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## The effects of culture on attorney preservation of the confidentiality of client information

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THE EFFECTS OF CULTURE ON ATTORNEY PRESERVATION OF THE  
CONFIDENTIALITY OF CLIENT INFORMATION

by

Rosemary Hollinger

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School of Public Service in partial fulfillment  
of the requirements for the degree of  
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DEPAUL UNIVERSITY  
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This thesis was presented

by

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A handwritten signature in black ink, reading "Marco Tavanti", is positioned above a horizontal line.

Marco Tavanti

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## ABSTRACT

### THE EFFECTS OF CULTURE ON ATTORNEY PRESERVATION OF THE CONFIDENTIALITY OF CLIENT INFORMATION

Rosemary Hollinger, J.D.

DePaul University, 2011

This research sought to investigate the effect of culture upon the preservation of confidentiality of client information when the interest of the client conflicts with the interests of others. The rules, practices and values of the legal profession in Chile, India and the United States were studied in respect to two dimensions of culture: individualism-collectivism and power distance. The content analysis of the three ethics codes studied supported the research hypothesis that ethics codes in countries with greater power distance were more concerned with the preservation of the status of the legal profession than those from more egalitarian cultures. Nine-one members of the legal profession in Chile, Indian and the US responded to the on-line questionnaire. The questionnaire results supported the hypothesis that while culture impacted attorney practices and values toward client confidentiality generally, it had no effect attorney practices and values in respect to client confidentiality harm to others and criminality escalates in seriousness. These results point toward an international legal culture and a shared view among attorneys about their duties to the legal system and their societies.

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## CHAPTER 1

### INTRODUCTION

#### THE EFFECT OF CULTURE ON CONFIDENTIALITY OF CLIENT INFORMATION

Globalization has internationalized the practice of law. Unprecedented levels of cooperation among lawyers from all over the world in both the private and public sectors has become the norm. In addition to the obvious language issues, lawyers from different cultures must learn to understand and respect different laws, procedures, practices and legal traditions. Lawyers practicing in this arena sometimes encounter unexpected resistance from their colleagues based on ethical issues, or where agreement is reached, implementation may vary because of differing ethical requirements (Weaver 2001, 4). In other words, ethics requirements vary from country to country. In most countries, a combination of statutes and ethics codes governs the practice of law, and these statutes and codes, themselves, are cultural products (Bierbrauer 1994, 243). But, is that all they are? Are these laws and ethics codes merely a formalization of legal practice and hence relatively easy to adjust or are they reflections of deeply held cultural values that are extremely resistant to change? For the purpose of this research, culture, when referring to the culture of a given country, means the “values, beliefs, norms and behavioral patterns of a national group,” (Leung et al. 2005, 357) and value refers to the “broad tendency [within a culture] to prefer certain states of affairs over others” (Hofstede 2001, 5). These values “form the core of culture” (Sison 2000, 181). This research attempts to determine the effect of culture in regard to the handling of one ethical issue that

international legal practitioners face: the confidentiality of client information. “Client information” is any information, regardless of source, that an attorney obtains in the course of representing a client for the purpose of that representation.

The practice of law is not “culture-free and may be nation-specific” (Tsui 2001, 145). International legal practitioners have to be aware of the norms of any culture in which they work in order to communicate and work with others “who do not share common cultural experiences. One aspect of these necessary skills is an awareness of and sensitivity to, differences in professional ethics” (Etherington and Lee 2007, 107). Typically, national level bar associations publish codes of professional ethics. However, using an analogy commonly used by cultural anthropologists, the ethics rules are at the tip of the cultural iceberg, that is they can be seen and read. The source or foundation of those rules exists at the bottom of the iceberg in the values or beliefs of the culture buried beneath the surface (Peterson 2004, 21). In order to operate successfully on the international level, the international practitioner must appreciate the bottom of the iceberg values because it is those values that can get in the way of international cooperation even when the parties share a common goal—for instance the fight against terrorism and money laundering.

Even in the post 9/11 world, governments continue to struggle to keep up with money laundering and terrorist financing schemes (Financial Action Task Force 2010, 2). Most governments realize that the financial system must be reformed to prevent money laundering and terrorist financing. Yet, sometimes governments take positions that seem inconsistent with this goal. For instance, the US government, with the support of the American Bar Association (ABA), has opposed and refused to adopt Recommendation 14

of the Financial Action Task Force (FATF), an intergovernmental organization whose mission is to develop and promote national and international policies to combat money laundering and terrorist financing. Recommendation 14 requires gatekeepers, i.e., lawyers, accountants and the like, to report suspicious financial activity on the part of their clients. The proponents of the recommendation believe that money laundering and terrorist financing could not happen without the assistance of the professionals who set up the multi-layered off-shore investment vehicles used to hide illicit funds and that requiring lawyers, accountants and financial advisors to report suspicious transactions would make it more difficult to engage in these activities. The ABA argued that a disclosure requirement of this sort would “transform significantly the relationships between attorneys and clients, and affect the role of the attorney that has evolved over centuries and is enshrined in constitutional and national laws.” (American Bar Association Task Force on Gatekeeper Regulations and the Legal Profession 2003,1) When resistance to change is values based, the society is likely to be highly resistant to change (Hofstede 2001). Since the ABA’s arguments appear to be based upon American cultural beliefs and values and not the law, compromise is unlikely.

This is just one example of many where value differences among countries working together for shared goals may have hampered international cooperation. Lawyers who work in the international arena will be more effective if they understand the different ethical standards that govern the attorneys with whom they practice and how those differences impact their professional judgments. Attorneys can begin the process of learning about the ethical requirements of the cultures they encounter by reading the ethics codes of each country in which they work. These codes set out the rules under

which their foreign colleagues operate and impose a level of quality control on the practice of law within the jurisdiction (Hafez 2002, 227). However, the Codes also reflect the “shared values or beliefs about how lawyers ought to behave” (Etherington and Lee 2007, 105). But the codes themselves only present a partial picture of cultural perspective on legal ethics. This level of understanding will provide the practitioner with only a rules based knowledge of the likely ethical judgments of his international colleagues leaving unresolved the question: how do the attorneys apply these rules in practice? Or, do certain cultural values affect the way attorneys deal with ethical issues they encounter?

Legal systems that recognize and protect human rights share certain characteristics including the recognition of a person’s right to be represented by an attorney, the right to the loyalty of that attorney, and the confidentiality of client information learned in the course of the representation. These last two principles are fundamental to the right to the effective assistance of counsel. However, different countries place different degrees of importance upon protection of client confidentiality (Etherington and Lee 2007, 106). Consequently, internationally, the level of protection given to client information varies. Moreover, most countries provide exceptions to the rule of confidentiality in order to prevent harm to others.

Legal systems and the laws within a legal system are products of their cultures (Bierbrauer 1994, 243). In order to evaluate the effect of culture on the level of protection given to client confidences, this research focuses on the legal ethics codes in three countries, Chile, India and the United States, and attempts to determine what effect, if any, culture has on the different degrees of protection given to the confidentiality of client information with particular attention to instances where the interest of the client in

preserving confidentiality clashes with the interest of society in obtaining the information from the attorney.

The analysis is centered around the ethics codes of the countries studied because attorneys forced to decide whether or not to disclose client information have to make the decision through by applying the ethics rules that govern attorney conduct consistent with “cultural norms” (Etherington and Lee 2007, 106). However, the codes may not predict actual attorney behavior. Variances among the codes do not necessarily mean variances in behavior since cultural values can’t predict behavior on an individual basis (Peterson 2004, 23). In order to get to that issue, the second phase of this research deals with applied ethics through the administration of a questionnaire.

I began my research by reviewing the scholarly literature on culture, law and ethics to gain an understanding of how they affect each other in particular in relation to the level of protection given to the confidentiality of client information. Several researchers have analyzed the cultures in terms of a theoretical construct described as cultural dimensions, which enable researchers to measure in relative terms the values and practices in a culture (Grove 2005, 2). The literature review in Chapter 2 contains a fuller discussion of these cultural dimensions. Based upon my review of the literature, I selected two cultural dimensions as potentially affecting ethical requirements regarding the preservation of client confidentiality by attorneys. The two dimensions studied are power-distance index (PDI), which measures the extent to which a society tolerates inequalities among its members, and individualism index (IDV), which measures the degree to which a society is oriented around the needs of individuals or the group. As discussed in Chapters 2 and 3, with the possible exception of a third dimension,

Uncertainty Avoidance (UAI), these were the dimensions that seemed to be the most relevant to the issues I was researching. In part, based upon this research, I formulated three hypotheses:

First hypothesis: in societies with high PDI scores (hierarchical and non-egalitarian), the codes will contain more provisions that preserve the prestige of the profession and maintain the hierarchical relationships within the society. In terms of confidentiality protection, this would mean less identification of the lawyer with the interests of the client and a greater distinction between interests of the client and the duties of the lawyer. Hence less information is likely to be protected when the interests of society clash with the interests of the client.

Second hypothesis: codes in countries with high IDV scores (individualistic) will be more concerned with the client rights and protections, whereas ethics codes in low IDV countries (collectivistic) will show a greater concern with the public interest especially when the interests of society conflict with the interests of the client

Third hypothesis: in practice, when lawyers from various cultures are faced with situations that force them to balance the client's desire for confidentiality versus the interests of third parties who may be harmed by future actions of the client, lawyers from collectivist societies are more likely to disclose otherwise confidential client information than lawyers from individualist societies. That is, when the interests of society conflict

with the interests of the client, lawyers from more collectivist societies will be more likely to make disclosures to prevent the harm to others.

As previously mentioned, this paper begins by reviewing research and the ethics codes and laws of the three countries studied in Chapter 2. The chapter begins with an explanation of the social issues and policies served by the protection of client confidentiality, then continues with a description and comparison of the three ethics codes studied, finally the chapter introduces and explicates the concept of cultural dimensions. In Chapter 3, I discuss my methodology and research design. Since the research questions involve both the rules relating to confidentiality and how they were applied, the research design included both content analysis and a questionnaire. Consequently, the chapter begins with a discussion of how the individual codes were selected since both the United States and Chile have multiple ethics codes. The chapter continues with a discussion of the construction of the questionnaire used and ends with the issues raised by the difficulties encountered in attempting to gather data internationally. The questionnaire attempts to determine (1) values relating to the confidentiality by eliciting the agreement or disagreement with values statements about confidentiality of client information and (2) practices by eliciting the degree of agreement or disagreement with an attorney's decision whether or not to disclose client information. Chapter 4 discusses a content analysis of the ethics codes and relates those findings to the cultural dimensions studied. Since the codes are cultural products, their content supported the first hypothesis that the codes in the less egalitarian countries were more concerned with preservation of the status of the profession. Following the content analysis, Chapter 5 analyzes the data obtained from a questionnaire administered to 94



attorneys or law students from Chile, India and the US to determine whether their responses concerning practices and/or values differed between the cultures studied. The baseline questions showed that attorney practices and values did differ significantly when there was no mention of harm to others. But, when the facts change to clearly implicate criminal conduct or to indicate that others would be harmed if confidentiality were maintained, the differences between cultures disappeared. Finally, Chapter 6 details the findings of my research and data analysis which in summary, found that while the ethics codes differed in regard the attorney's duty to preserve confidentiality when disclosure could prevent physical or economic harm to others, in application the differences were not significant. Attorney values in the three countries only differed significantly in respect to one of the nine values statements indicating a general international consensus on the values of preserving confidentiality of client information. Finally, the decisions about protecting the confidentiality of client information versus disclosure to protect others did not vary significantly between lawyers in the three countries studied when disclosure had the potential to protect others.

## CHAPTER 2

### LITERATURE REVIEW

Ethical beliefs are linked to culture (Smith and Hume 2005, 212), just as legal values are a reflection of cultural values (Bierbrauer, 1994, 243). Both are products of the societies that produce them. These beliefs and values are often written into the laws of the society and, on a more micro level, into the rules that members of the society write for themselves to govern their behavior. The ethics rules that govern professional behavior are codifications of the beliefs of a profession about how its members should conduct themselves. In most countries, the practice of law is governed by professional codes of conduct. Where the professional codes fall short of reflecting the values of the society, the legislature, courts or even administrative agencies may proscribe rules regulating professional behavior (Zacharias 2007, 4; Abel 1988, 222). Where the legislature steps in, the law prescribes the conduct of the profession.

In the United States, the Sarbanes Oxley Act of 2002 [Pub. L No. 107-204, 116 Stat 745 (2002)] provides a recent example of this. In the wake of Enron and other corporate scandals, Congress enacted the Sarbanes Oxley Act, which increased accounting and accountability standards for public companies. The Sarbanes Oxley Act imposed additional responsibilities on Boards of Directors, independent auditors and lawyers. Specifically, it requires corporate counsel to alert higher authorities within the corporation to on-going illegal conduct. At the time of the enactment of Sarbanes Oxley, ABA Model Rule 1.13 provided that when an attorney discovered that a person

associated with an organization was engaging in a violation of law that was “likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization” (ABA 2000). Although the ABA had considered promulgating ethics rules that mandated certain disclosures, the ABA members failed to adopt such a rule until after the Securities and Exchange Commission (SEC) proposed regulations that required disclosure. In December 2002, the SEC proposed regulations pursuant to Sarbanes Oxley that mandated corporate counsel to report “material violations” up the corporate ladder. 17 C.F.R. Section 205. These regulations were adopted on August 5, 2003. The following week, the ABA membership approved a modification of the ABA Model Rules of Professional Conduct (ABA Model Rules) to permit disclosure of violations of the law to higher authorities within the organization in certain circumstances (ABA House of Delegates 2003, 13). Subsequently, in response to the legislative initiatives and pressure from within the profession, the ABA modified the Model Rules to conform to the values of US society (Morgan 2003).

In countries where law is preeminent and serves as an effective check against the abuse of power, the law provides a neutral structure for peaceful conflict resolution based upon the values and norms of that country (Gibson 1996, 61). The sample population studied, lawyers and law students, likely has an even greater respect for the rule of law by virtue of their social class, education and choice of profession than the average citizen in their nations (Gibson 1996, 71). One of the basic premises of the rule of law is the right to counsel—the right to be represented by counsel at all stages of an adversary proceeding. Rules and laws that guarantee the confidentiality of client information to facilitate this right and further the interests of justice. As previously stated, the purpose

of this research is to determine the effect of culture upon the degree of protection given to client information in three countries with distinct cultures. In order to do this in a meaningful way, I analyzed the differences between the degrees of protection given to client information when preservation of confidentiality would harm others and the relevant aspects of culture in a manner that allowed comparisons and analysis.

There are two variables in this research: the independent variable, culture, and the dependent variable, the protections given to client information when the interests of the client conflicts with the interests of other members of society. In order to provide a context for the discussion that follows this discussion will begin with a description of the concepts of confidentiality of client information in the US and India, two common law jurisdictions, and Chile, a civil law jurisdiction. The discussion of culture will follow and will include how Hofstede and others have measured culture in a way that facilitates the evaluation of its effect on the degrees of protection given to client information.

Generally speaking, in each of the three countries studied, the rules and laws governing the legal profession require lawyers to keep confidential all information they obtain in the course of representing their clients and that they maintain this confidentiality after the lawyer/client relationship has ended. However, these same rules and laws provide exceptions to this confidentiality requirement. In these instances, the law may require the lawyer to disclose confidential information in the interests of serving a greater good—furtherance of justice or prevention of serious harm to others.

**Table 2.1: Confidentiality in Ethics Codes of Chile, India and United States**

Country	Code Provision
Chile	“It is the duty and the right of the lawyer to protect the professional secret.” (Article 10, <i>Codigo de Etica</i> )
India	“An advocate should not by any means, directly or indirectly, disclose the communications made by his client to him. He also shall not disclose the advice given by him in the proceedings.” ( Bar Council of India Rule 7)
United States	“A lawyer shall not reveal information relating to the representation of a client....” (ABA Model Rule 1.6)

#### UNITED STATES—AMERICAN BAR ASSOCIATION MODEL RULES

In the US, the states license and regulate attorneys. Each state has its own rules of conduct, and these rules often vary in many respects including the rules relative to the confidentiality of client information. However, forty-nine states and the District of Columbia have adopted, in whole or in part, the ABA Model Rules (Zacharias 2007, 4). The ABA is the largest bar association in the US with more than 400,000 members drawn from every state and every area of practice. Since 1908, the ABA has produced, amended and revised model rules of professional conduct that the states have used in promulgating their own rules. Bar association committees representing a cross section of the organized bar draft and propose rules, and the ABA membership votes on whether or not to adopt the proposed rule. As discussed later in this paper, the ABA Model Rules relating to the confidentiality have been extensively debated by the ABA membership

and revised on several occasions. Consequently, it is likely that the current ABA Model Rule on the confidentiality represents the majority view of US attorneys. In order to facilitate this analysis, this paper will use the ABA Model Rules and not the state rules when discussing US ethics rules for attorneys.

ABA Model Rule 1.6 provides that US attorneys must treat as confidential all “information relating to the representation of a client,” unless the client knowingly waives that right. There are two aspects to the requirement of confidentiality in the ABA Model Rule 1.6 that are relevant to this analysis: first, all information relating to the representation is confidential; and second, in specified conditions, the lawyer is permitted to disclose confidential information. If the information communicated does not relate to the lawyer’s representation, it is not confidential. If it does, the lawyer may disclose information only if the client consents or, in the absence of client consent, to the extent necessary to “prevent reasonably certain death or substantial bodily harm... or to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer’s services, or to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client’s commission of a crime or fraud in furtherance of which the client has used the lawyer’s services” (ABA Model Rule 1.6).

In the US, the standards relating to disclosure depend on whether the client is an organization or an individual. If the client is an organization and an officer of the organization made the communication, ABA Model Rule 1.13(b) requires the lawyer to disclose the intended criminal act to a “higher authority in the organization” and if the

higher authority in turn, fail to take appropriate action the lawyer may reveal the information “to the extent the lawyer reasonable believes necessary to prevent substantial injury to the organization. The clear focus of Rule 1.13 is protecting the organizational client from “substantial injury” by virtue of the illegal acts of its officers, employees, agents and others who act on its behalf.

