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LAWYER, FORM THYSELF: PROFESSIONAL IDENTITY FORMATION STRATEGIES IN LEGAL EDUCATION THROUGH “SOFT SKILLS” TRAINING, ETHICS, AND EXPERIENTIAL COURSES

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INTRODUCTION

Professional identity formation as a learning objective in law school¹ may appear to be nontraditional, and perhaps even innovative. It is likely not a new concept, but at least it has not traditionally been an explicit goal of legal education. In informal discussions among law professors, these ideas often emerge: law students develop their professional identities either in their families of origin or through life experiences prior to law school, and therefore, any such characteristics are set, ingrained, and perhaps immutable; law students develop their professional identities through interactions with supervisors during summer clerkships and after graduation—“on the job” so to speak; or professional identity is an unteachable, untrainable, and intangible concept, and law professors are unable to address it.

However, empirical data finds that many law students do change as a result of law school. For example, studies conclude that during law

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¹ L.O. Natt Gantt, II & Benjamin V. Madison, III, *Cultivating Professional Identity Formation in the Doctrinal Course*, Handout at Institute for Law Teaching and Learning Summer 2013 Conference on Hybrid Law Teaching 1, 3 (June 7–9, 2013), *available at* <http://lawteaching.org/conferences/2013/handouts/4d-ProfessionalIdentity.pdf> (setting forth several excellent definitions of professional identity as well as exercises that can be used in law school courses).

school, law students become more cynical about the legal profession (but also more protective of it);² less philosophical, less introspective, and less interested in abstractions, ideas, and the scientific method;³ and less focused on intrinsic satisfactions, while more motivated by external rewards.⁴ They become less interested in helping their communities and more interested in image and attractiveness, a shift which is linked to a decline in well-being.⁵ Law students' moral and ethical decision-making also changes in law school; they tend to shift away from relational, contextual decision-making and an ethic of care towards more rational, logical, rule-oriented approaches.⁶ Law school is therefore likely to impact law students' professional development. It is time to be sure that impact is soundly planned and coordinated.

"Professional identity" here is meant to encompass one's values, preferences, passions, intrinsic satisfactions,⁷ emotional intelligence,⁸ as

² See Kurt M. Saunders & Linda Levine, *Learning to Think Like a Lawyer*, 29 U.S.F. L. REV. 121, 179–80 (1994) (relaying examples of students' increased cynicism towards the legal profession); Don S. Anderson et al., *Conservatism in Recruits to the Professions*, 9 AUSTL. & N.Z. J. SOC. 42, 44 (1973) (identifying that certain professionals become more protective of their profession after a professional education).

³ See James M. Hedegard, *The Impact of Legal Education: An In-Depth Examination of Career-Relevant Interests, Attitudes, and Personality Traits Among First-Year Law Students*, 1979 AM. B. FOUND. RES. J. 791, 836–37 (1979). Hedegard suggested, based upon the results of his empirical research on the effects of legal education, that one could expect law students to become more realistic and pragmatic as graduation and legal practice approached. *See id.* at 837.

⁴ Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 122–23 (2002) (reporting the results of an empirical study linking intrinsic values to law student well-being); Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & L. 261, 281 (2004) (linking this shift in values to a decline in the emotional well-being of law students and thus concluding that intrinsic values are key to maintaining satisfaction and well-being in law school); *see also* Lawrence S. Krieger, *Psychological Insights: Why Our Students and Graduates Suffer, and What We Might Do About It*, 1 J. ASS'N LEGAL WRITING DIRECTORS 258, 260 (2002) [hereinafter *Psychological Insights*].

⁵ See sources cited *supra* note 4.

⁶ Sandra Janoff, *The Influence of Legal Education on Moral Reasoning*, 76 MINN. L. REV. 193, 226–27 (1991); *see also* SUSAN SWAIM DAICOFF, *LAWYER, KNOW THYSELF: A PSYCHOLOGICAL ANALYSIS OF PERSONALITY STRENGTHS AND WEAKNESSES* 46 n.55 (2004) [hereinafter *DAICOFF, LAWYER, KNOW THYSELF*].

⁷ See ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* 60 (2007); *see generally* sources cited *supra* note 4.

⁸ Emotional intelligence ("EQ") is a concept developed by psychologist and researcher Daniel Goleman in contrast to intellectual intelligence or intelligence quotient ("IQ"). *See* DANIEL GOLEMAN, *WORKING WITH EMOTIONAL INTELLIGENCE* 5, 13 (1998). It consists of five categories of traits that have been found to correlate to lifelong success in a variety of areas, and it can be a better predictor of all-around success than IQ. *See id.* at 26–

well as one's preferred professional best practices. "Emotional intelligence" here is used to refer to five areas: intrapersonal (self) awareness, self-management competencies, awareness of and ability to "read" others, interpersonal relational skills, and drive or motivation.⁹ Professional identity, therefore, includes the "soft skills" of the law, such as client relations, self-directed learning, and strategic planning, but goes further and encompasses other concepts as well.¹⁰ Many of these "professional identity" concepts have been empirically demonstrated to be important to one's effectiveness,¹¹ well-being, and satisfaction as a lawyer.¹² Therefore, legal education would be foolish to ignore the development of law students' professional identities or entrust it to chance occurrences and experiences, particularly given the data suggesting that personality changes do occur in law school. Medical schools have realized the importance of teaching similar concepts—including emotional intelligence—to medical students to enhance their effectiveness as

