practicing attorneys, based on previous attorney research. In the second study, participants were

235 See DAICOFF 2004, supra note 1, at 155-57 and accompanying notes (echoing the hypotheses of the instant study).
237 For example, in a previous mailout study the author conducted in 1991, the author obtained a 69.2% response rate (57.8% were usable), id. at 230. However, the author stapled a dollar bill to each of the questionnaires to
Both studies built upon four previous studies and measured attorneys’ psychiatric distress, work satisfaction, preference for Thinking vs. Feeling, and moral decisionmaking preferences in an effort to determine if Feeling and the ethic of care were related to one’s level of distress. All data was collected by Susan Daicoff, the principal investigator and then a law professor at Capital. Five questionnaires were used. The Brief Symptom Inventory, or BSI, by Leonard Derogatis, which was used by Beck and her colleagues in their 1995 study of attorneys, was purchased. The Moral Orientation Scale by Sharon enhance the response rate, based on the efficacy of this strategy in previous studies, see, e.g., A.Y. Williams, Survey Return Rate as a Function of Personalization of Cover Letters and Monetary Incentives (1990) (unpublished M. thesis, University of Central Florida (Orlando)). See also Lawrence J. Landwehr, Lawyers as Social Progressives or Reactionaries: The Law and Order Cognitive Orientation of Lawyers, 7 LAW & PSYCHOL. REV. 39, 43 (1982) (obtaining a disappointing 21% response rate among attorneys in a mailout survey).

Questionnaires were returned to the researcher’s work address (or, if the attorneys elected to do so, they handed them in to the author at the conference). Data was kept by the researcher in her office for seven years and then destroyed. No identification list was retained for this study and no names or addresses of the subjects were collected or retained. Subjects were solicited from among the attendees at the JMK Circle annual meeting in Lindsborg, KS in July, 2000. The researcher described the study briefly at lunch on Friday, July 28, 2000 and then handed out the study materials to interested participants at that time. The author asked for the materials to be returned if the attorney chose not to participate, since the tests were costly and could be reused if left blank. The only possible risk to participants the author could identify was that some of the questions about distress might trigger the attorneys’ feelings about their levels of psychological distress – thus some of the questions might be disturbing. However, this instrument was used before in a study with attorneys in Arizona and the author believed that the benefits of determining correlates of the distress far outweighed these minimal risks. No subjects in the Ohio study complained about the test questions. The subjects were informed of the purpose of the study by the author’s cover letter accompanying the questionnaires. The author was the only person to collect data and retain records. Consent was obtained by having the subjects complete and mail back the anonymous questionnaires. The cover letter was not stapled to the questionnaires. No deception was involved in this study, to the researcher’s knowledge. The first study underwent human subjects review and approval at Capital University, prior to the study.

Beck, et al., supra note 1.
Weinberg was used by permission, since it was used in Weissman's 1994 study of attorneys.\textsuperscript{240} Professor Weinberg granted permission for the instrument to be retyped and used in this study. The Keirsey Temperament Sorter II was purchased for each recipient of the survey and 20 questions of this test were retyped and used in order to measure only the Thinking/Feeling dimension.\textsuperscript{241} The author created a work satisfaction questionnaire based on a composite of those used in three previous studies: one by the ABA Young Lawyers' Division, one by Richard in 1994, and one by Weissman in 1994.\textsuperscript{242} This questionnaire measured three types of satisfaction: satisfaction with one's current position, with the practice of law generally, and with the choice of law as a lifetime career. Finally, the author created a short demographic questionnaire in order to have data about gender, age, type of practice, etc. in the event that those factors emerged as important.

The identity of the participants was protected by providing the questionnaires to the attorneys and having the attorneys return the questionnaires entirely anonymously. Mail-in questionnaires were returned to the researcher's work address. Some of the instruments\textsuperscript{243} and the cover letter used in the studies are reproduced below, in Appendix A.

