

**Learning to be Lawyers:
Professional Identity and the Law School Curriculum**
[excerpted – most footnotes deleted]

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I. Introduction

“Who am I as a member of this profession? What am I like, and what do I want to be like in my professional role? . . . What place do ethical-social values have in my core sense of professional identity?”² The Carnegie Report makes the case that law schools fail to motivate students to ask – and much less to answer – these questions.³ The Report faults legal education for focusing exclusively on doctrine and analytical skills and neglecting the formation of professional identity. Law schools can fix this problem by enabling students to “encounter appealing representations of professional ideals, connect in a powerful way with engaging models of ethical commitment within in the profession, and reflect on their [own] emerging professional identity in relation to those ideals and models.”⁴

This issue of professional identity formation has taken on greater urgency during the economic crisis of the latter part of this decade. Many new law school graduates who might otherwise have been hired by “Big Law” now enter solo or small firm practice.⁵ Even those graduates who are hired by large law firms receive less training, mentoring, and guidance than

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² WILLIAM M. SULLIVAN ET AL., *THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 135 (John Wiley & Sons, Inc.) (2007).

³ For a complete discussion of the Carnegie Report’s conclusions about law schools’ failure to encourage development of students’ professional judgment, see Clark D. Cunningham and Charlotte Alexander, *Developing Professional Judgment: Law School Innovations in Response to the Carnegie Foundation’s Critique of American Legal Education*, in MICHAEL ROBERTSON ET AL., *THE ETHICS PROJECT IN LEGAL EDUCATION* (Routledge-Cavendish) (forthcoming 2010).

⁴ SULLIVAN ET AL., *supra* note 2 at 35.

⁵ See, e.g., Bureau of Labor Statistics, *The Employment Situation – March 2010*, Table B-1 at 2 (listing 29,200 legal services jobs lost between March 2009 to March 2010); National Association for Law Placement, *Entry-Level Recruiting Volumes Plunge, Some Start Dates Deferred* (March 2, 2010), available at <http://www.nalp.org/2009perspectivesonfallrecruiting>, last visited April 16, 2010 (“At the largest firms, firms with more than 700 lawyers firm-wide, the median number of offers dropped from 30 in 2007, to 18.5 in 2008, and to just 8 in 2009.”); American Bar Association Commission on the Impact of the Economic Crisis on the Profession and Legal Needs, available at http://www.abanet.org/op/lamm/docs/accomplishments_for_website.pdf, last visited April 16, 2010 (“Although data is not yet available, another likely consequence borne out in previous recessions is increasing numbers of solo practitioners as lawyers in all stages of their careers turn to solo practice.”).

did their pre-crisis counterparts.⁶ Increasing numbers of new attorneys are now in many ways on their own, lacking the intensive interaction with mentors and professional exemplars that is the key to professional identity formation.

The Carnegie Report exhorts law schools to fill this void, to integrate “student learning of theoretical and practical legal knowledge and professional identity.”⁷ The Report identifies pro bono work, clinics, and externships as sites for this sort of learning, where students can interact with members of the profession and reflect on the models of professionalism that they encounter. Taking the Carnegie Report’s charge as a starting point, this article proposes an additional model for integrating a focus on professional identity into the law school curriculum. It profiles an experimental law school course that combined field work observations of practicing attorneys with in-class simulations of the work of a small law firm. The course was quite successful in prompting students to engage in an inquiry into what it is to be a lawyer and what kinds of lawyers they wanted to be. One student commented in a course evaluation, for example, that the course allowed him to see “a new vision for what being a practicing lawyer can be.” That this sort of exposure to professional exemplars and reflection on professional identity was possible in a non-clinic course was an exciting discovery, suggesting new directions for curricular design as law schools continue to meet the challenges of the Carnegie Report.