27. Irene Taylor conducted four studies on the emotional intelligence of Canadian lawyers. See generally Irene Taylor, *Canada's Top 25 Corporate Litigators*, LEXPERT, July 2002 [hereinafter Taylor, *Litigators*] (assessing traits differentiating "top" corporate litigators from other lawyers); Irene Taylor, *Canada's Top 30 Corporate Dealmakers*, LEXPERT, Nov.–Dec. 2002 [hereinafter Taylor, *Dealmakers*] (assessing traits differentiating "top" corporate dealmakers from other lawyers); Irene Taylor & Stephanie Willson, *Carpe Diem! Canada's Top 25 Women Lawyers*, LEXPERT, Sept. 2003 [hereinafter Taylor, *Women Lawyers*] (assessing traits differentiating "top" women lawyers from other women lawyers); Irene E. Taylor, *Top 40: 40 and Under 40*, LEXPERT, Nov.–Dec. 2004 [hereinafter Taylor, *Top 40*] (assessing traits differentiating "top" lawyers age 40 and under from other lawyers).

⁹ GOLEMAN, *supra* note 8, at 26–27 (grouping Goleman's five competencies into two categories: personal (self-awareness, self-regulation, and motivation) and social (empathy and social skills)).

¹⁰ See Edith L. Curry, *The Secret Skill of Relationship Marketing*, GPSOLO, May–June 2012, at 42, 43–44. The "soft skills" of the law refer to all of the lawyering skills, competencies, and abilities a lawyer needs besides the more traditionally visible "hard skills" like marshalling facts, reading, briefing, synthesizing cases and statutes, legal analysis, legal research and writing, oral advocacy, and written advocacy. See *id.* at 43. It can be controversial to use the terms "hard" and "soft" to differentiate between skills that are traditionally taught in law school and those that are traditionally overlooked in law school; "soft" suggests those skills are somehow easier or less important. However, corporate managers frequently use the term "soft skills" to refer to important but non-analytical abilities. See Linda Klein, *Professional Development: Now More than Ever*, 40 LAW PRAC., Nov.–Dec. 2014, at 72, 70. It is in that spirit—of excellent corporate management—that this term is used.

¹¹ Twenty-six abilities or competencies were linked to lawyering effectiveness in Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions*, 36 LAW & SOC. INQUIRY 620, 630 (2011). These twenty-six skills include both "hard" and "soft" skills. See *id.*

¹² Intrinsic values and satisfactions are important to one's well-being as a lawyer. See sources cited *supra* note 4.

physicians.¹³ Many law professors are actually well-positioned to help law students link professional identity concepts to the practice of law, particularly given legal educators' current emphases on practical skills training in law school.¹⁴

Since 1988, at least nine empirical studies have investigated the skills and competencies that make lawyers most effective.¹⁵ Their findings are generally consistent with each other. Each study includes findings about *nontraditional* skills and competencies (or "soft skills") that make lawyers most effective; these findings coalesce into the following lawyer competencies, which can be grouped into four categories: (1) intrapersonal (self) awareness, values, and abilities;¹⁶ (2) intrapersonal management competencies;¹⁷ (3) interpersonal (other) awareness;¹⁸ and (4) interpersonal management competencies.¹⁹

About a decade ago, a focus group of student leaders in the author's law school underwent an invitation-only leadership training offered by the law school. During this training, the student leaders asked for the

¹³ See Daisy Grewal & Heather A. Davidson, *Emotional Intelligence and Graduate Medical Education*, 300 JAMA 1200, 1202 (2008).

¹⁴ See, e.g., INST. FOR ADVANCEMENT AM. LEGAL SYS., AHEAD OF THE CURVE 1 (2015) (evaluating the Daniel Webster Scholar Honors Program, a two-year experience-based legal education program that replaces sitting for the New Hampshire bar exam).

¹⁵ See Bryant G. Garth & Joanne Martin, *Law Schools and the Construction of Competence*, 43 J. LEGAL EDUC. 469, 508–09 (1993); Stephen Gerst & Gerald Hess, *Professional Skills and Values in Legal Education: The GPS Model*, 43 VAL. U. L. REV. 513, 523–25, 548 (2009); John O. Mudd & John W. LaTrielle, *Professional Competence: A Study of New Lawyers*, 49 MONT. L. REV. 11, 17–19 (1988); Shultz & Zedeck, *supra* note 11, at 623–25; John Sonsteng & David Camarotto, *Minnesota Lawyers Evaluate Law Schools, Training and Job Satisfaction*, 26 WM. MITCHELL L. REV. 327, 329–30 (2000). See generally Taylor, *Dealmakers*, *supra* note 8; Taylor, *Litigators*, *supra* note 8; Taylor, *Top 40*, *supra* note 8; Taylor, *Women Lawyers*, *supra* note 8.