The BSI measures nine forms of psychological distress, plus three scales of global or general forms of psychological distress; its nine specific scales measure anxiety, hostility, obsessive-compulsiveness, depression, interpersonal sensitivity, phobic anxiety, paranoia, psychoticism, and somatization.\textsuperscript{244} The scales are described as follows:

\textsuperscript{240} Weissman, \textit{supra} note 14.
\textsuperscript{241} The author discussed the retyping and use of this portion of the test with the publisher and was assured that as long as the author purchased the forms, the author was allowed to use the test in this way. The author destroyed the original Keirsey forms because the author did not actually use them. The author elected not to use the Myers-Briggs Type Indicator due to ease, cost, convenience, and the fact that the author is not qualified to administer the test. The Keirsey Temperament Sorter II (1998) was purchased from the copyright owner.\textsuperscript{242} ABA/YLD 1990, \textit{supra} note 9; Richard 1994, \textit{supra} note 14; Weissman, \textit{supra} note 14.
\textsuperscript{243} Appendix A does not include the Moral Orientation Scale or the Keirsey Temperament Sorter as these instruments are copyrighted.
\textsuperscript{244} The BSI has 3 global indices and 9 specific subscales. The GSI, PSDI, and PST are three global indices of the BSI that assess the person's "psychopathological status" and provide information "at a third, more general level of psychological well-being. Research with the global indices has confirmed the rationale that they reflect distinct aspects of psychological disorder." LEONARD R. DEROGATIS, \textit{BRIEF SYMPTOM INVENTORY:}
| BSI/GSI | This is a global severity index T-score on Leonard Derogatis' Brief Symptom Inventory (a self-report symptom inventory designed to assess “current, point-in-time, psychological symptom status” or distress; it is not a measure of personality).  

245

Id. at 4. |
<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>PSDI</td>
<td>This is a positive symptom distress index T-score on the BSI.</td>
</tr>
<tr>
<td>PST</td>
<td>This is a positive symptom total T-score on the BSI.</td>
</tr>
</tbody>
</table>
| SOM | This is the first of the subscales of the BSI; it is reported as a T-score. Somatization “reflects distress arising from perceptions of bodily dysfunction. Items focus on cardiovascular, gastrointestinal, and respiratory complaints; other systems with strong autonomic mediation are included as well. Pain and discomfort of the gross musculature and additional somatic equivalents of anxiety are also components of somatization.”  

246

Id. at 7. |
| O-C | This is the obsessive-compulsive dimension, which “includes symptoms that are often identified with the standard clinical syndrome of the same name. This measure focuses on thoughts, impulses, and actions that are experienced as unremitting and irresistible by the individual, but are of an ego-alien or unwanted nature. Behavior and experiences of a more general cognitive performance deficit are also included in this measure.”  

247

Id. at 8. |
| I-S | This is the interpersonal sensitivity dimension, which “centers on feelings of personal inadequacy and inferiority, particularly in comparison with others. Self-deprecation, self-doubt, and marked discomfort during interpersonal interactions are characteristic manifestations of this.”  

248

Id. |
| DEP | This is the depression scale, which “reflects[s] a representative range of the indications of a clinical depression. Symptoms of dysphoric mood and affect are represented as are lack of motivation and loss of interest in life.”  

249

Id. |
| ANX | This is anxiety, which includes “general signs such as nervousness and tension” as well as “panic attacks and feelings of terror. Cognitive components involving feelings of apprehension and |

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The three satisfaction scales used were as follows:

<table>
<thead>
<tr>
<th>SAT 1</th>
<th>This assesses satisfaction with your current position (work) on a 4 point scale: 1=very satisfied; 2=somewhat satisfied; 3=somewhat dissatisfied; 4=very dissatisfied</th>
</tr>
</thead>
<tbody>
<tr>
<td>SAT 2</td>
<td>This assesses satisfaction with the practice of law generally on the same 4-point scale.</td>
</tr>
<tr>
<td>SAT 3</td>
<td>This assesses satisfaction with the choice of law as a lifetime career on the same 4-point scale.</td>
</tr>
</tbody>
</table>

