REPORT ON THE 2012 CONFERENCE

AND INTRODUCTION TO THE 2013 CONFERENCE

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Educating tomorrow's Lawyers

Report on the 2012 Conference
and
Introduction to the 2013 Conference

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The Development of Professional Identity in Legal Education:
Rethinking Learning and Assessment
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Connecting the Academy and the Profession
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IAALS, the Institute for the Advancement of the American Legal System, is a national independent research center at the University of Denver dedicated to continuous improvement of the process and culture of the civil justice system. By leveraging a unique blend of empirical and legal research, innovative solutions, broad-based collaboration, communications, and ongoing measurement in strategically selected, high-impact areas, IAALS is empowering others with the knowledge, models, and will to advance a more accessible, efficient, and accountable civil justice system.

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Educating Tomorrow's Lawyers leverages the Carnegie Model and the work of law schools and professors committed to reforming legal education to meet the needs of an evolving profession.

Our effort focuses on serving as a supported platform for sharing current educational models and providing a variety of resources for improving and assessing law teaching. By offering a structured and highly collaborative approach, *Educating Tomorrow's Lawyers* is creating a foundation for ongoing inquiry, exploration, and measurement.

I.   INTRODUCTION

The Carnegie approach to legal education, as set out in the 2007 Carnegie Foundation study on legal education, "Educating Lawyers: Preparation for the Profession of Law," embodies three apprenticeships: knowledge, practice, and professionalism, and suggests that most, if not all, courses in law school should incorporate all three apprenticeships—not just one. The Carnegie work grows out of a rich academic evolution in adult learning theory, which suggests that adults learn best experientially and in context, and that the theory of the law, the practice of the law, and the development of a professional identity should similarly be taught together and in context.

The inaugural 2012 ETL Conference on "The Development of Professional Identity in Legal Education: Rethinking Learning and Assessment" convened over three days in September 2012 at the University of Denver Sturm College of Law and was designed to achieve three aims: one organizational, one pedagogical, and one, more properly intellectual. The practical aim was to gather representatives of the *Educating Tomorrow's Lawyers* (ETL) Consortium schools for the first time, and to promote mutual dialogue focused around the topic of how law schools can best structure and teach professional identity formation of developing lawyers. By nature, this topic is an integrative one that involves all aspects of the curriculum and overlaps the responsibilities of virtually all personnel in each law school. To achieve this goal, the deans of the participating law schools were asked to select teams of interested faculty and administrators, generally three or four members, to analyze the current state of play around this crucial issue at their school. They all converged at the Conference with ideas about how they might more intentionally address the topic in their educational program and practice, while expecting to reshape these plans in dialogue with other participants at the Conference. A chart, attached as **Appendix A**, summarizes the myriad approaches that are being made at Consortium schools, a product of law school reports as well as a period of networking and interchange between the schools that occurred during the first afternoon of the Conference. The design of this organizational goal during the Conference was to stimulate the participating schools to begin more systematic reflection on how they conceive of their educational practices in light of this larger, common goal.

For the pedagogical goal, schools were asked to bring to the discussion with other Consortium members their best thinking about how they organize learning experiences and teaching practices to inspire and support students in moving toward this goal. Part of this discussion also involved the issue of assessment: how do schools know they are making progress toward their goals and how can they best provide feedback to their students to enhance student development toward the ethical-social identity so important to competent legal professionals? A chart, attached as **Appendix B**, helped to organize the discussion around what is known and what we need to know to advance this goal.

The Conference was convened with the understanding that perhaps the third apprenticeship, professional identity formation, is the most difficult apprenticeship to incorporate into legal education. One reason, of course, is that so many in the legal profession place different meanings on the labels associated with professional identity concepts and ideas. Indeed, the

Conference revealed the various contested approaches to, and understandings of, professional identity. For example, some participants came to the Conference prepared to discuss "professionalism," a term by which some mean the behavior and conduct of attorneys, while others mean the behavior of attorneys toward their clients, and still others mean morals or values of attorneys. Some admit that while "professionalism" to them signifies the behavior and conduct of attorneys, they use the term to include the role of the attorney because the legal profession itself seems to sweep all things that could be deemed professional identity—including ethics, mission, service, dedication, values, and morals—under the heading "professionalism." One Conference takeaway, then, is that future conferences could be more directed in specifying the particulars of professionalism or professional identity, and how this defines the conference's purpose. For example, a future conference might be titled "Teaching Students to Understand the Role of the Lawyer in Society," or perhaps, "Teaching Students About the Mission of Law and Lawyers to Serve People." The Conference experience served to underscore the idea that a mutual cohesive understanding about the meaning of the third apprenticeship will be critical for deepening satisfaction with the Conference experience, and it made significant progress in building that understanding.

The presentations at the Conference were designed to foster intellectual engagement and growth among the Consortium schools around the topic of professionalism and educating for professional identity development by providing participants with a chance to interact with a number of researchers and recognized expert practitioners. Topics they addressed included learning theory and research on law students' moral development; there was also a comparative perspective from medical education. All presentations were designed to provide participants with state-of-the-field knowledge about how professional identity is conceived today and the kinds of educational strategies that seem most promising as a means to foster it.

