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## ARTICLE

# PICTURING PROFESSIONALS: THE EMERGENCE OF A LAWYER'S IDENTITY

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For many decades now, a critique of legal education has been the narrow focus on development of cognitive skills and knowledge with little attention to the values, beliefs, and habits that form the identity of a professional.<sup>1</sup> Recently, many corners of the academy have begun to respond to this criticism. A number of law schools have already declared some aspect of professional identity to be a learning outcome expected of their graduates.<sup>2</sup> For purposes of assessment, this learning outcome poses a unique challenge. While some aspects of professional identity can be assessed through the standard tools of tests, written products, and observation of behaviors, it is more difficult to capture authentic expressions of beliefs, values, hopes, and fears through these tools. Artwork presents a number of advantages for assessing the attitudinal and affective aspects of professional identity formation, and for encouraging reflection and dialogue about the process of formation. This article will explore the use of student drawings as an assessment method to access these unique outcomes involved in professional identity.

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1. Most cited in this respect is the criticism from WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 132–133 (2007) [hereinafter *Carnegie Report*], which argues that law schools ignore the “apprenticeship of professionalism and purpose” is subordinated to the cognitive, academic apprenticeship.

2. Neil Hamilton, *Professional-Identity/Professional-Formation/Professionalism Learning Outcomes: What Can We Learn About Assessment from Medical Education*, 14 U. ST. THOMAS L.J. 357, 362 (2018) (stating a majority of law schools that had posted learning outcomes included an outcome related to “values that students are expected to understand and integrate into their professional lives.”); see also Louis D. Bilonis, *Professional Formation and the Political Economy of the American Law School*, 83 TENN. L. REV. 895, 901–902 (2016) (describing programs aimed toward professional identity formation).

## I. THE CHALLENGE OF DEFINING OUTCOMES FOR PROFESSIONAL IDENTITY FORMATION

Step one of assessment is, of course, starting at the end—what do we want to see regarding formation of professional identity? This presents a definitional problem: what is professional identity?<sup>3</sup> The very question assumes that there is a unitary vision of “the profession” of law, a proposition that is not without controversy.<sup>4</sup>

First, we have many identities beyond our professional identity—personal, family, cultural, religious, and so forth, and these are all inextricably bound. Therefore, there cannot be simply one single definition of “professional identity.” The norms of the profession reflect the diversity of foundational values among its members. Different attorneys can have very different notions about what constitutes an ethical and effective relationship between attorney and client regarding allocation of decision-making authority. The rules of professional conduct<sup>5</sup> and the ethical norms of the profession leave room for those differences.<sup>6</sup>

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3. A rich literature has, in recent years, explored the meaning of professionalism and the role of lawyers in society. See BENJAMIN H. BARTON, *GLASS HALF FULL: THE DECLINE AND REBIRTH OF THE LEGAL PROFESSION* (2015); BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD (Deborah Maranville et al. eds., 2015); DEBORAH L. RHODE, *THE TROUBLE WITH LAWYERS* (2015); DOUGLAS O. LINDER & NANCY LEVIT, *THE GOOD LAWYER: SEEKING QUALITY IN THE PRACTICE OF LAW* (2014); STEVEN J. HARPER, *THE LAWYER BUBBLE: A PROFESSION IN CRISIS* (2013); JAMES E. MOLITERNO, *THE AMERICAN LEGAL PROFESSION IN CRISIS: RESISTANCE AND RESPONSES TO CHANGE* (2013); THOMAS D. MORGAN, *THE VANISHING AMERICAN LAWYER* (2010); DEBORAH L. RHODE, *LAWYERS AS LEADERS* (2013); RICHARD SUSSKIND, *TOMORROW'S LAWYERS: AN INTRODUCTION TO YOUR FUTURE* (2013); ROBIN L. WEST, *TEACHING LAW: JUSTICE, POLITICS, AND THE DEMANDS OF PROFESSIONALISM* (2013); BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* (2012).

4. MORGAN, *supra* note 3, at 6 (“[T]he idea of an identity that lawyers have in common can be said to be vanishing rapidly.”).

5. ABA Model Rule of Professional Conduct 1.2 provides that the client is in charge of the goals of the representation, a position even more strongly expressed in the law of agency. MODEL RULES OF PROF'L CONDUCT r. 1.2(a) (AM. BAR ASS'N 2015). Yet that same rule provides that “A lawyer’s representation of a client, including representation by appointment, does not constitute an endorsement of the client’s political, economic, social or moral views or activities.” *Id.* at 1.2(b). Moreover, Rule 2.1 provides that an attorney may advise a client on “moral, economic, social, and political” considerations, allowing but not requiring attorneys to express their own value judgments in a representation. *Id.* at 2.1.

6. Several different models of the attorney-client relationship are regularly offered: the directive lawyer, the instrumental lawyer, client-centered lawyer, and collaborative (or lawyer as friend) model. Professors David Luban, Deborah Rhode, and William Simon have advocated a more directive lawyer, a lawyer who is willing to assert control of moral issues that arise during legal representation. WILLIAM SIMON, *THE PRACTICE OF JUSTICE* 138 (2009); DEBORAH RHODE, *IN THE INTERESTS OF JUSTICE* 58 (2003).

The classic statement regarding the instrumental view of the lawyer’s ethical responsibility has been outlined by Richard Wasserstrom: “The job of the lawyer . . . is not to approve or disapprove of the character of his or her client, the cause for which the client seeks the lawyer’s assistance, or the avenues provided by the law to achieve that which the client wants to accomplish. The lawyer’s task is, instead, to provide that competence which the client lacks and the lawyer, as professional, possesses. In this way, the lawyer as professional comes to inhabit a simplified universe which is strikingly amoral—which regards as morally irrelevant any number

Second, the stated norms of the profession profess that an attorney's representation of a client does not indicate endorsement of the client's goals;<sup>7</sup> nonetheless, attorneys do tend to align closely with the client group they choose to represent and even work to strengthen that identification in order to attract more clients. Thus, there are differences in identity among attorneys grounded in the clients one serves. One can distinguish two "hemispheres" of practice—those lawyers who primarily represent business corporations and those who primarily represent moderate-income individuals.<sup>8</sup> Moreover, recent trends in employment of law school graduates show an increasing percentage of graduates who move into JD-advantage positions: business, finance, health care, compliance, etc.<sup>9</sup>

The stuff of professional identity is as much affective and attitudinal as it is cognitive or skill based. For this reason, some individual faculty are skeptical or even hostile to the notion that professional identity formation should be part of legal education. "In fact, in the minds of many faculty, ethical and social values are subjective and indeterminate and, for that reason, can potentially even conflict with the all-important values of the academy—values that underlie the cognitive apprenticeship: rigor, skepticism, intellectual distance, and objectivity."<sup>10</sup> Yet, the socialization of students into the profession is one that occurs during law school and is influenced by the formal curriculum and the information network of relationships, culture, and models that students experience, regardless of our intention to influence

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of factors which nonprofessional citizens might take to be important, if not decisive, in their everyday lives." Richard Wasserstrom, *Lawyers as Professionals: Some Moral Issues*, 5 *HUM. RTS.* 1, 8 (1975).