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250 Id.
251 Id.
252 Id. at 9 (citing Marks, 1969 and Roth, 1959).
253 Id.
VI. HYPOTHESES

1) The study’s hypotheses were:

2) Lawyer distress (as measured by high scores on one or more of the three global indices or nine subscales of the BSI) would be correlated with work dissatisfaction (as measured by high scores on one of the three satisfaction measures).

3) Lawyer distress (as measured by high scores on one or more of the three global indices or nine subscales of the BSI) would be correlated with Feeling (as measured by categorization as a Feeler or by a high Feeling score).

4) Lawyer distress (as measured by high scores on one or more of the three global indices or nine subscales of the BSI) would be correlated with a Care orientation (as measured by categorization as a Care person or by a high Care score).

5) Lawyer work dissatisfaction (as measured by high scores on one of the three satisfaction measures) would be correlated with Feeling (as measured by categorization as a Feeler or by a high Feeling score).

6) Lawyer work dissatisfaction (as measured by high scores on one of the three satisfaction measures) would be correlated with a Care orientation (as measured by categorization as a Care person or by a high Care score.)

7) Demographics would not correlate with anything in particular; in other words, none of the following: gender, age, years in practice, years since graduation, practice setting, or practice area would correlate with distress (measured by BSI scores), satisfaction (measured by the three satisfaction measures), Feeling, or Care.

8) Feeling and Care would not be related to each other, as they are not the same trait.

VII. RESULTS

The results of the study were striking. Hypotheses 2 through 5 were not supported by the data; Hypotheses 1, 6, and 7 were supported.

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254 The data were analyzed with the kind assistance of Professor Clint Bowers of the University of Central Florida, Department of Psychology, using the SPSS
by the data. First, as expected, there was a relatively strong correlation between attorney distress and work dissatisfaction. This is consistent with previously reported, casual survey data that hinted at a relationship between them, but this study expands upon this by providing solid statistical support for the correlation. Second, as expected, no demographic variables correlated with distress or work dissatisfaction among attorneys. This is consistent with previous research finding no consistent demographic correlates of attorney distress or dissatisfaction. And, as expected, Feeling and Care were not correlated with each other, thus confirming previous research to the same effect. This suggests that a preference for Feeling does not necessarily mean that one has a care orientation, or vice versa. However, contrary to expectations, there were no correlations between attorney distress and dissatisfaction and the two traits of Feeling and the ethic of care. The findings are explored in more detail, below.

A. No Link Between Feeling, Ethic of Care, Lawyer Distress, and Lawyer Dissatisfaction

The finding that neither attorney distress nor work dissatisfaction was correlated with Feeling or an ethic of care conflicted with expectations, based on the two earlier studies that found a link between attorney dissatisfaction and these two traits. One possible explanation for the conflict between these findings and those of the earlier studies is that perhaps Feeling-preferenced lawyers and care-oriented lawyers in the instant study had self-selected into “niche” positions in the legal profession that fully utilize these preferences in a satisfying way. They did not report distress or work dissatisfaction in the instant study because they found positions in the profession that “fit” (or optimized) their Feeling preference or care orientation. For example, the author has found anecdotally that some Feeling-oriented lawyers report satisfaction in their work as guardians ad litem, family law magistrates, child protection workers, mediators, or collaborative lawyers. This self-selection
possibility is particularly likely to have been true in Columbus, Ohio, where the instant study was conducted, as there are a large number of government jobs available in this state capital (such as working as a lawyer in a governmental agency dedicated to the protection of children, for example). If this is true, however, then additional research is needed to determine which types of legal work, or practice settings, are most satisfactory to lawyers with a Feeling preference, lawyers with an ethic of care, lawyers with a Thinking preference, and those with a rights orientation. If this research was accomplished, law students could then begin to identify, as early as law school, those positions in the law that best suit their personal decisionmaking preferences and values.