In addition to the professional ethics rules, there is highly developed case law in the US that defines the attorney-client privilege in relation to court proceedings and its exceptions on both the federal and state levels. It is beyond the scope of this research to discuss the attorney client privilege and the crime fraud exception to it in more than a general sense. While the confidentiality of client information is protected through ethics codes directed at attorneys, the attorney-client privilege is directed at courts prohibiting them from compelling disclosure of certain client information. The attorney-client privilege is not co-extensive with the ethics rules. “The most critical distinction between client confidentiality and attorney client privilege has to do with the scope of what each covers. Information relating to the representation of a client from any source is confidential under the ethics rules. But only communications to or from the client are privileged under the evidence rules” (Joy 2009, 42). This means that in a judicial proceeding a court can compel a lawyer to disclose information obtained from third parties in the course of representing a client. Moreover, if a third party is present at the time of the client communication to the lawyer, the privilege is waived.

As previously mentioned, the ethics rules provide for permissive disclosure when the client communication involves fraudulent or serious criminal activity. The crime fraud exception to the attorney client privilege is more extensive in that it excludes from

the protection “information communicated by the client in an attempt by the client to use the lawyer’s services to commit or cover up a crime or fraud” (Michmerhuizen 2009, 1). In other words, communications about any criminal activity that the client seeks the lawyer’s service to commit or conceal are non-privileged and the attorney would be required in a judicial proceeding to disclose them.

#### INDIA—INDIAN BAR COUNCIL RULES

In 1926, the Indian Bar Councils Act established Bar Councils on the state level to unify the profession, which at that time consisted of 6 different categories of legal professionals, and to self-regulate the profession. The Indian legal profession was divided into two tiers of practitioners: advocates, attorneys and *vakeels* who practiced in the High Courts and pleaders, *mukhtars* and revenue agents who practiced in the lower courts (Gandhi 1988, 373). In 1951, the Indian government established the Bar Council as part of the effort to create a unified bar and to establish a self-regulatory structure to regulate the legal profession in India. According to the Bar Council website: “The profession is guided by a code of conduct and ethics framed as part of the rules of the Bar Council of India. The Bar Council of India and the State Bar Councils which are created under the Advocates Act, are mainly entrusted with the induction of the new entrance (sic) into the profession, taking care of the conduct and discipline of advocates, safeguarding the privilege and welfare of advocates and finally maintaining and improving the standard of legal education in the country.” Finally, the Bar Council describes itself as “the one and only body representing the Indian Bar” ([www.barcouncilofindia.org](http://www.barcouncilofindia.org)).



The Indian Bar Council's Rules, like the ABA Model Rules, recognize the confidentiality of client information, which includes communications from the client, the contents of any documents obtained in the course of the representation and the lawyer's advice. Under the Indian rules, the client can waive confidentiality only by expressly consenting to the waiver. The Indian rules differ from the ABA Model Rules, which permit implicit waiver to further the purpose of the representation, and the Chilean rules, which, as discussed below, do not allow for client waiver of confidentiality. Unlike the US and Chile, the Indian rules do not set out exceptions to the duty of confidentiality. India has codified the exceptions to the confidentiality of client information in Section 126 of the Indian Evidence Act, which provides that communications made in furtherance of any illegal purpose and facts observed during the course of the lawyer's employment "showing that any crime or fraud has been committed since the commencement of his employment" are not confidential. Unlike the ABA Model Rules the Indian rules do not distinguish between individual and organizational clients, and unlike both the Chilean and ABA rules, the Indian rules do not explicitly provide for either permissive or mandatory disclosure of information relating to criminal activity; although that may be clear to the Indian attorney based on context. The exclusion in Section 126 of the Indian Evidence Act is similar to the US crime-fraud exception but is broader in effect since the crime-fraud exception only applies to judicial proceedings. In addition, the exclusion of all facts observed during the course of a lawyer's employment does not have an equivalent in either the US or Chilean codes.

## CHILE—COLEGIO DE ABOGADOS DE CHILE CODIGO DE ETICA

Chile is a civil law country. In civil law jurisdictions, the concept of confidentiality is incorporated in the concept of a “professional secret” and the ethics code of the *Colegio de Abogados de Chile* recognizes that it is the right and duty of the lawyer not to disclose professional secrets. The *Colegio de Abogados de Chile*, A.C. traces its history to the *Colegio de Abogados*, which was established in 1925 for the purpose of regulating the practice of law in Chile. Prior to 1981, all Chilean attorneys were required to be members of the *Colegio de Abogados*, which had the plenary power to regulate the profession and discipline its members. The *Colegio* had the power to disbar attorneys for serious violations of its Rules. The 1980 Constitution, enacted during the administration of Augusto Pinochet, eliminated the requirement of mandatory affiliation and the concept of self-regulatory professional associations. Instead, the law required professional associations to be formed and regulated in the same manner as unions (Pavlic Velez 2007, 3-4). Consequently, while many bar associations exist in Chile, the *Colegio de Abogados de Chile* is the largest with 8,000 members.

Attorney conduct is also regulated by law in Chile. Under Chilean law, professional secrets include only non-public information that the client does not want disclosed that the attorney learned in the course of the representation regardless of source (Anriquez Novoa 2009). The scope of what is covered under the professional secret is narrower than what is covered by the confidentiality of client information provided by the Indian and US rules. Moreover, unlike the Indian and US client, the Chilean client cannot waive the protection of the professional secret since it is the right of the lawyer (Hazard 2004). This becomes clearer in the judicial setting where the US and Chilean

assertions of privilege operate differently. In the US, the common law privilege must be asserted by the client and ruled upon by the Judge. In Chile, it is the lawyer called to testify, not the judge, who decides whether or not the information sought is covered by the professional secret. Article 360 of the Code of Civil Procedure and Article 201 of the Code of Criminal Procedure. Chile reaches the same result as the US crime fraud exception to the privilege and Section 126 of the Indian Evidence Act through its statutory definition of professional secret. By definition, the concept of professional secret does not include information from the client that he intends to commit a crime. Moreover, the Chilean ethics rules require attorneys, who receive such information, to make the necessary disclosures to prevent the criminal act or to protect persons in danger (*Colegio de Abogados*, Art. 12). Of the three countries studied, Chile is the only one that mandates disclosure.

On the other hand, Chile has also enacted laws that protect the confidentiality of information covered by the professional secret. For instance, Articles 231 and 247 of the Criminal code sanctions attorneys who harm their clients by violating their duty to preserve the confidentiality of client information. At the same time, Chilean law requires criminal prosecutors and public defenders to report crimes that they become aware of in the course of their professional duties. Article 175 *Codigo Procesal Penal*.

Currently there is a proposal before the *Colegio de Abogados* to modify its rules relating to client information to distinguish between confidential client information, which would include all information relating to the client, and the professional secret, which is a subset of the former including only non-public information about the client. Under the proposed rule the lawyer would be ethically required to protect the

confidentiality of client information but only legally required to preserve professional secrets—the difference being the imposition of criminal sanctions for disclosure of information covered by the professional secret (Anriquez Novoa 2009). The *Colegio de Abogados* has also condemned the actions of aggressive prosecutors who have searched and seized attorney records in the course of white-collar criminal investigations. Thus, it would appear that the *Colegio* is becoming more assertive about protecting client information. This is that it reflects Chile's modernization of its legal institutions and movement toward a more adversarial system (Gibson 1996, 61).

In both common law and civil law systems, the rules struggle with the confidentiality of client communications relating to criminal acts. This situation presents the classic ethical dilemma for attorneys where the attorney must weigh the interests of the client against those of others in order to resolve the problem. It is implicit in the second and third research hypotheses that every society has an interest in preserving law and order and protecting its members and that sometimes this interest conflicts with the interests of the individual. US attorneys have debated this issue from the beginnings of the organized bar (Zacharias 2007, 6). My hypothesis is that the way a culture and its attorneys resolve this dilemma is affected by the country's culture.

**Table 2.2: Comparison of Code Provisions Allowing Disclosure**

Country	Code Provision
Chile	“When a client communicates ...the intention to commit a crime, such confidence does not remain covered by the professional secret. The lawyer shall make the necessary revelations to prevent the criminal act or to protect people in danger.” Article 12 of <i>Codigo de Etica</i>
India	(Communications not protected include) “Any communication made in furtherance of any illegal purpose... Any fact observed by ...attorney...in the course of his employment as such showing that any crime or fraud has been committed since the commencement of his employment.” Section 126, Evidence Act
United States	“A lawyer may reveal information...to prevent reasonably certain death or substantial bodily harm; to prevent the client from committing a crime or fraud ... substantial injury to the financial interests or property of another ....(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another ...has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services... to comply with other law or a court order.” (ABA Model Rule 1.6)

To summarize, all three countries recognize the confidentiality of client information obtained in connection with legal representation, and the ethics codes of the three countries studied provide different degrees of protection to communications made between a lawyer and the client in the furtherance of criminal or fraudulent activity. The salient differences between the codes concern the level of detail, the types of unlawful conduct that may not be protected, whether disclosure is permissive, mandated or not mentioned at all. In the US, two relatively lengthy and detailed provisions relate to

confidentiality while in both Chile and India the confidentiality provisions are short and generalized. Each of the countries studied dealt with the issue of the client who discloses violent criminal activity in a different way. In Chile, the professional secret does not include the expressed intention to commit a criminal act, and the code requires the attorney to make the disclosures necessary to prevent the criminal act and to protect the intended victim. The Indian code excludes from the protections given to client communication any communications made in furtherance of “any illegal act” but is silent as to whether or not disclosure is mandated. The Indian code’s exclusion of communications relating to “illegal acts” from the definition of confidential communications extends its reach beyond criminal acts and may include violation of civil statutes. Finally, in the US, all information relating to the attorney’s representation of the client is confidential. In other words, no communication relating to the attorney’s representation of the client is excluded. Unlike Chile, the ABA Model Rules protect communications relating to intended criminal acts, and unlike India, the ABA rules also protect communications related to the representation made in furtherance of criminal activity. In both instances, the ABA Model Rules permit attorneys to disclose otherwise confidential information to prevent acts that are “reasonably certain” to cause “death or substantial bodily harm...or substantial injury to the financial interests or property of another”. When the client is an organization, lawyers may disclose any information that will “prevent substantial injury to the organization” (ABA Model Rule 1.13 (c)).

ABA Model Rule 1.13 does not have an equivalent in either the Chilean or Indian ethics codes. While this may partly be explained by historical events in the US (Enron and World Com) and the overall complexity of our financial system, culture undoubtedly

played a role in how the ABA resolved the problem of attorney complicity in the corporate scandals during that time period. First, it was a rules-based solution. Cultures characterized by a high degree of individualism “consider formal legal rules ... (as) guidelines for future behavior” (Bierbrauer 1994, 250). These cultures view “precise and detailed rules [as a means] to avoid arbitrariness and caprice” (Bierbrauer 1994, 250). The US is the most individualist of the three countries studied (Hofstede 2010 95-97). Other societies solve problems of this nature based on shared values, traditions and mutual personal obligations. Both India and Chile are more traditional societies than the US (Inglehart, Basanez and Moreno 1998, 15). Second, Rule 1.13 is based upon the premise that the attorney’s first loyalty is to the corporation, but collectivist cultures value the personal relationships higher than loyalty to the company (Hofstede 2001, 239). A rule of this nature is unlikely in collectivist societies. Finally, the nature of Rule 1.13 may not have been an acceptable solution in hierarchical societies. Rule 1.13 permits the attorney to go outside of the corporate hierarchy to disclose client information. This may not be a workable solution for attorneys in hierarchical non-egalitarian societies (Weaver 2001, 5) or in cultures, where the lawyer may prioritize preservation of his relationship with his co-workers and supervisors (Bierbrauer 1994, 245).

Why did these three countries, all of which are democracies where the rule of law prevails, resolve this issue so differently? My hypothesis is that the differences are in part attributable to cultural differences between the countries. Indeed, as already alluded to, the level of specificity in the Rules as well as their contents are influenced by culture. In order to measure the effect culture plays in the resolution of this issue, I used two of the dimensions of culture identified by Geert Hofstede, to measure the differences

between Chile, India and the US (Hofstede and Hofstede 2005). I chose Hofstede's results because they have both a high degree of reliability (other researchers have replicated them) and a high degree of acceptance by the academic community (Robertson 2002, 328).

In his original research, Hofstede identified 4 dimensions of culture: power distance, individualism, masculinity, and uncertainty avoidance. He ranked each country's culture in terms of those dimensions, and, subsequently, added two more dimensions, long-term orientation and indulgence versus restraint. In the course of his research, he studied and ranked the cultures of over 75 countries including Chile, India and the US. Each of the six dimensions represents a continuum with each country falling somewhere between the two poles. As previously mentioned, two of Hofstede's dimensions are relevant to this study: power distance (PDI) and individualism/collectivism (IDV). Hofstede's definitions of his dimensions apply in this research. PDI "...is the extent to which the less powerful members of organizations and institutions accept and expect that power is distributed unequally. The basic problem involved is the degree of human inequality that underlies the functioning of each particular society." (Hofstede 2001, xix) PDI scores "inform us about the dependence relationships in a country" (Hofstede and Hofstede 2005, 45). A society that scores high on the PDI scale is likely to be more hierarchical and may be more accepting of treating one group differently than another based on status. Other researchers have linked PDI and ethicality in various cultures (Robertson 2002, 327).

IDV "...is the degree to which individuals are supposed to look after themselves or remain integrated into groups, usually around the family" (Hofstede 2001, 225). "In a



high individualism society, members place great importance upon themselves or a small peer group” (Hofstede 2001, 225). In an individualist culture “when a conflict arises between personal and group goals, it is considered acceptable for the individual to place personal goals ahead of collective goals” (Ball 2001, 58). At the opposite end of the spectrum, in a low individualism society, members place more importance upon the greater good for the extended family or organization” (Smith and Hume 2005, 213). “Collectivism stands for a society in which people from birth onwards are integrated into strong, cohesive in-groups, which throughout people’s lifetime continue to protect them in exchange for unquestioning loyalty” (Hofstede 2001, 225). In a collectivist culture “if there is a conflict between personal and group goals, it is considered socially desirable to place collective goals ahead of personal goals” (Ball 2001, 58). Scores in PDI and IDV tend to demonstrate a negative correlation--that is countries with high PDI scores (hierarchical accepting of inequality with the society) tend to have lower IDV scores (collectivist). This correlation meshes well with my hypothesis that in countries with high PDI scores or low IDV scores, the ethics codes will require more disclosures of confidential information when the interest of the client and society conflict. On the other hand, countries with low PDI scores or high IDV scores will require less disclosure.

My hypothesis is that individualist cultures, where the norms, rules and values are geared to the individual and not the group, give greater protections to client information than collectivist societies. The issue is joined when the confidentiality of client information clashes with the best interests of others or society as a whole for the information. The exceptions to the right or duty of maintaining confidentiality are society’s way of resolving this dilemma. In the specific case of client information

evidencing the intention to seriously harm others, the individual's need for confidentiality has to be balanced against the needs of others for the information. The degree of individualism in a culture may have a bearing on how this balancing occurs. Specifically, it is anticipated that attorneys from more individualistic cultures will be more likely to favor the client's confidentiality over society's need to know. This is consistent with the notion that attorneys from the US, the highest scoring IDV culture, focus on their duties to their client while attorneys in "some other countries have more diverse duties beyond those owed to the client" (Etherington and Lee 2007, 104).

In describing the IDV dimension, Hofstede noticed that "The relationship between the individual and the collectivity in human society is not only a matter of ways of living together, it is intimately linked with societal norms (in the sense of value systems of major groups of the population...)" (Hofstede 2001, 210). Research indicates that "distinctions along Hofstede's dimensions can lead to differences in moral judgment and decision outcomes (Robertson 2002, 328). The two dimensions studied, PDI and IDV, appear to be the most likely to impact the degree of protection given to the confidentiality of client information. In their research to determine if cultural beliefs affected accountants in US accounting firms located outside of the US, Smith and Hume found that IDV did affect their beliefs but that PDI did not. They attributed the latter finding to the pervasive effect of US values in the corporate culture of the US-owned firms studied (Smith and Hume 2005). This factor should not impact the results of this research because the Indians and Chileans responding to this questionnaire do not work for US-owned law firms. Having selected the dimensions to be studied, I then selected the countries to be studied. Based upon the literature review, I took the following factors

into consideration in selecting the countries to be studied: PDI and IDV scores and rankings, form of government (democratic), history, location (cultural zone), and economic growth during the last decade.

The PDI and IDV scores of the three countries studied, Chile, India, and the US, differed significantly. Research shows that no country is entirely individualistic or collectivistic (Wated and Sanchez 2005, 114). Hofstede reported the scores of each country on each dimension on the ordinal level and then ranked the countries in terms of their scores. It is unclear whether the intervals between each score are equal. For the purposes of my analysis, I collapsed the scores and coded each country's score on the PDI and IDV scales as High, Medium or Low. Using this approach, I selected 3 countries to sample from: Chile, India and the US. The scores on the PDI and IND scales are set out in the table below:

**Table 2.3: Power Distance Index Score and Rank**

Country	PDI Score (Mean = 57)	PDI Rank out of 76	PDI Category
Chile	63	37-38	Medium
India	77	17-18	High
USA	40	59-61	Low

(Hofstede 2010, 57-59)

**Table 2.4: Individualism Index Score and Rank**

Country	IDV (Mean = 43)	IDV Rank out of 76	IDV Category
Chile	23	57	Low
India	48	33	Medium
USA	91	1	High

(Hofstede 2010, 95-97)

Using this grouping, the countries studied each fall into a different PDI or IDV category. The second column of each of the above tables shows that one of the three countries scored near the mean on each dimension, i.e., Chile on PDI and India on IDV with the United States having the lowest score of the three countries on PDI and the highest score on IDV.

