

"Teaching" Formation of Professional Identity

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EARLY DRAFT – please do not cite

The Carnegie Report criticized legal education for, among other failings, not being intentional about the formation of professional identity among its students. However, in doing so the report unintentionally blurred the distinction between the required course in ethics and the regular fostering of professionalism that have long taken place in legal education and a new concept introduced in the report: the formation of professional identity.

As we develop our thinking about professional ethics instruction, we should be explicit about what we mean. In recent discussions, the terms "Professionalism" and "Professional Identity" have been confused with each other. While there is some overlap between them, each contains components that are distinct from the other.

This article offers a definitional line with which to articulate the distinction and a pedagogical process by which we might address the concern articulated in the Carnegie report. It explains how *Professionalism* relates to behaviors, such as timeliness, thoroughness, respect towards opposing counsel and judges, and responding to clients in a timely fashion. The article argues that we teach these concepts pretty well in law school, across the curriculum. We expect certain behaviors (often we define them in our course policies documents, and certainly they are defined in the student handbook), and for the most part we get them. *Professional identity* relates to one's own decisions about those behaviors (which sounds like overlap, but it is not), as well as a sense of *duty* as an officer of the court and *responsibility* as part of a system in our society that is engaged in upholding the rule of law. The concept of "teaching" Professional Identity means we ask the student to finish this sentence: "I am a lawyer, and that means for me that I will resolve this ethical dilemma as follows..." The Carnegie report is probably correct when it says we do not do that very well across the curriculum.

The problem is that formation of an identity is not something we can "teach" per se, since you cannot teach someone to form his or her identity. Rather, we as teachers need to create "situations" in which our students can be confronted with ethical questions and reflect on the decisions they make, and be guided by us as they form their own professional identities.

The question then becomes what those "situations" might look like. This article attempts to offer a framework that should be applicable across the curriculum. It describes a combination of guidance steps that ideally take place in a particular order, which this article calls a "Guidance Sequence for Formation of Professional Identity (GSFPI)."

The sequence has four essential components. 1) An **exercise or a writing assignment** that sets up an ethical dilemma as it appears in practice; 2) An **identification** by the student of the ethical quandary raised in completing the assignment; 3) An expression by

the student of the ethical issue and their **reflection** on their own decisions about how they resolved the dilemma; and 4) Some form of feedback and **response** from the professor about the decisions and choices the student made.

This could be accomplished fairly easily in any simulation-based course, but there is no reason it could not also be accomplished in a traditional doctrinal course. It could be a separate assignment in the course, with a portion of the grade assigned to it. The feedback from the professor is more time consuming in a large class, but not impossible with a well-designed rubric.

In the Discovery Law class that I teach (a simulation-based class), every discovery **document** the students prepare offer opportunities for **identification** of ethical issues, and the memos that accompany each assignment specifically ask the student to explain the choices they made and **reflect** on how and why they made those decisions. In the final step of the sequence, I provide margin **feedback** on their memos, and one of the criteria in the grading rubric on each assignment addresses the accuracy and quality of the identification of the ethical issue, and the depth and clarity of the reflection.

This article argues that in the first year legal writing course we should be working on how to introduce such GSFPI opportunities in the 1L course, for three reasons. First, the Carnegie report suggests that formation of professional identity should be infused into the entire curriculum, and obviously that would include LRW. Second, because we already do some of this (just not necessarily intentionally) and we are the first class the students have that simulates legal practice, it seems appropriate that our class would introduce concepts of formation of PI. Third, it would give us an opportunity for more connections with other parts of the curriculum working on formation of PI, most particularly the clinic.

Fortunately, it should not be difficult to do. Perhaps one way might be to have an ethical dilemma arise about whether to include a borderline negative case in a brief. That is a writing assignment we already have in the LRW course, and sometimes this does happen. But we do not necessarily ask them (or have an opportunity to ask them if we don't know about it) to identify and reflect on the choice they made about that case, and as a result, we lack an opportunity for response and guidance from the teacher to complete each of the steps in a GSFPI. With a modicum of intention and planning, this sort of exercise could be accomplished in many courses currently in the legal curriculum.

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