A variation on instrumental models is the "client-directed" model of representation, in which the client is in charge. Those who advocate for this approach believe that client autonomy is primary and the lawyer should be nonjudgmental and neutral, raising moral concerns only if the client decides to go in a direction that the lawyer believes to be clearly immoral. DAVID A. BINDER, PAUL BERGMAN & SUSAN C. PRICE, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* 282–284 (1st ed. 1991) (client-centered); ROBERT M. BASTRESS & JOSEPH D. HARBAGH, *INTERVIEWING, COUNSELING, AND NEGOTIATING: SKILLS FOR EFFECTIVE REPRESENTATION* 334–338 (1990).

A third approach seeks to split the difference, conceiving of a collaborative approach, sometimes referred to as the "lawyer as friend" model. Under this model, a lawyer should neither ignore difficult issues nor impose her views on the client, but raise difficult issues and engage in moral discourse with the client. When the lawyer and client consider various options, the lawyer should ask the client to identify not only the "consequences to client" of each, but consequences to other people as well. THOMAS L. SHAFFER & ROBERT F. COCHRAN, JR., *LAWYERS, CLIENTS, AND MORAL RESPONSIBILITY* 2 (1994); ROBERT F. COCHRAN, JR., JOHN M.A. DIPPIA & MARTHA M. PETERS, *THE COUNSELOR-AT-LAW: A COLLABORATIVE APPROACH TO CLIENT INTERVIEWING AND COUNSELING* (2006).

7. MODEL RULES OF PROF'L CONDUCT r. 1.2(b) (AM. BAR ASS'N 2015).

8. MORGAN, *supra* note 3 at 110–111 ("[A]lmost two-thirds of the legal talent in this country is now focused largely on meeting the needs of corporate clients.") (citing JOHN P. HEINZ ET AL., *URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR* (2005)).

9. *Detailed Analysis of JD Advantage Jobs*, NALP (May 2013), [http://www.nalp.org/jd\\_advantage\\_jobs\\_detail\\_may2013](http://www.nalp.org/jd_advantage_jobs_detail_may2013).

10. Carnegie Report, *supra* note 1, at 133.

that socialization.<sup>11</sup> From the interpersonal communications we model in the classroom, clinic, offices, and hallways, to the structure of our curriculum and grading systems, law schools and law professors convey values and model a professional identity.<sup>12</sup>

Accordingly, despite the difficulty inherent in defining professional identity, there are some basic aspects of professional formation that we can likely agree upon, such as the need for competence and diligence,<sup>13</sup> self-direction and resourcefulness,<sup>14</sup> and respect for the rule of law.<sup>15</sup> Moreover, even recognizing that our learning outcomes must allow for individual and cultural variations, we can agree that we want to see our students' recognition, growth, and integration of their professional identity.<sup>16</sup>

## II. THE NEED TO DISCOVER STUDENTS' STARTING POINTS (DIAGNOSTIC ASSESSMENT)

If we are to engage students in this personal exploration of identity, we must find starting points. Their professional formation will build on these bases. How can we discover the development in student formation process? How can we engage with students at a personal level of helping them to identify themselves as professionals?

11. *Id.* at 135; Roger Crampton, *The Ordinary Religion of the Classroom*, 29 J. LEG. EDUC. 247 (1978).

12. *See, e.g.*, Barbara Glesner Fines, *Competition and Curve*, 65 UMKC L. REV. 879 (1997) (arguing that grading normalization and ranking systems displace intrinsic motivation with extrinsic reward and privilege competition over collaboration; conformity over diversity; and hierarchy over equality).

13. Of all the rules of Professional Conduct, those directing attorneys to be competent and diligent are the least subject to divergent variations among the states. The definitions of "competence" and "diligence" in the Model Rules has been adopted without change by forty-one of the fifty jurisdictions adopting the Model Rules; and, for those states with variations, none appear to contradict the underlying values or core meaning of these terms. *See* CPR POLICY IMPLEMENTATION COMM., AM. BAR ASS'N, VARIATIONS OF THE ABA MODEL RULES OF PROFESSIONAL CONDUCT: RULE 1.1: COMPETENCE (Jan. 23, 2018), [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/mrpc\\_1\\_1.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc_1_1.authcheckdam.pdf); CPR POLICY IMPLEMENTATION COMM., AM. BAR ASS'N, VARIATIONS OF THE ABA MODEL RULES OF PROFESSIONAL CONDUCT: RULE 1.3: DILIGENCE (Sept. 29, 2016), [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/mrpc\\_1\\_3.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc_1_3.authcheckdam.pdf).

14. Neil W. Hamilton, *Empirical Research on the Core Competencies Needed to Practice Law: What do Clients, New Lawyers, and Legal Employers Tell Us?* 83 B. EXAMINER 6–16 (2014).

15. *See, for example*, the oaths of admission of various states. Margaret Robb, Oaths of Admission for All 50 States, <http://c.ymcdn.com/sites/www.inbar.org/resource/resmgr/litigation/Oaths.pdf>.

16. *See* Louis D. Bilonis, *Bringing Purposefulness to the American Law School's Support of Professional Identity Formation*, 14 U. ST. THOMAS. L.J. 480, 483 (2018) (quoting Richard L. Creuss et al., *Reframing Medical Education to Support Professional Identity Formation*, 89 ACAD. MED. 1446, 1447 (2014) (stating professional identity is "a representation of self, achieved in stages over time, during which the characteristics, values, and norms of the medical [or legal] profession are internalized, resulting in an individual thinking, acting, and feeling like a physician [or lawyer]")).

To begin, we must identify a baseline of student identity. With any learning, it is important to recognize the pre-existing schema or constructs that students bring to the learning task and upon which they will build new learning. These underlying misconceptions students bring to a learning task are persistent, difficult to overcome, and block learning of new ideas.<sup>17</sup> Students construct knowledge by building on prior understandings. If those prior understandings are incomplete or incorrect, new learning will be flawed as well. Thus, “teachers need to pay attention to the incomplete understandings, the false beliefs, and the naive renditions of concepts that learners bring with them to a given subject.”<sup>18</sup>

Identity is a construct<sup>19</sup> or schema, and students do not come to law school with a blank slate of identity. Obviously, all students have personal identities, formed by their family, culture, education, and experiences. However, they also hold pre-existing perceptions about what it means to be a professional. The challenge of formation is to socialize students into a shared professional identity and to help students to integrate their own personal identity into that new professional identification. To assess student progress on this formation and integration of a professional identity, one must understand the student’s current preconceptions about themselves and their profession. If conceptions of the profession are built on false assumptions or negative images, those negative schema must be rebuilt before students can integrate the positive values and habits of professionalism into their own professional identity. To help the students in this formation process, then, we must begin with the pre-existing images of what it means to be a professional. In this sense, the task of assessing professional identity is no different than that involved in assessing initial conceptual understandings of a doctrinal field. One must first understand where the students are at and meet them there.<sup>20</sup>

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17. M. Suzanne Donovan & John D. Bransford, *Introduction*, in NAT’L RESEARCH COUNCIL, *HOW STUDENTS LEARN: SCIENCE IN THE CLASSROOM* 1, 1 (M. Suzanne Donovan & John D. Bransford eds., 2005), <https://www.nap.edu/read/11102/chapter/1> (“Students come to the classroom with preconceptions about how the world works. If their initial understanding is not engaged, they may fail to grasp the new concepts and information, or they may learn them for purposes of a test but revert to their preconceptions outside the classroom.”).