Other researchers have identified cultural dimensions or traits that may also impact how a society solves problems. These alternative dimensions could also impact the manner a society approaches the issue of protecting the attorney/client relationship. Gibson and Trompenaars posit a continuum from universalism to particularism. At one extreme, there is strict adherence to the law, while at the other extreme, individualized justice can trump the law is. Gibson describes this as measuring a culture's "willingness to tolerate exceptions to the law" (Gibson 1996, 60). Trompenaars noted that universalists tend "to resist exceptions that might weaken [the] rule" (Trompenaar 1998, 3). Researchers have described Americans as seeking "procedural justice" through the fixed

rules...valid for all (Palazzo 2002, 204) or as legalistic in their approach to ethics (Smith 2005, 210). These observations are consistent with an individualistic culture (Karnes et al. 1989). The universalist/particularist analysis distinguishes among cultures that are willing to tolerate disorder for the benefit of individual liberty versus those that will sacrifice individual liberty for social order (Gibson 1996, 61). Gibson hypothesized that “those who value liberty more are more likely to favor the universalistic application of the rule of law and are less likely to view law as an instrument of repression and social control” (Gibson 1996, 61). This “moral universalism in the US ...has its roots in the American religious tradition of *dissenting Protestantism...*” (Palazzo 2002, 204) and in the US history of immigration because “the new community could not rely on shared traditions for ethical behavior...” Palazzo 2002, 204). On the other hand, researchers have commented that the Indian Hindu tradition is highly particularistic in that “...the obvious particularity of human beings is a fact that is not only acknowledged, but is frankly and formally built into Hindu classifications of action” (Dhand 2002, 351). Under Hinduism, a person’s identity is “contingent upon...factors that locate a person socially...” (Dhand 2002, 352). These factors can be both hierarchical or relational. (Dhand 2002, 352). Indians can rely on shared cultural values that are weaker in the immigrant culture of the US. On the other hand, US culture compensates for its lack of shared traditions by identifying common standards of conduct through agreed upon ethics codes. Not surprisingly, Trompenaars found that US responses to his vignettes tended to be highly universalistic while Indian responses were highly particularistic (Trompenaars 1998, 35, 37)<sup>1</sup>.

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<sup>1</sup> Trompenaars did not include Chile in his survey.

In discussing the findings of another researcher, Hofstede found that there was a correlation between the universalist/particularist continuum and the IDV dimension stating that the “individualist society tends to be universalist” (Hofstede 2001, 212). In particularist societies, “moral principals and behavior depend more on the... role somebody plays in any given context” (Palazzo 2002, 204). Collectivist cultures tend to be more “relational” that is “decisions...[are] made on the basis of shared values...” by members of the society who “bond into a network of social obligations and relationships” (Palazzo 2002, 205). In other words, collectivist societies are particularist (Palazzo 2002, 205). The universalist/particularist distinction seems to be another aspect of the IDV dimension, and societies with high individualism were likely to be universalist in viewpoint (Hofstede 2001, 212). This is certainly the case in relation to the US. Hofstede found the US to have the highest scores on IDV, and Trompenaars classified the US culture as universalist and the Indian culture as particularist (Trompenaars 1998, 35).

Inglehart and Welzel identified two dimensions of culture, which they assert “explain more than 70% of the cross-national variance in a factor analysis of ten indicators” (Inglehart 2011). These dimensions are: Traditional/Secular-Rational and Survival/Self-Expression. They describe the Survival/Self-Expression continuum as one where the “Cultural emphasis shifts from collective discipline to individual liberty, from group conformity to human diversity and from state authority to individual autonomy...” (Inglehart 2005, 2). This dimension seems to substantially overlap with Hofstede’s IDV dimension (Hofstede 2001, 223). On the other hand, the Traditional/Secular-Rational dimension does not at first glance seem to correspond closely to any of Hofstede’s dimensions. However, Inglehart characterized it as measuring the authority orientation of

the culture. The Traditional/Secular-Rational dimension indicates that authority on one extreme is vested in religious leadership while bureaucracies tend to predominate at the other extreme. The Survival/Self-expressive dimension measures the culture's "emancipation" from authority as individual liberty increases in importance (Inglehart 2005, 2). As described by Inglehart and Welzel, industrial societies trend in a predictable manner from traditional to secular-rational as the society develops (Inglehart 2005, 2). This development tends to precede the self-expressive dimension in time as a society develops economically (Inglehart 2005, 4). To the extent that this dimension measures the society's acceptance of a hierarchical authority it may measure some of the same characteristics measured by Hofstede's PDI dimension, but to the extent it measures individual liberty, it may be measuring some of the same tendencies measured by the IDV dimension (Leung 2005, 366). Hofstede found a significant correlation ( $r = -.56$ ) between PDI and secular-rational dimension (Hofstede, 2001, 93).

In discussing his findings on the PDI dimension, Hofstede observed that "the specific history of every country has affected its populations' ways of handling power differentials beyond the influences of the country's latitude, populations size or wealth" (Hofstede 2001, 117). Inglehart and Welzel also found that history plays a significant role in the development of a culture (Inglehart 2005, 5). Specifically, they found that "a society's historical heritage has an enduring influence on its value system, so that societies shaped by Protestantism, Islam, or other historical forces show distinctive values today that differentiate them from societies with other cultural heritages" (Inglehart 2005, 19). The results of the World Values Survey indicate that "societies cluster into relatively homogeneous cultural zones which reflect their historic

heritage...[which] persist even when one controls for the effects of socioeconomic development” (Inglehart 2005, 6). The Inglehart-Welzel cultural zones include: Protestant Europe, Confucian, Ex-Communist, Africa, English-speaking, Catholic Europe, South Asia and Latin America. Chile, India and the US fall into separate cultural zones (Latin America, South Asia and English-speaking respectively) (Inglehart 2005, 6). Religious experience is imbedded in the Inglehart and Welzel analysis. They found that religious beliefs have a greater effect in “pre-industrial societies...than among economically highly developed societies” (Inglehart, Basanez and Moreno 1998, 7). The GLOBE study researchers came to a similar conclusion about the clustering of societies that shared religious beliefs, language, geography, and ethnicity as well as economic development (Gupta and Hanges 2004, 183).

Scores of the three countries studied differed significantly on Inglehart’s Survival/Self Expressive Values scale.

**Table 2.5: Scores on Survival/Self Expressive Values Scale**

Country	Wave 2 (1989-1991)	Wave 3 (1995-1997)	Wave 4 (1999-2001)
Chile	-.20	-.81	0
India	-.91	-.69	-.60
USA	1.35	1.62	1.59



This research used the scores from the second wave of testing since the second wave was closest in time to Hofstede's survey. It is unlikely that this introduced any error into the analysis because cultures are relatively stable, and the scores should not change significantly between Hofstede's testing in 1969 and 1989 (Wave 2) (Hofstede 2001, 34). Inglehart and Welzel also noted that "cultural traditions are remarkably enduring and shape the political and economic behavior of their societies today" (Inglehart and Welzel 2005, 18). The relative rankings of the three countries in Wave 2 and 4 confirm this. The scale of scores for each wave ranged from -2 to +2. In the second Wave, the United States had the highest score of 1.35, Chile fell in the middle with a -.20, and India scored the lowest with -.91. The relative rankings of Chile and India are reversed on this scale relative to Hofstede's IDV rankings and are consistent with his PDI rankings.

During the 1990's, House and a team of 170 researchers conducted a 62-nation study of leadership referred to as the GLOBE study to determine if the values and practices associated with leadership effectiveness were universal or culturally dependent (Grove 2005 *Introduction*, 2). In the course of their research, the GLOBE team identified nine cultural dimensions. These dimensions included: performance orientation, uncertainty avoidance, humane orientation, institutional collectivism, in-group collectivism, assertiveness, gender egalitarianism, future orientation and power distance (Grove *Introduction* 2005, 4). Three of the GLOBE dimensions are "direct descendents" of Hofstede's UAI, PDI and IDV dimensions (Hanges and Dickson 2004 138). Unlike other researchers, the GLOBE researchers further distinguished between cultural practices and values within each dimension. In this way, the researchers were

able to evaluate the practices and values in each culture and to give each culture a separate score for values and practices for each dimension.

The GLOBE researchers also developed two dimensions that capture aspects of Hofstede's IDV dimension. The first of these dimensions is In-Group Collectivism, which resembles the IDV dimension, because societies that score high in this dimension distinguish between "in-groups and out-groups" and "duties and obligations are important determinants of social behavior (Grove 2005, *Worldwide Differences*, 7). While, on the other hand, in societies that score low in In-Group Collectivism "personal needs and attitudes are important determinants of social behavior." (Grove 2005, *Worldwide Differences*, 7). Cultures that score low on the In-Group Collectivism dimension also tend to emphasize rationality in behavior (Grove 2005, *Worldwide Differences*, 7). This could indicate some overlap with Inglehart's secular-rational dimension. The second dimension used by the GLOBE researchers to measure the degrees of individualism/collectivism within a culture was Institutional Collectivism, which they defined as "the degree to which organizational and societal institutional practices encourage and reward collective distribution of resources and collective action" (Javidan, House and Dorfman 2004, 30). Societies that score high on this dimension encourage "group loyalty... even if this undermines the pursuit of individual goals" and group "members assume that they are highly interdependent with the organization" (Grove 2005, *Worldwide Differences*, 11). Low Institutional Collectivism societies encourage the endeavors of the individual even if it is at the expense of the group and group members see themselves as independent of the group (Grove 2005, *Worldwide Differences*, 7).

The GLOBE researchers found that Hofstede's PDI had a .61 correlation with GLOBE's Power Distance cultural practice scale (Hanges and Dickson 2004, 139). Hofstede's IDV showed a strong negative correlation of -.82 with GLOBE's In-Group Collectivism practices scale and a significant negative correlation (-.55) with Collectivism I: Institutional Collectivism cultural values scale (Hanges and Dickson 2004, 140). Finally, there was a positive correlation of .32 between UAI and GLOBE's uncertainty avoidance values. It should be noted that GLOBE also found a negative correlation (-.61) between UAI and its uncertainty avoidance practices scale (Hanges and Dickson 2004, 139). So, while GLOBE uses the same descriptive terms for his dimensions of culture as Hofstede, it appears that they measure different aspects of same dimension (Hofstede 2010, 43).

The GLOBE study included India and the US but not Chile. However, since GLOBE reported its results in terms of regional clusters, when possible, I am using the results reported for the Latin American cluster (Costa Rica, Venezuela, Ecuador, Mexico, El Salvador, Columbia, Guatemala, Bolivia, Brazil and Argentina) (Gupta and Hanges 2004, 186) as a proxy for Chile since Chile shares the same "Latin culture" that the GLOBE researchers used to justify grouping the other countries in the Latin cluster. Like the other countries that make up the Latin Culture, Chile is a Catholic country with the Church exercising a strong influence on the society (Gupta and Hanges 2004, 186). "In addition, these societies 'share a common Roman law heritage, a common Iberian colonial past, and present-day patterns of social organizations'" (Rosenn 1988, 128). History has a significant impact on culture. Hofstede noted that while latitude, population size and wealth explain 44% of the variance in PDI, some of the remainder is

explained by history (Hofstede 2001, 117). Inglehart and Welzel found that history accounts between 35 and 59% of the variation in placement on the Traditional-Secular dimension (Inglehart and Welzel 2005, 80). In any event, it appears that history plays a significant role in the formation of a culture and its values. It follows from this that countries with a shared history are likely to share similar values.

By clustering these countries, the GLOBE researchers lost the distinctions between the countries making up each cluster. However, in the absence of individual country scores, the cluster score will serve as a good approximation for Chile's scores on the GLOBE study. Like Inglehart, GLOBE placed all three countries studied in different regional clusters. Specifically, GLOBE categorized the US as Anglo and India as Southeast Asian (Gupta and Hanges 2004, 190).

**Table 2. 6: GLOBE Study on Three Dimensions**

Country	Power Distance Practices	In Group Collectivism Practices	Institutional Collectivism Values
Chile	Unknown <sup>2</sup>	5.52	5.32
India	5.47	5.92	4.71
US	4.88	4.25	4.17

(Carl, Gupta and Javidan 2004, 539; Gelfand, Bhawuk, Nishii and Bechtold 2004, 477-479)

The GLOBE findings are consistent with Hofstede's relative rankings of the three countries studied. Both GLOBE and Hofstede found India to have a higher score on Power Distance than the US. The correlations between GLOBE's scores on both of its Collectivism scales and Hofstede's IDV dimension is negative. Therefore as expected the US which scored the highest of the three countries on IDV has the lowest score of the three countries on both of GLOBE's Collectivism scales above. The In Group Collectivism scale also has the same relative ranking of the three countries as Inglehart's ranking of them in Waves 2 and 4 on the Survival/Self Expressive Values Scale. The overall consistency in the literature regarding the relative ranking of the three cultures studied on power distance-type measures and individualism-collectivism measures supports the use of Hofstede's IDV and PDI cultural measures.

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<sup>2</sup> GLOBE noted no clear trend among the Latin American countries. (Carl, Gupta and Javidan 2004, 547).

Finally, I took socioeconomic growth into consideration because the research of Hofstede and Inglehart and Welzel shows that socioeconomic development has an effect on culture. Specifically, research has shown that the negative correlation between IDV and PDI disappears when national wealth is controlled for (Hofstede 2001, 216). Inglehart and Welzel also noted a strong link between economic development and the emergence of self-expressive (or individualistic) values i.e., values that place an “increasing emphasis on the civil and political liberties that constitute democracy” (Inglehart 2005, 2). I studied three countries experiencing steady economic growth because I believed that these cultures would be more stable and that the rule of law was more firmly established.

According to International Monetary Fund (IMF) data, all three countries have experienced steady increases in their economies as measured by their gross domestic product (GDP)<sup>3</sup> measured in constant dollars between 2000 and 2010. During this time period, the United States GDP growth rates ranged from a low of -2.4% (2009) to 4.1% (2000). 2009 was the only year of negative results. Chile and India, both classified as emerging and developing economies, also experienced steady growth. The Chilean GDP growth rate ranged from -1.5% in 2009 to 6% in 2004 with only one negative year. The Indian GDP growth rate ranged from 3.8% in 2001 to 9.8% in 2006. India had no negative years.

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<sup>3</sup> “Gross domestic product is the most commonly used single measure of a country’s overall activity. It represents the total value at constant prices of final goods and services produced within a country during a specified time period, such as one year.” (IMF.org)

## CHAPTER 3

### RESEARCH DESIGN AND METHODOLOGY

Initially, I approached this problem from the practitioner's viewpoint trying to understand differing viewpoints I have encountered in working with counsel from other countries. As an Enforcement attorney and a member of the Illinois bar (one of the states that has a more liberal disclosure rule than the ABA), the issue of privilege or disclosure in the context of financial fraud seemed clear. But, these issues are not as clear for members of the US private bar, and International standards seemed to vary. The reviews of various codes of conduct confirmed that different countries had different standards. This, in turn, led to the inquiry regarding the effect culture has on lawyer attitudes, practices and rules.

As previously mentioned, in designing my research to determine if culture has an effect on the level of protection given to the confidentiality of client information, I selected the cultural dimensions identified by Hofstede to study in this research that I thought would most likely affect the way each culture went about solving the problem of how to balance the client's need for confidentiality against the society's need to protect its members and prevent crime. The other dimensions, masculinity-femininity, avoidance of uncertainty, long-term orientation, subjective well-being did not appear to be as likely to impact the way a society resolved this issue. In general terms, the masculinity-femininity dimension is concerned with gender roles in a given society (Hofstede 2010, 140); the avoidance of uncertainty dimension (UAI) gauges a society's "tolerance of the

ambiguous and the unpredictable” (Hofstede 2010 189); the long-term orientation dimension measures the degree to which a society is focused on future rewards as opposed to past and present rewards (Hofstede 2010, 239); and the subjective well being dimension relates to the degree of gratification of human desires permitted by the society (Hofstede 2010, 281). However, as I discuss later in this chapter, UAI does appear to have an influence upon how the extent of protection given to client information is set out in the codes.

Data collection in this study proceeded in three stages each utilizing a different methodology. In the first stage of my research, I identified the ethics codes and statutes in each country to determine the extent of the protection given to confidential client information and the exceptions thereto. Afterward, I verified the accuracy and completeness of my analysis by interviewing lawyers and/or law professors from each of the three countries studied about these protections. Once I had identified the national ethics code (or its equivalent), I performed a content analysis of each code. Finally, because I recognize that codified ethics can differ from applied ethics, lawyers and/or law students in each of the countries studied were asked to take a questionnaire that was designed to determine to whether respondents thought client information should be disclosed in a variety of situations. The survey contained two sections. In the first section, the respondents were asked whether they agreed or disagreed with the manner in which a lawyer handled a situation where he had to balance the client’s need for confidentiality versus other societal interests in disclosure. The second section of the questionnaire asked for agreement or disagreement with nine values statements relating to confidentiality. Like the GLOBE study, this questionnaire attempted to differentiate



between the practices of attorneys in different countries “the way things are” and their values “the ways things should be” (Javidan, House and Dorfman 2004, 29). Finally, I analyzed the questionnaire responses.

### COMPARATIVE CONTENT ANALYSIS

Each of the three countries studied has an organized bar which has promulgated codes of ethics to govern the conduct of attorneys. In some situations, statutes and government regulations also govern the conduct of attorneys. Since other researchers have noted that the “authority and representative character of codes depend on who formulated them and *by which procedure*,” (Hafez 2002, 227) I began by identifying the ethics code of the major bar association of each of the countries studied. The three Codes used in this research include the *Código de Etica Profesional* of the *Colegio de Abogados de Chile*, A.G., the Rules on Professional Conduct of the Bar Council of India, and American Bar Association Model Rules of Professional Conduct. The major bar associations in each country studied promulgated these rules, which indicates that they represent the views of the largest group of lawyers in each country or, in other words, the consensus of opinion of the profession as to how attorneys should act.

The *Código de Etica Profesional* of the *Colegio de Abogados de Chile* was drafted by a Committee created by the Chilean Supreme Court composed of the deans of several Chilean law schools. This code of ethics to governs the conduct of all Chilean lawyers. Before the code was adopted, the Committee posted its proposals on the Internet for comment by interested parties.

The Advocates Act, 1961 established the Indian Bar Council and gave it national jurisdiction over the legal profession. (Bar Council of India Website). Section 7 of the

Advocates Act empowers the Bar Council of India to establish the standards of professional conduct and rules of etiquette for the legal profession in India. Its rules govern the conduct of all Indian attorneys.

