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Lawyer, Form Thyself: Professional Identity Formation Strategies in Legal Education, Professional Responsibility, and Experiential Courses

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Lawyer, Form Thyself: Professional Identity Formation Strategies in Legal Education, Professional Responsibility, and Experiential Courses

Susan Swaim Daicoff

Introduction

Professional identity formation as a learning objective in law school may appear to be nontraditional and perhaps even innovative. It is likely not a new concept, but at least has not traditionally been an explicit goal of legal education. In informal discussions among law professors, these ideas often emerge: law students develop their professional identities either in their families of origin or through life experiences prior to law school and therefore any such characteristics are set, ingrained, and perhaps immutable; law students develop their professional identities through interactions with supervisors during summer clerkships and after graduation -- “on the job” so to speak; or, finally, professional identity is an unteachable, untrainable, and intangible concept and law professors are unable to address it.

However, empirical data finds that many law students do change as a result of law school. For example, studies conclude that, during law school, law students become more cynical about the legal profession (but also more protective of it), less intellectual, less philosophical, less introspective, less interested in abstractions, ideas, and the scientific method, and less focused on intrinsic satisfactions and more motivated by external rewards. They become less interested in community and helping values and more interested in image and attractiveness and this shift is linked to a decline in wellbeing. Law students’ moral and ethical decisionmaking also changes.

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1 Professor of Law, Arizona Summit Law School (M.S., J.D., LL.M.). Thanks are due to Professors L. O. Natt Gantt, II, & Benjamin V. Madison, III for inviting the author to present this paper at the Southeastern Association of Law Schools’ annual conference in August, 2014, in Amelia Island, Florida, and to Robert Baskin for supporting this work.

2 L.O. Natt Gantt, II & Benjamin V. Madison, III, Cultivating Professional Identity Formation in the Doctrinal Course, Institute for Law Teaching and Learning’s Summer 2013 Conference on Hybrid Law Teaching (June 7-9, 2013), available at http://lawteaching.org/conferences/2013/handouts/4d-ProfessionalIdentity.pdf (last visited July 24, 2014) (setting forth several excellent definitions of professional identity as well as exercises that can be used in law school courses).

3 See Don S. Anderson et al., Conservatism in Recruits to the Professions, 9 AUSTL. & N.Z. J. SOC. 42, 44 (1973); Kurt M. Saunders & Linda Levine, Learning to Think Like a Lawyer, 29 U.S.F. L. REV. 121, 146 (1994).

4 James M. Hedegard, The Impact of Legal Education: An In-Depth Examination of Career-Relevant Interests, Attitudes, and Personality Traits Among First-Year Law Students, 4 AM. B. FOUND. RES. J. 791, 814, 836-37 (1979). Hedegard suggested that it could be expectable for law students to become more realistic and pragmatic, as graduation and legal practice approach. Id.

5 Kennon M. Sheldon & Lawrence S. Krieger, Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being, 22 BEHAV. SCI. & L. 261, 281 (2004) (linking this shift in values to a decline in the emotional wellbeing of law students and concluding that intrinsic values are key to maintaining satisfaction and wellbeing in law school); and Lawrence S. Krieger, Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence, 52 J. LEGAL EDUC. 112, 122-23 (March/June, 2002) (reporting the results of an empirical study linking intrinsic values to law student wellbeing). See also Lawrence S. Krieger, Psychological Insights: Why Our Students and Graduates Suffer, and What We Might Do About It, 1 J. ASS’N LEG. WRITING DIRECTORS 259, 262 (2002). Hereinafter these three sources shall be referred to as the “Krieger & Sheldon Studies.”

6 Krieger & Sheldon Studies, supra note 5.
in law school; they tend to shift away from relational, contextual decisionmaking and an ethic of care and towards more rational, logical, rule-oriented approaches. Law school is therefore likely to impact law students’ professional development; it is time to be sure that impact is soundly planned and coordinated.