¹⁶ See Susan Swaim Daicoff, *Expanding the Lawyer's Toolkit of Skills and Competencies: Synthesizing Leadership, Professionalism, Emotional Intelligence, Conflict Resolution, and Comprehensive Law*, 52 SANTA CLARA L. REV. 795, 826 (2012) (including, among other skills and competencies, practical judgment, motivation, diligence, self-confidence, integrity, honesty, adaptability, maturity, passion, engagement, drive for achievement, focus, concentration, optimism, self-knowledge, reliability, independence, and practical creativity/innovation).

¹⁷ See *id.* at 827 (including, among others, organizing and managing one's work, self-development, stress management, continued professional development, and managing one's general mood).

¹⁸ See *id.* (including, among others, understanding human behavior, the ability to see the world through others' eyes, tolerance, patience, and the ability to read others' emotions).

¹⁹ See *id.* at 827–28 (including, among others, interviewing, advocating, speaking, listening, organizing and managing others, mentoring, working cooperatively with others as part of a team, negotiating, mediating, developing relationships within the legal profession (networking), community involvement and service, problem solving, strategic planning, influencing others, counseling and advising others, asking questions, client relations, and assertiveness).

inclusion of professional identity development strategies throughout the curriculum. Specifically, they wanted to see these concepts taught in orientation, professional responsibility courses, upper-level electives, and practice-oriented courses such as clinics, interviewing and counseling, negotiation, and dispute resolution. The student leaders' passion for this inclusion was remarkable, yet implementation of their requests has taken years.²⁰ This Article sets forth some of the author's strategies for developing one's self-awareness, values, preferences, preferred professional role, best practices, judgment, interpersonal skills, and professional communications skills in law school. Many of these were influenced by the student leaders' requests.

I. STRATEGIES IN ORIENTATION: EMPIRICAL RESEARCH AND EXTEMPORANEOUS ROLE PLAY

At orientation, an hour can be set aside for presentation of the research on two relationships: the link between professional competencies and lawyer effectiveness and the link between one's intrinsic values and one's professional satisfaction and well-being.²¹ After a short presentation of this research, two volunteers can be solicited from among the new law students to role play a commonly-arising situation in front of the class. Specifically, after a short explanation of the unlicensed practice of law rules, the students can role play a friend asking a law student for legal advice and a law student politely declining to answer, even when the friend presses for an answer. This is interactive and can be engaging. Most importantly, it usually generates a lively discussion about the law (Surprise! One cannot render legal advice while in law school!²²); one's self-awareness (how to handle one's impulses and desires to ignore the law to help out a friend or deal with feelings of incompetency, anger, obligation, or guilt);²³ and one's interpersonal skills (such as how to handle social pressure and maintain personal boundaries with others).²⁴

It is helpful to *label* these insights and skills for new law students. It is equally important to *model* for new law students the importance of

²⁰ The training course was co-taught by the author and Professor James Cataland, Florida Coastal School of Law, Jacksonville, Florida. Upon receiving this feedback from student leaders, Professor Cataland and I petitioned the school to teach a class incorporating these ideas. See James Cataland & Susan Daicoff, Proposal to Teach Leadership, Teambuilding, Problemsolving, & Communications Skills for Lawyers at Florida Coastal School of Law (Fall 2010) (on file with the Regent University Law Review) (noting that a catalyst for this petition was the student feedback received during the leadership training). Our proposal was accepted, and in 2010 we taught a course emphasizing these ideas.

²¹ See sources cited *supra* note 4.

²² It would constitute the unlicensed practice of law. MODEL RULES OF PROF'L CONDUCT R. 5.5 (2013).

²³ See GOLEMAN, *supra* note 8, at 26.

²⁴ See *id.* at 27.

self-awareness, self-management, and awareness of others' motives in handling interpersonal interactions—while abiding by the rule of law—in professional situations. It also begins to establish a cultural expectation in law school of integrating one's personal and interpersonal competencies with legal rules, and it gives new law students a vocabulary for the new professional skills they will need to develop or hone in law school.

II. STRATEGIES FOR PROFESSIONAL IDENTITY FORMATION IN PROFESSIONAL RESPONSIBILITY COURSES

Almost all aspects of professional identity formation can be touched on in a professional responsibility course. It can be helpful to devote part of the course to professional identity formation and explicitly state, for example, that two-thirds of the course focuses on the ethical rules and one-third of the course focuses on assisting each student in developing his or her preferred professional identity, practical skills necessary for professional behavior, and personal and professional values. Learning objectives for the course can set forth expectations such as these: the student will “understand and be able to articulately describe his or her preferred professional role and values; and . . . demonstrate, via written assignments, skills exercises, and role play simulations, his or her acquired professional communications and judgment skills.”²⁵

While there may not be sufficient time for an in-depth exploration, three to five short graded assignments can address the professional identity learning objectives in addition to the more traditional learning objectives. These assignments also function to provide a practice-oriented, experiential component in the course and an opportunity for honing one's writing skills.

Each assignment is limited to one to two typed pages, is worth one to two percent of the course grade, and is graded on a competency basis without a curve; it is expected that any student can rewrite the assignments repeatedly until 100% credit is achieved. By the end of the semester, all students in the class can achieve full competency on these assignments as an iterative process.²⁶ Rewrites offer an opportunity for students to interact with the professor about clarifying their values and preferences and an important opportunity for the professor to sharpen students' writing skills. Each of these assignments (personal essay, memorandum, script, role play, and court or field observation) is explored below.