More importantly, however, the findings of this study suggest that lawyers with a decisionmaking preference of Feeling or an ethic of care are not at risk for distress or dissatisfaction in the law. Contrary to previous research, this study suggests that they are not necessarily likely to be the most distressed and dissatisfied lawyers in the profession. They may not be necessarily likely to suffer from alcoholism and depression more often than lawyers with the arguably more typical traits

\[\text{AND HAPPIER KIDS WITHOUT GOING TO COURT: THE SMART DIVORCE (2006)}\]
\[\text{(explaining this form of practice to clients); PAULINE H. TESLER, COLLABORATIVE LAW: ACHIEVING EFFECTIVE RESOLUTION IN DIVORCE WITHOUT LITIGATION (2001)}\]

\[^{257}\text{This contradicts the hypotheses discussed in DAICOFF 2004, supra note 1, at 155-57 and accompanying notes.}\]
of Thinking and a rights orientation to decisionmaking. For those who have argued that the legal profession as a whole needs to integrate an ethic of care into lawyering and legal education in order to improve the profession and make it more balanced, these results are truly encouraging. These results should allay any concerns that Feeling and a care orientation are not adaptive to or suited for the modern practice of law. Such results are also good news for therapeutic jurisprudence proponents, since a preference for Feeling and a care orientation appear to fit so closely with a therapeutic orientation to the practice of law.

B. LINK BETWEEN ATTORNEY DISTRESS AND WORK DISSATISFACTION

The most dramatic finding of the instant study was the confirmation that attorney distress and work dissatisfaction were indeed correlated, or linked. This confirms previous, relatively statistically unsophisticated research to this effect, which in itself is important. Whereas previous research only reported the data via percentages of attorneys reporting distress or dissatisfaction, this study confirmed the link via a statistical correlation. Most importantly, however, this study linked attorneys' wellbeing to their career satisfaction, suggesting that attorneys identify themselves, or at least their overall mental health, with their work.

It is possible that this relationship is maladaptive – that lawyers identify with their work to an excessive degree. This may suggest that many in the legal profession are out of balance, meaning excessively focused on work, with a tendency to make one’s wellbeing overly dependent on one’s work satisfaction. If this is true, then mental health professionals working with distressed lawyers may want to be sensitive to the degree to which psychological distress among lawyers is so inextricably linked with their dissatisfaction at work. It also suggests that lawyers may want to evaluate whether they have over-invested their identity and self-esteem in their career as a lawyer and, if so, begin to cultivate a sense of self and self-worth outside of their work as lawyers.

Also, there may be a causal connection, meaning that lawyers’ dissatisfaction with their work actually leads to attorney distress. If this is true, then perhaps distressed or impaired lawyers should examine, as part of their recovery, whether they are working in a position in the legal

258 Dau-Schmidt & Mukhopadhaya, supra note 121.
259 See Randall, supra note 20, at 93 (arguing that the values of a Feeling-oriented individual need to be encouraged in legal education).
260 Wexler, supra note 20, at 599.
261 ABA/YLD 1990, supra note 9, at 52.
262 Id.
profession that suits, is enjoyable for, and satisfying for them, since work satisfaction may lead to psychological wellbeing.

On the other hand, it is possible that the converse is true – that lawyers’ mental distress leads to work dissatisfaction. If this is the case, then we are left with questions as to the causes of the distress among attorneys.

The results of the instant study indicate that the relationship between lawyer distress and career dissatisfaction merits further exploration. The causal relationships are not clear. It is possible that lawyer distress leads to career dissatisfaction among lawyers, that career dissatisfaction leads to personal, psychological distress for lawyers, or that some third variable causes both, simultaneously.