18. NAT’L RESEARCH COUNCIL, *HOW PEOPLE LEARN: BRAIN, MIND, EXPERIENCE, AND SCHOOL* 10–11 (John D. Bransford et al. eds., expanded ed. 2000), <https://www.nap.edu/read/9853/chapter/1>.

19. The theories of how individual and social identities are constructed are rich, diverse, and developing. Karen A. Cerulo, *Identity Construction: New Issues, New Directions*, 23 ANN. REV. SOC. 385 (1997). For purposes of this article, we need only agree that our students’ sense of their own identity changes (to a greater or lesser extent) over the period of law school to incorporate their membership in a profession.

20. Neil W. Hamilton, *The Qualities of the Professional Lawyer*, AM. BAR ASS’N, INSTRUCTOR’S MANUAL: *ESSENTIAL QUALITIES OF THE PROFESSIONAL LAWYER* 1, 4 (Paul A. Haskins ed., 2014), [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/essential\\_qualities\\_instructors\\_workbook\\_final.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/essential_qualities_instructors_workbook_final.authcheckdam.pdf) (“[T]ake into account that stu-

A range of fundamental misconceptions about the profession of law can provide powerful schema that can block the development of core professional values. One of these starting points is the (often unconscious) belief that being a professional is about education, status, and power rather than about service to clients, the courts, and the public. This starting point places powerful extrinsic motivators as the goal of professional identity formation. It can make it difficult to understand why an attorney must subjugate his or her self-interest to a client, especially a non-paying client.<sup>21</sup> Likewise, this image of attorneys as “lone rangers” who operate in a highly individualistic and competitive culture, even within a law firm, may make it difficult for students to appreciate the importance of developing strong collaborative skills.<sup>22</sup> Finally, the image of the attorney as “expert” who “handles cases” for clients ignores the need to understand the client’s perspectives, expertise, values, and goals, leading to attorneys who talk more than they listen.<sup>23</sup>

Before we can begin to engage students in re-assessing their foundational attitudes and beliefs about the profession, we must discover what those beliefs are. However, some of these attitudes and values are difficult to access by standardized testing.<sup>24</sup> Self-reporting by students on many beliefs may be subject to social desirability bias.<sup>25</sup> Finally, some of these default positions may not even be obvious to the students themselves.<sup>26</sup>

### III. ASSESSMENT TOOLS FOR PROFESSIONAL IDENTITY FORMATION

The word “assess” comes from the Latin verb “assidere” meaning “to sit with.” In assessment, one is supposed to sit with the learner. This implies it is something we do “with” and “for” students and not “to” students.<sup>27</sup>

Nowhere is this statement more true than in the assessment of professional formation outcomes. Many of the outcomes we wish to measure in this realm are qualitatively different outcomes than the ability to spot a legal issue in a set of facts, or the ability to recall and interpret legal rules.

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dents are at different developmental stages of growth and engage each student at the student’s present developmental stage.”)

21. E.g., MODEL RULES OF PROF’L CONDUCT r. 1.16 (AM. BAR ASS’N 2015).

22. Barbara Glesner Fines, *Competition and the Curve*, 65 UMKC L. REV. 880, 888–897 (1997).

23. Austin Sarat & William L. F. Felstienner, *Lawyers and Legal Consciousness: Law Talk in the Divorce Lawyer’s Office*, 98 YALE L.J. 1663 (1989).

24. Psychological testing can assess some of these factors; however, there are concerns in educational programs using tests designed for diagnostic and therapeutic purposes by mental health professionals.

25. Robert Fisher & James E. Katz, *Social Desirability Bias and the Validity of Self-Reported Values*, PSYCH. & MARKETING 105–120 (2000).

26. Timothy D. Wilson & Elizabeth W. Dunn, *Self-Knowledge: Its Limits, Value, and Potential For Improvement*, 55 ANN. REV. PSYCHOL. 17.1, 17.2–17.7 (2004).

27. *Assessment for Learning*, LITERACY TODAY (Mar. 12, 2018), <https://www.literacytoday.ca/old-sections/assessment-for-learning>.

These latter outcomes fall within the cognitive domain. We seek to discover our students' ability to recall, describe, apply, analyze, evaluate, or create knowledge. Yet in assessing the development of professional identity, more than knowledge or cognitive skills are at play. Rather, the outcome of professional identity formation is one that is, by definition, subjective and individual.

As we delineate the subset of learning outcomes that constitute professional identity, we find the need to assess across all three learning domains of knowledge, skills, and values. Clearly there is some knowledge content that accompanies the formation of professional identity. Being able to access the history, traditions, and stated values and norms of a profession is a first step toward socialization into that profession.<sup>28</sup>

Likewise, there are numerous skill sets that are part of formation, many of which can be monitored, measured, practiced, and assessed using self-evaluation, observation of practice, and assessment of reports. For example, the development of diligent work habits can be assessed by collecting even such prosaic data as attendance records or compliance with deadlines or formatting directions. The ability to engage in reflective practice can be assessed through journal essays or personal conferences, aided by the use of rubrics expressing objective standards for development of this skill.<sup>29</sup> Respectful interpersonal communication and teamwork skills can be assessed through self-evaluations, third-party observations, and peer evaluations.<sup>30</sup> Again, rubrics for these observations provide data for measuring achievement of the component parts of this set of outcomes.

Yet, there remains a part of the learning outcome of professional identity that is more difficult to assess with these tools. Much of the knowledge required for formation of a professional identity is held peculiarly within oneself as much as within the corpus of legal knowledge. Knowing the values and norms of a profession and integrating them into one's own value system are two different things. The latter is not a task of knowledge acquisition but rather one of personal transformation. This requires the ongoing deepening of self-awareness and requires opportunities for self-discovery.<sup>31</sup>

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28. ABA Accreditation Standard 303(a)(1) requires that every law school require "one course of at least two credit hours in professional responsibility that includes substantial instruction in the history, goals, structure, values, and responsibilities of the legal profession and its members." ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2016–2017, at 16 (2016), [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2016\\_2017\\_aba\\_standards\\_and\\_rules\\_of\\_procedure.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2016_2017_aba_standards_and_rules_of_procedure.authcheckdam.pdf) (discussing Standard 303(a)(1)).

29. Barbara Glesner Fines, *Assessing Reflection* (2014), <http://law2.umkc.edu/faculty/profiles/glesnerfines/REFLECTION.pdf>.

30. Barbara Glesner Fines, *Using Team Based Learning in the Professional Responsibility Course* (July 18, 2012), <http://law2.umkc.edu/faculty/profiles/glesnerfines/Using%20Team%20Based%20Learning%20in%20the%20Professional%20Responsibility%20Course.pdf>.