Professional identity here is meant to encompass one’s values, preferences, passions, intrinsic satisfactions, emotional intelligence, as well as one’s preferred professional best practices. Emotional intelligence here is used to refer to five areas: intrapersonal (self) awareness, self-management competencies, awareness of others (empathy), interpersonal relational skills, and drive or motivation. Many of these “professional identity” concepts have been empirically demonstrated to be important to one’s effectiveness as a lawyer and to one’s wellbeing and satisfaction as a lawyer. Therefore, legal education would be foolish to ignore the development of law students’ professional identities, or entrust it to chance occurrences and experiences, particularly given the data suggesting that personality changes do occur in law school. Medical schools have realized the importance of teaching similar concepts, including emotional intelligence, to medical students, in order to enhance their effectiveness as physicians. Many law professors are actually well-positioned to help law students link professional identity concepts to the practice of law, particularly given legal educators’ current emphases on practical skills training in law school.

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8 Krieger & Sheldon Studies, *supra* note 5.

9 Emotional intelligence (“EQ”) is a concept developed by psychologist and researcher Daniel Goleman, in contrast to intellectual intelligence or intelligence quotient (“IQ”). It consists of five categories of traits that have been found to correlate to lifelong success in a variety of areas and can be a better predictor of all-around success than IQ.


10 SILVER, *supra* note 9, at 9-12, citing GOLEMAN, *supra* note 9, at 14–27 (grouping Goleman’s five divisions into two categories: personal [self-awareness, self-regulation, and motivation] and social [empathy and social skills]).


12 Krieger & Sheldon Studies, *supra* note 5.


14 See, e.g., the website of “Educating Tomorrow’s Lawyers,” an initiative of the Institute for the Advancement of the American Legal System at the University of Denver, involving a consortium of American law schools, at
Empirical findings on the nontraditional skills and competencies (or “soft skills”) that make lawyers most effective\(^\text{15}\) coalesce into these lawyer competencies, which can be grouped into four categories:\(^\text{16}\)

1. **Intrapersonal (self) awareness, values, & abilities**: practical judgment, maturity, passion and engagement, motivation, diligence, drive for achievement and success and a need to compete and win, intense detailed focus and concentration, optimism, self-confidence, strong sense of self and self-knowledge, integrity, honesty, and ethics, reliability, independence, adaptability, creativity/innovation (in a practical sense).

2. **Intrapersonal management competencies**: organizing and managing one’s own work, self-development, continued professional development, stress management, general mood.

3. **Interpersonal (other) awareness**: understanding human behavior, an intuitive sense of others by which one can “read” what is implicit or understand subtle body language and gestures, ability to see the world through the eyes of others, tolerance and patience, ability to read others and their emotions.

4. **Interpersonal management competencies**: dealing effectively with others, questioning and interviewing, influencing and advocating, instilling others’ confidence in you, assertiveness, speaking, listening, providing advice & counsel to clients, obtaining, building relationships with, and keeping clients, developing business, working cooperatively with others as part of a team, organizing and managing others (staff/colleagues), evaluation, development, and mentoring, negotiation skills, mediation, developing relationships within the legal profession (networking), community involvement and service, problem solving, strategic planning.\(^\text{17}\) [Citations omitted]

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\(^{16}\) This list summarizes the empirical findings of the nine studies cited in note 15, supra.

Perhaps a decade ago, a focus group of student leaders in the author’s law school asked for the inclusion of professional identity development strategies throughout the curriculum. Specifically, they wanted to see these concepts taught in orientation, professional responsibility courses, upper-level electives, and practice-oriented courses such as clinics, interviewing and counseling, negotiation, and dispute resolution. The student leaders’ passion for this inclusion was remarkable, yet implementation of their requests has taken years. This article will set forth some of the author’s strategies for developing one’s self-awareness, values, preferences, preferred professional role, best practices, judgment, interpersonal skills, and professional communications skills, in law school. Many of these were influenced by the student leaders’ requests.

**Strategies in Orientation**

At orientation, an hour can be set aside for presentation of the research on the link between professional competencies and lawyer effectiveness and on the link between one’s intrinsic values and one’s professional satisfaction and wellbeing. After a short presentation of this research, two volunteers can be solicited from the new law students to role play a common situation in front of the class. Specifically, after a short explanation of the unlicensed practice of law rules, the students can role play a friend asking a law student for legal advice and the law student politely declining to answer, even when the friend presses for an answer. This is interactive and can be engaging. Most importantly, it usually generates a lively discussion about the law (one cannot render legal advice while in law school) and one’s self awareness (how to handle desires to ignore the law and help out, feelings of incompetency, anger, obligation, guilt, etc.) and one’s interpersonal skills (how to handle social pressure, maintain personal boundaries with others, etc.). It is helpful to label for new law students these insights and skills and also model for new law students the importance of self awareness, self management, awareness of others’ motives, and handling interpersonal interactions, while abiding by the rule of law, in professional situations. It also begins to establish a cultural expectation in law school of integrating one’s personal and interpersonal competencies with legal rules.