C. FURTHER DISCUSSION: THE RELEVANCE OF INTRINSIC VALUES

Sheldon and Krieger’s work may shed some light on the possibility of a third, causal variable explaining both attorney distress and attorney work dissatisfaction. After the data collection of the instant study was completed, Krieger published a series of empirical studies linking law student distress to an emphasis on extrinsic values, or extrinsic motivations. In turn, law student wellbeing was related to an intrinsic value system or intrinsic motivations. He also found that law students who came to law school with intrinsic values tended to shift during law school, and adopt an extrinsic reward system. To the extent that they did so, they tended to develop psychological distress, as measured by a wellbeing scale.

Using Krieger’s findings to interpret the instant study’s results, it is very possible that extrinsic motivation among lawyers is linked to, or even causes, both lawyer distress and work dissatisfaction. For example, lawyers who are motivated by extrinsic rewards may feel unfulfilled in their work, since extrinsic rewards are few and far between in the

264 Id.
265 Id.
266 Id.
267 Id.
practice of law. In the nomenclature of an extrinsic reward orientation, a “win” or money may be the defined goals. Yet the compromised settlement of a legal dispute rarely feels like a “win” and, in litigation, at least half of the lawyers involved “lose,” if one adopts this cognitive framework or definition of success. An extrinsically motivated attorney could easily develop dissatisfaction at work, experience few “successes,” feel like a personal “failure,” and then begin to develop general mental and emotional distress as a result.

However, if one views legal work through the lens of an intrinsic reward orientation, one might find the following goals intrinsically rewarding: giving the client a “voice,” asserting constitutional or legal rights, providing the best possible representation of the client’s position, solving the client’s problem, or assisting the client to resolve the dispute in the most efficient manner. In this cognitive framework, settlement or litigation of a lawsuit may be very fulfilling, as it may easily accomplish these intrinsically satisfying goals. Legal work itself might become rewarding, the attorney might have a sense of accomplishment and fulfillment, and might experience a sense of professional and general wellbeing as a result. Clearly, further research is necessary to determine if there is a connection between extrinsic values, an emphasis on extrinsic rewards, and the linked phenomena of attorney distress and work dissatisfaction.

Finally, one possible reconciliation of the results of the instant study with the results of previous research may be explained as follows: It is possible that attorneys with a Feeling preference or an ethic of care (who are in the minority in the legal profession and are thus “atypical”) may be, in a traditional private practice law firm, at risk to develop distress and dissatisfaction due to a lack of fit between their intrinsic values and their work. However, they may find a great deal of satisfaction in alternative practice settings and areas, including government work, “niche” work, as well as therapeutic jurisprudence and other legal work found in the other “vectors” of the comprehensive law movement (such as problem solving courts, restorative justice, transformative mediation, collaborative law, and preventive law). These alternative ways of lawyering and judging may afford this set of attorneys the ability to fulfill their intrinsic values at work and thereby achieve work satisfaction, which then leads to overall better mental health. Some of the atypical lawyers in previous studies may have been in more traditional practice settings that did not fit well with their preferences,

268 Sheldon & Krieger, supra note 12 (pointing out that extrinsic rewards are rare in law school and stating that 90% of the law school class will not be in the top 10% of the class, grade-wise).
thus explaining their dissatisfaction, while those in the instant study may have found practice settings and areas that fulfill their intrinsic values and thus did not report distress or dissatisfaction. If this is the case, further development of such alternative practice settings and areas would be warranted.269

In addition, it is possible that typical lawyers (i.e., those with a Thinking preference and a rights orientation) also experience distress as well, so that the personality traits of Feeling and a care orientation are only part of the puzzle. However, the sources and manifestations of that stress among these more typical lawyers may differ from that in atypical lawyers. For example, a rights-oriented or Thinker lawyer may feel dissatisfied and distressed by a lack of autonomy at work or by the antics of a borderline-unethical opposing counsel who does not “do the right thing.” In contrast, a Feeler or care-oriented lawyer may experience dissatisfaction and distress when he is asked by a senior partner to take an action on behalf of a client that he knows will adversely affect the client’s family relationships, ignore the psychological aspects of a client’s legal matter, or adopt a role that conflicts with his personal values.