Finally, for the United States, I used the American Bar Association Model Rules of Professional Conduct (ABA Model Rules) because it serves as the Model for the rules adopted by 49 of the 50 US states. That being said this provision and, in particular those sections relating to disclosure of confidential information has been the subject of much debate within the profession. The original canons adopted in 1908 and every ethics code proposed by the ABA thereafter included the duty of protecting the confidentiality of client information (Zacharias 2007, 7). In 1969, the ABA adopted the Model Code of Professional Responsibility (Model Code) which permitted a lawyer to disclose otherwise confidential information that a client intended to commit a crime and the information necessary to prevent the criminal act. In 1983, the ABA adopted the Model Rules, which narrowed this exception to the duty of confidentiality to permit disclosure only to the extent necessary to prevent a death or substantial bodily harm that the client or someone else was reasonably certain to cause. Over 40 states refused to adopt the approach of the ABA Model Rules and retained the more expansive disclosure standard permitted in the Model Code. As previously discussed, in 2003, the ABA adopted its current version of Rule 1.6 which permits disclosure to information to prevent death, substantial bodily harm or a criminal or a fraudulent act reasonably certain to cause substantial harm to the property or financial interests of another person.

After selecting the codes to be studied I began my analysis. First, I identified the provisions in each code that related to the confidentiality of client information, and then I

identified the portions of the code that provided exceptions to the general rule of confidentiality—that is the circumstances under which a lawyer can disclose client information to prevent harm to others.

Then, I performed a content analysis of the codes. I classified words and concepts as falling into one of three categories: client-centered, profession-centered or public interest-centered. My hypothesis was that there would be more words or concepts that were client-centered in countries with high IDV scores and more public interest words and concepts in more collectivist societies. I anticipated that words and concepts that fell into the profession-centered category would reflect either an in-group/out group orientation of the society or possibly the hierarchical nature of the society.

I read the three codes and identified words that I thought fell into each category. The words counted are listed in Table Appendix 1-3. Next, I compared the three lists and attempted to have some degree of consistency across the three codes in my coding of words and concepts. Many times the same word would appear in the word lists for all three countries, for example “client” (*cliente* in Spanish). Other times different words were used to express the same meaning, for example, *abogado*, advocate and lawyer respectively were used in the Chilean, Indian and US codes.

This analysis also included a qualitative analysis to ensure that I was analyzing the meaning of codes (latent content), not the drafting. Other researchers have noted that a simple comparison of words or terms cross-culturally can be misleading and that some degree of interpretation is necessary (Hafez 2002, 227). Consequently, I also categorized each concept contained within the code provisions to determine the breakdown of the rules in terms of the same three categories. The style of writing the codes differed

significantly with the Chilean and Indian code provisions being very brief and consisting of no more than 3 sentences while the ABA Model Rules in some instances included paragraphs and sub-paragraphs. This difference is likely due to the need to spell rules out with more specificity in individualistic societies (Bierbrauer 1994, 250). Whereas, in more collectivist societies the drafters are likely to rely more upon shared values and traditions to fill in the details (Palazzo 2002, 205).

In order to provide uniformity in analysis across the codes, I counted each sentence as one concept. In all countries, one code provision could contain multiple concepts with one serving the interests of the client while another protected the public at large or the interests of the legal profession. I determined that the best method to do the code analysis was to do it on a sentence-by-sentence basis since each sentence generally incorporated only one concept. I did not count sentences that defined terms or provided examples of how the rule worked. Where a sentence prohibited a certain conduct then was followed by a phrase usually beginning with “unless” that permitted the prohibited conduct, I looked to the second phrase to determine how the concept should be classified.

In determining how to classify a concept, the operative question was: who is being protected if the lawyer violates this rule? Or what harm does the rule attempt to avoid? Using that standard, I was able to classify all but four rules in the three codes studied

In the course of performing the content analysis, I noticed that the concepts that I classified as profession-centered in the ABA Model Rules differed from some of the concepts that fell into the same category in the Chilean and Indian rules. It seemed to me that the ABA Model Rule provisions were more about regulating the conduct or

protecting the interests of the individual lawyer as opposed to the Chilean and Indian rules, which contained concepts that related to the legal profession as a whole. The Chilean and Indian codes used words like dignity, honor, respect, scandalously, and conviction. The Chilean and Indian codes contain provisions about maintaining the maintaining the dignity and honor of the profession. The US does not. In order to determine if that observation was accurate I reviewed the codes a third time and classified each concept categorized as profession-centered as being focused on the individual lawyer or the profession as a group.

Although I attempted to control for reviewer subjectivity by being very specific in describing the words counted and their classifications and the manner or standard used to operationalize the categorization of the concepts, I was only partially successful in controlling for my own North American cultural background. The original formulation of the profession-centered category reflected my own ethno-centric view of culture as a member of a highly individualistic society. I defined it as being centered on the lawyer. As noted above, in the more collectivist cultures, Chile and India, the more appropriate measure was for the profession to be viewed as the in-group. ‘...[I]n individualistic societies the distinction between out-groups and in-groups is relatively unimportant...in collectivistic societies behavior toward in-group members can differ markedly from behavior toward out-group members’ (Bierbrauer 1994, 246).

#### THE QUESTIONNAIRE

Although the rules in each of the countries studied protect the confidentiality of client information with some exceptions permitted to protect the greater society, the question remains whether the application of these rules is similar or different across the

three cultures. Are the rules simply a superficial adoption of international standards or are they consistent with the values of the society? In order to get some understanding of these issues, it was necessary to obtain data directly from members of the legal profession in the three countries studied. In the second phase of my research, I designed a two-part questionnaire. Part One consisted of five vignettes followed by variations of the facts, which asked the respondent attorneys and law students to what extent they agreed or disagreed with a lawyer's response to a series of ethical dilemmas relating to the confidentiality of client information. The questionnaire measured the degree of agreement or disagreement by using 5-point Likert scales with responses ranging from strongly agree to strongly disagree. The use of vignettes is a widely accepted method of research in the area of applied ethics (Robertson 2002, 331). Each vignette posed an ethical dilemma in which there was no clear right or wrong answer that dictates the resolution (Robertson 2002). Both Hofstede and Javidan agree that having the respondents comment on the behavior of a third party will have more "behavioral validity than those based on self-descriptions" (Hofstede 2001, 9; Javidan and others 2006, 900). I anticipated that these questions would measure legal ethical practices, i.e., what the GLOBE researchers refer to as "the way things are" (Javidan, House and Dorfman 2004, 29). Part Two of the questionnaire was nine statements of legal values relating to confidentiality. These questions were designed to capture "the way things should be" (Javidan, House and Dorfman 2004, 29).

Because, I drafted the vignettes based in part upon my research and in part upon my experience as a practicing attorney in the US, I asked attorneys in Chile and India to review it to determine if the scenarios were realistic in their professional experience.

Based upon their comments, I made minor adjustments to the vignettes. The scenarios in the vignettes were designed, in part, to touch upon some of the areas that were controversial in the drafting of the ABA Model Rules and, in part, based upon news reports of areas of contention concerning the Council of Bars and Law Societies of Europe (CCBE) Code of Conduct.

Two Chilean law students translated the questionnaire into Spanish. Each translated half of the questionnaire and checked the work of the other. By using Chileans to translate the questionnaire into Spanish, I was able to avoid “distortions in meaning across cultures” (Robertson 2002, 330). This methodology was consistent with Hofstede’s recommendations relating to the translations of research instruments (Hofstede 2001, 21). The two primary translators were doing legal internships in the US at the time they did the translations. Consequently, they understood the terminology in both languages. They translated from English to Spanish, i.e., from their second language to their first (Hofstede 2001, 21). I reviewed the translations for accuracy. Because I was uncertain that two of the assertions were correctly translated, a Spanish teacher (native English speaker) back translated them into English. The back translations were almost identical to the original English. I distributed the questionnaire to the Indian lawyers in English because the Indian lawyer, who reviewed the questionnaire, stated that there was no need to translate the questionnaire into any of the Indian languages.

I used three methods of data collection (content analysis, interviews and questionnaire) as a means supporting and corroborating conclusions drawn by other means. Getting lawyers to respond to the questionnaire was the greatest hurdle in this research design. In real world terms, compliance was a function of personal

relationships. Lawyers see themselves as very busy and are not inclined to respond to unsolicited questionnaires. Consequently, the method that worked best was a personal request that the lawyer take the questionnaire followed up by an emailed informational email with the link to the questionnaire. This latter alternative is the least desirable because the sample is not truly random. But, it was the best available option. Questionnaire participation was strictly voluntary and all responses were anonymous.

In the US, I distributed the questionnaire to two sample populations. First, I selected a random sample of 110 lawyers from Sullivan's Law Directory, which lists most of the lawyers who practice in Chicago, Illinois. My goal was to have a sample of 100 lawyers, but I selected 10 more in anticipation of some of the emails failing. Twelve of the email addresses selected were out-dated. In order to construct my sample, I selected a page in Sullivan's Law Directory at random and beginning with the first lawyer on the left-hand page I selected every fifth lawyer to be a member of the sample. If the fifth entry was a law firm instead of a lawyer I moved to the next lawyer entry and counted 5 from that person. I used the same methodology if the fifth lawyer did not have an email address listed. After one week, only two lawyers had responded to the questionnaire invitation.

At this point, I revised my methodology to a snowball technique. I drew a list of 20 lawyers who I knew, but with whom I did not have a supervisory or business relationship and asked each of them to take the questionnaire and to ask one friend to take it as well. All but one lawyer agreed to do this and some forwarded the questionnaire to more than one friend. After four weeks, I had 51 responses.



In Chile, two Chilean law students distributed the questionnaire. Each of them worked as law clerks in law firms with approximately 20 lawyers each. They each asked the lawyers in the firms to respond to the questionnaire. Thirteen lawyers responded. They then distributed the questionnaire to 50 law students in their last year of legal studies at *Pontifical Universidad de Chile*. Twenty-eight responded. In total there were 41 Chilean respondents.

Distribution of the questionnaire in India was difficult. Initially two prominent attorneys in India agreed to do it. After 2 months, only 4 attorneys had responded. Then, a U.S attorney at IBM asked an Indian colleague to distribute the questionnaire, which netted 6 more responses. I then posted a link to the survey on a Facebook page for Indian lawyers and one person responded. Subsequently two faculty members from DePaul's Law School agreed to use their contacts in India to assist me in distributing the questionnaire. Despite their best efforts, three more persons responded. In all, there were 14 Indian respondents.

The survey results validated the lack of consensus among lawyers on the issues presented. The greatest consensus among the attorneys was in response to the following vignette: The General Counsel knows that the corporation he works for has been told by a respected engineer that a tank holding poison could burst but that the Board had decided not to spend the money to repair it. The General Counsel prepares a report to the Board warning of the risks to the corporation if the tank is not repaired. The Board rejects his recommendation and orders him to destroy the report, which he does. Subsequently, the tank ruptures and hundreds of people die..." The General Counsel tells a newspaper reporter about his written report and his communications with the

Board of Directors. There was a strong consensus among the Chilean, Indian and US lawyers disagreeing with the lawyer's decision to talk to the press about what had transpired internally. The Indian response was more closely aligned with the US response, but due to the small sample size the affect of one respondent who strongly agreed with the decision to speak to the press makes it appear that the Indian responses differed from the other two groups. However, when viewed as one sample (N= 97) the responses to this item showed the least dispersion as measured by standard deviation (std. dev. = .934). The standard deviations for each national group in response to this item were: Chile = .870, India = 1.272 and US = .815.

**Table 3.1: Responses to Item Relating to Discussion of Client Information with the Press**

Country	N	Disagree or Strongly Disagree	Strongly Agree, Agree or Somewhat Agree	Standard Deviations
Chile	17	76.5%	23.5%	.870
India	11	80%	20%	1.272
US	36	88.8%	11.2%	.815

Even in this vignette where the majority of lawyers in each country disagreed or strongly disagreed with the General Counsel's conduct in discussing his communications with the Board of the corporation that employed him some attorneys (Chile 23.5%; India 20%; US

11.2%) agreed or somewhat agreed with the General Counsel's conduct. Having validated that the items contained in the questionnaire fell into ethical grey zones, the question then remained whether the cultural background of the respondents had a significant effect on the issue of preservation of client confidentiality when facing a conflict between the client's best interests and those of others.

The vignettes were followed by nine assertions that the respondents are asked to agree or disagree with using the same 5-point Likert scale. The assertions test the attitudes of the respondents more directly than the vignettes. The attitudinal statements also fell into ethical gray areas. The results validated this. For both the US and Chilean respondents there were respondents who agreed or disagreed with each of the values statements.

I analyzed the results of the questionnaire by using IBM SPSS Statistics 19 software. I split the file into three groups: Chile, India and US to permit in order to compare the means obtained from the three independent samples. Initially, I used chi square test to determine if responses relating to the confidentiality of client information were independent of nationality. I chose Chi Square because it can be used with variables measured at the nominal level and the three samples drawn were of unequal sizes.

**Table 3.2: Sample Sizes**

Country	Sample Size (N)
Chile	39
India	14
US	41

I analyzed the questionnaire responses using two statistical tests. In the first pass I used Chi Square because it can analyze nominal level data gathered from samples of unequal size. Initially, I used an alpha level of  $p < 0.05$  to determine if a difference was significant or not. Subsequently, I set alpha at  $p < 0.10$ . The null hypothesis was that nationality had no effect on the responses.

I performed a second statistical test on the data as a check on these results because I was concerned that Indian sample may be having a disproportional impact upon the results. I used the independent samples T-test to compare the results from Chile and the US. I chose these two groups because they were of almost equal size. I also used a significance level of  $p < 0.05$ . Finally, I also generated means, modes and percentages and compared them to assist in the interpretation of the results.

## CHAPTER 4

### CONTENT ANALYSIS

#### OVERVIEW OF THE CODES

I began the content analysis portion of this research by reviewing the ethics codes to learn how the profession regards its role in its society or culture. Each of the above mentioned ethics codes begins with a statement about the role of the attorney, in particular, and how they should balance their duty to their clients against the greater needs of society. For example, the preamble to the ABA Model Rules begins with the statement that “A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.” This statement shows the US view that an attorney is a member of the profession, a client representative and a member of society, i.e., a citizen. Since the Chilean and Indian codes recognize the same three roles, I drew my three categories for the purposes of the content analysis from this statement: the profession (the group), the client (individual) and the public interest (the larger group).

The ABA Model Rules preamble explicitly recognizes that “In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living.” Notably, the ABA does not see the lawyer as having a responsibility to his profession in contrast to the Chilean and Indian codes.

The Chilean attorney code of ethics for its attorneys begins by noting that the essence of the professional duty of the attorney is to serve justice and to collaborate in its administration and that it is the professional duty of the attorney to defend doggedly, with strict adherence to the legal and moral standards, the rights of his client.”<sup>4</sup> Article Two of the Code states that the lawyer must maintain professional honor and dignity. The Chilean code also recognizes the lawyer’s duty to the client, the profession and the society. Unlike the ABA Model Rules the Chilean code does not mention the individual lawyer’s economic self-interest and in discussing the lawyer’s duties. In addition, the Chilean code begins with the lawyer’s duty to serve justice and only later discusses the lawyer’s duties to his client.

The Indian code states that “An advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity may still be improper for an advocate. Without prejudice to the generality of the foregoing obligation, an advocate shall fearlessly uphold the interests of his client and in his conduct conform to the rules hereinafter mentioned both in letter and in spirit. Rules on standards of professional.” (Chapter II, Part VI of the BCI Rules)<sup>5</sup> Like the Chilean code, the Indian code recognizes the lawyer’s duties to the client, the profession and the society and does not mention the lawyer’s economic self-interest.

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<sup>4</sup> Article 1 of the Chilean Code

<sup>5</sup> Chapter – II Standards of Professional Conduct and Etiquette (*Rules under Section 49*

(1) (c) of the Act read with the Proviso thereto) Preamble Bar Council of India Rules.

The Indian code initially focuses on the lawyer's status as a member of the legal profession. While all three codes recognize that lawyers serve as officers of the legal system with an interest in promoting justice, the Indian Code explicates the lawyer's status as an officer of the Court, a "privileged member" of the community and a "gentleman." This emphasis on status and group membership may be reflective of India's relatively high PDI and low IDV score.

**Table 4.1: Comparison of the Attorney's Roles as Described in Ethics Codes**

Country	Description
Chile	... to serve justice and collaborate in its administration. ...to defend doggedly the rights of the client ...to maintain professional honor and dignity
India	... to comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community and a gentleman.... ...fearlessly uphold the interests of his client...
United States	... as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice...

Clearly the role of the attorney in each country shares certain commonalities. All three codes recognize the importance of the role of the attorney vis-à-vis the court, the legal system in general, society and their duty to represent faithfully and zealously the rights of their clients. They also recognize the unique role attorneys have in their cultures and extend the duties to act ethically as members of their community.

However, the preambles also reflect the cultural differences between the three countries. The US focuses on the individuals, the lawyer as representative of his client and recognizes the lawyer's self-interest in earning a living. Whereas the Chilean code speaks about the professional duties of the lawyer in terms first in terms of serving justice and fostering its administration and then about defending the rights of the lawyer's client. The Indian code describes the lawyer's status, first, as an officer of the court, then as a member of society, and finally as a "gentleman" before addressing the lawyer's duty to represent the client zealously. Indeed, scholars have described the Indian legal profession as "elitist" (Gandhi 1988, 375) noting that it "mirrors the basic inequalities of Indian society" (Gandhi 1988, 376). The profession's view of its role in its society, thus, appears to be consistent with its rankings on Hofstede's IDV (Chile and US) and PDI (India) scores.

An examination of the rules regarding the lawyer's duty to maintain the confidentiality of client information and the manner in which the codes balance the needs of the society versus the needs of the client when the client has confided the intention to commit a criminal act also reflects the cultural differences between the three countries studied.

ABA Model Rule 1.6 provides that a lawyer cannot reveal any information relating to the representation of a client unless the client gives informed consent or the lawyer is impliedly authorized to make the disclosure in order to carry out the representation. As a general rule, all communications between attorney and client are confidential. The code recognizes several permissive exceptions to this general principal of confidentiality. These exceptions require the lawyer to balance the client's interest in



confidentiality against the societal interest in disclosure. In those situations, the rules allow the lawyer to exercise his own moral judgment as to whether or not to disclose client confidences. The ABA Model Rules permit disclosure where the lawyer reasonably believes it is necessary to:

1. prevent reasonably certain death or substantial bodily harm to a third party;
2. prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client had used or is using the lawyer's services;
3. prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services...
4. to comply with other law or court order.

