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Teaching Professional Identity in Law School

by Martin J. Katz

Many stakeholders in the legal system believe that law schools need to place greater emphasis on teaching practice skills and professional identity. This article focuses on the role of law school curriculum in shaping professional identity.

Law schools are in the business of teaching students legal doctrine. Since the introduction of the case method at Harvard Law School in the late 1800s, law schools regularly have taught students how to find doctrine (research); how to identify doctrine (reading cases and other legal texts); how to understand doctrine (exploring the limits of legal texts, and applying rules from old texts to new facts); and how to critique doctrine (discussing whether a particular rule is a good one, based on the goals the rule might seek to accomplish).

In more recent times, law schools' stakeholders—including clients, firms, judges, bar associations, and students themselves—have called on law schools to do more than merely teach doctrine.¹ These stakeholders have asked (or demanded) that law schools do a better job of preparing their graduates for practice.² Specifically, there have been numerous calls for law schools to teach more about practice skills and professional identity.³ This article focuses on the role of law schools in teaching professional identity.

Professional Identity Defined

Professional identity is more than simply ethics or professionalism—or even both together. Although professional identity includes these two issues, it is a broader concept. Professional identity is the way a lawyer understands his or her role relative to all of the stakeholders in the legal system, including clients, courts, opposing parties and counsel, the firm, and even the legal system itself (or society as a whole).

In an ideal world, lawyers come to understand their duties to each of these stakeholders and how to navigate tensions between those duties. Ethical rules and precepts of professionalism may help navigate those tensions. Professional identity goes beyond those rules and precepts to encompass the ideals each of us holds regarding our professional roles, and how we apply those ideals to the complex situations we encounter in our professional lives.

Professor David Thomson describes the distinction well:

Professionalism relates to behaviors, such as timeliness, thoroughness, respect towards opposing counsel and judges, responding to clients in a timely fashion. . . . *Professional identity* relates to one's own decisions about those behaviors (which sounds like overlap, but it's not), as well as a sense of *duty* as an officer of the court and *responsibility* as part of a system in our society that is engaged in upholding the rule of law.⁴ The challenge, then, is how to teach professional identity.

How Students Learn Professional Identity

Students typically learn legal ethics in courses that focus on the rules that guide professional responsibility. Many schools, including the University of Denver Sturm College of Law (Denver Law), teach ethics "across the curriculum," raising ethical issues in classes other than those wholly dedicated to legal ethics. This enables students to confront ethical issues in the context of particular areas of practice.⁵

Similarly, students learn professionalism not just through curriculum, but through rules imposed and behaviors required, such as punctuality, courtesy, respect, and decorum. As Professor Thomson notes, "We expect certain behaviors (often we define them in our course policies documents, and certainly they are defined in the student handbook), and for the most part we get them."⁶

What about the larger concept—professional identity? As Professor Thomson points out,

[Y]ou cannot teach someone to form their identity. Rather, we as teachers need to create "situations" in which our students can be confronted with ethical questions and reflect on the decisions they make, and be guided by us as they form their own professional identities.⁷

He puts it this way:

For me, "teaching" Professional Identity means we ask the student to finish this sentence: "I am a lawyer, and that means, for me that I will resolve this ethical dilemma as follows . . ."⁸



About the Author

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The key is creating situations where students will be confronted with, and pushed to reflect on, questions of professional identity. The best questions are those that go beyond a particular ethical rule or a particular behavior associated with professionalism. The best questions for teaching address the complex interplay of our various roles and duties as lawyers.

Experiential education is perfectly suited to this type of training. Experiential education puts students in the shoes of lawyers in real or simulated legal settings so that they can see first-hand how the law works and how complex ethical and professional issues arise. Students are pushed to reflect on those issues and are guided as they form their own professional identities.⁹

Because experiential education provides such good opportunities for the development of both skills and professional identity, Denver Law provides a substantial experiential curriculum, in addition to its more traditional curriculum. At a minimum, students must take *Lawyering Process*, a simulated practice course, during both semesters of their first year, and at least one additional experiential learning course after their first year. In addition, Denver Law recently announced the new *Experiential Advantage™ Curriculum*, which allows any student to dedicate a third of his or her law school career to experiential learning. This provides students with deep exposure to doctrine, skills, and professional identity development in the context of real or simulated legal practice.

The *Experiential Advantage Curriculum* combines three core types of experiential education: clinics under the supervision of experienced full-time professors, externships where students work with practicing lawyers on real legal matters, and legal simulation

courses where students role play as lawyers in simulated legal matters under the tutelage of full-time professors and/or practitioners. Students who opt into the *Experiential Advantage* program gain an entire year of valuable exposure to situations in which they can start developing their professional identities under the guidance of experienced professionals.

Challenges to Developing Experiential Learning Curricula

There are three main challenges to developing experiential learning curricula designed to facilitate the development of professional identity. These are explained below.