**Strategies for Professional Identity Formation in Professional Responsibility Courses**

Almost all aspects of professional identity formation can be touched on, in a professional responsibility course. It can be helpful to devote part of the course to professional identity formation and explicitly state that, for example, two-thirds of the course focuses on the ethical rules and one-third of the course focuses on assisting each student in developing his or her preferred professional identity, practical skills necessary for professional behavior, and personal and professional values. Learning objectives for the course can set forth these expectations: “…[the student will] (2) understand and be able to articulately describe his or her preferred professional role and values; and (3) demonstrate, via written assignments, skills exercises, and role play simulations, his or her acquired professional communications and judgment skills.”

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18 This was after a three-day voluntary leadership training course co-taught by the author.
19 Krieger & Sheldon Studies, supra note 5.
20 It would constitute the unlicensed practice of law. RONALD D. ROTUNDA & JOHN S. DZIENKOWSKI, PROFESSIONAL RESPONSIBILITY: A STUDENT’S GUIDE, Section 5.5-3 at 1069 (2013-14).
While there may not be sufficient time for an in-depth exploration, three to five short, graded assignments can address the professional identity learning objectives in addition to more traditional learning objectives. These assignments also function to provide a practice-oriented experiential component in the course and an opportunity for honing one’s writing skills.

Each assignment is limited to one to two typed pages, is worth one to two percent of the course grade, and graded on a competency basis without a curve; it is expected that any student can rewrite the assignments repeatedly until 100% credit is achieved. By the end of the semester, all students in the class can achieve full competency on these assignments, as an iterative process. Rewrites offer an opportunity for students to interact with the professor about clarifying their values and preferences. Each of these three assignments (personal essay, memo, script, and role play, and court/field observation) is explored below.

**Strategy for Developing Intrapersonal Awareness**

Intrapersonal awareness can be explored through a personal essay on one’s professional preferences and values. A short reading is assigned, introducing professional role diversity (hired gun, zealous advocate, moral lawyer, wise counselor, true believer, etc.) and on the link between intrinsic values and professional satisfaction. To foster autonomy, preserve personal privacy, and provide maximum input, students choose three of about eight topics on which to write. Millennial students in particular appreciate positive feedback, clear directions, samples of good work, respect, and input and choice. It is important not to permit students to simply write in vague, generic, aspirational terms; clarity about one’s values requires concrete, specific,

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22 Rob Atkinson gives a great description of this professional role diversity in arguing that not all lawyers function as neutral partisans (amoral representatives of their clients), Rob Atkinson, A Dissenter’s Commentary on the Professionalism Crusade, 74 TEX. L. REV. 259, 305, 308, 309 (1995).
23 Krieger & Sheldon Studies, supra note 5.
24 Kennon M. Sheldon & Lawrence S. Krieger, 33:6 PERSONALITY & SOC. PSYCH. BULL. 883 (2007) (summarizing the results of their multiple studies of law student wellbeing and the importance of autonomy support in law school for law student wellbeing).
individualized preferences and plans. Feedback on drafts and permitting rewrites are helpful in this regard.

**Personal Essay - Detailed Instructions**

This assignment will be graded as set forth in the Syllabus; it is worth 1% of your grade. The final Personal Essay will be due on the last day of classes. The purpose of this assignment is to provide you with an opportunity to consider your personal definition of professionalism, as you enter the legal profession, and develop or hone skills that will enhance your professional development.


For this Personal Essay, choose three of the following topics on which to write. Write one short, separate paragraph on each of the 3 topics (equally weighted). Your entire paper may not exceed 500 words. Grades will be based on whether or not your answer is responsive to your chosen questions and on the depth of your analysis; however, there are no “right” answers to these questions, as individuals may and should vary.

**Note:** NO credit will be earned for answers that include basic Model Rules of Professional Conduct (“Model Rules”) concepts like competence, diligence, communication, and honesty, as those behaviors are required of all lawyers as “givens,” or as a “floor” for professional behavior. We want to explore professionalism beyond simply complying with the Model Rules, here.