For ETL, and its mission of extending the discussion surrounding professional identity formation education triggered anew by the Carnegie Report, professional identity formation is not just ethics or professional responsibility. That is, as one Conference presenter noted, the "floor" for lawyers. Professional identity formation is rather a much broader concept about what it means to be a lawyer in today's world—and before that, what it means to be a law student. This apprenticeship is at the core of *Educating Tomorrow's Lawyers* and, indeed, at the core of IAALS' work more broadly. Changing the culture of lawyering into one that embraces a responsibility to help people, society, and the legal system is an ideal that IAALS incorporates across all four of its initiatives. As Professor James Moliterno, recipient of the 2012 Rebuilding Justice Award, said at the award ceremony: "If you want to rebuild justice, you must start at the law schools."

To this end, the Conference was designed to provide a starting point of current knowledge, together with examples, that could provide the participants with a common stock of references from which to continue their discussions within their own schools and with each other. Evaluation of its success is ongoing and depends in part on participants' short-term responses. But also, and perhaps more importantly, success depends upon the longer-term effects in participants' educational thinking and practice with regards to professional identity formation.

This paper aims to provide a breakdown of the discussions and exchanges that took place at the Conference and a snapshot of the shared ideas and goals presented about reforming legal education. The conclusions of the Conference are yet to be gleaned, but, by furthering discussion and implementation of the materials to follow, we hope those conclusions will take form in law school dialogue, classroom innovation, and further collaboration among our *Educating Tomorrow's Lawyers* Consortium.

II. Formational Pedagogies Described and Discussed at the Conference

The Conference presentations revealed a rich set of pedagogies that have been developed over the last several years at Consortium schools to address the third Carnegie apprenticeship. These pedagogies, while somewhat variable in application, reveal distinct patterns and themes.

A number of Conference presenters emphasized the importance of placing students in learning environments, such as clinics and simulations, where they are encouraged to act in the role of a lawyer and given room to identify and address ethical quandaries that often arise in practice. It is through this combination of role-play, confrontation, identification, and reflection that formation of professional identity is most likely to occur in the student. A key pedagogy, then, is to intentionally draw students through teaching situations or "guided sequences." Further, a decided consensus of participants felt that the reflection step is critical, since it is in the reflection on the ethical quandary and the student's decision-making process in reaching a resolution, that identity formation takes place.

A few Conference presenters discussed the additional importance of modeling professional behaviors, both by the professor and by practitioners. The use of practitioners in class was a common theme, not so much in the didactic sense (*"you should do this"*) but, rather, in the sharing of ethical struggles and quandaries that are faced in practice. Similarly, a preference for coaching was evident, and the clinician attendees in particular spoke to the value of being with the student while they work through an ethical issue, to guide and coach them through it.

The sequencing of learning and the sequencing of curriculum were also highlighted topics at the Conference, and areas that are not often discussed. The first year curriculum is fairly static, and has been for years, although there have been some interesting minor adjustments at several schools. There is a certain trend toward moving programming around professionalism into the first year. At Indiana University Maurer School of Law, Mercer University School of Law, and the University of St. Thomas School of Law, for example, a comprehensive course dedicated to professionalism is part of the first year core curriculum. After the first year, most law students can pick from a smorgasbord of options, and choose their own path for learning. Most have some additional requirements, but they are relatively few when considered against the rest of the second and third years. What some Conference presenters highlighted was the value and importance of this kind of intentional curriculum sequencing, which can even be used within

individual courses, and how sequencing can support the formation of professional identity in very effective ways.

The Carnegie integration concept—which puts a value on the integration of the three apprenticeships within each class and across the curriculum—was a common theme across the Conference. Pedagogically, many of our courses have been uni-apprenticeship oriented, that is, focused primarily on achieving the goals of a single apprenticeship. For example, the first year courses are often described as being the heart of the cognitive apprenticeship, doctrinally focused to the exclusion of skills and formational objectives. Likewise, a typical trial advocacy course is primarily focused on achieving the goal of skill development to the exclusion of doctrine or identity formation. What many Conference presenters offered instead of these pedagogical approaches were examples of courses that intentionally integrate the three apprenticeships together, so that doctrine, skills, and formation all take place within the same course. One of the best ways to do this, some presenters offered, is through simulations using ill-structured problem sets modeled on real-life, law practice problems. Further, when there is integration of the three apprenticeships, there is, by definition, more attention paid to the third apprenticeship. By its very nature, this advances the formation of professional identity in our students.

A final theme that was regularly discussed at the Conference was the value of a thoughtful and thorough assessment plan—for the law school as a whole, for programs, and even for individual courses. The value of articulating measurable student learning outcomes at each level was addressed, and several methodologies for measuring achievement of those outcomes were also shared. A pedagogical tool that was rather roundly criticized was the final exam: the "summative" assessment. Among these criticisms was that the final exam did not allow for the formation apprenticeship to take place much at all. Instead, Conference presenters offered details of various forms of formative assessment meant to shape the student's learning before the end of the course or program. Among these were rubrics keyed to learning outcomes, mid-term examinations with detailed feedback, and an appeals process for mid-term examination grades. Each of these pedagogical approaches provides opportunities for students to think intentionally about their own formation, through feedback from the professor, and then build upon it in the next exercise or assessment step.