31. "Students need examples of professional ideals, connected to models of ethical commitment with an opportunity to reflect on their own emerging professional identity in relation to those



Finding tools to assess and engage students in this process requires that we look to other disciplines for guidance and, most importantly, that we recognize the limits of those tools. For example, surveys and inventories may be helpful tools in assessing student progress toward self-knowledge and internalization of professional values and attitudes. However, surveys are subject to significant limitations. “[M]any people, particularly poor performers in comparison with their peers, are not particularly accurate at self-assessment and tend to have a higher impression of their knowledge and skills than is the reality.”<sup>32</sup> Does that mean we should wait until we have survey methods that are not subject to these limitations? Not if we are serious about moving beyond the implicit and unintentional methods of professional formation we currently use. However, it does mean that we need to continually re-assess our tools and approach the task of assessment with a significant degree of humility.

For example, over the past two decades, law schools have experimented with tools such as the Myers-Briggs Type Indicator to help students understand themselves and others.<sup>33</sup> However, current scientific research casts doubt on the utility of these popular instruments, negating both the duality implicit in this test and the suggestion that results from the test inform one’s abilities.<sup>34</sup> Similar critiques and concerns can be found in discussions of a host of other inventory tools. All are subject to the Forer Effect: people give credence to vague but positive descriptions of their personality with a patina of authority.<sup>35</sup> Nonetheless, when used as tools for exploration of aspects of one’s experience and personality, rather than labels that have predictive or evaluative effect, these tools may allow students and faculty to engage in more sophisticated self-assessments.<sup>36</sup>

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ideals and models.” Clark Cunningham, *Being a Lawyer, Becoming a Hero*, 7th International Legal Ethics Conference, Fordham Law School, New York City (July 14, 2016), <http://www.teachinglegalethics.org/becoming-hero> (last visited Jan. 28, 2018).

32. Neil Hamilton, *Formation-of-an-Ethical-Professional-Identity (Professionalism) Learning Outcomes and E-Portfolio Formative Assessments*, 48 U. PAC. L. REV. 847, 858 n.24 (2017) (citing studies).

33. DON C. PETERS & MARTHA M. PETERS, JURIS TYPES: LEARNING LAW THROUGH SELF-UNDERSTANDING (2007); SUSAN SWAIM DAICOFF, LAWYER, KNOW THYSELF: A PSYCHOLOGICAL ANALYSIS OF PERSONALITY STRENGTHS AND WEAKNESSES (2004); Ian Weinstein, *Learning and Lawyering Across Personality Types*, 21 CLINICAL L. REV. 427 (2015); Barbara J. Gilchrist, *The Myers-Briggs Type Indicator as a Tool for Clinical Legal Education*, 10 ST. LOUIS U. PUB. L. REV. 601 (1991).

34. See, e.g., Adam Grant, *Goodbye to MBTI, the Fad That Won’t Die*, PSYCHOL. TODAY BLOG (Sept. 18, 2013), <https://www.psychologytoday.com/blog/give-and-take/201309/goodbye-mbti-the-fad-won-t-die>.

35. Weinstein, *supra* note 33, at 427.

36. *Id.* at 453 (noting the limitations of the MBTI, Profession Weinstein describes how it has served as a “useful, non-judgmental framework for accounting for the challenges and opportunities that arise in the dimension of personality as we learn and as we work with the infinite variety of individuals we meet as students, clients, and in the myriad roles in which lawyers work with others”).

With any tool, whether it is journals, surveys, or personality/style questionnaires, the value of the tool is not the product but the conversation and coaching that the tool generates. One under-utilized tool for generating these conversations is the use of drawings. Multiple disciplines tell us that visual representations can provide powerful insights.

Art teaches us that pictures convey emotions and ideas in a way that permits others to enter into another's worldview and explore the identity of the artist or of another.<sup>37</sup> "In a very real sense, drawings make parts of the self and/or levels of development *visible*."<sup>38</sup> Data visualization teaches us that a picture allows us to see trends, relationships, and themes that are otherwise hidden by a mass of data or words.<sup>39</sup> However, perhaps the best known use of drawings to explore another's identity comes from the field of psychology, where drawings have been used "as a projective technique . . . to explore conscious or unconscious issues and experiences."<sup>40</sup> Particularly with children, the use of the "draw-and-talk" technique has provided psychologists and social workers with important tools to facilitate understanding a child's world-view.<sup>41</sup>

For some, this latter use of drawings becomes a basis for objection in using drawings as tools for assessment of student learning or research. However, when drawings are used as a stimulus for conversation about reflections, perceptions, and views, rather than unilaterally interpreted by professors for their meaning, the objection is met. "When participants are engaged in interpreting the messages that their drawings were intended to convey, the use and interpretation of the drawing moves beyond the enclave of psychologists."<sup>42</sup>

If the goal of assessment of professional identity is less to determine whether a student has acquired a particular knowledge base or mastered a particular skill, but is rather to "provide repeated opportunities for reflection on the responsibilities of the profession and reflective self-assessment in general,"<sup>43</sup> drawings can be excellent assessment tools. Drawings can provide a catalyst and focus for communication about professional identity. Those conversations are powerful opportunities for learning and growth.

37. Art and identity is a core lesson in art appreciation courses. See, e.g., *Investigating Identity*, MoMA Learning, [https://www.moma.org/learn/moma\\_learning/themes/investigating-identity](https://www.moma.org/learn/moma_learning/themes/investigating-identity) (last visited Jan. 28, 2018) ("Many artists use their work to express, explore, and question ideas about identity."); *Unit 6 Lesson 1: Identity*, OXFORD ART ONLINE, <http://www.oxfordartonline.com/page/Unit-6-Lesson-1> (last visited Jan 28, 2018); The British Museum, *Art & Design: Identity*, <https://www.britishmuseum.org/pdf/07%20Identity%20FINAL.pdf>.

38. Claudia Mitchell et al., *Drawings as Research Method*, in PICTURING RESEARCH: DRAWING AS VISUAL METHODOLOGY 19, 19 (Linda Theron et al. eds., 2011) [hereinafter *Drawings as Research*].

39. EDWARD TUFTE, *THE VISUAL DISPLAY OF QUANTITATIVE INFORMATION* (1983).

40. *Drawings as Research*, *supra* note 38, at 19.

41. *Id.*

42. *Id.*

43. Hamilton, *supra* note 20, at 4.

However, because identity is so personal and elements of it are sometimes beneath the surface of our consciousness, having a tool to facilitate those conversations can be very useful. Drawing can provide “a means of exploring their emerging sense of professional identity and clarifying their value commitments.”<sup>44</sup>

#### IV. PICTURING PROFESSIONALS: RESULTS OF A TEN-YEAR EXPERIMENT

For many years, to determine a baseline of student perceptions (and hopes and fears) about what a professional identity means to them and their future career, I have asked students on the first day of Professional Responsibility class to draw a picture of a “professional.” I give the students about five minutes for their drawing exercise and ask them to avoid using words, but simply draw. I ask them not to be concerned about artistic quality—stick figures are entirely acceptable if they convey their image of a professional. I have the students hand in their drawings and immediately show the class the result of this exercise using the classroom document camera. I ask the students to reflect on what they see as I quickly display picture after picture. There is a good deal of laughter, chatter, and engagement as the pictures provide a rich basis for discussing the meanings of professionalism. I used the exercise more as an ice-breaker than as any research tool and I do not present the results of that exercises here as research, but rather as a demonstration of how this tool might be used for assessment of learning in a more structured way than my own classroom exercise.