In recognition of the sanctity of human life, the Code permits a lawyer to disclose client information where the disclosure may save or protect the life of another. But, notably, the lawyer is not required to make the disclosure.

In Chile, the ethics code of the *Colegio de Abogados de Chile*, A.G. recognizes the confidentiality of attorney client information. Article 10 of the Chilean ethics code states that it is the duty and the right of the lawyer to protect the professional secret (non-public information the client wants to remain confidential). The code describes it as an absolute duty owed to the client. However, Article 12 of the same code requires the lawyer to disclose client confidences when the client communicates the intention to

commit a crime. In that case, the lawyer must disclose sufficient information to prevent the criminal act or to protect people in danger. The Chilean code mandates disclosure when the communication relates to the commission of a crime and requires disclosure to prevent the criminal act and/or to protect other members of society. The scope of required disclosures under the Chilean code are broader than the permissive disclosures provided for in the ABA Model Rules because they mandate disclosure of all future criminal acts not just those “reasonably certain [to cause] death or substantial bodily harm to a third party...[or] a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another....”

The Indian Bar Council’s ethic’s code also states that a lawyer should not disclose client communications or the lawyer’s advice to the client, but requires the lawyer to comply with Section 126 of the Indian Evidence Act, 1872 which states that certain information is not protected from disclosure. The Evidence Act is silent about disclosure. Section 126 begins by reiterating the lawyer’s duty to maintain the confidentiality of client communications, absent the client’s express consent to disclosure. It then goes on to state that:

...nothing in this section shall protect from disclosure -

1. Any communication made in furtherance of any illegal purpose,
2. Any fact observed by any barrister, pleader, attorney or *vakil*, in the course of his employment as such showing that any crime or fraud has been committed since the commencement of his employment. It is immaterial whether the attention of such barrister, pleader, attorney or *vakil* was or was not directed to such fact by or on behalf of his client.

## THE WORD AND CONCEPT COUNT

The three codes varied greatly in length and complexity with the ABA Model Rules being, by far, the lengthiest and the most complex.<sup>6</sup> Because of these differences, the use of the raw numbers is an inappropriate measure of the relative emphasis in the Codes on provisions designed to protect clients, lawyers (or the profession) or the public interest. In order to standardize my data, I used ratio, proportions and percentages to describe my findings. After reviewing the Codes themselves, I analyzed the words and concepts contained in each of the Codes. I began by reviewing and categorizing words as being client-centered, profession-centered or public interest centered. Using the words listed in Appendices 4, 5 and 6, the counts are shown below:

**Table 4.2: Content Analysis Word Count of Ethics Codes of Chile, India and US**

Country	Client-Centered	Public Interest-Centered	Profession-Centered
Chile	44	54	171
India	51	41	120
US	243	197	513

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<sup>6</sup> The Indian Code actually is longer in that it also included sections regulating legal education and admission to the Bar, but since this research is focused on rules of Conduct, I analyzed only the Chapter dealing with lawyer conduct.

Since the rules are directed toward lawyers, the profession-centered word count (which included the word lawyer and its synonyms) does not reflect anything other than the length, complexity and draftsmanship of the Code. I placed no significance on the absolute numbers in the word count in the Profession-Centered category. The more interesting relationship in terms of words used is the relationship between words that center on the client (the individual) versus the public interest (the group). The comparison of client-centered words to public interest words shows that the Chilean code uses more words that are categorized as relating to the public interest than words that relate to the client. This is consistent with Hofstede's finding that Chile is the most collectivist of the three cultures studied. If viewed from the perspective of an in-group/out-group perspective. If the criminal were viewed as a non-group member or someone whose activities harm the in-group, it would be expected that the Rules would mandate that the attorney protect the in-group (defined as the law-biding citizens). However, the relationship broke down when I considered the results as to India and the United States since they are almost identical even though their IDV scores differed significantly. When I converted the ratios to proportions both equaled approximately 1.23.

I also compared the meaning of the codes by categorizing each concept (or sentence) contained in the codes in order to determine if when the meaning of the code provisions was considered if the results would show a stronger relationship between the concept counts and the individualism level of the culture. The results of this analysis are set out in Table 4.3.

**Table 4.3: Concept Count Expressed as a Number and as Percentage**

Country	Client-Centered	Profession-Centered	Public Interest-Centered
Chile	13 / 13.3%	42 / 42.9%	43 / 43.9%
India	33 / 44.6%	20 / 25.8%	22 / 29.7%
US	91 / 32%	90 / 32.7%	98 / 35.3%

When the concepts were considered as originally categorized, the Chilean code remained the least concerned with protection of the individual client and the most concerned with protection of the group. Without consideration of the Profession-Centered results, it appears that the Indian code is more concerned with protecting the individual (client) than the ABA code. Thus, without consideration of the profession-centered counts, the relationship between individualism and culture breaks down. However, a closer examination of the Profession-Centered category shows that this is not the case. In the course of reviewing and coding the concepts in the three codes, it became evident that the Profession-Centered category in the Chilean and Indian codes actually contained two distinct types of provisions: provisions designed to protect the interests of the individual lawyer (the individual) and provisions designed to protect the interests of the profession as a whole (the group). This prompted another review the concepts coded as Profession-Centered to further categorize them as protecting the interests of the

individual lawyer versus protecting the interests of the group. The results are tabulated in Table 4.4.

**Table 4.4: Profession-Centered Concepts Categorized as Concerning Individuals or Groups**

Country	Individual	Group
Chile	15	28
India	8	12
US	77	5

When I re-categorized the profession-centered concepts, the results changed, and the results are set out in Table 4.5. In Table 4.5, the Individual column is the sum of the results in the Client-Centered column in Table 4.3 plus the Individual results reported in Table 4.4 above (for example, for Chile:  $13 + 15 = 28$ ), and the results in the Group column are the results reported in Table 4.3 for Public Interest-Centered plus the amount reported in the Group column in Table 4.4 (for Chile  $43 + 28 = 71$ ) and so on for each row. The focus of the ABA rules on the rights and duties of the individual lawyer is consistent with the highly individualistic culture of the US and with the tendency of individualistic cultures to express their norms and values in terms of “universal duties the individual has to fulfill” and “procedural justice” each individual is entitled to. (Palazzo 2002, 203)

**Table 4.5: Re-Categorization of Profession-Centered Concepts into Individual and Group**

Country	Individual	Group	Proportion of Individual to Group
Chile	28	71	.39
India	41	34	1.20
US	168	103	1.63

Viewed from this perspective, the results show the influence of the level of individualism or collectivism in each country. Chile shows proportionately the lowest number of rules focused on protecting the individual and the largest number focusing on protecting the group without regard to whether the group is the organized Bar or the general public. The ABA Model Rules' focus on the interest of the individual lawyer caused the relative scoring of the US to diverge from India again reflective of the US focus on the rights and interests of the individual. This is the more accurate measure because in retrospect the distinction between the rights of the client and the lawyer only measures the amount of self-interest evident in the code not the societal focus on the individual as opposed to the group. However, the proportion of individual-centered concepts in the Indian code is closer to the US than the IDV scores would indicate. This may be a result of the British colonial history both countries share. The common law legal system of both countries is a direct result of this shared heritage and it would not be surprising if the values and norms of the legal profession in each country reflect this

heritage. In both countries, the earliest colonial lawyers trained in the England and undoubtedly brought home English concepts of professional ethics with them when they returned home to practice their professions.



**CHAPTER 5**  
**DATA ANALYSIS**  
**QUESTIONNAIRE**

Before administering the questionnaire, I pre-tested it on 2 subjects from each country to ensure that it was comprehensible and to judge the amount of time it took to complete. Once the final version of the questionnaire was approved, I uploaded it to Survey Monkey. Electronic administration insures confidentiality of the respondents while containing costs and facilitating international delivery of the questionnaire. The questionnaires are located at Appendices 7 and 8. The consultants, who distributed the questionnaire, provided each potential respondent with an approved an informational memo and the link to the questionnaire. Ninety-four attorneys and law students took the questionnaire: 39 from Chile, 14 from India and 41 from the United States. Since the sample of the Indian respondents is so small, it is difficult to draw any conclusions from the Indian responses other than in terms of where the scores fell relative to the Chilean and US scores. The demographics from the three countries differed in terms of gender and years of experience with a greater proportion of the Chilean respondents being male while the Indian and US respondents were evenly divided between males and females. The Chileans also had less work experience than the Indians and U.S attorneys, which reflects the presence of law students in the sample. The Indians respondents were relatively evenly divided as to years of experience while the Americans tended to have

more than 10 years experience. Most of the respondents in all three countries worked in the private sector. The frequencies are set out below in Tables 5.1, 5.2 and 5.3.

**Table 5.1: Gender Comparison of Respondents**

What is your Gender?	Chile	India	US	Total
No Response	1	1	0	2
Female	12	6	19	37
Male	26	7	22	55
Total	39	14	41	94

**Table 5.2: Comparison of Years of Experience**

Years of Experience	Chile	India	US	Total
Less than 5 years	31	6	4	41
More than 5 and less than 10 years	5	3	4	12
More than 10 years	3	4	33	40
No Response	0	1	0	1
Total	39	14	41	94

**Table 5.3: Comparison of Employment Background**

Employment	Chile	India	US	Total
Unemployed	0	1	0	1
Government	6	0	11	17
NGO	4	2	0	6
Private	29	11	30	70
Total	39	14	41	94

For the purpose of analyzing the questionnaire responses, I categorized the responses by dependent and independent variable. The independent variable is country and the dependent is the reaction to the attorney's handling of the ethical dilemma presented in the vignettes or to the values statements. For instance, the first vignette introduced the concept of confidentiality of financial information without more than a suggestion of possible wrongdoing. The attorney in the vignette did not disclose the existence of offshore bank accounts to the police who questioned him in connection with his client's disappearance. There is no mention of illegal activity. Although, it may raise the gatekeeper issue discussed earlier in relation to FATF recommendation 14 for some of the respondents; it was anticipated that most respondents would see it purely as a financial privacy issue and agree with the decision not to disclose. That was not the case. This item showed that without clear wrongdoing or harm to others the responses differed

significantly by country. This supported the hypothesis that culture does impact attorney practices toward confidentiality in a general sense. This vignette established a baseline of attorney attitudes toward the confidentiality of client information which I used for comparison purposes as subsequent items added other facts that injected harm to others and criminal activity. In order to determine if the responses differed in a significant way by nationality, I analyzed the responses using Chi Square with nationality as the independent variable and the decision to maintain confidentiality or disclose information as the dependent variable. For the baseline vignette, the value of Chi Square was 15.761, the degrees of freedom were 8 and the exact significant of Chi Square was .046 (alpha = 0.05). Since  $.046 < .050$  I conclude that there is a statistically significant relationship between nationality and general attitudes about disclosure of client information. The mean scores were consistent with my hypothesis that attorneys from more individualist societies would be less likely to disclose confidential client information than those from more collectivist societies. The means were Chile = 3.03, India = 2.83, and US = 2.27 with 1 indicating strong agreement with the decision not to disclose and 5 indicating strong disagreement with the decision not to disclose. The median for Chile and India was 3 (somewhat agree with the decision not to disclose) while the median for the US was 2 indicating agreement with the decision not to disclose. US attorneys are more likely to agree with the decision not to disclose client information while the Chilean and Indian attorneys are more ambivalent about it.

When there is no criminal activity or harmful conduct on the part of the client, lawyer attitudes toward confidentiality are impacted by culture. The US attorneys, products of the most individualistic culture (highest IDV score) and egalitarian culture

(lowest PDI score), accord greater protection to the confidentiality of client information than their counterparts from India and Chile. I also analyzed these responses using gender and years in practice as the independent variable and found no significant differences. This further supports the hypothesis that culture and not some other factor is affecting attorney attitudes toward confidentiality.

The differences between the three groups of attorneys become insignificant as elements indicating criminal conduct or harm to others were added. Indeed, as Graph 5.4 below shows the difference between the US, Indian and Chilean respondents almost disappears completely when criminal activity is involved. There are four data points in Graph 5.4 each corresponding to an item on the questionnaire. The first data point corresponds to the baseline question discussed above where there is no criminal activity or harm to others. The difference between the three groups is statistically significant and the US attorneys indicate the highest degree of agreement with the lawyer's decision not to disclose the existence of the offshore accounts. The second data point indicates harm to others (non-payment of child support and alimony) and implicates a refusal by the client to comply with the ruling of a civil court, but no criminal activity. The Indians and the Chilean respondents remain fairly consistent in their response, but the sentiments of the US respondents have changed, and they have become more likely to make the disclosures necessary to protect the financial interests of the former wife and children. The third data point records the reaction to maintaining confidentiality in light of information from the police that the client had stolen \$60 million from his employer. The US and Indian respondents become more uncomfortable with maintaining confidentiality than their Chilean counterparts, but only insignificantly so. Finally, the fourth data point

indicates a shared view that the General Counsel of a corporation, who had advised the Board of Directors to repair a tank of poison which subsequently ruptured, could, against the wishes of his client, provide copies of his written communications to the Board to government investigators after the tank ruptured and killed hundreds of people. The results show that the differences between the groups became insignificant after the element of harm to others and or criminal behavior was added. Graph 5.5 shows that the Indian and Chilean responses remained relatively consistent as the facts changed, while the US responses changed in favor of more disclosure. Thus, it would seem that while culture affects generalized views about client confidentiality, when the issue of harm to others or criminal behavior is at stake, there are no significant differences between how lawyers from different cultures balance the competing interests of the client versus the greater society.

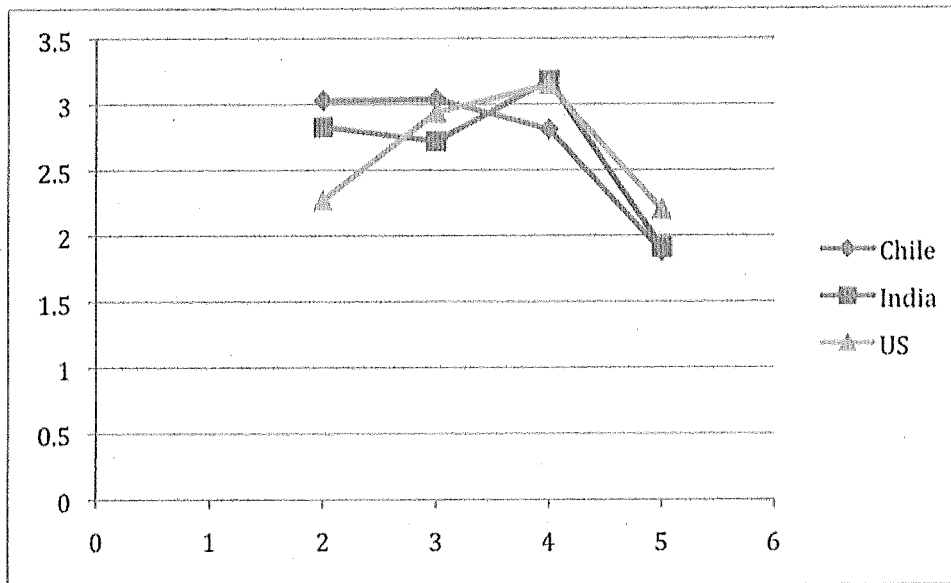
**Table 5.4: Descriptive Statistics for Four Items Showing Escalating Harm to Others**

Country	Attorney Sets up Accounts- No Criminal Acts or Harm	Non-Payment of Child Support and Alimony	Client Stole Money	Cooperation with Government After Tank Ruptures
Chile				
---Mean	3.03	3.04	2.81	1.88
---Median	3.00	3.00	3.00	2.00
---Mode	3	2.00	2.0	1
India				
---Mean	2.83	2.72	3.18	1.91
---Median	2.00	2.00	2.00	2.00
---Mode	2	2	2	2
US				
---Mean	2.27	2.94	3.15	2.20
---Median	2.0	3.0	3.00	2.00
---Mode	2	4	4	2

1=Strongly Agree; 2=Agree; 3=Somewhat Agree; 4=Disagree; 5=Strongly Disagree



**Graph 5.5: Means of Chile, India and US as Harm to Others Escalated**



For most of the practices and values statements the differences between the three groups of attorneys were statistically insignificant at the  $\alpha = 0.05$  and at the  $\alpha = 0.10$  level. The responses relating to attorney practice questions in connection with the disclosure of confidential client information in response to bank regulatory inquiries (Questions 13, 17), subpoenas (Questions 14 and 15), obstruction of justice (Questions 19, 20 21) and speaking to the press (Question 23) did not differ significantly by nationality.

When I analyzed the values statements in the second part of the questionnaire, when  $\alpha = 0.05$ , there were significant relationships between nationality and the responses to two of the values statements. The first values statement was "A lawyer should never disclose anything his/her client says to anyone." Statistical analysis shows that  $\chi^2 = 16.935$ , degrees of freedom = 8 and the exact significance of Chi Square = .031. Since  $.031 < .050$  the relationship between culture and

this value is significant. This result confirms the finding that in the absence of harm to others or criminal acts, lawyer attitudes toward confidentiality generally do differ by culture. However, there is either no correlation or a negative correlation between the scores on the baseline practice question regarding confidentiality and the values question. (Pearson correlation = Chile -.35, India -.179, US .055) This finding is consistent with the GLOBE study, which also found that Institutional Collectivism values correlated negatively with practices. The GLOBE researchers attribute this to the individual respondents' preferences for things that they lack (Gelfand, Bhawuk, Nishii and Bechtold 2004, 466).

There is another possible interpretation of the responses to the first values statement. When I analyzed the responses to this item using years in practice as the independent variable, the results were almost identical. Using years in practice, Chi Square = 16.871, degrees of freedom = 8 and the exact significance of chi square also .031. Given that the Chilean sample was so much younger than the US sample, it is possible that it is years in practice and not culture that is impacting the results here.