II. The Fundamentals of Law Practice Course at Georgia State University College of Law

a. Course Design and Content

Offered for the first time in Spring 2010, the Fundamentals of Law Practice course at Georgia State University College of Law combined instruction in skills, law practice management, and ethical decision-making, while also giving students a structured framework within which to reflect on their own developing identities as lawyers. The inaugural class, a

⁶ See, e.g., Bill Henderson, *Models of Practice: Past, Present, and Future*, Spring 2010 Workshop of the National Institute for Teaching Ethics & Professionalism (March 19, 2010) available at http://webdb.gsu.edu/dmg/mediaplayer/mediaplayer.cfm?file=law/lawcdc/NIFTEP_SP10/NIFTEP_SP10_BillHenderson.mov, last visited April 16, 2010 (noting that law firms have begun to move away from the “Cravath system,” in which highly credentialed new associates received intensive in-house training); Bill Henderson, *Part II: How Most Law Firms Misapply the “Cravath System,”* Legal Profession Blog (July 29, 2008) available at http://lawprofessors.typepad.com/legal_profession/2008/07/part-ii-how-mos.html, last visited April 16, 2010; Stuckey et al., *supra* note 4 at 13 (“Some students are prepared for the jobs that await them, especially the top students who are hired by appellate judges or by large law firms, government agencies, and corporations that have the resources and patience to complete their education and training, *although even these employers are increasingly forcing their new hires to sink or swim.*”) (emphasis added). Joyce S. Sterling and Nancy Reichman suggest other variations on this theme. Joyce S. Sterling & Nancy Reichman, *So, You Want to Be a Lawyer? The Quest for Professional Status in a Changing Legal World*, 78 *FORDHAM L. REV.* 2289, 2294 (2010) (“As beginning salaries have increased for new lawyers, seasoned partners have become reluctant to devote their limited time to socialization and training, feeling that these lawyers can ‘sink or swim’ on their own.”); *id.* at 2309 (“With less work to go around, lawyers who remain [in big firms] are provided with few opportunities to create new lawyering skills. . .”).

⁷ SULLIVAN ET AL., *supra* note 2 at 13; *id.* at 135 (“Because law school represents a critical phase in the transition into the profession, it is inevitable that it will influence students’ image of what kind of lawyers they want to be.”).

three-credit course, consisted of fourteen students, all of whom were required to apply for admission, and was co-taught by two instructors.⁸

Rather than a pre-set series of instructor lectures, the course began with a field work component in which students were paired with attorneys in solo practice or small firms. Students' field work was designed to expose them in real time to the realities of solo and small firm practice and to link them with professional exemplars on whom they could model their own identity development. The field work component also served a purpose internal to the course: it required the students *themselves* to begin to identify which skills, practice management tools, and ethical decision-making abilities they would need upon graduation, thereby providing the raw material from which the rest of the course would be drawn.

To prepare for their field work, students were assigned excerpts from Michael J. Kelly's two collections of profiles of lawyers in various practice settings, *Lives of Lawyers: Journeys in the Organizations of Practice* and *Lives of Lawyers Revisited: Transformation and Resilience in the Organizations of Practice*.⁹ **{Professor Cunningham Note: Kelly's books are not part of the Spring 2011 syllabus.}** Students also practiced interviewing and note-taking skills by interviewing a panel of practitioners during class and writing a short report on the information they gathered. In these reports and in their field work, students were encouraged to adopt Kelly's value-neutral ethnographic approach, "to understand, to listen thoughtfully and to some degree respectfully, not to be an investigative reporter or a scholar burrowing into the myriad small hypocrisies that hover around almost all forms of organizational life."¹⁰ The goal was to use students' observations of the realities of solo and small firm practice as the course's text.

Students then began their field work, which spanned seven weeks of the semester. To the greatest extent possible, students were matched with attorneys who practice in the subject area the students saw themselves entering. These included family law, workers' compensation, general business and transactional law, intellectual property, immigration law, criminal defense, personal injury, community and homeowner association law, environmental law, and bankruptcy law. Field placement attorneys were recruited through a local bar association's small firm and solo practice section, as well as through the law school alumni network. Students and attorneys signed a field placement agreement that outlined both parties' responsibilities and, if the students

⁸ The co-instructors were the author, Charlotte Alexander, and Clark D. Cunningham, W. Lee Burge Professor of Law & Ethics at Georgia State University College of Law.