In sum, a rich and encouraging aspect of the Conference was the blossoming of pedagogies that are being designed and implemented at our Consortium schools to address and encourage the third apprenticeship—the formation of professional identity. And, these new pedagogies lay the foundation for how we shape our curriculum.

III.   IMPLICATIONS FOR CURRICULUM

A.   IMPLICATIONS FOR CURRICULAR CHANGE REGARDING PROFESSIONAL IDENTITY FORMATION

The Carnegie Report identified the general and historic lack of law school program attention to anything more than the basic, foundational ethical rules of the legal profession. Indeed, the Carnegie Report emphasized that many faculty view ethical and social values as subjective, indeterminate, and, therefore, *in conflict with* values of the legal academy underlying the cognitive apprenticeship: "rigor, skepticism, intellectual distance, and objectivity." However, the Carnegie Report maintained that there might not be a more important time to turn attention to the question of ethical and social values of lawyers given the increasing pressure of business demands in the profession and the "growing sense of demoralization in legal practice." In addition, changes in the practice of law, identified by several Conference participants, seem to be placing more emphasis on higher-end lawyering skills, including judgment, problem solving, character, collaboration, and interpersonal skills, indicating that a greater intentionality is needed in the legal academy surrounding professional identity formation in its students.

Professor William Henderson of the Indiana University Maurer School of Law presented various data related to the changing nature of the legal profession and the implications of that change for law schools. According to Henderson, a growing legal services industry is catering to basic needs of clients, including needs like e-discovery and legal research. Those clients are increasingly unwilling to pay lawyer rates for low-level lawyering services. Clients, however, still understand the value of higher-level lawyering skills that require creativity, nuance, and sophistication in ever-more-complex real world environments. Henderson believes law schools must provide more robust lawyering experiences that address skills along with professional identity formation in collaborative simulations or real world settings. In addition, more modern studies of the attributes and competencies demanded of professionals in general are applicable to law professionals in particular.   Beyond those competencies traditionally emphasized in law school, these include:

- interpersonal understanding, impact and influence, and collaborativeness (Spencer and Spencer, 1993),
- openness to experience, conscientiousness, extraversion, agreeableness (sociability), and neuroticism (emotional stability),
- negotiation, alternative dispute resolution, organization and management of legal work, and recognizing and resolving ethical dilemmas (MacCrate, 1992), and
- conflict resolution, client and business relationships (entrepreneurship), working with others, and character (Shultz and Zedeck, 2009).

Henderson demonstrated Indiana University's recently developed curriculum model, which identifies core competencies in: 1) Responsiveness and Active Listening, 2) Empathy, 3) Self Awareness, 4) Questioning and Probing, 5) Communication and Professional Presentation, and 6) Resilience. New and emerging skills for lawyers, demanded by clients and driven by

shifting changes in business and other environments, require new thinking about methods for teaching law students. Like Henderson, many Conference participants had also previously thought about and implemented new methods to address this issue, and these thoughts were discussed widely among the group.

B.   Methods and Approaches

A number of Conference participants made presentations about their own particular approaches to professional identity formation. These approaches ranged from reforming the doctrinal classroom to changing the nature of an entire year of law school, and even changing the focus of an entire law school. At a general level, perhaps the most intriguing presentation was by Dr. Matthew Wynia, Clinical Assistant Professor of Medicine in the Division of Infectious Diseases at the University of Chicago Hospital, and Director of both the Institute for Ethics and the Center for Patient Safety for the American Medical Association. To begin, Dr. Wynia defined professionalism as "dedicated and committed conformance to the shared standards formulated by a group." Dr. Wynia then discussed key methods for teaching and inculcating a sense of professionalism among medical students. He noted that the most effective methods for schools, yet the more difficult to implement, include mentoring, reflective practice, and integrated case-based learning (simulations). The lesser effective methods for schools, but undoubtedly the easier to incorporate, include lectures, ceremonies, and oaths. ▶ Dr. Wynia's list of effective methods from medical education perhaps not surprisingly coincides with methods being implemented by Conference participants within legal education.

1.   Entire Law School Focus

Deans from four ETL Consortium law schools, the University of Denver Sturm College of Law, Loyola University New Orleans College of Law, the University of Dayton School of Law, and Southwestern Law School, talked about changes at their law schools aimed at enhancing a focus on professional identity formation. Dean María Pabón López, of Loyola, discussed the school's strong clinical offerings and a new commitment to integrated courses. López also explained that the law school's historical commitment to Jesuit values like service orientation is consistent with the recommendations of the Carnegie Report.

Dean Martin J. Katz, of the University of Denver, discussed changes at his school that began in 2009 with faculty adoption of the law school's strategic plan, which included a commitment to modern learning. In addition to the hiring of five additional clinicians and the piloting of an expanded and integrated full-time internship, entitled "Semester in Practice," the law school has also created a series of Carnegie Integrated Courses, rigorous and robust fully-integrated classes, overseen by the new Chair in Modern Learning and the law school Modern Learning Committee. The law school has also added a summer stipend to encourage faculty to retool doctrinal courses to make them more integrated and has established an annual endowed lecture to bring a distinguished professor in teaching and learning to the law school to work with faculty. ▶

Dean Paul McGreal, of the University of Dayton, discussed the law school's more interactive oath ceremonies implemented at the beginning and end of law school. Unlike the standard Hippocratic Oath administered in medical education, Dayton's oaths are uniquely crafted by students, helping them to instill the values of professional orientation at the most important points of their law school careers. McGreal also discussed enhancements in the law school's lawyering skills, upper level writing, and clinical experiences, including the addition of two new clinics in intellectual property and dispute resolution. Additionally, Dayton has added capstone courses that are run as simulations and has moved aggressively to incorporate technology in the creation of interactive/online hybrid teaching and classes.