Cost

Experiential learning is effective only when done in small group settings with low student–faculty ratios. Clinics generally are taught at a ratio of eight students for each professor. This is far more costly than putting eighty students in front of one professor in a lecture class. In matters that involve actual clients in actual litigation, there are costs, including fees for expert witnesses, depositions, and other forms of discovery. Thus, although experiential learning has great benefits, it has the potential to increase the cost of law school at a time when that cost is already quite high. However, there are less expensive ways to increase experiential learning capacity. Externships provide cost-effective partnerships with practicing lawyers and externship faculty, and are far less expensive than clinics. Similarly, faculty members who teach small courses often can shift that teaching to course simulations, or add small-group course simulations to large courses. Course simulations often can be done effectively at ratios of 15-1 or 20-1. In addition to having different cost profiles, each type of experiential learning forum has its own advantages. Mixing clinics, externships, and course simulations provides these advantages to students and builds capacity to offer a full year of experiential learning in a cost-effective way.

Special Expertise of Faculty

Generally, law schools hire clinicians who are already experts in managing cases with student lawyers and supervising those students. Similarly, externship professors excel at setting up high-quality externships and helping students get the most out of that experience. However, very few classroom faculty come with expertise at developing and managing course simulations. To expand the capacity to offer course simulations, Denver Law has offered incentives and training to our faculty, which have resulted in several excellent new course simulations. One of the highlights of our faculty training program was a series of sessions with experts from NITA (National Institute for Trial Advocacy), which develops some of the best course simulations in the business.

Assessment

In a typical doctrinal class, the professor gives a test on the material and grades the test according to how well the student has learned the material. Grading the development of professional identity is much more complicated. For example, it is not obvious how to grade a student's reflections on how to balance the duty of candor to a court with his or her duty to zealously represent the client. More thinking needs to be done on this subject. Denver Law has helped start a national dialogue on this issue, working

with the Educating Tomorrow's Lawyers initiative¹⁰ to host the first conference ever on the topic of assessing the development of professional identity.¹¹ As more professors help students develop their professional identities and start to think about assessment, we will gain more expertise in measuring such development.

Conclusion

At this point, there is not much data available to evaluate how successful schools have been in teaching professional identity development; however, the anecdotal reports from both students and employers are encouraging. It appears that law schools can in fact help students begin to develop strong professional identities as lawyers.

The primary tool Denver Law uses to foster professional identity formation—experiential education—has an additional benefit: employers often note that students who have had substantial experiential learning opportunities are more thoughtful, more flexible, and better adapted to the complexities of law practice. Early indications are that this type of education creates lawyers who are both better suited for practice and more thoughtful about their roles. It is a win-win proposition.

Notes

1. See, e.g., Barry, "Practice Ready: Are We There Yet?" 32 *Boston College J.L. and Social Justice* 247 (March 2012); Edwards, "The Growing Disjunction Between Legal Education and the Legal Profession," 91 *Michigan L.Rev.* 34 (Oct. 1992); Lloyd, "Hard Law Firms and Soft Law

Schools," 83 *North Carolina L.Rev.* 667 (April 2005). See also Caplan, "An Existential Crisis for Law Schools," *The New York Times* SR10 (July 15, 2012) ("[Law schools'] missions have become muddled, with a widening gap between their lofty claims about the profession's civic responsibility and their failure to train lawyers for public service or provide them with sufficient preparation for practical work."); Jones and Palazzolo, "What's A First-Year Lawyer Worth?" *Wall Street J.* B1 (Oct. 17, 2011) ("[T]here is still a gulf between a newly minted lawyer and one who can provide value to a client."); Segal, "What They Don't Teach Law Students: Lawyering," *The New York Times* A1 (Nov. 20, 2011) ("The fundamental issue is that law schools are producing people who are not capable of being counselors." (internal quotation marks omitted)).

2. Discussion of the causes of this trend is beyond the scope of this article. Among the possible causes, though, are that clients, under pressure to reduce their legal spending, are pressuring firms to reduce lawyer training. Additionally, lawyers tend to remain with firms for shorter periods, reducing employers' incentives to spend resources on training.

3. The 2007 report by the Carnegie Foundation suggested that there are three basic types of learning for professionals of any type: specific knowledge (doctrine, in the case of law); skills; and professional identity. See Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* (Carnegie Foundation for the Advancement of Teaching, 2007).

4. Thomson, "Teaching Professional Identity with Skills and Values Texts," Law School 2.0 (Jan. 21, 2012), available at www.lawschool2.org/l2/2012/01/teaching-professional-identity-with-skills-values-discovery.html. (Emphasis in original.)

5. The University of Denver Sturm College of Law has a public service requirement for graduation, designed to help students form a habit of performing *pro bono* legal work, as required by the Colorado Rules of Professional Conduct (and part of good lawyers' professional identity).

6. Thomson, *supra* note 4.

7. Thomson, “Teaching’ Formation of Professional Identity,” Law School 2.0 (July 24, 2012), available at www.lawschool2.org/l2/2012/07/formation-of-professional-identity.html.

8. Thomson, *supra* note 4.

9. Note that not all experiential education does this. For example, trial competitions are experiential, but often focus more on practical skills than on professional identity. However, the better trial competitions focus on both.

10. See educatingtomorrowlawyers.du.edu. Educating Tomorrow’s Lawyers is an initiative of the Institute for the Advancement of the American Legal System (IAALS), which is located on the University of Denver’s campus. For more information about the initiative, visit the IAALS website at iaals.du.edu.

11. The post-conference report is available at educatingtomorrowlawyers.du.edu/images/wygwam/events/Report_on_the_2012_Conference.pdf. ■