⁹ MICHAEL J. KELLY, *LIVES OF LAWYERS: JOURNEYS IN THE ORGANIZATIONS OF PRACTICE* (The University of Michigan Press) (1994); MICHAEL J. KELLY, *LIVES OF LAWYERS REVISITED: TRANSFORMATION AND RESILIENCE IN THE ORGANIZATIONS OF PRACTICE* (The University of Michigan Press) (1994).

¹⁰ KELLY (2007), *supra* note 13 at 8. Kelly compares his approach to that of documentary filmmaker Frederick Wiseman, whose films adopted what has been called the "observational mode." *Id.* at 335. Following Wiseman, Kelly asked his subjects questions like, "What's going on in the practice these days?" "How is the organization doing?" "What do you like about this practice and what about it annoys you?" *Id.* at 336. His "main line of questioning was to get people to describe how law practice works for them and what they think about issues that face the organization in which they are located." *Id.* The courses at Duke and the University of North Carolina described by John Conley also incorporated "lengthy, in-class ethnographic interviews with a substantial number of lawyer-informants chosen to represent the wide range of settings in which lawyers practice." Conley, *supra* note 11 at 1947; *see also* Baker, *supra* note 11 at 378 (advocating that students interview practicing attorneys "to find someone who has done it before, ask how, and then adapt what [they] learn").

were to be exposed to any attorney-client interaction, they signed a confidentiality agreement as well.

Each student began his or her field work with an in-person interview of the attorney, followed by an observation of the attorney at work. Students' observations ranged from sitting in on initial intake interviews and follow-up client meetings, accompanying attorneys to court hearings and mediations, and observing depositions. Students observed their attorneys giving bad news to clients, making strategic decisions about how to present their clients' case to the court, and counseling their clients about whether to accept an offer of settlement. Students also observed attorneys at work in their offices. Several students sat in on file review and case planning sessions in which attorneys and their support staff reviewed the status of their cases, discussing pending deadlines and the division of labor on each case. Other students sat with their attorneys while the attorneys generated bills and observed the attorneys' exercise of billing judgment. Finally, some students accompanied their attorneys to bar association section events, meeting other attorneys in the legal community and observing the ways in which their attorneys developed and maintained a network of professional colleagues.

This field work experience culminated in a written report by each student,¹¹ which accounted for forty percent of their grade and sought to answer the following questions:

- In metro Atlanta in 2010 what is it like to be a solo practitioner or a member of a small firm?
- What is it like to start a small firm or solo practice?
- What knowledge, skills, and professional qualities should a law student aim to acquire to prepare for entry into small firm or solo practice?
- How can law school better assist law students to acquire such knowledge, skills and professional qualities?

Students' experience of interviewing their field work attorneys, recording the information gathered, and synthesizing it into a written report was both an exercise in skills development and professional identity formation. On the one hand, the field work assignment mimicked the sort of factual investigation that attorneys are frequently required to perform. Students were required to plan their investigation, to memorialize and organize the information they gathered in an accessible form, and to evaluate the information gained through their field work experience.¹² On the other hand, the field work component exposed students to professional exemplars, providing them with an opportunity for reflection on what constitutes a lawyer's professional identity. In the language of the Carnegie Report, students were learning through an "apprenticeship of identity and purpose," in which they could reflect on the "skills and

¹¹ Each student's report was subject to review and approval by his or her field work attorney before it was handed in to the instructors, and was not shared with anyone outside the class without the field work attorney's permission.

¹² The MacCrate Report, *supra* note 4, identifies these skills as necessary for practice. MacCrate Report, *supra* note 4, at Skill § 4 (listing skills associated with factual investigation as core lawyering skills); *see also* Shultz & Zedeck, *supra* note 4 at 26 (listing questioning and interviewing as factors that contribute to attorney effectiveness).

inclinations, along with the ethical standards, social roles, and responsibilities that mark the professional.” By observing attorneys counseling clients, interacting with judges, and networking with their colleagues, students had the opportunity to reflect on what it means to be a lawyer.¹³

The students themselves identified both the professional identity and skill-building aspects of the field work requirement. One student reflected on what he saw as the key to his field work attorney’s professional identity: not court victories or large fee awards, but rather the attorney’s ability to interact well with his clients. According to the student, over the course of a tough divorce negotiation, the lawyer engaged his

. . . clients in almost therapeutic conversations . . . explain[ing] legal consequences of various proposals while, at the same time, negotiating a veritable minefield of emotion. Both attorneys and the mediator were very skillful in their abilities to support and advocate for their clients, while at the same time encouraging progress toward resolution of the case.