²⁵ Susan Daicoff, Professional Responsibility Syllabus (Spring 2014) [hereinafter Daicoff, Syllabus] (on file with the Regent University Law Review).

²⁶ *See id.*

III. STRATEGY FOR DEVELOPING INTRAPERSONAL AWARENESS: THE “PERSONAL ESSAY”

Intrapersonal awareness can be explored through a personal essay on one’s professional preferences and values. One or more law review articles are assigned as reading, introducing professional role diversity (such as hired gun, zealous advocate, moral lawyer, wise counselor, or true believer),²⁷ and on the link between intrinsic values and professional satisfaction.²⁸ For example, Rob Atkinson’s taxonomy of professional roles of the lawyer,²⁹ Lawrence Krieger’s empirical work on lawyer and law student autonomy and well-being,³⁰ and Marjorie Silver’s work on the “affective assistance of counsel”³¹ are particularly helpful.³²

To foster autonomy,³³ preserve personal privacy, and provide maximum input, students choose three of about eight topics on which to write. Millennial students³⁴ particularly appreciate positive feedback,

²⁷ Rob Atkinson gives a great description of this professional role diversity in arguing that not all lawyers function as neutral partisans (amoral representatives of their clients). See Rob Atkinson, *A Dissenter’s Commentary on the Professionalism Crusade*, 74 TEX. L. REV. 259, 303–17 (1995).

²⁸ See sources cited *supra* note 4.

²⁹ Atkinson, *supra* note 27, at 303–12.

³⁰ See Krieger, *Psychological Insights*, *supra* note 4, at 260–61.

³¹ See generally MARJORIE A. SILVER, *THE AFFECTIVE ASSISTANCE OF COUNSEL* (2007) (discussing the negative effects that a lack a self-awareness can have on lawyers).

³² One can also assign as reading Susan Daicoff, *On Butlers, Architects, and Lawyers: The Professionalism of The Remains of the Day and The Fountainhead*, 17 J.L. BUS. & ETHICS 23 (2011).

³³ Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 PERSONALITY & SOC. PSYCHOL. BULL. 883, 894–95 (2007) (summarizing the results of their multiple studies of law students’ well-being and emphasizing the importance of autonomy support in law schools for law student well-being).

³⁴ Millennial law students were generally born after about 1983. Susan K. McClellan, *Externships for Millennial Generation Law Students: Bridging the Generation Gap*, 15 CLINICAL L. REV. 255, 259 (2009) (placing the birth years of the “Millennial Generation” between 1982 and the mid-2000s); see also Leslie Larkin Cooney, *Giving Millennials a Leg-Up: How to Avoid the “If I Knew Then What I Know Now” Syndrome*, 96 KY. L.J. 505, 505–06 (2007–2008) (noting characteristics of Millennials as collaborative, technology-minded, achievement-oriented, team-oriented, ambitious, demanding, questioning of everything, and more); Judith Welch Wegner, *Reframing Legal Education’s “Wicked Problems”*, 61 RUTGERS L. REV. 867, 988–89 (2009) (describing the characteristics of the Millennials). Researchers Howe & Strauss are generally credited for identifying the Millennial Generation and placing it in context with regard to older generations based on their study of 500 years of history. See generally NEIL HOWE & WILLIAM STRAUSS, *MILLENNIALS RISING: THE NEXT GREAT GENERATION* (2000) (discussing the characteristics of the millennial generation); WILLIAM STRAUSS & NEIL HOWE, *GENERATIONS: THE HISTORY OF AMERICA’S FUTURE, 1584 TO 2069* (1991) (discussing the rise of the millennial generation).

clear directions, samples of good work, respectful input, and choice.³⁵ It is important not to permit students to simply write in vague, generic, aspirational terms; clarity about one's values requires concrete, specific, individualized preferences and plans.³⁶ Feedback on drafts and permitting rewrites are helpful in this regard. Students should be warned not to simply pontificate on vague concepts (such as "justice") or reiterate concepts in the Model Rules of Professional Responsibility (such as "competence" and "diligence");³⁷ they should be urged to take the discussion deeper into specific personal values and attributes.

Prompts for writing may be:

1. Describe your personal working definition of "professionalism" based on Rob Atkinson's taxonomy of lawyer types: Type I (zealous advocate); Type II (wise counselor); and Type III (true believer).³⁸ What kinds of cases will you most enjoy taking as a lawyer, and why?

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

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

4. Describe your professional strengths and areas of challenge.

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

6. Describe how you manage and deal with stressful situations, including disappointment and conflict with others in the workplace.

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

8. Find a reported case or one currently in news media. Do you agree or disagree with how the lawyers are approaching the case from a professional ethics or representation standpoint (not their legal strategy)? Why?