I simply do not recall how or where I got this idea. It may have been from a faculty retreat I attended in my second year of teaching. The purpose of the retreat was to address collegiality concerns that had arisen among the faculty and it was facilitated by a therapist. The first exercise she required of us was to draw a picture of one of our favorite things and then to write five adjectives about that thing. After doing so, we were then instructed to stand, hold up our picture, and say “I am \_\_\_” and then recite the five adjectives. The retreat became known as the notorious “crayons and play-dough” retreat and has never been repeated. The feeling of saying “I am growing, rooted, juicy, red, and tasty” (my favorite thing was an apple tree)<sup>45</sup> to my colleagues as a pre-tenured, young, female professor has never left me. It has made me careful when considering the use of drawings as tools for personal exploration. For this reason, I never ask the students to

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44. Susan M. Cox et al., “My Turbinado Sugar”: *Art-Making, Well Being and Professional Identity in Medical Education*, 8 *ARTS & HEALTH* 65 (2016), <http://www.tandfonline.com/doi/abs/10.1080/17533015.2015.1037318>; see also Daniel Woods et al., *The Teacher in Me: Exploring Preservice Teacher Identity Through Self-portrait*, 8 *J. MULTICULTURAL EDUC.* 112 (2014).

45. In researching this article, my discomfort in being asked to share my drawing was confirmed. See, e.g., Mathabo Khau, *Teacher Sexuality Depicted: Exploring Women Teachers’ Positioning Within Sexuality Education Classrooms Through Drawings*, in *PICTURING RESEARCH*, *supra* note 38, at 119, 120, 124–125 (noting a teacher’s depiction of sexuality of self as fruit tree).

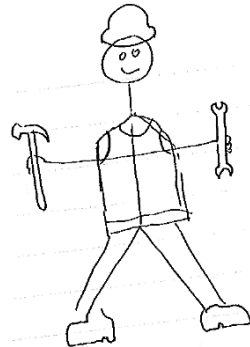
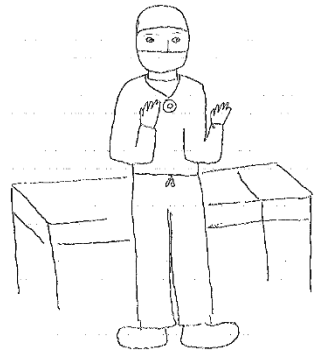
put their names on their drawings and I always warn them that I will be showing the drawings to the class as a whole.

For purposes of this article, I selected the five sets of pictures from my professional responsibility classes in 2007, 2012, and 2017.<sup>46</sup> In 2007 and 2012, the exercise took place on the first day of class. In 2017, I solicited drawings at about the midpoint of the course. I do not present these drawings as evidence about the image my students have of “professional.” Rather, the drawings are shared here as evidence of how drawing can generate a rich menu of topics for conversation and coaching.

### A. *Not Just Attorneys*

Merriam-Webster’s Dictionary defines “profession” as: “a calling requiring specialized knowledge and often long and intensive academic preparation.”<sup>47</sup> For nearly everyone, a professional is someone who has been devoted to becoming an expert in a particular field. In approximately ten percent of the pictures, the occupational category students depict is not legal. Doctors, clergy, and police or military officers sometimes appear. These reflect the historical conception of these occupational categories as a “calling.”<sup>48</sup>

However, to the extent that long and intensive academic preparation is becoming necessary for more and more careers, one might consider that all jobs have become “professions” in some sense. Accordingly, other occupational categories appear in my students’ drawings as well. Mechanics, secretaries, even grocery store clerks, have appeared as “professionals.” One might hypothesize that these



students are envisioning a professional as one who is dedicated to quality in their job. However, this set of drawings may also reflect the fact that about half of my students are first generation professionals, and must integrate their professional identity with that of the occupational identities of their families. In any case, these drawings could provide one starting point for a

46. Each of these classes had enrollments of approximately eighty students. Nearly all students participated in the exercise.

47. *Profession*, MERRIAM-WEBSTER ONLINE DICTIONARY, <https://www.merriam-webster.com/dictionary/profession> (last visited Feb. 1, 2018).

48. *Id.*

rich discussion of these topics that may otherwise be left beneath the surface of the educational process.

B. Status and Wealth

The most common non-lawyer pictures of professionals are of sports figures. Nearly every class produces two or three athletes from a variety of sports. These pictures draw upon the distinction between professional and amateur, which in our society is, often as not, a line drawn on the basis of whether one is paid for one’s skills.<sup>49</sup> This is but one of several images that reflect the central role of money in student conceptions of themselves as professionals.



About fifteen percent of pictures regularly include symbols of wealth and status. This is not unexpected. In any aspect of professional identity formation, social status is a likely element.

Occupational identities contain an implicit reference to the person’s position in the larger society, tending to specify the positions appropriate for a person doing such work or which have become possible for him by virtue of his work. The most frequent reference is, of course, to social-class position and to the opportunities for class mobility opened up or closed off by entrance into the particular occupation.<sup>50</sup>

However, the preoccupation with wealth and status has a significant consequence for professional identity formation.<sup>51</sup> In a culture in which rewards such as grades are privileged, conversations about the relative importance of those extrinsic rewards to a successful and satisfying career are critical.



49. Oxford English Dictionary defines the adjective “amateur” as “Engaging or engaged in without payment; non-professional.” *Amateur*, OXFORD LIVING DICTIONARIES, <https://en.oxforddictionaries.com/definition/amateur>.

50. Howard S. Becker & James Carper, *The Elements of Identification with an Occupation*, 21 AM. SOC. REV. 341, 346 (1956).

51. The empirical work of Professors Sheldon & Krieger consistently has demonstrated that the most important factors in well-being are intrinsic, rather than extrinsic, motivations. 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 (2004); 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 (2007); Kennon M. Sheldon & Lawrence S. Krieger, *What Makes Lawyers Happy?: A Data-Driven Prescription to Redefine Professional Success*, 83 GEO. WASH. L. REV. 554 (2015).

### C. Images of Time

Students are keenly aware of the role of time in the work life of a professional. About five percent of images contain some reference to time across all years of the exercise. Before 2017, these images preceded any discussion in the course of time-based billing methods. This reflects the strength of this approach to valuing a professional's services. It may also reflect the reality of the formation process that students experience in law school as they have faced time pressures unlike most have experienced in prior educational settings. To explore this topic more fully, one could provide a prompt to ask students to draw a picture of the role of time in their professional life and then engage students in a discussion of the results.