Dean Austin Parrish discussed changes at Southwestern addressing skills. Legal writing at the school is now a three-stage legal skills course that incorporates programming on professionalism and includes a specific professionalism assessment at the end of the first year. Upper class courses now include a variety of skills courses: capstones, strategic planning courses, courtroom procedures, a business practicum, expanded clinics, externships, and writing opportunities. The law school is also exploring a mandatory professional skills requirement and has added courses with interdisciplinary components where law students work with professors in other graduate departments.

Another entire-law-school-focused-curriculum is a faith-based model. Professors Jerome Organ and Neil Hamilton presented, in depth, some key elements that make up the University of St. Thomas School of Law's faith-based, professional formation law school focus. At St. Thomas, the law school's entire focus is "formation of professional responsibility with a moral core of service and responsibility." The internalized moral core is characterized by a deep responsibility to others, particularly the client, with some restraint on self-interest. Overall, St. Thomas, a Catholic institution, is dedicated to integrating faith and reason in a search for truth, through a focus on morality and justice. Faith, however, is not the dominant perspective, it is "just another seat at the table." Even so, Organ and Hamilton were unsure how much self-selection by law students played into the success of the law school's approach to identity formation, especially because the law school actively recruits faculty and students open to the faith-based mission and who are attracted by a focus on ethical formation.

The first year curriculum at St. Thomas contains a "Foundations of Justice" course that meets for five days before the upper-level students begin their semester. Classes meet for two hours each day with forty students per section, and allow the law school to prime new students about its focus on formation and justice. The course is characterized by explicit conversations about the role of the lawyer and the values of the profession. Students write reflective papers in the course and also have a group project that 1) relates some legislation to course themes or 2) conducts an oral history interview of a practicing lawyer. Additionally, St. Thomas has a two-semester lawyering skills program focused on formative assessment and emphasizing professionalism and professional formation in traditional doctrinal courses. St. Thomas also has a mandatory "Mentor Externship" program that operates over three years. In the last two years, this mentorship program receives school credit with an emphasis on self-directed learning through mentor dialogues and

reflective papers. St. Thomas further provides unique "Ethical Leadership" courses in the third year, focused on both corporate practice and social justice.

Assessment of the professional identity outcomes for St. Thomas' program began in 2009, and this research work was presented at the Conference by Verna Monson. Three tests were administered to students to this end: 1) the Defining Issues Test 2 (DIT2), 2) the professional identity formation assessment (Kegan, 1982), and 3) the law school survey of student engagement (LSSSE). The results from each of these assessments indicated a statistically significant improvement in overall moral judgment capacity in students.[1]

2.   ALL EXPERIENTIAL THIRD YEAR OF LAW SCHOOL

Professor James Moliterno gave an account of Washington and Lee University School of Law's Third Year All Experiential Education Program, a major reform of the third year of legal education. While maintaining the good components of the first and second years, this reform seeks to engage all students in experiential education during the third year. In this reformed third year curriculum, each student must enroll in a full credit load of experiential offerings, including 1) two two-week immersion courses, one focused on litigation at the beginning of the first semester of their third year and the other on transaction skills at the beginning of their second semester, 2) a clinic or externship, providing them with live-client work experience and instruction, 3) a course called "The Legal Profession", which addresses current issues in the legal profession including cultural and economic issues as well as skill sets not addressed elsewhere, and 4) at least three practicum courses, which are elaborate simulations of a lawyer practice setting.

Since implementing the new third year program in 2008, Washington & Lee has seen a surge in applications, which have increased by one-third in the years since implementing the program. More impressively, this last year Washington & Lee *doubled* its yield from 130 to 260 students. Even with the larger number of students, data from the Law School Survey of Student Engagement (LSSSE) shows substantial increases in student engagement. For example, when asked whether students asked questions in class or contributed to class discussion, 5 percent answered "Never" in 2008 versus 1.5 percent in 2012; 24 percent answered "Very Often" in 2008 compared to 36 percent in 2012. When asked whether they had worked on a paper or project requiring integration of ideas or information from other sources, 30 percent answered "Very Often" in 2008, but in 2012 they answered "Very Often" 57 percent of the time. Such results give credence to the success of this third-year model.

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[1] Neil Hamilton and Verna Monson, Legal Education's Ethical Challenge: Empirical Research on How Most Effectively to Foster Each Student's Professional Formation (Professionalism), 9 St. Thomas L. J. 2 (2012).