³⁵ See Emily A. Benfer & Colleen F. Shanahan, *Educating the Invincibles: Strategies for Teaching the Millennial Generation in Law School*, 20 CLINICAL L. REV. 1, 13, 32 (2013) (emphasizing structure, certainty, and transparency in training Millennial law students); see also Melody Finnemore, *Meet the Millennials: Young Attorneys Prompt Need for Firms to Explore New Ways of Doing Business*, OR. ST. BAR BULL., Nov. 2005, at 9, 9–13, available at <https://www.osbar.org/publications/bulletin/05nov/millennials.html>; Melissa H. Weresh, *I'll Start Walking Your Way, You Start Walking Mine: Sociological Perspectives on Professional Identity Development and Influence of Generational Differences*, 61 S.C. L. REV. 337, 360, 364–65, 367, 371, 384–85 (2009) (discussing how to work with and teach those in the Millennial generation).

³⁶ See Gantt & Madison, *supra* note 1, at 3–8.

³⁷ See MODEL RULES OF PROF'L CONDUCT RR. 1.1, 1.3 (2013).

³⁸ Atkinson, *supra* note 27, at 303–12.

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

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

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

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

I sometimes have a lack of focus because I try to do [too] many things at one time and then prioritize or deprioritize in an unorganized way. I lose focus on things I deem less helpful or accidentally spend less time on things that are important. I am also impulsive and everything sounds like a good idea. Life is too short, so I constantly strive to accomplish so many things and never feel like I can wait on any of them. I say yes to things I should not because I fail to recognize my workload or the time it takes to complete everything[.]

My plan is to focus on my strength of self-reflection and use it to try to overcome my weaknesses. I will try to plan a better schedule and ensure more time to do the things I need to do. In the future I will try to reevaluate my workload and level of dedication on the first of every month. In practice I will try an evaluation weekly, and will look to work productivity to decide whether my plan worked or not.³⁹

³⁹ Student 1, Personal Essay (on file with the Regent University Law Review) (used with permission).

IV. STRATEGY FOR DEVELOPING APPLIED PROFESSIONAL IDENTITY AND INTERPERSONAL SKILLS: THE “SCRIPTED ROLE PLAY”

For the learning objective of developing professional communications and judgment skills, it is very effective to have students develop and role play a professional hypothetical situation. First, they apply the rules of ethics to their developed scenario, reach a conclusion about what the lawyer must and can do in the situation, and write a memorandum of law.⁴⁰ Finally, they develop a script to perform for the whole class, portraying what must be done and what a “best practice” would be in the situation.⁴¹ Written or oral graded products are the memorandum of law, script, and role play.⁴² All students are grouped into teams of two to four, unless they strongly prefer to work alone, and instructed to develop a unique professional dilemma involving the ethical rules of law.⁴³ Collaboration is expected on this assignment to foster teamwork competency.⁴⁴ Dilemmas may include situations involving the interplay of the ethical rules with personal values and morals, such as:

- communicating the end of the lawyer-client relationship;
- having the fee discussion with a new client;
- explaining the settlement to a plaintiff client at the end of the case;
- dealing with a nosy friend;
- breaching confidentiality due to imminent harm;
- obtaining informed consent to a waiver of privilege and confidentiality;
- representing two co-clients where one develops a secret;
- dealing with a difference with your client;
- withdrawing from a case because of a conflict;
- asking a former client for consent to current representation of another client;
- ending the lawyer-client relationship because of a conflict;
- negotiating a job offer from a private firm while working for the government;
- moving to a new law firm and dealing with conflicts of interest;
- dealing with a conflict between co-defendants;
- dealing with the perjuring client or witness;
- the temptation to lie in settlement negotiations;
- confidences inadvertently disclosed in a misdirected email;
- a client who steals information from the opposing counsel;

⁴⁰ Daicoff, Syllabus, *supra* note 25.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *See id.*

⁴⁴ *See id.*

- dealing with a non-supervising senior partner; and
- confronting an impaired or wrongdoing lawyer or judge.

Each role play requires the team to imagine a fact scenario for application of the assigned rule of law, write a one-page memorandum of law applying the rules of professional responsibility to the situation, write a one- to two-page script for a client conference or lawyers' meeting in the scenario, and then role play the script as a three-minute long simulation in class.⁴⁵ Most important to professional identity development, the memorandum must contain an analysis of best practices, which involves going above and beyond the rules to determine what to do in the situation based on the students' values and preferences.⁴⁶ Each team is required to meet with the professor before presenting in class for further feedback about professional communications skills and to be sure the scenario, memorandum, and script are appropriate and workable.⁴⁷ After the class presentation, the class provides feedback to each team; this feedback should focus on strengths and offer a few suggestions to foster a positive learning environment.⁴⁸ The team then rewrites their memorandum and script based on the class's feedback and the professor's individual feedback to improve it and optimally reach 100% credit.⁴⁹ Skills development like this should permit students to revise their work repeatedly and should foster an environment of success in the final resultant grades.⁵⁰

This skills assignment is designed to develop four areas of emotional intelligence: self-awareness, self-management, awareness of others' motives and needs, and interpersonal interactional skills.⁵¹ More specifically, it aims to develop teamwork; collaboration; professional judgment; professional communication skills; the ability to handle difficult conversations and difficult people; one's preferred style of interaction with clients or opposing counsel; client relations; the ability to give, receive, and implement feedback; and an awareness that best practices in law practice often exceed the minimal requirements of the ethical rules. This assignment may model the ability to effectively "script" difficult conversations that will take place in professional settings after graduation before those difficult conversations take place. It is particularly effective to move from discussing in theory what one might say or do in a professional setting to role playing with words, gestures,