### D. Other Symbols of a Professional

The most common image in all the pictures is a briefcase, appearing in fifty-five percent of the drawings. One wonders if law schools should not provide a “briefcase ceremony” much as medical schools have “white coat” ceremonies to celebrate the transition from student to doctor.<sup>52</sup> Other common images that appear to be related to education, preparation, or knowledge included books (twelve percent), and degrees or diplomas (nine percent).

### E. A Well-Heeled Profession: Negotiating Gender and Professional Identity

Very early on in conducting this exercise (in the early 1990s), all the representations of professionals were of uncertain gender or were men. In those days, I conducted this exercise at the chalk board, asking students to volunteer to come to the board and draw pictures. One day, a student had

52. Raanan Gillon, *White Coat Ceremonies for New Medical Students*, 26 J. MED. ETHICS 83 (2000) (noting a number of law schools have begun to include “matriculation ceremonies” as part of their orientation for new law students).

drawn a stick figure of a professional—briefcase in hand—and a woman then raised her hand and marched to the board. Glancing back at the class with a smile, she firmly drew a triangle dress on the stick figure—defiantly asserting that women could be professionals. In the years since, the gender identity of the figures has steadily changed. In 2007, thirty percent of drawings were of neutral or uncertain gender.<sup>53</sup> Of the seventy percent that could be characterized as identifying gender, forty-five percent were clearly women. By 2017, the percentage of gender-neutral drawings had decreased to about ten percent, but the gender split remained the same.

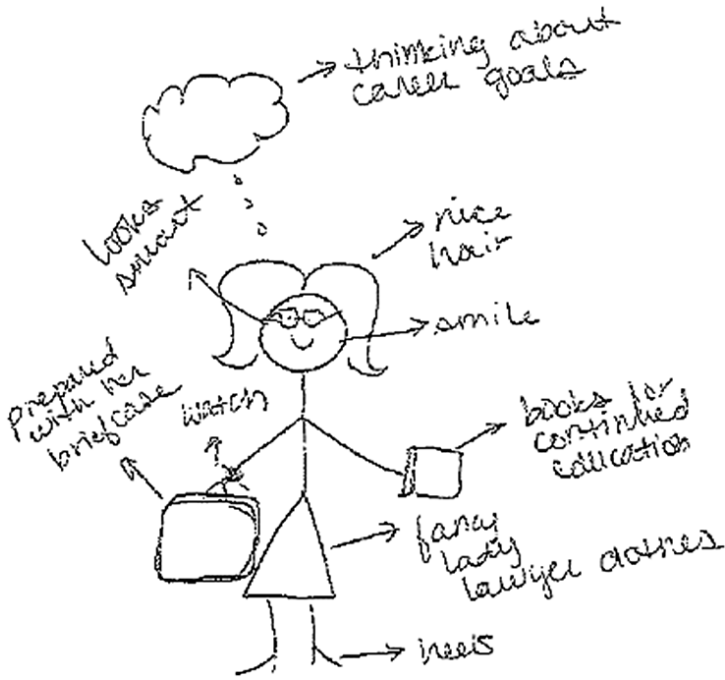
Moreover, in recent years, gender debates have emerged. In the 2017 set of drawings, all drawings that could be characterized as depicting men wore ties (thirty-eight percent). However in the drawings in which the individual depicted could be characterized as a female, a greater variety of clothing choices appeared. For example, in six of the twenty-nine drawings depicting women, the individual was wearing pants. In three drawings in particular, a debate about the role of footwear was engaged. Despite my admonition to draw images only and omit verbal descriptors, three drawings of women contained extensive and conflicting commentary about the proper dress for a professional.<sup>54</sup>

In one image, the professional has “nice hair,” “fancy lady lawyer clothes,” and “heels.”

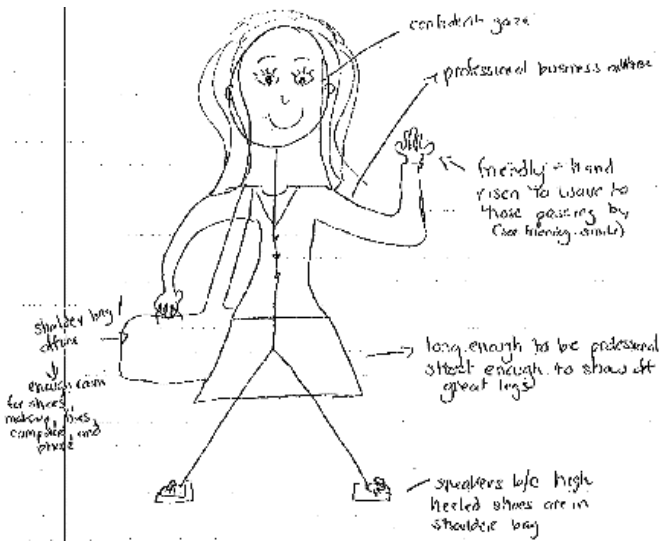
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53. I include within this number, the basic stick figure, though one could argue, based on my earlier experience, that even this figure is a default male model.

54. Because of the random way in which I gather the drawings from the class, I cannot say whether these three students sat next to one another and were actually engaged in debate—however, the presence of the commentary suggests that engaging this exercise in groups could extend conversation about the issues that appear.

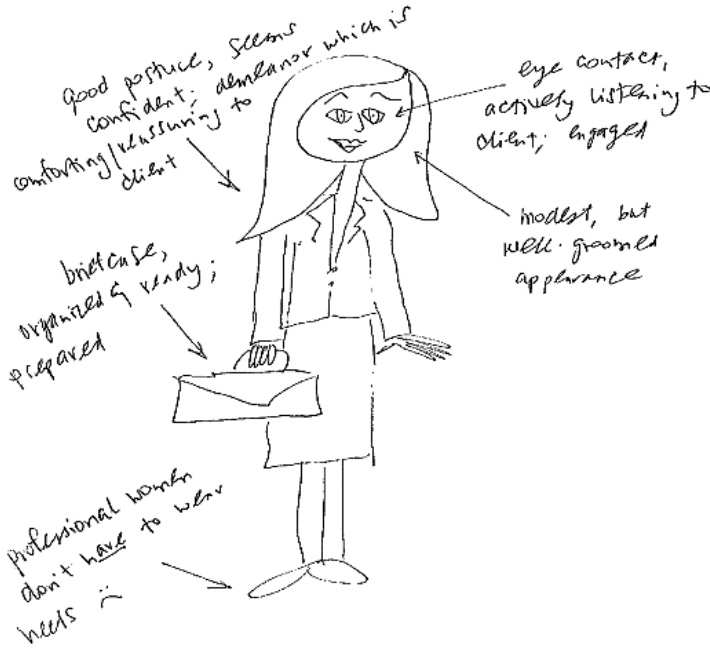


In a second drawing, the woman has “professional business attire” a skirt that is “long enough to be professional but short enough to show off great legs” and “sneakers b/c high heeled shoes are in shoulder bag.”





Finally, a third drawing depicts a woman with a “modest but well groomed appearance” and flat shoes with a note that “professional women don’t *have* to wear heels ☺.”