1. Describe your personal working definition of “professionalism” based on Rob Atkinson’s taxonomy of lawyer types: Type I (zealous advocate); Type II (wise counselor); and Type III (true believer).\(^{28}\) What kinds of cases will you most enjoy taking, as a lawyer and why?

2. What skills do you think are most important for professional behavior, as a lawyer, and why?

3. What are your intrinsic values? What are you best at; what are your strongest assets; what do you like to do even if you are not being paid for the work? How can you integrate these values into your work as a lawyer or in the future?

4. Describe your professional strengths and areas of challenge.

5. Describe your plan of action to continue to develop your professional identity (including a plan for overcoming any personal areas of challenge).

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\(^{28}\) Atkinson, *supra* note 20.
6. Describe how you manage and deal with stressful situations, including disappointment and conflict with others in the workplace.

7. Wild Card: Write your own thoughtful question about professionalism and/or your role in the legal profession -- and answer it.

8. Find a reported case or one currently in news media; do you agree with how the lawyers are approaching the case from a professional ethics/representation standpoint (not their legal strategy) or not, and why?

Here is a sample personal essay that reflects an excellent response to this assignment:

Cognizance of your own behavior and attitude is probably the most important skill. The entire practice and clientele base depends on how lawyers interact with clients and other lawyers. Reflecting on how others view you, how you interact with others, and how you react to what others do is valuable because that is how you successfully interact and attract others. If you can recognize when your choice of words or expression of opinion is alienating others, you can change to try to make a positive turnaround.

Instead of having a “take me as I come” approach where others either will not listen or go out of their way not to hear, a more tailored approach can earn friends, clients, and respect. Knowing the audience, how different responses might affect others, and in what situations you can loosen up is also helpful. A lawyer who is cognizant can tailor an approach that casts the widest net, earns a large amount of respect, and meets a wide range of people.

My professional strengths come from my willingness to self reflect and evaluate my performance. I tried to hone those skills in military service, where my duties included attending monthly counseling sessions where I discussed job performance with a leader/counselor. It was a time to reflect and I always tried to take advantage of it. I later became a leader/counselor, and tried to emulate the good qualities of my counselors, as well as learn from the bad. I would always try to self reflect and even sought the opinions of those I counseled. Later, a teacher in one of my classes had each student complete a different self-evaluation from a different source each week. The entire class was dedicated to professional development, and the reading all focused on managerial self-reflection. I put a lot of effort into it because I am constantly striving to self improve.

I sometimes have a lack of focus because I try to do too many things at one time and then prioritize or deprioritize in an unorganized way. I lose focus on things I deem less helpful or accidentally spend less time on things that are important. I am also impulsive and everything sounds like a good idea. Life is too short, so I constantly strive to accomplish so many things and never feel like I can wait on any of them. I say yes to things I should not because I fail to recognize my workload or the time it takes to complete everything. My plan is to focus on my strength of self-reflection and use it to try to overcome my weaknesses. I will try to plan a better schedule and ensure more time to do the things I need to do. In the future I will try to reevaluate...
my workload and level of dedication on the first of every month. In practice I will try an evaluation weekly, and will look to work productivity to decide whether my plan worked or not.

Strategy for Developing Applied Professional Identity and Interpersonal Skills

For the learning objective of developing professional communications and judgment skills, a three-part skills assignment is used involving a memorandum of law, script, and role play. All students are assigned into teams of two to four, unless they strongly prefer to work alone, and permitted to select a unique professional dilemma involving the ethical rules of law. Collaboration is expected on this assignment to foster teamwork competency. Dilemmas include situations involving the interplay of the ethical rules with personal values and morals, such as: communicating ending the lawyer-client relationship; having the fee discussion with a new client; explaining the settlement to a plaintiff client at the end of the case; dealing with a nosy friend; breaching confidentiality due to imminent harm; obtaining informed consent to a waiver of privilege and confidentiality; representing two co-clients where one develops a secret; dealing with a difference with your client; withdrawing from a case because of a conflict; asking a former client for consent to current representation of another client; ending the lawyer-client relationship because of a conflict; negotiating a job offer from a private firm while working for the government; moving to a new law firm and dealing with conflicts of interest; dealing with a conflict between co-defendants; dealing with the perjuring client or witness; the temptation to lie in settlement negotiations; confidences inadvertently disclosed in a misdirected email; a client who steals information from the opposing counsel; dealing with a nonsupervising senior partner; and confronting an impaired or wrongdoing lawyer or judge.