**Table 5.6: Comparison of Means on Baseline Practices and Values Questions**

Nationality		Chile	India	US
Attorney Sets up Offshore Accounts and does not disclose	Mean	3.03	2.83	2.27
	Median	3.00	2.00	2.00
	Mode	3	2	2
N=	Valid	30	12	37
	Missing	9	2	4
Never Disclose anything Client says	Mean	2.47	1.82	3.61
	Median	3.00	2.00	4.00
	Mode	3	2	4
N =	Valid	17	11	36
	Missing	22	3	5

1=Strongly Agree; 2=Agree; 3=Somewhat Agree; 4=Disagree; 5=Strongly Disagree

The second value statement for which there was a significant difference between cultures was “If a lawyer sets up an off-shore investment trust for his client that the client uses to cheat a large pension fund, the lawyer has no duty to disclose the existence of the trust to help the victims get back their money In regard to the second statement, chi square = 15.702, df = 8 and the exact significant of chi square is .047. Although these results indicate a statistically significant difference between the three groups of attorneys, the means of the three countries show that the Chileans are more likely to regard themselves as having a duty to disclose information to assist the victims and the Indians the least likely. However, if the Indian results are disregarded due to the sample size, the

means indicate that Chileans are slightly more likely to feel that they have a duty to assist the victims than US attorneys. This would be consistent with the hypothesis that attorneys from more collectivist cultures are more likely to make disclosures necessary to protect the group or society. However, a T test shows no significant difference between the Chilean and US respondents. The test statistic ( $t = -1.251$ ) is not significant Sig. (2-tailed =  $.217 > .050$ .) From this, I conclude that Chi Square is showing a significant difference between the three groups of attorneys only because of the Indian results and as previously stated the Indian sample is too small to draw any meaningful conclusions.

**Table 5.7: Descriptive Statistics Relating to a Duty to Assist Fraud Victims**

Attorneys have a duty to assist fraud victims recover their property	Chile	India	US
Mean	2.71	4.00	3.14
Median	3.00	4.00	3.00
Mode	3	5	4

1=Strongly Agree; 2=Agree; 3=Somewhat Agree; 4=Disagree; 5=Strongly Disagree

I also analyzed the results using a higher alpha because in the course of analyzing the data the number of Indian respondents increased by two with the effect that responses that had had significance levels  $>.050$  now had significance levels  $<.050$ . So it seemed possible that by increasing the alpha might compensate somewhat for the smaller Indian

sample size. When  $\alpha = 0.10$  three other values statements showed a significant relationship to nationality. Those statements are:

“It’s OK to discuss things my client has said to me with other people as long as I don’t disclose my client’s identity.”

“A lawyer should always answer questions from a judge fully and truthfully even when it means disclosing something his client has told him.”

“If the lawyer knows the other side of a business transaction does not understand a term of the contract, he should explain it fully to make sure everyone understand the contract before it is signed, even if that means the other party may not sign the contract.”

In regard to the values statement that it was permissible to disclose client confidences so long as the client’s identity was protected:  $\chi^2 = 14.061$ , degrees of freedom = 8 and the exact significance of  $\chi^2 = .080$ . This result is significant if  $\alpha = 0.10$ . Based upon the modes and the medians, the Chilean and US respondents were more likely to disagree with this statement while the Indians were more likely to be somewhat in agreement with the statement. However, for the Indian and US respondents, the dispersion of responses was small which is what led to the difference between the groups being greater than the difference within the groups. Nevertheless, because the means are so close to each other no meaningful conclusion can be drawn from this result.

**Table 5.8: Descriptive Statistics for Values Statements**

Value Statement		Chile	India	US
Disclosure of Client Communications Permissible if Client Identity not Disclosed	Mean	3.18	3.55	3.81
	Median	4.00	3.00	4.00
	Mode	4	3	4
N=	Valid	17	16	11
	Missing	22	23	3
Always Answer Judges Truthfully	Mean	2.50	3.36	3.67
	Median	2.00	4.00	4.00
	Mode	2*	4	4
N=	Valid	16	11	36
	Missing	23	3	5

\* Multiple modes exist. The smallest value is shown.

1=Strongly Agree; 2=Agree; 3=Somewhat Agree; 4=Disagree; 5=Strongly Disagree

In regard to the second statement that attorneys should always respond fully and truthfully to judicial inquiries, chi square = 14.386, df = 8 and the exact significant of Chi Square is .072. This result is also significant when alpha = 0.10. The Chileans were more likely to agree with this statement than either the Indian or US respondents. The shared colonial background of the US and India may have influenced this result since the legal system in both countries is based upon British common law. The British common law system is more adversarial than civil law systems with the lawyer acting more as an

advocate for his client. But, it could also be a reflection of the individualism and egalitarianism in the three countries. The ranking of the mean scores of the three countries is consistent with their ranking on the IDV scale and the relative ranking of the US and Chile on the PDI scale. Since, there were no significant differences reported for these two values statements by gender or years in practice, culture is playing a role in relation to this values statement.

In regard to the third statement, that a lawyer should explain the misunderstood terms of a contract to the other side of a transaction even if it means that the party would not sign the contract, chi square = 14.147, df = 8 and the exact significance of chi square is .078. This result is spurious because a chi square analysis of this statement using years in practice as the independent variable showed a greater significant difference between the three groups (less than 5 years in practice, 5-10 years in practice and more than 5 years in practice) than it did between the three nationalities. Using years in practice as the independent variable Chi Square = .008, df = 8 and the exact significance of Chi Square = 20.690. With reference to the means, it appears that the attorneys in practice for more than 10 years are in the least agreement with this statement. A researcher in the area of generational differences in the workplace suggested that this finding is consistent with his research finding that members of generation Y, born after 1985, are products of the information age and are far more likely to believe that more information is always better than less (J. Vargas, Interview, May 5, 2011).

**Table 5.9: Comparison of Means, Medians and Modes of Values Statements that Differ Significantly by Culture when Alpha = 0.10**

Value Statement		Chile	India	US
Disclosure of Client Communications Permissible if Client Identity not Disclosed	Mean	3.18	3.55	3.81
	Median	4.00	3.00	4.00
	Mode	4	3	4
N=	Valid	17	16	11
	Missing	22	23	3
Always Answer Judges Truthfully	Mean	2.50	3.36	3.67
	Median	2.00	4.00	4.00
	Mode	2*	4	4
N=	Valid	16	11	36
	Missing	23	3	5
Explain Misunderstood Contract Term to Other side	Mean	2.59	2.18	3.25
	Median	2.00	2.00	3.50
	Mode	2	2	4
N=	Valid	17	11	36
	Missing	22	3	5

1=Strongly Agree; 2=Agree; 3=Somewhat Agree; 4=Disagree; 5=Strongly Disagree

The null hypothesis that the balancing of the interests of the client versus the greater good for the society does not vary by nationality has been proven to be true. The



research hypothesis was that attitudes toward confidentiality vary by nationality when the issue is serious harm to others. But, the research finding is that although attorney attitudes toward confidentiality do vary by nationality and that this variation is consistent with the levels of individualism and egalitarianism in the society as measured by Hofstede's IDV and PDI scales, they do not differ significantly when the client confidence involves criminality or serious harm to others.

## CHAPTER 6

### CONCLUSIONS

Rules, which are obvious cultural products, reflect the influences of culture along the lines of the two dimensions studied. Specifically, in the highly individualistic US, the AMA Model Rules were more focused on the rights of individuals, whether they are clients or lawyers, than they were on the interests of the collective. Of the three ethics codes studied, the ABA Model Rules afforded the greatest protection to the confidentiality of client information. Under the ABA Model Rules, all client information is confidential, and the Rules do not mandate any disclosures. The US attorney has discretion to make certain specified disclosures to prevent harm to others or to remedy harm caused by the client. On the other extreme, Chile, the least individualistic of the three countries, provided the least protection to client information in the sense that the Chilean rules appear to include only non-public information that the client does not want disclosed and mandate disclosure of any client information necessary to prevent the criminal act or to protect others relating to the commission of a criminal offense. The Indian rules fell in the middle by including all communications made to the attorney by or on behalf of client but excluding all communications made in furtherance of a criminal act and any information observed in the course of representation; but the Indian rules are silent regarding disclosure.

In addition, the Indian and Chilean rules reflect a greater in-group/out-group consciousness in the way the rules as a whole were directed toward the legal profession. These ethics codes contained provisions relating to preservation of the dignity, honor and prestige of the legal profession, while the US code was more focused on regulating and protecting the interests of the individual lawyer or firm. The Chilean and Indian cultures had higher PDI scores reflecting their more hierarchical nature, which is reflected in the code provisions designed to encourage behaviors that maintain or increase the prestige and higher status of the profession.

In respect to compelled disclosures of client confidences in the context of judicial proceedings, the US evidence rules protect less information than the ABA rules, while in Chile the professional secret appears is unchanged. While, in the judicial setting, both countries require the disclosure of client confidences relating to the commission of a crime, the US rules only cover client confidences made by the client to the lawyer. The presence or involvement of a third party in the communication stripes the communication of its privileged nature. On the other hand under Chilean law, the presence or involvement of a third party in the communication has no effect the privileged nature of the communication. Consequently, under US law accountant analysis, internal investigative reports may not be privileged while they are more likely to be privileged under Chilean law and as previously mentioned under Chilean law, the attorney decides whether or not something is covered by the professional secret. The Chilean system reflects a greater respect for the status of lawyers as part of the judicial system in that culture consistent with that country's higher PDI score.

The content analysis portion of the research confirmed the first hypothesis in that in the high PDI societies, Chile and India, the codes did contain more provisions that were concerned with preserving the status or reputation of the profession. In terms of confidentiality, the US, which had the lowest PDI score of the three countries and most egalitarian society, provided the most protection to the confidentiality of client information in its ethics code. The content analysis also confirmed the second hypothesis that in countries with high IDV scores (individualistic cultures), the codes would grant greater protection to the confidentiality of client information. The ABA Models Rules, adopted by lawyers from the most individualistic country studied, gave the greatest protections to the most client information by permitting (as opposed to requiring) disclosure in defined circumstances.

The second phase of the research delved deeper into the practices and values of the respondent attorneys and law students to determine if the degree of individualism or power distance in a society influenced attorney decision-making relating to the confidentiality of client information when preservation of confidentiality would result in harm to others. The results of a questionnaire distributed to 94 members of the legal profession in Chile, India and the US showed significant differences between the three national groups of respondents when the items related to confidentiality generally with no mention of criminal activity or harm to others. The questionnaire first dealt with practices by presenting vignettes that described a situation and the respondents were asked to indicate the degree to which they agreed or disagreed the attorney's decision to preserve confidentiality. As expected, US attorneys were the least likely to disclose client information in the absence of harm to others or criminal activity. However, when

the same respondents were asked to indicate their agreement or disagreement with a broad values statement relating to maintaining confidentiality under all circumstances, the US attorneys showed the least agreement with that statement. The values statement correlated negatively with the practices item. This is consistent with the findings of the GLOBE study (Gelfand, Bhawuk, Nishii and Bechtold 2004, 466). If the GLOBE researchers are correct that the differences between the means for values and practices indicate preferences for what the respondents lack, then US attorneys may want to be able to make disclosures under some circumstances and do not desire to maintain complete confidentiality as the ABA Model Rules permit. This finding is consistent with verbal commentary by one of the US attorneys interviewed after taking the questionnaire who said, "I answered the questions the way I think the Rules required, but I didn't feel very good about my answers," (N. Martin, interview, September 16, 2010) and the responses of the US attorneys to the practices questions involving harm to others or criminal conduct. At the same time, the scores of the Chilean respondents indicating a higher degree of agreement with that values statement may indicate some discontent on the part of the Chilean lawyers with their rules mandating disclosure under certain circumstances. Hence, one of the original premises of this research, that the codes of the major bar associations represent the ethical consensus of the profession, may not be valid.

In regard to the practices portion of the questionnaire, the three groups of respondents did not differ from each other significantly as additional facts to the basic scenario increased the severity of harm to others and moved from civil law violations to criminal. The questionnaire results showed that the cultural differences between the groups of respondents diminished to insignificance as the degree of harm to others

increased. In response to the baseline question, the Chileans were the most likely to disclose the client information and their responses, as measured by their mean scores, remained fairly consistent as the degree of harm to others increased, while the US responses, as measured by the mean scores, converged with the Chilean as the degree of harm to others increased. This convergence is shown in Graph 5.5. This finding indicates that as the harm to others increases and the wrongdoing by the client becomes more apparent, there was no significant difference between the three groups of respondents in terms of making disclosures necessary to prevent or rectify harm to others. These responses point to the possibility of an international legal culture that overcomes the effects of national culture. This may be an area that merits further research. Do the expectations of non-lawyers in relation to confidentiality of communications about criminal acts or acts that harm others in the three cultures vary by the degree of individualism within the culture or are they in accord with the views of the lawyer's?

Three other statements in the values portion of the survey showed statistically different responses between the 3 groups when  $\alpha = 0.10$ . However, the results of one of the items relating to explaining misunderstood contract terms was spurious since the responses were more heavily influenced by number of years in practice. Since the Chilean sample was less experienced than the US sample, nationality masked the more significant effect of years in practice. In addition, the results of the Chi Square analysis of the values statement relating to the ethicality of discussing client information without identifying the client appeared to be more heavily influenced by the degree of within group cohesion than differences between the groups. Finally, the responses relating to honesty and candor with judges did differ significantly by culture with the Chileans being

more likely to agree with the proposition that one should always answer judicial questions truthfully and completely, while the Indian and US respondents were more likely to disagree. The mean scores of the US in relation to Chile were consistent with the research hypothesis that in societies with a higher PDI scores, lawyers would draw a greater distinction between the interest of the client in confidentiality and their duty as a lawyer (and officer of the court). It is, of course, also consistent with the greater respect shown for persons in authority in more hierarchical societies. However, the Indian responses were similar to the US responses even though their society is more hierarchical than the US. The common origins of the legal systems in the US and India may explain the similarity of responses between these two groups. As previously noted, history impacts values and the ways a society resolves the issues it faces. In the US and India, this evolution of the attorney client relationship occurred in the context of an adversarial legal system where the role of the lawyer is clearly defined to serve as the advocate of the client (Zacharias 2007, 4). This contrasts with the role of the attorney in inquisitional systems, like Chile, where the lawyer's role may be more closely aligned with serving the interests of justice (Zacharias 2007, 4). Hence, Indian and US lawyers may perceive themselves and their duties as more distinct and sometimes adversarial to the Court.

Consequently, the overall finding of this research was that although the rules relating to disclosures vary in form and substance and reflect the influences of culture, the practices and values of the members of the legal profession in Chile, India and the US did not differ significantly when disclosure of the client information could prevent or remedy harm to other members of society. The null hypothesis is proven. This

conclusion leads to the possibility that there is an over-arching legal culture that overrides national culture. Further research into this area may be warranted.

In other words, the responses to the values questions reflect how the respondents think a culture should be, not the way it is; while the responses to the practice questions reflect how a culture is. The negative correlation may be reflective of a society's aspirations. The implications of this explanation pose interesting questions as to the US respondents. The US respondents had the highest level of agreement with the hypothetical attorney's decision not to disclose the existence of off-shore accounts in the absence of harm or criminality, at the same time, they were more likely to disagree with the statement that lawyers should never disclose anything their clients say. Furthermore, as the criminality or likelihood of harm to others increased, US attorneys became as likely to disclose the communication as Chilean lawyers who are required to do so. This puts into question whether the ABA's position opposing FATF Recommendation 14 and the Model Rules' permissive disclosure standards truly represent the views of the American bar or if they only represent the views of a segment of the bar. As previously mentioned, ABA Model Rule 1.6 has been changed several times over its history and not every state has adopted its standards. Further research in this area, comparing the views of US lawyers who belong to the ABA with those who do not may help to resolve this issue. Finally, it may be that within the legal profession, due to increasing reliance upon international legal standards by the courts and legal academics and international educational experiences, the differences between legal cultures may be decreasing with time and age. If this is true, then the possibility of international cooperation to fight common problems may improve with the next generation of lawyers.



## REFERENCE LIST

- Abel, Richard L. 1988. *United States: The Contradictions of Professionalism*. Edited by Richard L Abel and Philip S.C. Lewis. Vol. 1, *Lawyers in Society The Common Law World*. Berkley, California: University of California Press.
- American Bar Association. 2002. *ABA Model Rules of Professional Conduct (pre-2002)* available at [www.law.cornell.edu/ethics/aba/2001/ABA\\_CODE.HTM#Rule\\_1.13](http://www.law.cornell.edu/ethics/aba/2001/ABA_CODE.HTM#Rule_1.13).
- American Bar Association House of Delegates. 2003. *Daily Journal*. (August 11-12, 2003) 1-23. Available at: [www.abanet.org](http://www.abanet.org).
- American Bar Association Task Force on Gatekeeper Regulations and the Legal Profession. 2003. *Comments on Gatekeeper Provisions of FATF Consultation Paper*. (April) 1-8. Available at: [www.abanet.org](http://www.abanet.org).
- Anriques Novoa, Alvaro. 2009. *El Deber de Confidencialidad del Abogados*. Colegio de Abogados de Chile available at: [www.colegioabogados.cl/cgi-bin/bin](http://www.colegioabogados.cl/cgi-bin/bin).
- Ball, Richard. 2001. Individualism, Collectivism, and Economic Development. *Annals of the American Academy of Political and Social Science*. 573.
- Bar Council of India. 2010. *Bar Council of India Rules*. Available at: [www.barcouncilofindia.org/about/professional-standards/rules-on-professional-standards/](http://www.barcouncilofindia.org/about/professional-standards/rules-on-professional-standards/).
- Bierbrauer, Gunter. 1994. Toward an Understanding of Legal Culture: Variations in Individualism and Collectivism Between Kurds, Lebanese, and Germans. *Law & Society Review*. 28: 2: 243-264.
- Bricker, Cary. 2009. Revisiting the Crime Fraud Exception to the Attorney Client Privilege: A Proposal to Remedy the Disparity in Protections for Civil and Criminal Privilege Holders. *Temple Law Review* 82: 149-180.
- Carl, Dale and Vipin Gupta and Mansour Javidan. "Power Distance." In *Culture, Leadership and Organizations: The GLOBE Study of 62 Societies*. eds. Robert J. House, Paul J. Hanges, Mansour Javidan, Peter W. Dorfman and Vipin Gupta. (Thousand Oaks: Sage Publications 2004). 513-563.
- Dhand, Arti. 2002. The Dharma of Ethics, the Ethics of Dharma: Quizzing the Ideals of Hinduism. *The Journal of Religious Ethics*. 30 no. 3: 347-372.