⁴⁵ *Id.*

⁴⁶ *See id.*

⁴⁷ *Id.*

⁴⁸ *See id.*

⁴⁹ *See id.*

⁵⁰ *See id.*

⁵¹ *See* GOLEMAN, *supra* note 8, at 26–27 (discussing the concepts and components of emotional intelligence).

tone, body language, and actions. Developing the script allows students to experiment with how they want to present themselves in professional interactions. It also affords an opportunity to discuss one's instinctive reactions, such as anger or outrage, and how to manage and contain them in professional settings. Finally, the best practices section of the memorandum challenges students to go beyond the rules to resolve ethical dilemmas based on their explicit personal and professional values. A sample memorandum that can be given to students is contained in Appendix A.⁵²

V. STRATEGY FOR IDENTIFYING PROFESSIONAL IDENTITY CONCEPTS IN THE FIELD: THE "COURT OBSERVATION"

Finally, in any doctrinal course, it is often instructive to assign students to observe at least one hour of court proceedings, or perform other fieldwork, and write about their observations and reflections.⁵³ Traditionally, students are asked to write about the application of substantive rules of law to the observed cases,⁵⁴ but to foster professional identity development, more focused questions can be assigned instead. The sample instructions contained in Appendix B set forth such questions; they could be further improved by asking whether the student would behave in the same way as the observed lawyers and judges behaved.⁵⁵

Specific learning objectives for this work can include students' gaining real world insight into the law of professional responsibility and professionalism in practice; observing the operation of the law, lawyers, and judges in action; developing or improving skills of self-reflection and writing; and developing the ability to identify and comment upon professionalism and best practices in ethics.

Finally, this assignment often gives students an opportunity to interact with practicing lawyers and judges. This affords a chance to practice interacting in a professional environment—and possibly even network, which is one of the lawyering competencies cited in the lawyering effectiveness studies.⁵⁶

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

⁵² See *infra* Appendix A.

⁵³ See Daicoff, Syllabus, *supra* note 25.

⁵⁴ See James E. Moliterno, *Legal Education, Experiential Education, and Professional Responsibility*, 38 WM. & MARY L. REV. 71, 77 (1996) (noting that the "case method" is a beneficial and enduring aspect of traditional legal education).

⁵⁵ See *infra* Appendix B.

⁵⁶ See, e.g., Gerst & Hess, *supra* note 15; Shultz & Zedeck, *supra* note 11.

Critiquing the behavior of practicing lawyers can assist students in clarifying their intentions for their own professional behavior.

VI. STRATEGIES FOR PROFESSIONAL IDENTITY FORMATION IN CLINIC AND EXPERIENTIAL COURSES: “TRANSLATION” AND “LABELING”

Of course, opportunities for professional identity formation abound in clinical (live-client) and experiential (simulation-based) courses.⁵⁷ However, students need professors to “translate” these experiences into concepts that relate to professional identity formation; otherwise the experiences, while wonderful and exhilarating, may not result in lasting connections to students’ values and competencies.⁵⁸

An introductory assignment in these courses may be a self-assessment of one’s strengths, values, preferences, biases, and the like. These can be anonymous to preserve students’ privacy.

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

Simulations, mediations, and live client interactions are often debriefed by the professor and reflected upon by the student, but these opportunities can be more explicitly linked to professional identity formation when they are grounded and couched in explicit terms relating to values or to the empirical research on competencies of an effective lawyer.⁵⁹ When the professor provides feedback to a student on a simulated or real mediation, for example, the professor can consciously identify the student’s strengths and areas of challenge⁶⁰ based on the empirical research on lawyer effectiveness and well-being.

For example, when debriefing a mediation, the supervising clinical or experiential professor might say to a student mediator:

I was really impressed with how you kept your cool as a mediator even when the parties’ interactions became heated; you must have been a bit worried, but you didn’t show it! (*Good work demonstrating maturity, strong sense of self, and stress management!*) I particularly liked how you homed right in on that one party’s implicit need for safety and recognized it. (*You showed a good ability to read others and actively listen and recap.*) I know you must have been feeling pressed for time at

⁵⁷ See Charlotte S. Alexander, *Learning to be Lawyers: Professional Identity and the Law School Curriculum*, 70 MD. L. REV. 465, 467–72, 483 (2011).

⁵⁸ See *id.* at 476–78.

⁵⁹ See sources cited *supra* note 15.

⁶⁰ Note that the term “weakness” has been avoided for reasons stated below. See *infra* text accompanying notes 71–73.

the end of that mediation, but if you'd like to try a more facilitative approach, then next time you could try asking some open-ended questions of the parties to see if they can problem-solve their own solution rather than making direct suggestions to them. (*Let's work on developing patience, questioning, listening, problem-solving, and practical judgment.*) The parties are more likely to follow through, feel heard, and have had a "voice" if they set the terms of their agreement themselves. (*I am now teaching you how to implement the empirical findings of "procedural justice" in your work as a mediator.*) Great job connecting with the lawyers after the mediation; you are good at that! (*You are learning how to network professionally and build and develop professional relationships with peers.*)

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

Finally, intentionally using the term "best practices" and assisting students to identify better ways to handle dilemmas and problems that arise in clinical courses can help students maintain a practice of self-reflecting and developing a course for improvement. For example, when mediation students write reflections of their mediations, they can be asked to write about their (1) strengths, (2) areas for improvement (Millennial law students seem to dislike the concept of "weaknesses"⁶¹), and (3) best practices for the next mediation.⁶² Without these prompts, students often default to writing about what the parties said, did, and agreed to, which does not develop their own professional self-awareness.