Each role play requires the team to imagine a fact scenario for application of the assigned rule of law, write a one-page memorandum of law applying the rules of professional responsibility to the situation, write a two-page script for a client conference or lawyers’ meeting in the scenario, and then role play the script as a three-minute-long simulation in class. Most important to professional identity development, the memo must contain an analysis of “best practices,” which involves going above and beyond the rules to determine what to do in the situation, based on the students’ values and preferences. Each team is required to meet with the professor before presenting in class for further feedback about professional communications skills and to be sure the scenario, memo, and script are appropriate and workable. After the class presentation, the class provides brief feedback to each team; this feedback optimally focuses on strengths and few suggestions, to foster a positive learning environment. The team then rewrites their memo and script based on the class’ feedback and the professor’s individual feedback, to improve it and optimally reach 100% credit.

This skills assignment is designed to develop four areas of emotional intelligence: self awareness, self management, awareness of others’ motives and needs, and interpersonal interactional skills. More specifically, it aims to develop teamwork, collaboration, professional judgment, professional communications skills, the ability to handle difficult conversations and difficult people, one’s preferred style of interaction with clients or opposing counsel, client relations, the ability to give, receive, and implement feedback, and an awareness that “best practices” in law practice often exceed the minimal requirements of the ethical rules. It may

30 See notes 9-10, supra, discussing the concepts and components of emotional intelligence.
model the ability to effectively “script” difficult conversations ahead of time, in professional settings, after graduation. It is particularly impactful to move from discussing in theory what one might say or do, in a professional setting, to actually role playing with words and actions. Developing the script allows students to decide and try out how they want to present themselves in professional interactions. It also affords an opportunity to discuss one’s instinctive reactions, such as anger or outrage, and how to manage and contain them in professional settings. Finally, the best practices section of the memo challenges students to go beyond the rules to resolve ethical dilemmas based on their personal and professional values.

Here is a sample the students receive:

**SAMPLE SKILLS ASSIGNMENT:**

**Memorandum of Law**

**Facts:** In this assignment, I am assuming that I am a lawyer in a divorce case between Rick and Marcia. I represent Rick, who wants to aggressively pursue Marcia in this divorce and, as part of that, wants to call the three minor children as witnesses to testify about Marcia’s infidelity during the marriage. I disagree and, despite the fact that I have counseled with him about this matter in person, he has not changed his mind.

**Law:** The Model Rules (“MR”) that apply are MR 1.2 and 1.16: Under MR 1.2, the client has the ultimate decision-making power over the objectives of the representation and the lawyer oversees the means but shall consult with client regarding the means to be taken to reach the client’s objectives, MR 1.2(a). I must consult with Rick before refusing to call the children as witnesses. Comment 2 to MR 1.2 does not explain how to resolve a disagreement between lawyer and client as to the means to be used. MR 1.4(a)(2) requires me to reasonably consult with Rick regarding the means I will use to accomplish his objectives. The law clearly says I can deal with technical and tactical issues (Comment 2 of MR 1.2), grant short or reasonable continuances to the other side if they do not adversely affect the client’s case, and plan trial strategy, without Rick’s consent. The Restatement 3d says there are two matters outside the client’s control: (1) the lawyer can refuse to do things he thinks are unlawful; and (2) the lawyer alone can decide to do things he reasonably believes to be required by law or by an order of a tribunal. Therefore, the law does not clearly permit me to decide not to call a witness against my client’s wishes. I think in this case we have a “fundamental disagreement” which would allow me to seek to withdraw, but I must seek the court’s permission before I withdraw.