3.   CHANGES TO LEGAL PROFESSION COURSES

Efforts to revise curriculum also extend into each individual class, particularly in courses specifically pertaining to professionalism. Professor Daisy Hurst Floyd discussed Mercer University School of Law's Legal Profession course, which is a first year, three credit required class that emphasizes professional identity formation. The Legal Profession course is a companion, not a substitute, for the separate, upper-level course on the Law of Lawyering, which is also required. Instead, the Legal Profession course at Mercer is built around the five virtues of the professional lawyer: 1) competence, 2) fidelity to the client, 3) fidelity to the law, 4) the duty of public service, and 5) civility. Assignments are designed to help students integrate moral sensitivity and identification, moral motivation, and moral implementation. The methods used by the class include large group meetings, online lectures, weekly class meetings of 24-26 students, oral history interviews of lawyers, biographies, and reflection exercises. Reflection exercises focus on lawyering scenarios that place various kinds of lawyers in fairly common ethical conundrums. Students work in groups of three and are expected to be critical observers of lawyer practice. The complexity of the various scenarios increases over the course of the class. The class is foundational to other upper level courses at Mercer, and emphasizes that professional identity is not separate from personal values and the exercise of judgment in situations of inherent difficulty and complexity. This practical wisdom, a concept around since Aristotle, means "doing the right thing, the right way," and translates to "integration of moral will and moral skill with nuance, empathy and imagination."

Another take on legal profession courses came from Professor William Henderson, who presented Indiana University Maurer School of Law's first year course on professionalism. In 2006, an alumnus commented that Indiana students were not active enough as beginning lawyers. Their training was said to be too academic and that they possessed undeveloped professional identities. Employers said students needed teamwork, project management, and emotional intelligence skills. As a result, Indiana came up with a first year, four-credit legal profession course that is team-based, with practice groups that include upper-class team leaders, role plays, group presentations, and multi-source feedback from peers, upper-class students, and professors. The class brings in "Career Choice" speakers, comprised of various kinds of lawyers who are often paired together so that they bring different perspectives. The students are expected to interview at least five of these speakers. The course is taught by twelve different teachers, including the dean of the law school, professors, associate deans, and staff, like the placement director.

Professor Henderson has surveyed students in the course, focusing on these additional skills not traditionally taught in law school, and he presented some of the results of his surveys. His students scored higher on quality focus, or attention to detail, and authority questions that are indicators of confidence. However, students tended not to score as well on customer focus, teamwork, or on resilience.

4. Changes to Traditional Doctrinal Courses

Professors Corrada and Thomson presented on how they have integrated traditional subject matter courses in Labor Law, Administrative Law, and Discovery Law through the use of simulation. These examples of teaching doctrine through whole-course simulations are designed to implement the insights of the Carnegie Report and studies about learning that support the Carnegie Report's recommendations. Their presentation explained how these whole-course simulations work and why they make sense, both in terms of learning theory and the practicalities of modern legal education.

A. An In Depth View of a Labor Law Course

Professor Roberto Corrada discussed in some detail the particulars of both upper level simulation classes that he teaches, one in labor law and the other in administrative law. The labor law simulation that takes place in his labor law class allows students to organize a union and bargain with him about the terms and conditions of the class. Students become involved in planning the course and in taking control through collective bargaining. The simulation is not completely worked out by the professor in advance—and it does not have a particular "right" or correct ending. Students drive the simulation, while Corrada steers the discussion wherever it leads.

The class is organized so that the topics students need to know to make the simulation successful are presented first. Then, Corrada introduces the active learning by committing an unfair labor practice near the beginning of the class. The unfair labor practice is intended to allow students to see that the classroom has become a metaphor for the workplace. Once students understand the classroom/workplace dynamic, the challenge becomes a strategic one for students, requiring the engagement of critical thinking skills—what can they do to change the class to achieve a desired outcome? How can they use casebook learning to effect a real change in their environment? What kind of arguments will work? Will they need a coalition or can they effect change on their own? Is a legal strategy the best? A series of embedded and unpredictable unfair labor practices then enter into the classroom environment to be identified by students who transfer knowledge from the casebook to the classroom.[2]

After the students vote for a union, which they typically do, the class moves to collective bargaining, shifting from a litigation-focused class to one that is transaction-focused. In this situation, students realize that everything is up for grabs, including the class content. Corrada cannot choose what area of labor law to discuss or what readings to assign without consulting with the union. Therefore, the students are presented with several choices about where the class should go in terms of coverage. But, students learn that a certain amount of responsibility must accompany this power in the classroom: What should the professor teach us? What do we want to know? What should we want to know and why?

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[2] For a more detailed discussion of the basic setup of the class, see Roberto Corrada, *A Simulation of Union Organizing in a Labor Law Class,* 45 J. Legal Ed. 445 (1996)

Although questions related to legal ethics and the role of the lawyer pervade the simulation class, Corrada recently added an explicit assignment specifically tailored to professional identity. A primary issue for labor lawyers involves the lack of effective remedies provided by the National Labor Relations Act. For many violations, the remedy is a mere notice posting explaining that the employer has committed an unfair labor practice and that the employer promises to cease the unlawful practice. For severe violations, including terminating a union organizer, the remedy is back pay, something that employers are all too willing to risk in order to prevent union election. Corrada uses his own unfair labor practices as a case in point and asks students to reflect on the role of the lawyer in circumstances where legal penalties are very low. In conjunction, Corrada assigns an excellent article by his colleague Stephen Pepper, *Counseling at the Limits of the Law,* to help organize and deepen student thinking around the issue.