This attention to attire highlights the importance of recognizing that the process of professional formation presents unique challenges for those whose identity does not mesh easily with the dominant image presented to them. These “outsiders” must negotiate consciously and regularly how they will integrate their personal and professional identities. The issue has long been explored in the literature in law<sup>55</sup> and across a range of professions.<sup>56</sup> As law schools move to more explicitly attend to professional identity formation, the need to respect the individual and group identities students bring to this formation process is evident.<sup>57</sup>

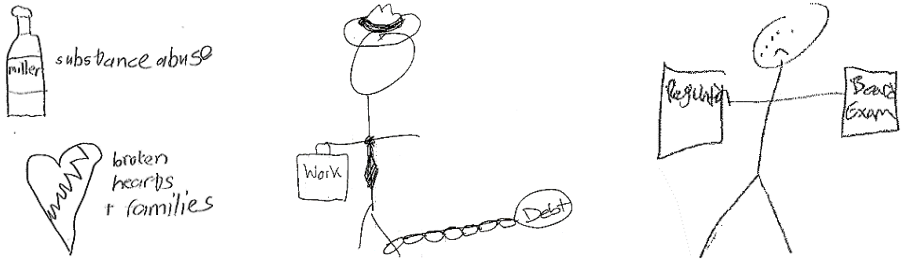
55. Alice D. Jacobs, *Women in Law School: Structural Constraint and Personal Choice in the Formation of Professional Identity*, 24 J. LEG. EDUC. 462 (1972); Marina Angel, *Women in Legal Education: What It's Like to Be Part of a Perpetual First Wave or the Case of the Disappearing Women*, 61 TEMPLE L. REV. 799 (1988); Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1 (1994).

56. ELLA L. J. EDMONDSON BELL & STELLA M. NKOMO, *OUR SEPARATE WAYS: BLACK AND WHITE WOMEN AND THE STRUGGLE FOR PROFESSIONAL IDENTITY* (2001).

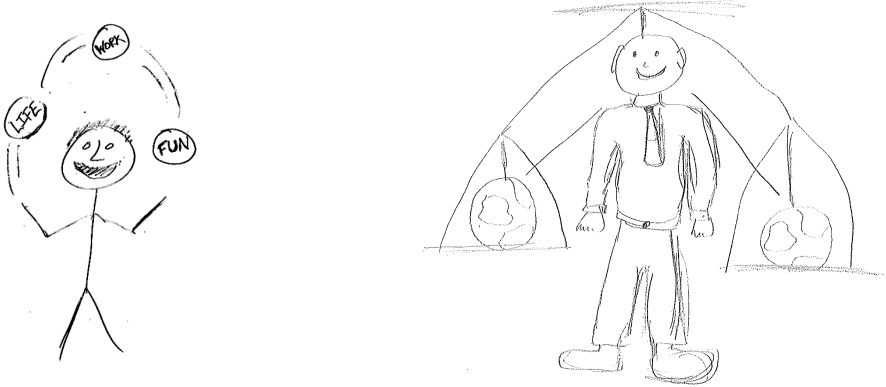
57. Of particular interest this work is the linguistic analysis of law school undertaken by ELIZABETH MERTZ, *THE LANGUAGE OF LAW SCHOOL: LEARNING TO “THINK LIKE A LAWYER”* (2007), which describes the depersonalization effect of classroom dialogues.

### F. Worries and Fears

In ten percent of the drawings, the professional has an expression of sadness. Seven percent of the drawings depict some significant worry, fear, or negative aspect of being a professional. These include: late nights working, substance abuse, the emotional toll of the practice, worries about the bar examination, and the financial worries of law school debt. Again, these are topics that must find their way into the law school conversation in more intentional and systematic ways, for they are clearly topics of concern to students.



In the 2017 drawings, two drawings showed an emerging confidence in the ability to balance the responsibilities of the profession.



What led to this confidence? A conversation to uncover that development would inform my teaching and improve ongoing discussions with students to identify and build upon their strengths as they pursue their careers.

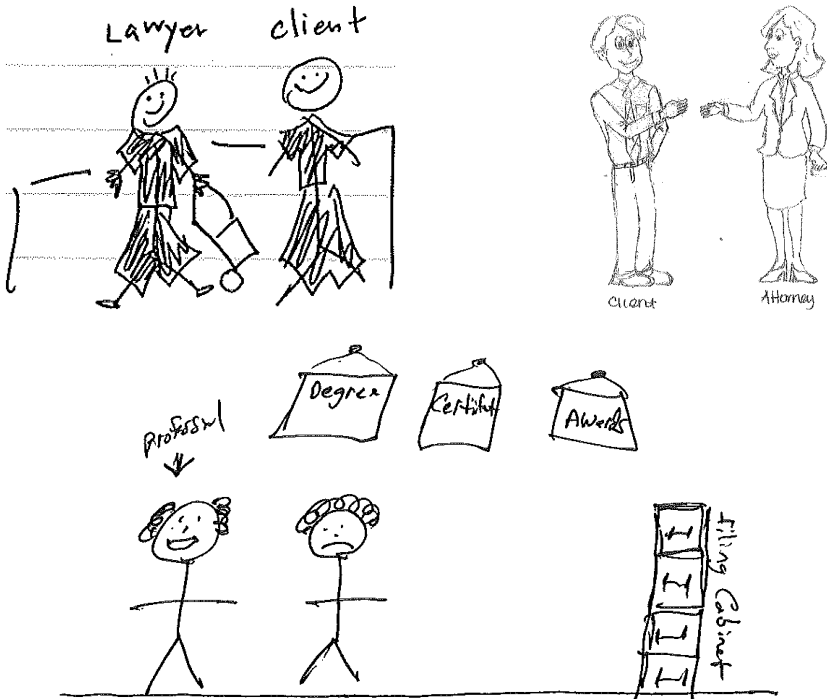
### G. Changes in Drawing Content at Mid-Semester

In 2017, instead of using this exercise as an introduction to the Professional Responsibility course, I introduced the exercise at the mid-point in the semester. I was surprised to see a number of differences emerge from the drawings.