**MR 1.16(a) requires me to withdraw if** (1) my representation will result in a violation of the rules of professional conduct; (2) my representation will result in a violation of law; (3) my physical or mental condition materially impairs my ability to represent the client; or (4) the lawyer is discharged by the client. **MR 1.16(b) permits me to withdraw if** (1) it can be done without material adverse effect on client’s interests; (2) the client persists in a course of action involving the lawyer’s services that the lawyer reasonably believes is criminal; (3) the client
persists in a course of action involving the lawyer’s services that the lawyer reasonably believes is fraudulent; (4) the client has used the lawyer’s services to perpetrate a crime or fraud; (5) the client insists on taking action the lawyer finds repugnant or with which lawyer has a “fundamental disagreement;” (6) the client substantially fails to fulfill an obligation to lawyer and has been warned that withdrawal will occur (e.g., client fails to abide by terms of agreement re: scope of representation or fees and costs); (7) the representation will result in an unreasonable financial burden on lawyer; (8) the representation has been rendered unreasonably difficult by the client; or (9) other good cause. Only MR 1.16(b)(5) applies. I am not required to withdraw, here, but am permitted to request the court’s permission to withdraw as his counsel, under MR 1.16(b)(5). Since I am his attorney of record in litigation, I likely need the court’s approval to withdraw, MR 1.16(c). Also, I have a duty to mitigate the consequences of my withdrawal for the client, Comment 9, and to take reasonable measures to protect Rick’s interests. Upon withdrawing, I must (1) notify the client; (2) allow him time to employ new counsel; (3) surrender papers and property of the client; and (4) refund monies not earned, MR 1.16(d).

**Best Practices:** As this is a permissive withdrawal situation, I have options. Rick’s plan is not the kind of approach I take in divorces because I am not willing to create further harm to minor children, so I am not willing to follow his direction in this case even though his plan is not criminal or fraudulent. Minimizing hostility in family law cases like this may enhance my and my client’s wellbeing, in the long run, and fits with my intrinsic values of problem solving, thus I will seek to withdraw.

**Script**

Me: Hi, Rick, thank you so much for coming in to see me today. I want to talk about the status of your case and the approach I am taking in representing you, because, as you probably guessed, I have some real concerns about the different ways you and I would like to proceed, in your divorce. This “status conference” isn’t going to be time billed to you as a client, because I think we just need to sit down and talk about where we are going and whether it makes sense for me to continue as your lawyer.

Rick: (looks surprised) Okay….

Me: (giving him no opportunity to argue) As you know, you and I disagree about the trial strategy regarding who to call as a witness about your wife’s infidelity. We’ve talked about this at length in person and on the phone and I wondered if your thoughts on that had changed at all, since the last time we talked? (Assume that we had discussed it at length in our last conference.)

Rick: (basically says no) No, I still think that’s the way to go.

Me: Well, as you know, that’s not a way that I work when handling divorce matters. There are other lawyers who might well be comfortable with that approach, but I’m not. That means that I need to ask the court for permission to withdraw as your attorney, and help you find the right attorney for you, who will really represent you in the way that you’re looking for in this case. I’m afraid that my approach would just be frustrating for you and not really get you what you are looking for, so I have determined that this is best course of action. I will, of course, help you find a new attorney, take time to do this, and do all that I can to make a smooth transition to
your new attorney, including giving that attorney all the papers and documents I have in your file. You will also get back any unearned retainer funds in my possession, so you can use them with your new counsel. Does that make sense?

Rick: You’re going to quit on me? Are you kidding? You really don’t want to do it my way?

Me: I don’t see any other way to proceed and provide you with adequate legal representation, because we have what is called a “fundamental disagreement” about how to handle the case.

Rick: Well, I guess we do!

Me: (Probably need to employ some basic empathy to defuse any anger he has and help him understand the dilemma and my choice, e.g.:) I can understand how frustrating and surprising this may be, but I don’t really see any other options. …. Do you agree? (pause for responses) Do you have any questions? (pause for responses) Would you like me to help you identify some attorneys you might mesh well with?

**Strategy for Identifying Professional Identity Concepts in the Field**

Finally, in any doctrinal course, it is often instructive to assign students to observe at least one hour of court proceedings or perform other fieldwork and write about their observations and reflections. Traditionally students are asked to write about the application of substantive rules of law to the observed cases, but to foster professional identity development, more focused questions can be assigned, instead. The sample instructions, below, set forth such questions; they could be further improved by asking whether the student would behave in the same way as the observed lawyers and judges behaved. Specific learning objectives can be: students will gain real world insight into the law of professional responsibility and professionalism in practice; observe the operation of the law, lawyers, and/or judges in action; develop or improve skills of self-reflection and writing; and develop the ability to identify and comment upon professionalism and/or best practices in ethics. This assignment often gives students an opportunity to interact with practicing lawyers and judges, which affords a chance to practice interacting in a professional environment and possibly even networking, which is one of the lawyering competencies cited in the lawyering effectiveness studies.31

**Professional Responsibility Court Observation/Field Experience Assignment:**

In person (not by video or phone), do one of the following five things: Attend at least an hour of one of the following: (1) a deposition; (2) a court hearing or trial; or (3) a presentation by a local attorney; or (4) provide at least one hour of pro bono service assisting local attorneys providing pro bono services at a local event;32 or (5) interview in person a local attorney or judge about the practice of law and the meaning of “professionalism.”