B. ADMINISTRATIVE LAW – A DEEPER LOOK

Likewise, Professor Corrada's Administrative Law class runs as a whole course simulation that engages the classroom in new and exciting ways, utilizing all three of the Carnegie apprenticeships. The class uses the novel *Jurassic Park* and its plot as a real world scenario: a company releasing dinosaur DNA into the biosphere. The students work in teams to decide how to address the problem legislatively, creating a regulatory framework to effectively deal with all aspects of the problem. In doing so, students learn administrative law as well as legislative drafting skills. Students typically create a regulatory agency and give it powers and limits, integrating constitutional and statutory requirements into their invented structure. The course is innovative in taking a complex problem described in a long report (*Jurassic Park*) and puts students in the position of lawyer-legislator.

While learning administrative law, students also must wrestle with policy decisions and their own views of government control and free enterprise. Students work in "expert teams" and become responsible for teaching their fellow classmates the areas of administrative law that are within their area of expertise. For example, the "information team" leads the case discussions on agency powers involving search and seizure and constitutional limits. The team must also apply what they learn in crafting the parts of the regulatory framework that address the agency's power to gather and collect information.

Although the simulation naturally raises issues of professional responsibility, Corrada recently added a specific assignment aimed at a key issue of professionalism found in administrative law—the issue of agency capture. Corrada gives students articles about FDA problems involving capture by pharmaceutical companies and challenges the students to address potential capture issues in the *Jurassic Park* regulatory framework. The eventual student-drafted statutory conflict of interest rules or agency practice rules require students to meaningfully grapple with these ethical issues.

C.   A Discovery Practicum to Better Teach Advanced Civil Procedure

At first glance, a discovery litigation course might be considered just a skills course, leaving the teaching of the applicable doctrine to another class. Most schools do not have a course focused just on discovery law, in part because it is believed that the subject is sufficiently covered in first year Civil Procedure. Unfortunately, while all students take Civil Procedure in the first year, they rarely learn much detail of the discovery phase in civil litigation. A typical Civil Procedure casebook is 1200 pages, but allocates only 40 pages to the discovery rules. While some courses might direct some effort at those rules, the overwhelming focus of the first year course is on such foundational topics as jurisdiction, venue, pleading, and the *Erie* doctrine. This is done for two primary reasons: first, those are subjects that can be tested on a final exam more substantively than the discovery rules can be tested, and, second, because those are the topics tested on the bar exam. This approach is understandable, and even appropriate, but it creates a real problem: a law school graduate going into a litigation practice will have a good grounding in those subjects tested on a summative exam, but will rarely have any idea how to actually draft a set of interrogatories, or know why one would want to.

During the Conference, Professor Thomson presented his Discovery Law course, which he has taught at the University of Denver for 20 years. Thomson explained how his "whole-course simulation" model works, involving a mock litigation and students role-playing for the entire semester. Each week, students draft a discovery document and serve it on their opposing counsel. With each assignment, they write a memo that identifies, among other things, the ethical issues they faced in preparing the document, and a reflection on how they decided to resolve it.

This ethical reflection ties into the course's Learning Outcomes, which sets as a goal that students will "use these opportunities to think intentionally about the formation of your professional identity."   (The full pedagogy and design of the course is available at http://educatingtomorrowslawyers.du.edu/course-portfolios/detail/discovery-practicum).
Through these exercises, Thomson is able to assess his students' professional identity formation throughout the course, as he is able to determine whether the reflections were: 1) thoughtfully addressed, 2) clearly expressed, and 3) at a depth that reveals that formation is actually taking place for the student. The rubric that he uses to evaluate and provide feedback on these weekly assignments was an interesting tool that Thomson shared with Conference participants, along with some excerpts from student reflections:

> *"The central ethical dilemma of discovery came into sharp focus during this exercise. I felt torn responding to several of the interrogatories. For each, I tried to imagine standing in front of a judge explaining the choice that I made."*

Among the great benefits of teaching through simulations is that they create many opportunities for active learning, sense-making, self-assessment, and reflection by students, as they work with each other to construct the subject of the course in collaborative exercises. Simulations also have the benefit of supporting the professional identity apprenticeship—which,

as has been said, is often overlooked in legal education—because they put the students in the role of the lawyer in a world where lawyers increasingly work as members of problem-solving teams. Moreover, simulations support collaborative and active learning almost by definition.

These teaching methods seem to provide a better way to achieve transfer and long-term retention of information while also providing an integrated law school experience, emphasizing not only legal analytical thinking, but also practical skills and professionalism in a single class.

5. EXERCISES ADAPTABLE TO ANY LAW SCHOOL COURSE

When discussing methods of teaching that can be applied to or adapted for any law school class, Professor David Thomson presented a brief review of his work in progress on assessment of professional identity formation, which was sent to attendees in advance of the Conference. He explained that while professionalism and professional identity have some overlap, they are mostly distinct concepts; professionalism relates mostly to behaviors, like timeliness, respect, and compliance with the rules, while professional identity relates mostly to concepts of duty and responsibility as officers of the court.

Thomson proposed an intentional pedagogical structure for integrating professional identity-building situations into the classroom, which he calls a Guided Sequence for Formation of Professional Identity (GSFPI). The sequence has four steps: 1) an exercise or writing assignment, 2) an opportunity in the exercise for the student to identify an ethical quandary, 3) a reflection by the student on their decision of how to resolve the ethical issue, and 4) some feedback from the professor about the nature and quality of the reflection.

