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Lawyers Should Have a Professional I.D.

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Lawyers Should Have a Professional I.D.

By Lawrence K. Hellman

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No, this column is not about a national I.D. card system that some have proposed. Instead, the topic is about one's *professional identity* — how it develops and how it influences your life and our legal system.

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A healthy discussion about professional identity and purpose has developed in the wake of the Carnegie Foundation's publication in 2007 of an assessment of contemporary legal education: *Educating Lawyers: Preparation for the Profession of Law*.¹ The report made two principal recommendations. First, preparation for practice should be understood to involve three distinct, but related, "apprenticeships:" cognitive, practical, and ethical-social.² Second, the three apprenticeships should be administered in an "integrated" manner.³

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The Carnegie Report proposes that understanding the role and purpose of a lawyer should be viewed as an *integral part* of a lawyer's training and of a lawyer's work.⁴ It views professional identity to be as essential as legal knowledge and practice skills to performing properly as a lawyer.⁵ Those who do not appreciate the inextricable relationship between knowledge, skills, and professional expectations will have a sense of professional identity and purpose that is likely to be inaccurate, incomplete or confused.⁶

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Law school is an intensely acculturating experience. High achievers all, beginning law students are eager to learn what they're supposed to learn. And, indeed, there is a lot to learn. Of course, much of the focus at the beginning is on substantive knowledge — legal doctrine and procedural rules — with ample attention to analytical and communications skills. What lawyers are supposed to *do* with their growing body of knowledge and mastery of skills is not always discussed. How they are supposed to *feel* about the legal outcomes they encounter in the cases they study is not necessarily considered to be part of the curriculum.

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According to the Carnegie Report, students at many law schools "are warned not to let their moral concerns or compassion for the people in the cases they discuss cloud their legal analyses ... They have no way of learning when and how their moral concerns may be relevant to their work as lawyers and when these concerns could throw them off track. Students often find this confusing and disillusioning. The fact that moral concerns are reintroduced only haphazardly conveys a cynical impression of the law that is rarely intended ..."⁷

As students progress through law school, they inexorably are forming a professional identity, but this is often an unguided (and unexamined) journey.⁸ The search for professional identity and purpose continues as the law school graduates enter practice.⁹ Like formal apprentices of a bygone era, new lawyers seek to observe more experienced practitioners and learn from their examples. But who is there to discuss which examples are sound and which are flawed? In the absence of an environment that creates opportunities for reflection and criticism (like clinical rounds in medical school), what is there to

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fall back on but one's intuition?

The Preamble of the Model Rules of Professional Conduct identifies some principles that may help a lawyer to begin to develop a well-grounded sense of professional identity. While sometimes bordering on platitudes, the broad statements in the Preamble provide a perspective on the position of lawyers in society that can provide a foundation for one's professional identity. For example, the Preamble speaks of the lawyer as a "public citizen having a special responsibility for the quality of justice."¹⁰ This concept is further developed by the suggestion that lawyers should be engaged in seeking "improvement in law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession."¹¹

Statements such as these do not establish enforceable rules. Rather, they seek to articulate a sense of *professional* identity that is separate from the identity of clients, or even from one's *pre-professional* self. They express a sense of purpose and responsibility that is neither universally instinctive nor easily internalized. Yet, without such a sense of purpose and responsibility, how can lawyers justify to themselves or to society their control of the legal system?

So how does one acquire a "valid" professional I.D.? The process can begin by introducing the Preamble's vision of what it means to be a lawyer at the very beginning of law school and thoroughly and effectively integrating this perspective throughout all aspects of the curriculum. A central goal of overall curriculum should be understood to be to assist students to form a sense of professional identity that is confident, secure and healthy.

While the Preamble calls on all lawyers to view themselves as having a special responsibility for the quality of justice delivered by the legal system, wisely, the Carnegie Report does not ask the law schools to indoctrinate their students with some preferred view of "justice." It recognizes that any such effort would be both "illegitimate and ineffective."¹² After all, the formation of one's professional identity is an inherently individual process. The Carnegie Report simply proposes that matters of ethics, morals, and justice must be addressed persistently throughout law school *in connection with* the development of the cognitive and practice skills that the students are acquiring in law school.¹³ Otherwise, the ethics rules and broad visions of professional identity and purpose will tend to be viewed as peripheral considerations, not factors that go to the core of being a lawyer.¹⁴ Because "law school cannot *help* but affect students' values or ethical perspectives,"¹⁵ the schools should seek to do so intentionally and constructively, not accidentally and confusingly.¹⁶

But the Carnegie Report has a blind spot. No matter how purposeful the law schools become with respect to helping their students begin to form their professional identity, it is a mistake to view the influence of the law schools in the formation of their students' professional values as occurring in a vacuum, protected from the influences of the practice world. An empirical study I conducted more than two decades ago investigated the influence of law office work *during law school* on how law students absorb professional values.¹⁷ The study "demonstrated that a student's practice environment quickly supersedes law school as a source of reference for demarcating professionally acceptable behavior."¹⁸ There is every reason to believe that the practice environment continues to dominate the formation of professional identity after one's graduation from law school and admission to the bar.

If the Carnegie Report is right about how legal education has been conducted at most law schools up to now, this means that the lessons of "the real world" are being taught mostly by lawyers whose sense of professional identity and purpose was inadequately developed during their law school years and who are, therefore, ill-equipped for this instructional role.

For future generations of lawyers to have a more confident and comprehensive sense of professional identity and purpose than their predecessors, the law schools and the profession will have to join efforts and simultaneously address the challenge.

NOTE: This article is an updated version of articles on the subject published by Dean Hellman in The National Law Journal and the March 2008 Oklahoma County Bar Association's publication, Briefcase.

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1. William M. Sullivan, et. al., *Educating Lawyers: Preparation for the Profession of Law* (2007) (hereinafter "Carnegie Report").
2. *Id.* at 27-29.
3. *Id.* at 13, 160-61, 191-92, 194-97.
4. *Id.* at 3-4.
5. *Id.* at 31.
6. *Id.* at 127-28.
7. *Id.* at 187-88.
8. *Id.* at 140.
9. ABA Section on Legal Education and Admissions to the Bar, *Legal Education and Professional Development — An Educational Continuum*, Report of The Task Force on Law Schools and the Profession: Narrowing the Gap 305-17 (1992).
10. ABA, Model Rules of Professional Conduct Preamble Para. [1].
11. *Id.* Preamble Para. [6].
12. Carnegie Report, *supra* note 1, at 135.
13. *Id.* at 142-43.
14. *Id.* at 31-33.
15. *Id.* at 139.
16. *Id.* at 140.
17. Lawrence K. Hellman, *The Effects of Law Office Work on the Formation of Law Students' Professional Values: Observation, Explanation, Optimization*, 4 GEO. J. LEGAL ETHICS 537 (1991).
18. *Id.* at 611.

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Lawrence K. Hellman is dean and professor of law at Oklahoma City University School of Law. He writes frequently on legal ethics topics and served as co-chair of the OBA's Rules of Professional Conduct Committee from 2000 to 2007. He is an elected member of the American Law Institute and the Oklahoma Fellows of the American Bar Foundation. He also holds an appointment to the ABA Section of Legal Education and Admissions to the Bar Professionalism Committee.

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