Afterwards, write a one page reflective paper thereon, in which you address the following questions:

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31 See sources cited in note 15, supra.
32 In 2014, students at Arizona Summit Law School did this by providing service to support local attorneys providing pro bono legal services to homeless veterans at the Arizona Stand Down three-day event, see http://arizonastanddown.org/ (last visited July 24, 2014).
1. Where did you acquire your one hour of field observation/court observation?
2. What Model Rules did you see “in action,” in your experience (if any)?
3. What ethical questions were raised (if any) in your observation? How were those ethical questions handled?
4. What “best practices” (above and beyond the ethical rules) did you observe or would you suggest, in the situation you observed?
5. What surprised you about the observation?
6. What inspired you, in the observation?
7. What is one concrete event or interaction you observed during the experience that relates to the practice of law, professional responsibility, or professionalism?

Collaboration is permitted but your final papers must be entirely your own work. You may watch the same proceedings as or with another student. You may talk to each other about your impressions and observations. You may read and comment on each other’s draft papers; however, any collaboration beyond what is identified in this section is not permitted.

Students often comment on either inspiringly gracious, professional behavior or disappointingly unprofessional and unprepared behavior they observe in lawyers and judges. They often use the experience to reaffirm their commitment to their own preferred professional identity.

**Strategies for Professional Identity Formation in Clinic and Experiential Courses**

Of course, opportunities for professional identity formation abound in clinical (live client) and experiential (simulation-based) courses. However, students need professors to “translate” these experiences into concepts that relate to professional identity formation, otherwise the experiences, while wonderful and exhilarating, may not result in lasting connections to students’ values and competencies. An introductory assignment in these courses may be a self-assessment of one’s strengths, values, preferences, biases, and the like. These can be anonymous to preserve students’ privacy.

A “professionalism contract” signed by the clinic student at the outset of the clinical course can be an important anchor for the student’s professional identity development. It can set forth expectations of the clinical professor for the student’s professional behavior and assist both the student and professor in monitoring joint accountability to maintain those standards.

Simulations, mediations, and live client interactions are often debriefed by the professor and reflected upon by the student; however, these opportunities can be more explicitly linked to professional identity formation when they are grounded and couched in explicit terms relating to values or the empirical research on competencies of an effective lawyer. When the professor provides feedback to a student on a simulated or real mediation, for example, the professor can consciously identify the student’s strengths and areas of challenge based on the empirical research on lawyer effectiveness and wellbeing.

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33 See sources cited in note 15, supra.
34 Note that the term, “weakness,” has been avoided; a discussion of why is set forth at text accompanying notes 43-45, infra.
For example, the supervising clinical or experiential professor might say, to a student mediator when debriefing a mediation:

I was really impressed with how you kept your cool as a mediator even when the parties’ interactions became heated; you must have been a bit worried but you didn’t show it! (Good work demonstrating maturity, strong sense of self, and stress management!). I particularly liked how you homed right in on that one party’s implicit need for safety and recognized it. (You showed a good ability to read others and actively listen and recap). I know you must have been feeling pressed for time at the end of that mediation, but if you’d like to try a more facilitative approach, then next time you could try asking some open ended questions of the parties to see if they can problem solve their own solution rather than making direct suggestions to them. (Let’s work on developing patience, questioning, listening, problem solving, and practical judgment). The parties are more likely to follow through, feel heard, and have had “voice” if they set the terms of their agreement themselves. (I am now teaching you how to implement the empirical findings of “procedural justice,” in your work as a mediator.) Great job connecting with the lawyers after the mediation; you are good at that! (You are learning how to network professionally and build and develop professional relationships with peers.)