The student concluded that the characteristics he “observed have not been the focus of any of my coursework” and that “observation and practice would be the only real way to develop them.” A second student was struck by his field work attorney’s use of the pronoun “we” to refer to the attorney and his client. Though the student was initially confused by the use of “we,” once he “realized that [the attorney] was referring to clients using the pronoun ‘we’ . . . the conversation came into focus.” This realization led the student “to think about the attorney-client relationship” – the attorney’s behavior as a professional in relation to his client – “in a somewhat different light.” These student comments confirm the Carnegie Report’s observation that, “when students can form relationships with professionals who inspire them, they can internalize new images of what they want to be like more deeply and vividly than they are likely to do through reading.”

With respect to skills development, the same student commented that his field work project taxed the note-taking methods he had developed in law school, in which he sought essentially to transcribe his professors’ lectures. While conducting his field work, he was required to be “an active listener in a small group [and in a] one on one situation.” As the student commented:

I usually try to engage the speaker non-verbally by making eye contact and nodding my head if I understand, and this can make comprehensive note-taking very difficult. I often found myself playing catch up after a point of conversation had already been covered. The other primary difficulty arises out of my tendency

¹³ In a course evaluation, students gave the field work component of the course very high marks. All but one listed the field work experience as the thing they liked best about the class, and a majority listed field work as being “very educational.”

to take comprehensive notes, a function of the obsessive compulsive plenary note-taking behavior that I developed in law school. . . Note-taking and interviewing skills are important to all aspects of a lawyer's life, and this observation exercise taught me quite a bit about how to practice these skills more effectively.

These and other real-world lessons from students' field work reports then influenced the design of the rest of the course. The final seven weeks focused on a set of topics drawn from the students' own assessments of the skills, practice management tools, and ethical decision-making abilities they would need after graduating.¹⁴ The remainder of the course was structured not only to give students substantive information on each of these topics, but also, through a combination of teaching techniques and course requirements, to force students to take on the professional identity of attorneys and begin to be, rather than merely think like, lawyers.

b. Learning to be Lawyers

As much as possible for a non-clinical course, the class attempted to place students in role as attorneys, to create an authentic experiential learning environment for students that replicated the high stakes and deadline pressures of law practice. The course did so by using five strategies: instituting a timekeeping requirement; using case management software; assigning frequent, graded projects with relatively short deadlines; requiring student presentations; and conducting a simulated client intake. These requirements were designed to encourage the students both to develop lawyering skills and to take on a lawyer's professional identity: to be organized, self-disciplined, and motivated.

Though most attorneys would likely agree that these basic professional qualities are essential to a successful law practice, they receive little explicit attention in law schools. In fact, as one student observed in his field work report, the traditional model of legal education may encourage students to develop the opposite set of habits:

Unlike many other educational experiences, law school is almost exclusively focused on end results. Very few classes are graded based on more than a final exam . . . Overall, the entire system leads to focus and planning for distant and singular events. There is no need to develop skills around regular recordkeeping and follow up. Instead, students tend to become rather insular as they develop whatever personal system will help them to best regurgitate and utilize what is taught in class . . . when final exams come around. . . I think these are habits which have to be broken in order to be successful in practice. Regular

¹⁴ These topics were: intake procedures, conflict checking, file management, engagement letters and fee arrangements, trust accounting and billing practices, choosing and staying current in a practice area, drafting a business plan and choosing a business form, staffing and setting up a solo or small plan, networking strategies and learning a local legal culture, advertising and marketing, malpractice insurance, and the logistics of court appearances.

maintenance of files, recording of time, and follow up with clients is absolutely vital to success. Clients cannot be put off “until finals.”