Clearly, the next step in the exploration of lawyer distress is to empirically determine if an intrinsic reward orientation is linked to attorney wellbeing and, conversely, if an extrinsic orientation is linked to attorney distress. This would simply require extending the existing law student studies270 into the practicing bar. If so, then the identification of intrinsic satisfactions within law practice should be undertaken, so that law students and lawyers could identify aspects of their work that will be ultimately fulfilling, leading to better mental health and work satisfaction among lawyers.

VIII. CONCLUSION

In contrast to previous research, this empirical study did not find a link between lawyer distress and work dissatisfaction and the traits of Feeling as measured by the Myers-Briggs Type Indicator and the ethic of care, which are relatively underrepresented in the legal profession. Simply having these arguably atypical traits in the legal profession does not appear to be necessarily linked to distress or work dissatisfaction in the law. This suggests that individuals in arguably a “psychological minority” in the law, with respect to their ethical and moral

269 See Daicoff, supra note 216, at 59-61 (advocating for the further development of alternative forms of humanistically oriented law practice and dispute resolution).
270 Sheldon & Krieger, supra note 12.
decisionmaking preferences, are not necessarily at risk to develop distress and dissatisfaction, as practicing lawyers. These individuals may be particularly drawn to specific areas and practice settings within the law, however, including alternative approaches to law and adjudication, such as those presented by therapeutic jurisprudence and the other vectors of the comprehensive law movement. These results are therefore good news for this emerging movement towards law as a healing profession. They are also good news for those in the profession who believe that the law would benefit from a greater emphasis on the values and ethics embodied by a Feeling approach to decisionmaking and an ethic of care. These include concerns such as interpersonal harmony, mercy, relational dynamics, harm to others, and others’ emotions, in addition to legal rights, duties, and obligations.

This study did, however, confirm that lawyer distress and lawyer work dissatisfaction are correlated with each other. This suggests that attorneys’ overall wellbeing is linked to whether or not they are satisfied with their work. This link may, indeed, itself be unhealthy and may require lawyers to examine whether their self-concept is overly identified with their work. It is unclear whether one causes the other, or if some third variable causes both. It is possible that an emphasis on extrinsic rewards and motivations, as Krieger and Sheldon discovered among law students, is the third variable that leads to both lawyer distress and work dissatisfaction. Additional research is necessary to explore this hypothesis and to shed new light on the important issue of lawyer wellbeing.

Attorney distress, to which attorney work dissatisfaction is now more firmly linked, continues to be a malaise in the legal profession. It is an established phenomenon with significant consequences for attorneys, clients, and society as a whole. The time has come to systematically investigate its incidence, causes, and correlates, in an attempt to reach a cure. This study is one step in that direction. At the same time, however, as the profession continues to reevaluate its values, ethics, and sensitivities, it finds itself on the brink of change. According to this study, to the extent that that change incorporates more Feeling and care orientations in the law, it need not lead to a loss of attorney wellbeing.

\[^{271}\text{id.}\]
Re: Enclosed Survey Materials

Dear Attorney:

Greetings! I would be delighted if you would indulge me in a chunk of your time. I am a law professor at Capital University Law School in Columbus, Ohio/Florida Coastal School of Law in Jacksonville, Florida** who is conducting an empirical study of lawyer work satisfaction, distress, and personality.

Your participation will be completely anonymous and should take less than an hour of your time. (I know; it's asking a lot!) I will not be able to determine in any way whether or not you respond, although I hope you will. If you choose not to participate, please return the materials to me so I can reuse them in future studies.