The professor can be explicit or implicit about the lawyering competencies being debriefed (italics, above); however, explicitly stating them is preferable. It “grounds” the feedback in the lawyer research and gives the student specific labels for the behaviors and skills he or she is developing. It can assist the student in becoming more intentional about his or her professional identity development.

Finally, intentionally using the term “best practices” and assisting students to identify better ways to handle dilemmas and problems that arise in clinical courses can help students maintain a practice of self-reflecting, developing, and charting a course for improvement. For example, when mediation students write reflections of their mediations, they can be asked to write about their (1) strengths, (2) areas for improvement (Millennial law students seem to dislike the concept of “weaknesses”35), and (3) best practices for the next mediation. Without these prompts, students often default to writing about what the parties said, did, and agreed to, which does not develop their own professional self-awareness.

**Simple Strategies in Any Course**

Even if none of the strategies above seems feasible, even simple strategies such as creating a handout based on Shultz and Zedeck’s36 empirical research on the 26 lawyering effectiveness factors and asking students to self-identify their strengths and weaknesses among the 26 competencies, can be helpful. One can assign Rob Atkinson’s law review article37 on the diversity of professional role among lawyers and ask students to explore which role they

personally prefer. One can show Fordham Law School’s video, “Red State, Blue State,” and explore whether students prefer moral or amoral lawyering. One can expose students to emerging concepts of practicing law as a healer or peacemaker, to present a diversity of approaches to the law from which students can choose. One can explore with students Krieger & Sheldon’s empirical findings regarding the differences between intrinsic values and extrinsic values and ask them to identify their own personal, individualized intrinsic values and relate them to their future work in the law, such as helping others, upholding constitutional rights, being an expert, the thrill of court appearances, representing the underrepresented, etc. Students can be asked to write a “graduation letter” to themselves (to be saved and opened after graduation), reminding them of their intrinsic values. Most simply, professors can review the list of lawyering effectiveness competencies set forth above, look for opportunities to mention them, and begin using those labels, names, and concepts in any of their classes when giving feedback to students.

A few notes are in order, however. For example, the concepts of “strengths and weaknesses” should be revised, slightly. Millennial law students may resist the concept of “weakness” and prefer to identify “areas of opportunity, challenge, or growth.” Labels can be important, psychologically, and weakness may sound unappealing or even threatening to law students, who typically prefer to be seen as dominant and confident. Also, when attempting to provide opportunities for students to develop their professional identities, professors may want to avoid Socratic dialogue, logical argument and questioning, and critical grading or feedback. This can “chill” personal exploration of preferences, strengths, weaknesses, competencies, and values. Some empirical research indicates that law students want to be seen as competent and socially ascendant, even though internally they feel socially awkward and anxious. Supportive, encouraging words, labels, and exercises are thus more effective in creating a safe environment in which students can explore their values, preferences, strengths, and areas for growth.

Conclusion

In summary, professional identity formation in law school may occur whether professors foster it intentionally or not. Empirical research exists to inform legal educators about how law students

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40 Krieger & Sheldon Studies, supra note 5.
41 To be more “Millennial”-relevant, I now ask them to put it in the Notes section of their cellphones, for later use, rather than use paper. See Brittany Stringfellow Otey, Millennials, Technology, and Professional Responsibility: Training a New Generation in Technological Professionalism, 37 J. LEGAL PROF. 199, 227 (2013) (arguing that technology needs to be employed when training Millennial law students).
42 At text accompanying notes 31-32, supra.
43 See sources cited in notes 24 and 39, supra.
44 Stephen Reich, California Psychological Inventory: Profile of a Sample of First-Year Law Students, 39 PSYCHOL. REP. 871, 873 (1976). See also research on law student personality in DAI COFF, 2004, supra note 7, at ___.
45 Stephen Reich, California Psychological Inventory: Profile of a Sample of First-Year Law Students, 39 PSYCHOL. REP. 871, 873 (1976).
tend to change, during in law school, and about what qualities and skills law students need to develop, to be effective lawyers. These two sets of research findings need to be coordinated and combined. This will allow professional development during law school to become a conscious, explicit, and planned phenomenon that is targeted towards the competencies needed to be an excellent lawyer, rather than a happenstance process that could easily go awry. Strategies for providing opportunities for professional identity formation in law school can be simple and feasible. They are likely to be most effective when explicit, respectful of students, and informed by existing research on lawyers and law students.