- Etherington, Laurence and Robert Lee. 2007. Ethical Codes and Cultural Context: Ensuring Legal Ethics in the Global Law Firm. *Indiana Journal of Global Legal Studies*. 14 no. 1: 95-118.
- Financial Action Task Force. 2010. *An Introduction to the FATF and Its Work*. Available at: <http://www.fatf-gafi.org>.
- Gandhi, J.S. 1988. *Past and Present A Sociological Portrait of the Indian Legal Profession*. . Edited by Richard L Abel and Philip S.C. Lewis. Vol. 1, *Lawyers in Society The Common Law World*. Berkley, California: University of California Press, 1988.
- Gelfand, Michelle J. and Dharm P.S. Bhawuk, Lisa Hisae Nishii and David J. Bechtold. "Individualism and Collectivism." In *Culture, Leadership and Organizations: The GLOBE Study of 62 Societies*. eds. Robert J. House, Paul J. Hanges, Mansour Javidan, Peter W. Dorfman and Vipin Gupta. (Thousand Oaks: Sage Publications 2004). 437-512.
- Gibson, James L and Gregory A. Caldera. 1996. The Legal Cultures of Europe. *Law and Society Review* 30 1: 55-85.
- Grove, Cornelius N. 2005. Introduction to the GLOBE Research Project on Leadership Worldwide. Grovewell LLC [article on line] available at: [www.grovewell.com/pub-GLOBE-dimensions.html](http://www.grovewell.com/pub-GLOBE-dimensions.html) Accessed February 20, 2011. 1-10.
- Grove, Cornelius N. 2005. Worldwide Differences in Business Values and Practices: Overview of GLOBE Research Findings. Grovewell LLC [article on-line] available at: [www.grovewell.com/pub-GLOBE-dimensions.html](http://www.grovewell.com/pub-GLOBE-dimensions.html) Accessed February 20, 2011. 1-16.
- Gupta, Vipin and Paul J. Hanges. "Regional and Climate Clustering of Societal Cultures." In *Culture, Leadership and Organizations: The GLOBE Study of 62 Societies*. eds. Robert J. House, Paul J. Hanges, Mansour Javidan, Peter W. Dorfman and Vipin Gupta. (Thousand Oaks: Sage Publications 2004). 178-218.
- Hafez, Kai. 2002. Journalism Ethics Revisited: A Comparison of Ethics Codes in Europe, North Africa, the Middle East, and Muslim Asia. *Political Communication*. 19: 225-250.
- Hanges, Paul J. and Marcus W. Dickson. "The Development and Validation of the GLOBE Culture and Leadership Scales." In *Culture, Leadership and Organizations: The GLOBE Study of 62 Societies*. eds. Robert J. House, Paul J. Hanges, Mansour Javidan, Peter W. Dorfman and Vipin Gupta. (Thousand Oaks: Sage Publications 2004). 122-151.

- Hazard, Geoffrey C. and Angelo Dondi. 2004. *Legal Ethics: A Comparative Study*. Palo Alto: Stanford University Press.
- Hofstede, Geert. 2001. *Cultures Consequences*. 2d Edition. Thousand Oaks: Sage Publications.
- Hofstede, Geert and Gert Jan Hofstede. 2005. *Cultures and Organizations: Software of the Mind*. 2d Ed. New York: McGraw Hill.
- Inglehart, Ronald. *Inglehart-Welzel Cultural Map of the World*. [article on-line] available at: [www.worldvaluessurvey.org/wvs/articles/folder\\_published/article\\_base\\_54](http://www.worldvaluessurvey.org/wvs/articles/folder_published/article_base_54) Accessed February 2, 2011.
- Inglehart, Ronald and Miguel Basanez and Alejandro Moreno. 1998. *Human Values and Beliefs: A Cross Cultural Sourcebook*. Ann Arbor: The University of Michigan Press.
- Inglehart, Ronald and Christian Welzel. 2005. *Modernization, Cultural Change and Democracy*. New York: Cambridge University Press.
- International Monetary Fund. 2010. World Economic Outlook Database. Available at: ([www.imf.org/external/pubs/ft/weo/2010/01/weodata/weoselgr.aspx](http://www.imf.org/external/pubs/ft/weo/2010/01/weodata/weoselgr.aspx)).
- International Monetary Fund. 2010. *IMF Data Mapper: Real GDP Growth*. World Economic Outlook [Data set]. Available at: [www.imf.org/external/datamapper/index.php](http://www.imf.org/external/datamapper/index.php).
- Javidan, Mansour, Robert J. House and Peter W. Dorfman. "A Nontechnical Summary of GLOBE Findings." In *Culture, Leadership and Organizations: The GLOBE Study of 62 Societies*. eds. Robert J. House, Paul J. Hanges, Mansour Javidan, Peter W. Dorfman and Vipin Gupta. (Thousand Oaks: Sage Publications 2004). 29-48.
- Javidan, Mansour, Robert J. House, Peter W. Dorfman, Peter Hanges and Mary Sully de Luque. 2006. Conceptualizing and Measuring Cultures and Their Consequences: A Comparative Review of GLOBE's and Hofstede's Approaches. *Journal of International Business Studies*. 37 no. 6: 897-914.
- Joy, Peter A. and Kevin C. McMunigal. 2009. Incriminating Evidence – Too Hot to Handle. *Criminal Justice* Vol. 24 (Summer).
- Karnes, A., J. Sterner, R. Welker and F. Wu. 1989. A Bicultural Study of Independent Auditors Perceptions of Unethical Business Practices. *International Journal of Accounting*. 24, 29-41.

- Leung, Kwok, and Rabi S. Bhagat, Nancy R. Buchan, Miriam Erez and Cristina B. Gibson. 2005. Culture and International Business: Recent Advances and Their Implications for Future Research. *Journal of International Business Studies*. 36 no. 4: 357-378.
- Michmerhuizen, Sue. (2009) *Confidentiality, Privilege: A Basic Value in Two Different Applications*. American Bar Association. Available at: [www.abanet.org/media/youraba/200907/article10.html](http://www.abanet.org/media/youraba/200907/article10.html)
- Morgan, Thomas D. 2003. *Georgetown Journal of Legal Ethics*. 2003 Symposium Article: "Sarbanes-Oxley, A Complication, not a Contribution, In the Effort to Improve Corporate Lawyer's Conduct." 17 No. 1 (Fall 2003).
- Palazzo, Bettina. 2002. U.S.-American and German Business Ethics: An Intercultural Comparison. *Journal of Business Ethics*. 41, no. 3: 195-216.
- Pavlic Velez, Claudio Rafael. 2007. Legal Ethics and Professionalism in Comparative Perspective: The Case of Chile. Justice in Mexico Project held in Mexicali, Mexico on May 9, 2007. 1-14. Available at: [www.justiceinmexico.org/resources/legal\\_ethics.php](http://www.justiceinmexico.org/resources/legal_ethics.php)
- Peterson, Brook. 2004. *Cultural Intelligence A Guide to Working with People from Other Cultures*. Boston: Intercultural Press.
- Robertson, Christopher J., William F. Crittenden, Michael K. Brady, and James T. Hoffman. 2002. Situational Ethics across Borders: A Multicultural Examination. *Journal of Business Ethics*. 38 no. 4: 327-338.
- Rosenn, K.S. (1988) A Comparison of Latin American and North American Legal Traditions. In L.A. Tavis (ed.) *Multinational Managers and Host Government Interactions* pp. 127-152). South Bend, Indiana: University of Notre Dame Press. Quoted in Robert J. House et al. (eds.), *Culture, Leadership and Organizations The GLOBE Study of 62 Societies*, 186, Thousand Oaks: Sage Publications.
- Sison, Jose G. 2000. The Cultural Dimension of Codes of Corporate Governance: A Focus on the Olivencia Report. *Journal of Business Ethics*. 27 no. ½: 181-192.
- Smith, Aileen and Evelyn C. Hume. 2005. Linking Culture and Ethics: A Comparison of Accountants' Ethical Belief Systems in the Individualism/Collectivism and Power Distance Contexts. *Journal of Business Ethics* 62 no. 3: 209-220.
- Tsui, Judy and Carolyn Windsor. 2001. Some Cross-Cultural Evidence on Ethical Reasoning. *Journal of Business Ethics*. 31 no. 2: 143-150.
- Trompenaars, Fons and Charles Hampden-Turner. 1998. *Riding the Waves of Culture: Understanding Cultural Diversity in Global Business*. New York: McGraw-Hill.

- Wated, Guillermo and Juan I. Sanchez. 2005. The Effects of Attitudes, Subjective Norms, Attributions, and Individualism-Collectivism on Managers' Responses to Bribery in Organizations: Evidence from a Developing Nation. *Journal of Business Ethics*. 61 no. 2.
- Weaver, Gary R. 2001. "Ethics Programs in Global Businesses: Culture's Role in Managing Ethics. *Journal of Business Ethics*. 30 no 1: 3-15.
- Zacharias, Fred. 2007. "Legal Ethics and Professionalism in Comparative Perspective: The Case of the United States." Justice in Mexico Project held in Mexicali, Mexico on May 5, 2007. Available at:  
[www.justiceinmexico.org/resources/legal\\_ethics.php](http://www.justiceinmexico.org/resources/legal_ethics.php)
- Zer-Gutman, Limor. 1999. Revising the Ethical Rules of Attorney-Client Confidentiality: Towards a New Discretionary Rule. *Loyola Law Review* 45 no. 4.

## APPENDIX 1: AMERICAN BAR ASSOCIATION MODEL RULES

### RULE 1.6

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(4) to secure legal advice about the lawyer's compliance with these Rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(6) to comply with other law or a court order.

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### RULE 1.13

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization,

and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) Except as provided in paragraph (d), if

(1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and

(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization,

then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

APPENDIX 2: CÓDIGO DE ETICA DEL COLEGIO DE ABOGADOS DE CHILE,  
A.G.

Artículo 10º: Secreto Profesional.

Guardar el secreto profesional constituye un deber y un derecho del abogado. Es hacia los clientes un deber que perdura en los absoluto, aún después de que les haya dejado de prestar sus servicios; y es un derecho del abogado ante los jueces, pues no podría aceptar que se le hagan confidencias, si supiese que podría ser obligado a revelarlas. Llamado a declarar como testigo, debe el letrado concurrir a la citación, y con toda independencia de criterio, negarse o contestar las preguntas que lo lleven a violar el secreto profesional o lo expongan a ello.

Article 10: Professional Secret

It is the duty and the right of the lawyer to protect the professional secret. It is an absolute duty toward the client even after he has stopped giving his services and it a right of the attorney before judges because he would not be able to accept confidences if he know that he (the lawyer) could be obligated to reveal them if called to testify as a witness, the lawyer must comply with the subpoenas and with complete independence to answer or not the questions such that he does not violate the professional secret or expose them.

Artículo 12º: Extinción de la obligación de guardar el secreto profesional.

El abogado que es objeto de una acusación de parte de su cliente o de otro abogado, puede revelar el secreto profesional que el acusador o terceros le hubieren confiado, si mira directamente a su defensa. Cuando un cliente comunica a su abogado la intención de cometer un delito, tal confidencia no queda amparada por el secreto profesional. El abogado debe hacer las revelaciones necesarias para prevenir un acto delictuoso o proteger a personas en peligro.

Article 12: Extinguishment of the Obligation to preserve the Professional Secret

The lawyer who is the object of an accusation on the part of his client or another lawyer can reveal the professional secret that the accuser or third parties have confided if it is directly relevant to his defense. When a client communicates to his lawyer the intention to commit a crime, such confidence does not remain covered by the professional secret. The lawyer shall make the necessary revelations to prevent the criminal act or to protect people in danger.



### APPENDIX 3: BAR COUNCIL OF INDIA RULES ON STANDARDS OF PROFESSIONAL CONDUCT AND ETIQUETTE

#### Chapter 2:

6. An advocate shall not, directly or indirectly, commit a breach of the obligations imposed by Section 126 of the Indian Evidence Act.

7. An advocate should not by any means, directly or indirectly, disclose the communications made by his client to him. He also shall not disclose the advice given by him in the proceedings. However, he is liable to disclose if it violates Section 126 of the Indian Evidence Act, 1872.

#### INDIAN EVIDENCE ACT OF 1872

126. Professional communications - No barrister, attorney, pleader or vakil, shall at any time be permitted, unless with his client's express consent to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment or to disclose any advice given by him to his client in the course and for the purpose of such employment.

Provided that nothing in this section shall protect from disclosure -

1. Any communication made in furtherance of any illegal purpose,
2. Any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, pleader, attorney or vakil was or was not directed to such fact by or on behalf of his client.

Explanation - The obligation stated in this section continues after the employment has ceased.

#### Illustrations

(a) A, a client, says to B, an attorney - "I have committed forgery and I wish you to defend me."

As the defense of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(b) A, a client, says to B, and attorney - "I wish to obtain possession of property by the use of forged deed on which I request you to sue."

The communication being made in furtherance of criminal purpose, is not protected from disclosure.

(c) A, being charged with embezzlement retains B, an attorney to defend him, In the course of the proceedings B observes that an entry has been made in A's account book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

APPENDIX 4: LIST OF WORDS COUNTED—CHILE

<b>Client</b>	<b>Profession</b>	<b>Public Interest</b>
Cliente	Profesional	Justicia
Acusados	abogado	Morales
Delincuente	letrado	Honradez
Persona (cliente)	Ética profesional	Injustamente, justa
Acusador (cliente)	Deber (del abogado)	Delito
Derechos (cliente)	Derecho (del abogado)	Judicatura
	Ministerio	Magistratura
	Colegas	Tribunales
	Patrocino	Magistrados
	Abogaci	Derecho (terceros)
	servicias	judicial
	Asociación o Colegio	normas
	Código	Estado civil
		Jueces, juzgador
		Persona (tercero)
		juicio
		ministerio
		legal
		Causa (civil o penal)
44	171	54

APPENDIX 5: LIST OF WORDS COUNTED—INDIA

Client	Profession	Public Interest
Client (pronouns)	Profession	Court, tribunal, authority
Party (represented)	Practice of law	Public officials
Person accused of crime, accused	Duty (attorneys)	crime
Accused	Advocate (pronouns)	Rule of Court
	member	matter
	counsel	proceeding
	Advocate (pronouns)	Lawful, legal, fair,
	Bar, Bar Council, Law Society etc.	Suit, litigation, case, brief
	Right (attorneys)	Right (other than lawyer's)
		Judge, judicial authority, bench, judiciary, judicial officer,
		Illegal, unfair, improper
		Law
		Party (opposing)
51	120	41

APPENDIX 6: LIST OF WORDS COUNTED—US

US

Client	Profession	Public Interest
Client (pronouns)	Legal profession	Legal system
Rights (client's)	professional	justice
Defendant (client)	Bar	Accused (third person)
Respondent (client)	Legal counsel	Fraud, fraudulent
Accused (client)	Lawyer, counsel	Judge, Adjudicative officer
Person (client)	firm	disclosure
Organization (=client)	prosecutor	law
	partner	legitimate
	Practice of Law	respect
	Legal Services	matter
		proceeding
		evidence
		Tribunal, court
		trial
		adjudication
		proceeding
		Public interest, Rights (third persons); liberty, justice
		Third person
		Bar
		Official, public officer, government employee, government
243	513	197

## APPENDIX 7: QUESTIONNAIRE—ENGLISH

### SECTION 1

Please tell us a little bit about yourself so that we can see how lawyers from different countries are feeling about the issues we are examining.

1. What is your nationality? \_\_\_\_\_
2. In which country or countries did you obtain your legal education? \_\_\_\_\_
3. Which term best describes the nature of your legal employment?  
Private sector (for profit)    Non-profit organization    Government  
(if surveying law students this question will be omitted)

4. How many years have you practiced law?

Less than 5 years    5-10 years    More than 10 years

5. What is your gender?

Male \_\_\_\_\_    Female \_\_\_\_\_

### SECTION II

Set out below are some situations, please circle the response that indicates if you agree or disagree with the lawyer's conduct in the following examples.

1. Mr. A specializes in structuring off-shore financial transactions. He was recently retained by Mr. B who asks for his assistance in setting up 4 off-shore international business corporations ("IBC's") and setting up bank accounts for each IBC in a Caribbean country known for bank secrecy. Mr. B instructs Mr. A that he does not want his name associated with these four entities. Mr. A does not ask why Mr. B wants the four IBC's set up in this fashion. He sets them up in accordance with his client's instructions. Shortly thereafter Mr. B disappears. The police are questioning Mr. A in connection with Mr. B's disappearance. Mr. A does not disclose the off-shore bank accounts or their location.

Strongly    Agree    Somewhat    Disagree    Strongly  
Agree    Agree    Agree    Disagree    Disagree

2. If the police had told Mr. A that they were concerned that Mr. B had been the victim in an extortion plot and that he was transferring money to the blackmailer but they did not know how or where the blackmailer was, would that change your answer?

Yes (please answer # 3) \_\_\_\_\_ No (skip to #4) \_\_\_\_\_

3. If your answer was yes, please characterize your agreement or disagreement with the manner in which Mr. A handled this situation in light of his knowledge that Mr. B may have been the victim of a crime.

Strongly Agree	Agree	Somewhat Agree	Disagree	Strongly Disagree
-------------------	-------	-------------------	----------	----------------------

4. Assuming the facts set out in paragraph 1 above and that Mr. A was told by one of his law partners that Mr. B was involved in contentious divorce and that the court had just entered a sizable judgment against Mr. B for child support and alimony for his wife of 15 years and their 3 children, would that change your answer to question 1 above?