VII. SIMPLE STRATEGIES IN ANY COURSE

Even if none of the strategies above seems feasible, even simple strategies can be helpful. For example, one can base a handout on Shultz and Zedeck's empirical research on the twenty-six lawyering effectiveness factors and ask students to self-identify their top strengths and challenge areas from among the twenty-six competencies.⁶³

One can assign Rob Atkinson's law review article on the diversity of professional roles among lawyers and ask students to explore which role they personally prefer.⁶⁴ One can show Fordham Law School's video, "Red State, Blue State," and explore whether students prefer moral or amoral

⁶¹ See *infra* text accompanying notes 71–73.

⁶² See Daicoff, Syllabus, *supra* note 25.

⁶³ See Shultz & Zedeck, *supra* note 11, at 630.

⁶⁴ See Atkinson, *supra* note 27.

lawyering.⁶⁵ One can expose students to emerging concepts of practicing law as a healer or peacemaker to present a diversity of approaches to the law from which students can choose.⁶⁶

One can explore Krieger and Sheldon's empirical findings regarding the differences between intrinsic values and extrinsic values⁶⁷ and ask students to identify their own individualized intrinsic values and relate them to their future work in the law, such as helping others, upholding constitutional rights, being an expert, the thrill of court appearances, and representing the underrepresented.⁶⁸ Students can be asked to write a "graduation letter" to themselves which reminds them of their intrinsic values and is opened after graduation.⁶⁹ Most simply, professors can review the list of lawyering effectiveness competencies set forth above,⁷⁰ look for opportunities to mention them, and begin using those labels, names, and concepts in any of their classes when giving feedback to students.

VIII. CAUTIONS

A few notes are in order, however. For example, the labels "strengths" and "weaknesses" should be revised slightly when asking law students to reflect on themselves. Millennials may resist the concept of weakness and prefer to identify areas of opportunity, challenge, or growth.⁷¹ Labels can be important psychologically;⁷² weakness may sound unappealing or even threatening to law students who typically prefer to be seen as dominant and confident.⁷³

⁶⁵ See RED STATE, BLUE STATE: LAWYERS, POLITICS & MORAL COUNSELING (Fordham University School of Law 2009), available at <http://www.law.fordham.edu/louis-stein-center-for-law-and-ethics/10469.htm>.

⁶⁶ See SUSAN SWAIM DAICOFF, COMPREHENSIVE LAW PRACTICE 82 (2011); J. KIM WRIGHT, LAWYERS AS PEACEMAKERS 219–20 (2010).

⁶⁷ See sources cited *supra* note 4.

⁶⁸ See Gantt & Madison, *supra* note 1, at 3, 5, 7.

⁶⁹ To be more Millennial-relevant, I now ask students to put it in the "Notes" section of their smartphones for later use rather than writing on paper. See Brittany Stringfellow Otey, *Millennials, Technology, and Professional Responsibility: Training a New Generation in Technological Professionalism*, 37 J. LEGAL PROF. 199, 262 (2013) (arguing that technology must be employed when training Millennial law students).

⁷⁰ See *supra* notes 15–19 and accompanying text.

⁷¹ See JESSICA BRACK, MAXIMIZING MILLENNIALS IN THE WORKPLACE 5–7 (2012), available at <http://www.kenan-flagler.unc.edu/executive-development/custom-programs/~media/DF1C11C056874DDA8097271A1ED48662.ashx>.

⁷² See Kevin H. Michels, *Our Hidden Value*, 53 U. LOUISVILLE L. REV. 1, 32 (2014).

⁷³ Stephen Reich, *California Psychological Inventory: Profile of a Sample of First-Year Law Students*, 39 PSYCHOL. REP. 871, 874 (1976); see also DAICOFF, LAWYER, KNOW THYSELF, *supra* note 6, at 26.

Also, when attempting to provide opportunities for students to develop their professional identities, professors may want to avoid Socratic dialogue, logical argument and questioning, and critical grading or feedback. This can chill personal exploration of preferences, strengths, weaknesses, competencies, and values. Some empirical research indicates that law students want to be seen as competent and socially ascendant, even though internally they feel socially awkward and anxious.⁷⁴ Supportive, encouraging words, labels, and exercises are thus more effective in creating a safe environment in which students can explore their values, preferences, strengths, and areas for growth.⁷⁵

CONCLUSION

In summary, professional identity formation in law school may occur despite whether professors foster it intentionally. Empirical research exists to inform legal educators about how law students tend to change during law school and about what qualities and skills law students need to develop to be effective lawyers.⁷⁶ These two sets of research findings need to be coordinated and combined. This will allow professional development during law school to become a conscious, explicit, and planned phenomenon that is targeted towards the competencies needed to be an excellent lawyer, rather than a happenstance process that could easily go awry. Strategies for providing opportunities for professional identity formation in law school can be simple and feasible. They are likely to be most effective when they are explicit, respectful of students, and informed by existing research on lawyers and law students.