The five strategies used in the course were designed to encourage students to develop better habits, which they could then carry into practice.

First, throughout the course, students were required to keep records of the time they spent on coursework and turn them in each week. If students did not meet their weekly time-reporting deadlines, they were asked to provide an explanation of the sort that would satisfy a client. With respect to the time they recorded, students were instructed that falsification of their time sheets or “padding” of their hours could lead to a failing course grade, a referral to the school honor board, and a report as part of the character and fitness review for bar admission.¹⁵ The timekeeping requirement sparked extended class discussion about the ethics and logistics of timekeeping (How detailed a description to record? What increments to use? How to avoid double-billing?), a task that combines knowledge, skill, and professional qualities that the students acknowledged they would need in nearly any private practice setting. The requirement also encouraged students to reflect on their own time management practices. In addition, the weekly time reporting requirement gave students an ongoing deadline to meet throughout the semester which they could not, in the student’s words, “put off until finals.”

Second, students were required to use a web-based case management software program called Clio to keep their time, upload their written assignments for instructor review, make to-do and task lists for themselves, calendar important dates, and share documents with classmates during group work.¹⁶ Because Clio was designed for solo and small firm practitioners, it is possible that students may use the program in their own practices after graduation. Even if students do not use Clio itself, because it shares many of the basic characteristics of other case management software programs, students’ familiarity with Clio would translate to other software packages. Students’ use of Clio allowed them to experiment with different methods of organizing and tracking their work. It also exposed them to the ways that technology can aid in efficient and effective law practice management.

Third, students were required to complete frequent writing assignments with relatively short deadlines. These assignments, along with students’ time records, made up a “portfolio” for each student, which accounted for thirty percent of the students’ final grade.¹⁷ These

¹⁵ Students were assured, however, that the instructors would understand if they could not always complete every assignment each week: “[I]f on an occasion you have not done one or more assigned readings for a class, do not report that you have done so. (An explanation for incomplete class preparation is welcome but not required; we were once law students ourselves, you know.)”

¹⁶ See <http://www.goclio.com/about.html>, last visited June 14, 2010 (“Clio includes a full suite of practice management tools targeted specifically at the administrative needs of sole practitioners and small firms. Clio is a single resource that eliminates the need for multiple specialized applications by incorporating the principal talents of each. Web-based, secure, and easy-to-use, Clio seeks to overcome many of the technical hurdles offered by conventional practice management solutions. Spend your valuable time building your practice, let Clio handle the rest.”).

¹⁷ Midway through the semester, the instructors gave students a provisional portfolio grade to give them an indication of their performance up until that point in the class. Unlike summative final exams, this type of formative

assignments' frequency and relatively short turn-around times were designed to mimic the crush of time-sensitive, high-stakes work faced by practicing lawyers. Students were required to prioritize and budget their time effectively in order to do quality work and turn in these assignments on time. In addition, because the students' assignments, along with the timeliness and quality of their time records, contributed to the portfolio portion of the students' final grade, everything in the course, in effect, "counted." As in practice, in which all client work "counts," students who neglected their ongoing responsibilities suffered the negative consequences in their portfolio grades.

{Professor Cunningham Note: for Spring 2011 the following "fourth" course element is being eliminated to make time for more simulation-based instruction.} Fourth, each student was required to research a particular substantive topic (retainers and engagement letters, for example) and give a short presentation to the class. This assignment made up the final thirty percent of the students' grade, and students were assessed based on their creativity and initiative in seeking out information and finding resources, as well as the quality of the presentation. The assignment was designed not only as a way for students to share substantive presentations with their classmates, but also to familiarize students with the resources they might consult and the steps they might take if they were starting their own practice and seeking to educate themselves on the skills, practice management tools, and ethical decision-making abilities they might need.