There are two sets of questions enclosed; one set of 53 questions on a green form (the BSI) and one typed set. Blacken the appropriate circle on the green form and circle your answers on the other. Please don't put your name or any other identifying information on your answers. Your participation in this research is of course entirely voluntary and you may choose not to participate or to refrain from answering any particular question. Mail the completed questionnaires back to me in the enclosed, self-addressed, stamped envelope. If you run out of steam or patience, I will gladly accept partial responses. Although late questionnaires will be gladly accepted, please try to return the enclosed questionnaires by ________, 2000.

I appreciate your kindness in responding and sincerely hope that the results of this study will benefit the profession as a whole. If you are interested in obtaining a summary of the results of this study, please

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** The first study was conducted in May, 2000, while the author was an Associate Professor at Capital University Law School in Columbus, Ohio; the second study was conducted in July, 2000, while the author was an Associate Professor at Florida Coastal School of Law in Jacksonville, Florida.
write or call me at the above address and I will forward a copy to you. I plan to publish the results in summary form in a law review article.

If you have any questions, comments, or concerns about the enclosed materials, the study, or my research in general, or would like to discuss any of it with me, please do not hesitate to contact me. Thank you again for your participation – it is greatly appreciated!

Sincerely,

Susan Daicoff
Associate Professor of Law
Direct dial (904) 680-7774
Fax (904) 680-7771
e-mail: sdaicoff@fcsl.edu

Enclosures
In answering the next 3 items, please answer them with reference to your current work, unless you are not now working as a lawyer in your current work. In that case, please answer the next 3 questions with reference to your last “lawyer” work.

Please circle your answers:

Please rate your level of satisfaction with your current position:

1. Very Satisfied
2. Somewhat Satisfied
3. Somewhat Dissatisfied
4. Very Dissatisfied

Please rate your level of satisfaction with the practice of law generally:

1. Very Satisfied
2. Somewhat Satisfied
3. Somewhat Dissatisfied
4. Very Dissatisfied

Please rate your level of satisfaction with the choice of law as a lifetime career:

1. Very Satisfied
2. Somewhat Satisfied
3. Somewhat Dissatisfied
4. Very Dissatisfied

The following are questions selected from the Keirsey Temperament Sorter II. Decide on answer a or b and put a check mark next to the proper answer. There are no right or wrong answers since about half the population agrees with whatever answer you choose.
Please circle your answers (answering is entirely voluntary):

**Gender**

- [ ] Male  
- [ ] Female

**Age**

$\begin{array}{cccccccccccccc}
66-70 & 71-75 & 76+
\end{array}$

**Number of years in law practice**

- [1-2]  
- [3-5]  
- [6-10]  
- [11-15]  
- [16-20]  
- [21-25]  
- [26-30]  
- [31-35]  
- [36-40]  
- [41-45]  
- [46+]  

**Number of years since law school graduation**

- [1-2]  
- [3-5]  
- [6-10]  
- [11-15]  
- [16-20]  
- [21-25]  
- [26-30]  
- [31-35]  
- [36-40]  
- [41-45]  
- [46+]  

**Annual Income Level**

$\begin{array}{cccccccccccc}
<$20,000 & $20-40,000 & $40-60,000 & $60-80,000 & $80-100,000 & $100-150,000 & $150-200,000 & $200-300,000 & $300-400,000 & >$400,000
\end{array}$

**Practice Setting**

- General Practice  
- Corporate/Business/Commercial Law

**Practice Area**

- Private Practice  
- Corporate Counsel/Legal Department  
- Criminal Law  
- Employment Law  
- Judicial Clerkship  
- Judiciary
<table>
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<tr>
<th>Environmental Law</th>
<th>Government Agency</th>
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<tr>
<td>Labor Law</td>
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<tr>
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<td>Other</td>
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<tr>
<td>Litigation</td>
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<tr>
<td>Other (describe:______________________)</td>
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THANK YOU!