⁷⁴ Reich, *supra* note 73, at 873–74.

⁷⁵ See generally Alexander, *supra* note 57 (showing the use of student experiential exercises as tools for professional identity growth); see also BRACK, *supra* note 71, at 7.

⁷⁶ See sources cited *supra* notes 4, 6, 8.

APPENDIX A

SAMPLE MEMORANDUM OF LAW TO BE USED FOR
THE LEARNING OBJECTIVE OF DEVELOPING
PROFESSIONAL COMMUNICATIONS AND JUDGMENT
SKILLS†

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

Law: The Model Rules ("MR") that apply are MR 1.2, 1.4, and 1.16.¹ Under MR 1.2, the client has the ultimate decision-making power over the objectives of the representation; the lawyer oversees the means but shall consult with client regarding the means to be taken to reach the client's objectives.² I must consult with Rick before refusing to call the children as witnesses. Comment 2 to MR 1.2 does not explain how to resolve a disagreement between lawyer and client as to the means to be used.³ MR 1.4(a)(2) requires me to reasonably consult with Rick regarding the means I will use to accomplish his objectives.⁴ I am allowed to deal with technical and tactical issues, grant short or reasonable continuances to the other side if they do not adversely affect the client's case, and plan a trial strategy without Rick's consent.⁵ The Restatement 3d says there are two matters outside the client's control: (1) the lawyer can refuse to do things he thinks are unlawful; and (2) the lawyer alone can decide to do things he reasonably believes to be required by law or by an order of a tribunal.⁶ Therefore, the law does not clearly permit me to decide not to call a witness against my client's wishes.

In this case we have a "fundamental disagreement" which would allow me to seek to withdraw, but I must seek the court's permission

† This memorandum is a sample given to students to clearly demonstrate the expectations for this assignment.

¹ MODEL RULES OF PROF'L CONDUCT RR. 1.2, 1.4, 1.16 (2013).

² *Id.* R. 1.2(a).

³ *See id.* R. 1.2 cmt. 2.

⁴ *Id.* R. 1.4(a)(2).

⁵ *See id.* R. 1.2 cmt. 2.

⁶ RESTATEMENT (THIRD) OF LAW GOVERNING LAWYERS § 23 (2000).

before I withdraw.⁷ MR 1.16(a) requires me to withdraw if (1) my representation will result in a violation of the rules of professional conduct; (2) my representation will result in a violation of law; (3) my physical or mental condition materially impairs my ability to represent the client; or (4) I am discharged by my client.⁸ MR 1.16(b) permits me to withdraw if “the client insists upon taking action that [I] consider[] repugnant or with which [I] ha[ve] a fundamental disagreement.”⁹

Only MR 1.16(b)(4) applies here. I am not required to withdraw, but am permitted to request the court’s permission to withdraw as his counsel.¹⁰ Since I am his attorney of record in litigation, I likely need the court’s approval to withdraw.¹¹ Also, I have a duty to mitigate the consequences of my withdrawal for the client and to take reasonable measures to protect Rick’s interests.¹² Upon withdrawing, I must (1) notify the client; (2) allow him time to employ new counsel; (3) surrender papers and property of the client; and (4) refund monies not earned.¹³

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

Script:

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

Rick: *(looks surprised)* Okay . . .

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

⁷ See R. 1.16(b)(4), (c).

⁸ *Id.* R. 1.16(a).

⁹ *Id.* R. 1.16(b)(4).

¹⁰ *Id.* R. 1.16(b), (c).

¹¹ See *id.* R. 1.16(c).

¹² *Id.* R. 1.16 cmt. 9.

¹³ *Id.* R. 1.16(d).

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

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

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

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

Rick: Well, I guess we do!

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

APPENDIX B

SAMPLE INSTRUCTIONS FOR COURT OBSERVATION
OR FIELD EXPERIENCE REFLECTION PAPER IN
PROFESSIONAL RESPONSIBILITY COURSES‡

In person (not by video or phone), spend at least one hour doing one of the following: (1) observing a deposition; (2) observing a court hearing or trial; (3) attending a presentation by a local attorney; (4) providing at least one hour of pro bono direct client service assisting local attorneys providing pro bono services at a local event; or (5) interviewing in person a local attorney or judge about the practice of law and the meaning of “professionalism.”

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

1. Where did you acquire your one hour of field or court observation?
2. What Model Rules did you see “in action” in your experience (if any)?
3. What ethical questions were raised (if any) in your observation? How were those ethical questions handled?
4. What “best practices” (above and beyond the ethical rules) did you observe or would you suggest in the situation you observed?
5. What surprised you about the observation?
6. What inspired you in the observation?
7. What is one concrete event or interaction you observed during the experience that relates to the practice of law, professional responsibility, or professionalism?

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

‡ These sample instructions can be given to students as a guide for their fieldwork observation and reflection. This set of instructions incorporates questions to foster professional identity development.