Fifth, and finally, students were required to participate in a simulated client intake process, in which they conducted a conflict check, interviewed a potential client, took notes, reviewed the client's documents, decided on a fee structure, wrote an intake memo and engagement letter, kept their time, and generated a bill using Clio. This simulation brought together many other strands of the course: the timekeeping requirement, the substantive instruction on topics such as engagement letters, and the modeling of attorney-client interaction that the students observed during their field work. It also allowed students, in role as attorneys, to continue to practice their interviewing and note-taking skills, as well as to learn how to communicate simply, clearly, and effectively with clients, both orally and in writing, a core professional quality necessary for good lawyering.¹⁸

c. Insights from the Course

One of the most striking aspects of the first offering of Fundamentals of Law Practice was the course's ability to encourage student reflection on issues of professional identity. The course was designed both to provide students instruction in "hard" lawyering skills through

assessment was designed to allow students to correct deficiencies and improve their performance by the end of semester. See SULLIVAN, ET AL., *supra* note 2 at 171 ("[W]e believe that assessment should be understood as a coordinated set of formative practices that, by providing important information about the students' progress in learning to both students and faculty, can strengthen law schools' capacity to develop competent and responsible lawyers.") ...

¹⁸ See MacCrate Report, *supra* note 4 at Skill § 5 (discussing interviewing and counseling skills); see also Baker, *supra* note 11 at 378 (describing teaching students to "imitate good practice habits: . . . they draft model operational documents, such as client engagement letters that set forth the work that is to be done and the basis of fees").

simulations and to guide them through a process of observing professional exemplars and reflecting on their own identity development – engaging in what the Carnegie Report calls the “apprenticeship of identity and purpose.” The success of this second aspect of the course has been a welcome surprise.

The extent to which students have engaged in a process of reflecting on their own “identity and purpose” as developing lawyers is revealed by comments in their field work reports and course evaluations. For example, one student concluded his report with the following observations:

My last day in the office was a Saturday, and I sat in on [a client meeting] . . . This Saturday really drove home for me how different life at a small law firm can be. There was such a feeling of freedom and genuineness; all images of the faceless machine that I often picture when thinking of big firm life vanished. I saw a new vision for what being a practicing lawyer can be. [The field work attorneys] were serving their clients on a Saturday, not because they had to, but because they wanted to.

This student’s “new vision” of life as a practicing attorney was echoed by another student’s anonymous course evaluation:

I enjoyed getting to interview and write about one of the first . . . solo practitioners who really opened up to me about what solo practice is really like. For me, that was one of the earth-shattering moments when I realized that this dream of mine to practice solo is truly possible, and that feeling has been growing in me as a result of this class ever since.

This sort of deep reflection on professional identity might not be surprising in a clinical setting or an externship, where students work closely and at length with practitioners who role-model professional behavior. Indeed, the Carnegie Report singles out “well designed experiences of pro bono and service work, of good externships, and especially of clinical courses” as sites where students “encounter appealing representations of professional ideals, connected in a powerful way with engaging models of ethical commitment within the profession, and reflect on their emerging professional identity in relation to those ideals and models.”¹⁹ The fact that students could engage in a similar process of reflecting “on their emerging professional identity” as a result of a field work experience in a non-clinical, simulation-based course like Fundamentals of Law Practice is an exciting and promising discovery.

¹⁹ SULLIVAN, ET AL., *supra* note 2 at 146-47.

The economic crisis of the latter part of this decade has given new meaning to long-standing critiques of American legal education. If law schools teach only how to think like, and not to be, lawyers, then the legal academy is surely failing its students, who, today more than ever, will be required to take on the identity of “lawyer” from the moment they join the bar. Courses like Fundamentals of Law Practice at law schools around the country are a first step in the right direction. However, law schools should reexamine the basic shape and content of their curricula and develop a robust system of experiential legal education, beginning with simulation-based courses, progressing through externships and clinics, and culminating with ongoing training and support programs for new lawyers after they graduate. By implementing a variety of layered strategies that complement traditional substantive classroom instruction, the legal academy will be able to ensure that its graduates have developed both the professional qualities and the skills they need to take on their new identities as lawyers.²⁰

²⁰ *Cf.* SULLIVAN ET AL., *supra* note 2 at 160 (“Through ever-closer approximations to actual practice, in a range of settings, students can be helped to develop insight into the full dimensions of the identity and purposes proper to a lawyer.”).