Together with Thomson, Conference attendees walked through their own GSFPI exercise in an effort to demonstrate the ease and adaptability of such exercises for any classroom. The fact pattern, attached as **Appendix C**, presented two brief ethical issues that arise in a discovery context. The group discussed each issue in turn, and Thomson emphasized the importance of the student making a decision and then reflecting on that decision. How did it make the student feel? Are they comfortable with how they decided to resolve the ethical quandary? How did the student's decision help them begin to "see" themselves as lawyers facing such issues on a daily basis? What did it tell them about what kind of lawyer they want to be? Through such self-reflection on ethical quandaries, students begin to instill the professional identity so essential to the third Carnegie apprenticeship.

IV.   CONCLUSION

Generally, the reception for the Conference was very positive. Attendees were enthused by the opportunity to learn more about how their peers teach and to learn about emerging research being conducted on the effectiveness of such approaches. There was general consensus that the formation of professional identity happens in context and in role, not in a didactic lecture format. As discussed here, the presentations, dialogue, and ideas from the Conference will hopefully now

be become an integral part of the conversations within each law school so that professional identity, and broader educational reforms, can reach into every classroom.

There was also wide discussion at several points during the Conference about how Educating Tomorrow's Lawyers could advance its mission in the future. There were many excellent suggestions, such as ETL Fellows[3] presenting at their own schools, the formation of virtual working groups within ETL focusing on particular sub-topics, and various methods of increased communication among the participants in between conferences.

Feedback received from participants in this Conference has already led to improvements for the next one, which will take place in early October of 2013. Preliminary details about the 2013 ETL Conference can be found on the following page. Thank you to those who attended the 2012 ETL Conference, and we look forward to seeing you and a number of new schools excited about advancing legal education in 2013.

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[3] ETL Fellows are professors whose courses are featured on the ETL website.

PRELIMINARY 2013 CONFERENCE DESCRIPTION

CONNECTING THE ACADEMY AND THE PROFESSION:
RETHINKING LEARNING AND ASSESSMENT

ETL's next invitational Conference, to be held in Denver, October 3 – 5, 2013, will address the topic of "Connecting the Academy and Profession: Rethinking Learning and Assessment." While continuing the focus on the formation of professional identity from the 2012 Conference, this event will deepen that conversation by expanding the participants beyond the members of the ETL Consortium to include participants from the broader profession. The Conference aims to initiate a conversation about the preparation of legal professionals that will include members of the judiciary, members of law firms, in-house counsel, and attorneys practicing in government, the military, and public interest sectors, as well as representatives of the organized bar.

To initiate this expanded discussion, the 2013 Conference will be focused around several important dialogues that are emerging both within legal education as well as with various sectors of the legal profession. Some of these emerging dialogues have already begun to link law school education with on-going professional development in settings of practice. However, these are relatively rare and few. The Conference will provide a setting in which legal educators and practitioners can meet to find common ground and develop a better understanding of their respective potentials within a larger, common commitment to forming tomorrow's lawyers.

The Conference will engage several of these emerging dialogues by offering examples and promoting critical reflection on issues such as the following:

■ What new knowledge about educational and assessment practices is emerging in settings of legal practice—and how are these related to parallel efforts in law schools?
■ What might be learned from the variety of new experiments with the Third Year law school curriculum—and their links to practice—now taking place in a number of law schools?
■ How can various fields of practice—the bench, the bar associations, firms, and others—connect with the rethinking of legal education currently underway?
■ How might law schools better connect with and utilize new research in the areas of: changing forms of legal practice; changes in student needs and interests; and evidence of effectiveness in teaching and learning practices, including assessment?
■ How might an on-going exchange of ideas and common concerns between the legal academy and the larger profession be developed?

IAALS ETL Conference 2012 Law School Participant Professional Identity Programming

Curricular Approaches	Albany	American	CUNY	Dayton	Denver	Georgetown	Hofstra	Loyola	Miami	New Hampshire	New Mexico	Pittsburgh	Regent	Seattle	Southwestern	St. Thomas	Suffolk	W&L
New Student Orientation	☑			☑	☑			☑	☑				☑		☑			
Professional Identity & Diversity	☑													☑				
Experiential Lab Add-Ons to Doctrinal Courses	☑																	
Practitioner Involvement in Experiential Education	☑							☑										☑
Experiential Courses: Simulations/Practicums/Project-Based		☑			☑	☑	☑	☑										
Public Service/Pro Bono Requirements & Courses		☑	☑	☑	☑		☑				☑					☑	☑	
Enhanced Professional Responsibility Class		☑		☑												☑		
Social Justice Lawyering Focus		☑																
Required Coursework							☑										☑	☑
Ethics Courses on Morality & Vocation			☑							☑								
Center for Study of Ethics			☑	☑									☑		☑			
Integrated Apprenticeship Course(s)					☑		☑				☑	☑	☑		☑	☑		☑
1L Courses/Workshops on Professionalism			☑				☑			☑	☑	☑		☑	☑	☑		
Mandatory Clinic		☑									☑					☑		☑
Mentoring Program					☑										☑			
Swearing In Ceremony for 1L Students				☑														

Chart for Conference

	What is Known	Models & Resources	Research Agenda
Learning Outcomes			
Curriculum			
Pedagogies			
Assessment			

ETL Conference 2012

You have recently been hired as primary outside counsel to Montague School of Law, an independent fourth-tier law school near Richmond, Virginia. The school has a provisional accreditation, and has recently enrolled a first-year class of 158, which was below its target of 190 entering students.