Yes (please answer #5) \_\_\_\_\_ No (skip to #6) \_\_\_\_\_

5. If your answer is yes, please characterize your agreement or disagreement with the manner in which Mr. A handled this situation in light of his knowledge that Mr. B was liable for a judgment for child support and alimony:

Strongly Agree	Agree	Somewhat Agree	Disagree	Strongly Disagree
-------------------	-------	-------------------	----------	----------------------

6. Assuming the facts set out in paragraph 1 above and that Mr. A was told by the police that Mr. B had stolen \$10 million from his employer, would that change your answer to question 1 above?

Yes (please answer #7) \_\_\_\_\_ No (skip to #8) \_\_\_\_\_

7. If your answer is yes, please characterize your agreement or disagreement with the manner in which Mr. A handled this situation in light of his knowledge that Mr. B had embezzled \$60 million from his employer.

Strongly Agree	Agree	Somewhat Agree	Disagree	Strongly Disagree
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8. Returning to the relationship between Mr. A and Mr. B, assume that both Mr. A and Mr. B live in a small city and have known each other for 12 years. Mr. B is the president of a small community bank. Shortly after Mr. A sets up the off-shore IBC's, he is approached by a bank regulator, in his official capacity, and he is asked the identity of the client for whom he set up the four IBC's. Mr. A refuses to disclose that he set them up for Mr. B.

Strongly Agree      Agree      Somewhat Agree      Disagree      Strongly Disagree

9. Would your answer to number 8 change if Mr. A were being questioned pursuant to a subpoena in a formal proceeding in connection with the disappearance of \$60 million USD from the bank?

Yes(please answer #8) \_\_\_\_\_ No(skip to #9) \_\_\_\_\_

10. If your answer to number 8 would change, how would you characterize your agreement or disagreement with Mr. B's refusal to disclose the identity of his client?

Strongly Agree      Agree      Somewhat Agree      Disagree      Strongly Disagree

11. Mr. C, an attorney in a large firm in a large city in your country, is retained by a new client who operates a billion dollar hedge fund with investors from more than 40 countries. He is having problems with a U.S. regulatory agency that has obtained a court order freezing all of the funds of the hedge fund in the U.S. He gives Mr. C \$15 million USD and asks Mr. C to deposit it in a bank account in his name or the name of his law firm to fund future legal expenses he anticipates. Mr. C accepts the funds and deposits them into an account in the name of the firm. Assume that after the client leaves the office, Mr. C does an internet search and learns that the U.S. courts have found these to be the funds of defrauded investors. Mr. C does some legal work for the client and pays himself with some of the funds.

Strongly Agree      Agree      Somewhat Agree      Disagree      Strongly Disagree

12. Three weeks later, an attorney from the US regulatory agency calls and asks if you know the location of any funds owned or controlled by the client. Mr. C says nothing about the existence of the \$15 million.

Strongly Agree      Agree      Somewhat Agree      Disagree      Strongly Disagree

13. In the course of the litigation against a financial institution in your country an attorney learns that his client's assistant is going to testify to the court that the client is operating a fraudulent investment scheme. In light of this testimony, it is likely that the client will lose his case in court. When the lawyer tells his client what is likely to happen, the client responds that he will make sure his assistant doesn't testify at the hearing. The lawyer does not disclose this conversation to anyone.

Strongly Agree      Agree      Somewhat Agree      Disagree      Strongly Disagree



14. Would your answer to number 13 be different if the lawyer believed that his client intended to harm his assistant?

Yes(please answer #16)\_\_\_\_\_ No(skip to #17)\_\_\_\_\_

15. If yes, did the lawyer act correctly in not disclosing this communication

Strongly Agree Somewhat Disagree Strongly  
Agree Agree Disagree Disagree

16. What if the client's response in 13 above were to the effect that it doesn't matter what his assistant or anyone else says in court, he already knows how this case will turn out and he's not worried and Mr. C understands this to mean that the Judge has been bribed. Mr. C does not tell anyone about this conversation.

Strongly Agree Somewhat Disagree Strongly  
Agree Agree Disagree Disagree

17. The General Counsel knows that the corporation he works for has been told by a respected engineer that a tank holding poison could burst but that the Board had decided not to spend the money to repair it. He prepares a report to the Board warning of the risks to the corporation if the tank is not repaired. The Board rejects his recommendation and orders him to destroy his report. He does so.

Strongly Agree Somewhat Disagree Strongly  
Agree Agree Disagree Disagree

18. The tank ruptures and hundreds of people die. The government begins to investigate the firm. The Board denies having any knowledge of the tank before it burst. The General Counsel tells the government investigators about his written report and his communications with the Board of Directors.

Strongly Agree Somewhat Disagree Strongly  
Agree Agree Disagree Disagree

19. What if instead of talking to government investigators, the General Counsel spoke to a newspaper reporter about his written report and his communications with the Board of Directors?

Strongly Agree Somewhat Disagree Strongly  
Agree Agree Disagree Disagree

### Section III

Indicate the extent to which you agree or disagree with the following statements:

1. A lawyer should never disclose anything his/her client says to anyone.

Strongly Agree      Agree      Somewhat Agree      Disagree      Strongly Disagree

2. It's OK to discuss things my client has said to me to other lawyers with whom I work.

Strongly Agree      Agree      Somewhat Agree      Disagree      Strongly Disagree

3. It's OK to discuss things my client has said to me with other people as long as I don't disclose my client's identity.

Strongly Agree      Agree      Somewhat Agree      Disagree      Strongly Disagree

4. If a lawyer thinks that what his client is going to do is morally and legally wrong, he should disclose it to the proper government authorities.

Strongly Agree      Agree      Somewhat Agree      Disagree      Strongly Disagree

5. If a lawyer representing a corporation finds out that an officer of the corporation has committed a crime unrelated to his duties as a corporate officer, the lawyer should not disclose it.

Strongly Agree      Agree      Somewhat Agree      Disagree      Strongly Disagree

6. If a lawyer sets up an off-shore investment trust for his client that the client uses to cheat a large pension fund, the lawyer has no duty to disclose the existence of the trust to help the victims get back their money.

Strongly Agree      Agree      Somewhat Agree      Disagree      Strongly Disagree

7. A lawyer should always answer questions from a judge fully and truthfully even when it means disclosing something his client has told him.

Strongly Agree      Agree      Somewhat Agree      Disagree      Strongly Disagree

8. In a business transaction, it's OK not to disclose adverse facts if the other party doesn't specifically ask about those facts.

Strongly Agree      Agree      Somewhat Agree      Disagree      Strongly Disagree

Agree

Agree

Disagree

9. If the lawyer knows the other side of a business transaction does not understand a term of the contract, he should explain it fully to make sure everyone understands the contract before it is signed, even if that means the other party may not sign the contract.

Strongly  
Agree

Agree

Somewhat  
Agree

Disagree

Strongly  
Disagree

## APPENDIX 8: QUESTIONNAIRE—SPANISH

### Sección I.

Por Favor cuéntenos un poco sobre ud. para ver como abogados de diferentes culturas reaccionan frente a diversas situaciones.

1. ¿Cuál es su nacionalidad?
2. ¿En qué país o países obtuvo su educación legal?
3. ¿Cuál de los siguientes términos describe mejor su trabajo?
  - a. Sector privado.
  - b. Organizaciones sin fines de lucro.
  - c. Gobierno.
4. ¿Cuántos años lleva ejerciendo derecho?
  - a. Menos de 5 años.
  - b. Entre 5 y 10 años.
  - c. Más de 10 años.

### Sección II.

A continuación hay ciertas situaciones, por favor señale con un círculo si ud. está de acuerdo o en desacuerdo con la conducta del abogado.

1. El señor A, especialista en transacciones financieras en el extranjero, fue contactado por el señor B, quien le pidió su asesoramiento para la creación de cuatro sociedades internacionales estructuradas en el extranjero (IBC's) y para la creación de una cuenta bancarias para cada IBC en un país caribeño conocido por tener un fuerte secreto bancario. El señor B instruye al señor A de que no quiere que su nombre figure en relación con aquellas sociedades. El señor A no le pregunta a el señor B porque quiere que las cuatro IBC's sean constituidas de tal modo. Él las constituye de acuerdo a lo pedido. En el poco tiempo el señor B desaparece y la policía interroga al señor A sobre su relación con el señor B y éste no le cuenta a la policía sobre sus cuentas en el extranjero o sobre la localización de éstas.
  - a. Muy de acuerdo.
  - b. De acuerdo.
  - c. En parte de acuerdo.
  - d. En desacuerdo
  - e. Muy en desacuerdo.
2. Si la policía le dijera al señor A, que están preocupados que el señor B haya sido víctima de extorsión, dónde él ha transferido dinero al chantajista, pero no saben ni cómo ni dónde está el chantajista., ¿cambiaría su respuesta?
  - a. Si (Responda la número 3)
  - b. No (Salte a la número 4)

3. Si su respuesta fue si, por favor señale si ud está acuerdo o desacuerdo con la manera de que el señor A manejó la situación en relación a su conocimiento de que el señor B había sido víctima de un crimen.

- a. Muy de acuerdo.
- b. De acuerdo.
- c. En parte de acuerdo.
- d. En desacuerdo.
- e. Muy en desacuerdo.

4. Asumiendo los hechos del numero uno y que al señor A, uno de sus colegas le comentó que el señor B estuvo involucrado en un divorcio complicado y que la corte falló considerablemente en contra de del señor B por una pensión alimenticia a favor de sus 3 hijos y de su esposa de hace 15 años. ¿Cambiaría ud. Su respuesta?

- a. Si (Responda la número 5)
- b. No (Salte a la número 6)

5. Si su respuesta fue si, por favor señale si ud. está de acuerdo o en desacuerdo con la manera de que el señor A manejó la situación en relación a su conocimiento de que el señor B es responsable un fallo que lo condena a pagar una pensión alimenticia.

- a. Muy de acuerdo.
- b. De acuerdo.
- c. En parte de acuerdo.
- d. En desacuerdo.
- e. Muy en desacuerdo.

6. Asumiendo los hechos del número uno y que la policía le dijo al señor A que el señor B ha participado en malversación de fondos por US\$60 millones de propiedad de su empleador. ¿Cambiaría ud. su respuesta del numero uno?

- a. Si (Responda la número 7)
- b. No (Salte a la número 8)

7. Si su repuesta fue si, por favor señale si ud. está de acuerdo o en desacuerdo con la manera de que el señor A manejó la situación en relación a su conocimiento de que el señor B ha malversado US\$60 millones de su empleador.

- a. Muy de acuerdo.
- b. De acuerdo.
- c. En parte de acuerdo.
- d. En desacuerdo.
- e. Muy en desacuerdo.

8. Volviendo a la relación entre el señor A y el señor B, por favor asuma de que ambos viven en una pequeña ciudad y de que se conocen desde hace 12 años. El señor B es presidente de un pequeño banco de dicha ciudad. Luego el señor A constituye las IBC en el extranjero, y con respecto a eso un regulador bancario le pregunta, dentro de sus

atribuciones, sobre la identidad de su cliente para el cual el señor A constituyó las cuatro IBC's. El señor A se niega a entregar el nombre del señor B.

- a. Muy de acuerdo.
- b. De acuerdo.
- c. En parte de acuerdo.
- d. En desacuerdo.
- e. Muy en desacuerdo.

9. ¿Cambiaría su respuesta a la número 8 si es que el señor A es interrogado mediante una respuesta a una citación judicial en un procedimiento formal en conexión con la desaparición de US\$ 60 millones desde el banco?

- a. Si (responda la número 8)
- b. No (Salte a la número 9)

10. Si su respuesta a la número 8 cambió, ¿cómo clasificaría usted si está de acuerdo o en desacuerdo con la decisión del señor B de no revelar la identidad de su cliente?

- a. Muy de acuerdo.
- b. De acuerdo.
- c. En parte de acuerdo.
- d. En desacuerdo.
- e. Muy en desacuerdo.

11. El señor C, un abogado de un importante estudio de abogados de su ciudad, es contactado por un nuevo cliente que opera un "hedge fund" por un monto de un Billón de dólares con inversionistas en más de 40 países. Él está teniendo problemas con una desconocida agencia regulatoria de ese mercado en EEUU, quien ha obtenido una orden judicial para congelar los fondos del "hedge fund" en los EEUU. Él le da US\$ 15 millones y le pide al señor C que lo deposite en un banco a su nombre o a nombre del estudio para cubrir futuras expensas legales. El señor C acepta el fondo y los deposita en una cuenta a nombre del estudio. Asumiendo que después de que el cliente deja la oficina el señor C hace una búsqueda y encuentra de que la corte ha establecido de que el dinero del fondo proviene de estafas a inversionistas. El señor C hace un trabajo legal para su cliente y se paga con el dinero del fondo.

- a. Muy de acuerdo.
- b. De acuerdo.
- c. En parte de acuerdo.
- d. En desacuerdo.
- e. Muy en desacuerdo.

12. Tres semanas después un abogado de una agencia regulatoria de los EEUU llama al señor C y pregunta por la existencia de cualquier fondo operado o controlado por su cliente. El señor C no revela la existencia de los 15 millones de dólares.

- a. Si (Responda numero 13)
- b. No (Salte a numero 14)

13. Durante el curso de un litigio en contra de una institución financiera de su país, un abogado descubre que el asistente de su cliente va a testificar en el juicio que su cliente, está operando un esquema financiero fraudulento. El abogado le dice a su cliente que a la luz de este testimonio, es muy probable que va a perder el juicio. El cliente le responde que hará lo necesario para que su asistente no testifique en la audiencia destinada para el efecto. El abogado no le revela a nadie el contenido de esta conversación.

Muy de acuerdo      De acuerdo      Algo de acuerdo      En desacuerdo      Muy  
en desacuerdo

14. ¿Su respuesta al número 13 sería diferente si el abogado cree que su cliente está planeando agredir a su asistente.

Sí (por favor responda #16) \_\_\_\_\_      No (vaya a la respuesta #17) \_\_\_\_\_

15. Si es así ¿ cree que el abogado actuó de manera correcta en no desclasificar la información?

Muy de acuerdo      De acuerdo      Algo de acuerdo      En desacuerdo      Muy  
en desacuerdo

16. ¿Qué pasa si la respuesta dada por el Sr. D en la pregunta #13 se refiere a que no importa lo que su asistente o cualquier otra persona diga en el litigio, porque él ya sabe cómo va a terminar este caso y no está preocupado. El Sr. C entiende que esto se refiere a que el Juez ha sido sobornado. El Sr. C no le revela a nadie el contenido de esta conversación.

Muy de acuerdo      De acuerdo      Algo de acuerdo      En desacuerdo      Muy  
en desacuerdo

17. El Gerente sabe que la compañía para la que trabaja ha sido informada por un respetado ingeniero sobre un tanque contenedor de veneno que podría reventar pero el Directorio ha decidido no gastar dinero en repararlo. El prepara un informe para el Directorio advirtiendo sobre los riesgos para la compañía si el tanque no es reparado. El Directorio rechaza sus recomendaciones y le ordena destruir el informe. Él lo hace.

Muy de acuerdo      De acuerdo      Algo de acuerdo      En desacuerdo      Muy  
en desacuerdo

18.. El tanque se rompe y cientos de personas mueren. El gobierno inicia una investigación contra la compañía. El Directorio niega tener cualquier conocimiento sobre el tanque antes de que se hubiera reventado. El Gerente Legal le cuenta a los investigadores gubernamentales sobre su informe escrito y de su comunicación con el Directorio.

Muy de acuerdo      De acuerdo      Algo de acuerdo      En desacuerdo      Muy en desacuerdo

19      ¿Qué pasa si en vez de hablar con los investigadores gubernamentales, el Gerente Legal habló con los periodistas del periódico acerca de su informe escrito y de su comunicación con el Directorio?

Muy de acuerdo      De acuerdo      Algo de acuerdo      En desacuerdo      Muy en desacuerdo

### Seccion III

Indique en qué medida está de acuerdo o en desacuerdo con las siguientes afirmaciones

1. El abogado nunca debe revelar a nadie, lo que su cliente le ha dicho  
Muy de acuerdo      De acuerdo      Algo de acuerdo      En desacuerdo      Muy en desacuerdo

2. Está bien revelar lo que mi cliente me ha dicho a otro abogado que trabaja conmigo.  
Muy de acuerdo      De acuerdo      Algo de acuerdo      En desacuerdo      Muy en desacuerdo

3. Está bien revelar a otras personas lo que mi cliente me ha dicho, siempre y cuando no revele la identidad de mi cliente.  
Muy de acuerdo      De acuerdo      Algo de acuerdo      En desacuerdo      Muy en desacuerdo

4. Si el abogado cree que lo que su cliente va a hacer es incorrecto tanto moral como legalmente, este debería denunciarlo a las autoridades.  
Muy de acuerdo      De acuerdo      Algo de acuerdo      En desacuerdo      Muy en desacuerdo

5. Sí un abogado que representa a una compañía descubre que un empleado de ésta ha cometido un crimen no relacionado con sus deberes en cuanto empleado de ella, el abogado no debería revelarlo.  
Muy de acuerdo      De acuerdo      Algo de acuerdo      En desacuerdo      Muy en desacuerdo

6. Sí un abogado establece un fondo de inversión en valores extranjeros para su cliente, quien lo usa para estafar a un gran fondo de pensiones, el abogado no tiene el deber de ayudar a las víctimas a recuperar su dinero.  
Muy de acuerdo      De acuerdo      Algo de acuerdo      En desacuerdo      Muy en desacuerdo

7. Un abogado debería responder siempre a las preguntas del juez de manera completa y veraz incluso cuando eso llevara a revelar información confidencial de su cliente.



Muy de acuerdo      De acuerdo      Algo de acuerdo      En desacuerdo      Muy  
en desacuerdo

8. En la negociación de una transacción financiera, es aceptable no revelar antecedentes desfavorables si la contraparte no pregunta específicamente sobre esos antecedentes.

Muy de acuerdo      De acuerdo      Algo de acuerdo      En desacuerdo      Muy  
en desacuerdo

9. Si un abogado sabe que la contraparte en la negociación de una transacción financiera no ha entendido un término utilizado en el contrato, él debería explicarlo completamente para estar seguro que todos han entendido el contrato antes de firmarlo, incluso si ese conocimiento significa que la contraparte no lo va a firmar.

Muy de acuerdo      De acuerdo      Algo de acuerdo      En desacuerdo      Muy  
en desacuerdo