First, and most gratifying to me, clients appear. For years, these pictures did not include another person other than the professional. The first time a client appeared was in 2002, when the professional depicted was an attorney, drawn with horns and a menacing expression, facing an elderly

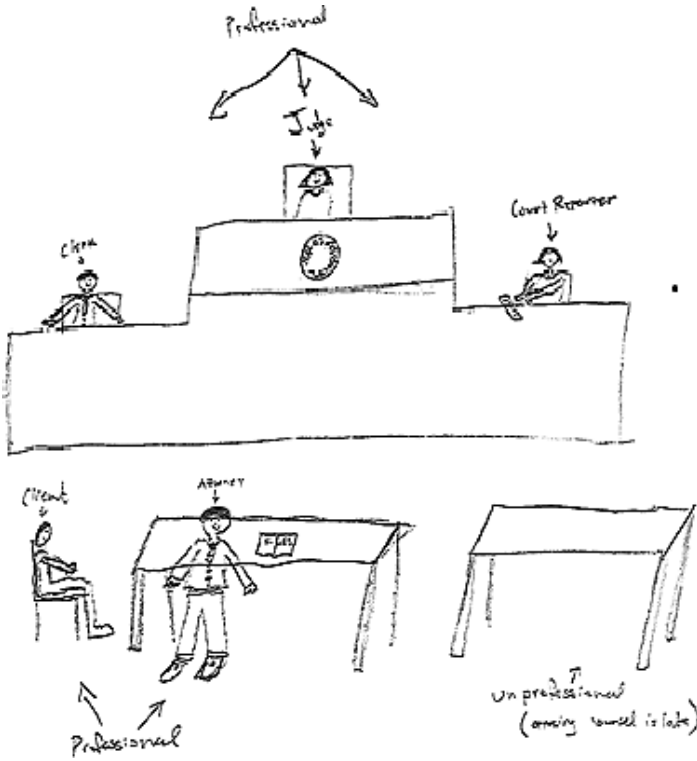
woman on her knees begging the attorney to “please let me keep my home.” It was not until 2005 that the first client appeared in these pictures. Over the ensuing years, clients appeared in only two or three pictures out of a class of over eighty students.

I used this absence of others in the drawings as a way of highlighting one of the themes of my Professional Responsibility course: that students must “keep the client in the picture.” One might ask if there was a difference in the prompt provided to the students that would account for this difference; however, the prompt was the same as it has been for years: “draw a picture of a professional.” That the 2017 drawings contained the same percentage of non-lawyer professionals is some indication that the students were not motivated by the prompt to include clients. Rather, I would like to think that clients appear in the drawings because the prior five weeks of readings, assignments, and class discussions had focused on the attorney-client relationship. It is a small sign, and without further conversation and investigation and other assessment tools, I would not rely on the drawings alone as an assessment of that learning outcome. However, the drawings provide a powerful tool for holding a discussion of that outcome and the students’ progress.



Other themes of professionalism appeared as well. For example, this courtroom scene depicts all of the individuals in a courtroom (including the client) as “professional.” The empty counsel table, however, is noted as

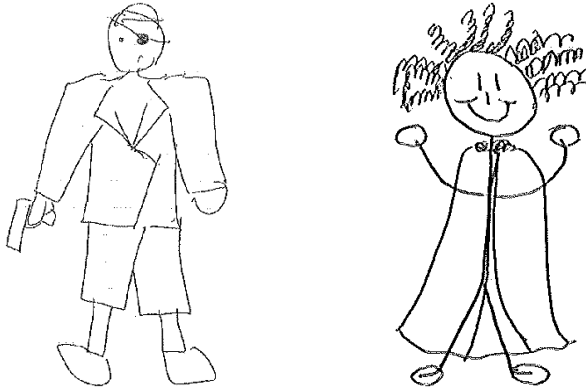
“unprofessional (opposing counsel is late).” Here, professional has become less a person than a value.



The impact of our prior weeks of study of confidentiality now gave meaning to the briefcases and stacks of paper that had appeared in earlier drawings—no longer empty vessels, they now contained confidential information to be guarded.



Likewise, the study of models of the attorney-client relationship<sup>58</sup> appeared to have borne fruit in depictions of attorneys as superheroes and hired guns, raising the possibility of using drawings as a method of extending this particular lesson (“draw a picture of a model of the attorney-client relationship”).



## V. CONCLUSION

There are several lessons to be drawn (no pun intended) from this exercise in using drawings as a tool for assessment, reflection, and conversation.

First, one need not have a highly-refined rubric with highly refined-degrees of gradation to begin gathering data about student learning. For some outcomes, one can simply observe and count. How many students drew a client? How many students drew happy lawyers? This can be true for all kinds of assessments, even classic essay exams: how many students followed directions? How many students cited the wrong standard? How many students used a particular fact?<sup>59</sup>

Second, assessment activities and learning activities can be one and the same. Particularly when assessment is for formative purposes—that is, to support and develop learning—data need only generate exploration, conversation, and further learning to be effective. Validity and reliability are less

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58. BARBARA GLESNER FINES, *PROFESSIONAL RESPONSIBILITY: A CONTEXT AND PRACTICE CASEBOOK* 164–66 (2013).

59. See Barbara Glesner Fines, *Using Exams for Measuring Learning Gains*, Presentation at 2015 AALS Mid-Year Workshop on Measuring Learning Gains: Institutional Effectiveness for the New Era (June 23, 2015), <https://www.aals.org/wp-content/uploads/2015/06/Abstract-Barbara-Glesner-Fines.pdf>.

important than engagement and extension.<sup>60</sup> Assessment tools are often built through a trial and error process.<sup>61</sup>

Third, just as in any other assessment, what one asks determines in part what one gets.<sup>62</sup> Consider carefully directions and questions when crafting assessments. For example, consider what the drawings in this exercise might look like if the question was “draw a lawyer” or “draw a professional at work” or “draw professionalism.” The more directive the question, the more the results will be narrow and focused. It is especially critical in using drawings to remind students that the quality of their artwork is *not* important.<sup>63</sup>

Fourth, comparisons are helpful. Comparing student outcomes over time (from the beginning of a course to the end; from semester to semester) is necessary if we are going to use the results of assessment to gauge our own effectiveness in guiding student learning.

Fifth, conversations are crucial. While drawings may give some raw and incomplete data for assessment, the most complete and accurate data is to be found in the conversations and reflections that these drawings generate. These conversations can be verbal or written, individual or in groups. Without these conversations, however, little can be drawn from drawings alone other than questions. With reflection and conversation, much can be learned and shared. A clinical analysis of the drawing itself (the visible) is insufficient to provide deep understanding. Drawing as a research tool must be complemented by verbal research methods that encourage collaborative meaning—making and allowing the drawer to give voice to what the drawing was intended to convey. When the analysis is shared in this way, valid knowledge production occurs.<sup>64</sup>

Finally, faculty must review and use the data they gather from assessments. Conducting an assessment and gathering data is not the point of assessment activities. For these activities to achieve their goal of improving student learning—both for the students engaged in the assessment and for future students—we must analyze our results, share them with students, and use those results to refine the learning activities we offer.

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60. Hamilton, *supra* note 32, at 858 (“[V]alidity and reliability are of highest concern if the test is a high-stakes norm-referenced assessment, of significant concern if the test measure complex cognitive constructs, and of more moderate concern if the test is fostering interpersonal and communication abilities and self-reflection.”).

61. Barbara Glesner Fines, *Lessons Learned about Classroom Teaching from Authoring CALI Lessons*, 38 WM. MITCHELL L. REV. 1094, 1114 (2012) (describing how distractors in multiple choice questions can be generated from classroom assessment techniques such as minute papers).

62. *Id.* at 1106–1112 (discussing effective formulation of questions based on lesson objectives, response, feedback, and follow-up).

63. *Drawings as Research*, *supra* note 38, at 23 (“the invitation needs to reassure them that the focus is on the content of their drawing, and not on the quality of it as a drawing.”).

64. *Id.* at 25.