In the spring of 2012, Montague Law advertised in the usual channels to hire an Assistant Dean of Career Opportunities, and interviewed several applicants. Interviews were conducted by Dean Harriett Brewer and Associate Dean for Student Affairs Jane Franklin. Carl Washington, a life-long resident of Milwaukee, Wisconsin new to the academy and legal education, got the job. He quit his job in Wisconsin, sold his home and moved his family to Richmond in May. In late July, Dean Brewer informed him that because of low enrollment he would be fired from his new job, effective August 15.

Washington has sued Montague Law and the Dean alleging that the school should have disclosed the precarious financial situation that the law school was facing and failed to do so. In a meeting about the lawsuit with Dean Brewer, she told you that neither she nor Associate Dean Franklin made any mention about the school's financial situation or the possibility of low enrollment. She also added that: "Everybody knows about the crisis in legal education; we should not have had to bring him up to speed on that. All he had to do was read the papers – it's all out there."

You ask for Associate Dean Franklin's file on the hiring of Mr. Washington, and she first asks you: "Should I go through it first?" You respond: "I need to know everything; please give me the file as is."

When you go through the file, you make notes on each item and attach your notes to each item, taking care to write those notes on notepaper that has the printed message: "Attorney Work Product" on it.

One item you find in the file is an undated and unidentified handwritten note that reads: "If we don't enroll a large enough class, will we have enough money to pay the salary on this position?" You write a note on the "Attorney Work Product" notepaper and attach it: "Was this sent to someone, and when did they know about enrollment numbers?"

A. When you receive Rule 34 Document Requests that are arguably too narrow to include this document…
   1) What ethical issue have you been confronted with?
   2) Will you decide to produce the document?
   3) Reflect on how you have decided to resolve this question, and how it relates to the sort of attorney you want to be in practice.

B. You decide the document is privileged, and add it to the privilege log. Soon thereafter, counsel files a Motion to Compel its production…

1) What ethical issue have you been confronted with?
2) Should you produce the document, or fight the motion?
3) Reflect on how you have decided to resolve this question, and how it relates to the sort of attorney you want to be in practice.

Appendix D

Related Materials

American Bar Association Section of Legal Education and Admissions to the Bar, Legal Education and Professional Development: An Educational Continuum (MacCrate Report) (American Bar Association, 1992).

Clayton Christiansen, Disrupting Class: How Disruptive Innovation Will Change the Way the World Learns (McGraw Hill, 2010).

Roberto Corrada, *A Simulation of Union Organizing in a Labor Law Class*, 46 J. Legal Ed. 445 (1996).

Molly Cooke, et al., Educating Physicians: A Call for Reform of Medical School and Residency (Jossey-Bass, 2010).

Bryant Garth, *From MacCrate to Carnegie: Very Different Movements in Curricular Reform*, 17 J. Legal Writing 261 (2011).

Neil Hamilton and Verna Monson, *Legal Education's Ethical Challenge: Empirical Research on How Most Effectively to Foster Each Student's Professional Formation (Professionalism),* 9 St. Thomas L. J. 2 (2012).

Neil Hamilton, *The Formation of Professional Identity in the Peer–Review Professions*, 5 St. Thomas L. J. 1 (2008).

Robert Kegan, The Evolving Self: Problem and Process in Human Development (Harvard Univ. Press, 1982).

Malcolm S. Knowles, The Adult Learner (Taylor & Francis, 7th Ed., 2011).

Marcia S. Kreiger, *A Twenty-First Century Ethos for the Legal Profession: Why Bother?*, 86 U. Denv. L. Rev. 865 (2009).

Stephen L. Pepper, *Counseling at the Limits of the Law: An Exercise in the Jurisprudence and Ethics of Lawyering*, 104 Yale L. J. 1545 (1995).

Daniel Pink, A Whole New Mind: Why Right Brainers Will Rule the Future (Riverhead, 2006).

Donald A. Schön, Educating the Reflective Practitioner: Toward a New Design of Teaching and Learning in the Professions (Jossey-Bass, 1990).

Marjorie Shultz and Sheldon Zedeck, Predicting Lawyer Effectiveness: A New Assessment for Use in Law School Admissions Decisions (2009).
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1442118

Lyle M. Spencer and Signe M. Spencer, Competence at Work: Models for Superior Performance (Wiley, 1993).

David I. C. Thomson, Law School 2.0: Legal Education for a Digital Age (LexisNexis/Matthew Bender, 2009).

William M. Sullivan, et al., Educating Lawyers: Preparation for the Profession of Law (Carnegie Report) (Jossey-Bass, 2007).

Richard Susskind, The End of Lawyers?: Rethinking the Nature of Legal Services (Oxford, 2010).

Matthew K. Wynia, *The Short History and Tenuous Future of Medical Professionalism: The Erosion of Medicine's Social Contract*, 51 Perspectives in Biology and Medicine 565 (2008).