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ARTICLE

BRINGING PURPOSEFULNESS TO THE AMERICAN LAW SCHOOL'S SUPPORT OF PROFESSIONAL IDENTITY FORMATION

LOUIS D. BILIONIS*

I. INTRODUCTION

The heart of the charge was a lack of purposefulness.

When it promoted the formation of professional identity and purpose as central to the development of law students into lawyers, the Carnegie Foundation for the Advancement of Teaching's *Educating Lawyers*¹ was not posing an idea that is repugnant to the mission of the typical American law school. It is the rare school that would disavow the goal of graduating well-rounded and well-grounded new lawyers who have made good progress toward their socialization in the legal profession.² The problem that *Educating Lawyers* perceived was the failure of law schools to pursue the professional formation dimension of the educational endeavor with anything like the intentionality and drive for excellence that they exhibit when helping students to think like a lawyer.³ Professional formation was left by

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1. WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 28 (2007) [hereinafter *EDUCATING LAWYERS*].

2. I am speaking of law schools in their institutional capacity. Some law professors are uncertain of the role they personally can play in their students' development of a professional identity and sense of purpose. Faculty particularly may wonder whether professional identity formation implicates contestable values that should be left to the student personally, as well as whether they as faculty members possess expertise in the matter. See, e.g., Roger C. Cramton, *The Ordinary Religion of the Law School Classroom*, 29 J. LEGAL EDUC. 247, 253 (1978); *EDUCATING LAWYERS*, *supra* note 1, at 132–133 (noting “the strong impression that in most law schools, the apprenticeship of professionalism and purpose is subordinated to the cognitive, academic apprenticeship” and that “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”).

3. See *EDUCATING LAWYERS*, *supra* note 1, at 128 (concluding that “law schools need to further deepen their knowledge of how the apprenticeship of professionalism and purpose works[.] . . . improve their understanding of their own formative capacity, including learning from their

and large to chance. It was the hoped-for consequence of the student's travails in the bramble bush that is American legal education.⁴

There is reason today to think better of legal education's attention to what *Educating Lawyers* called the law student's third apprenticeship.⁵ A growing number of schools have instituted programs to assist students in their formation of a professional identity and sense of purpose.⁶ Many have declared aspects of professional formation, under varying articulations, to be among the stated learning outcomes of their program of legal education.⁷ Thanks to the leadership of the Holloran Center for Ethical Leadership in the Professions at the University of St. Thomas School of Law, a nationwide network of legal educators dedicated to advancing the support of professional identity formation now exists. Its participants collaboratively undertake initiatives on stage-development competency rubrics, corresponding assessments and pedagogies, faculty and staff development, and

own strengths, as well as those of other professions[, . . . and] attend more systematically to the pedagogical practices that foster the formation of integrated, responsible lawyers").

4. Cf. K. N. LLEWELLYN, *THE BRAMBLE BUSH* 112 (Oxford Univ. Press, 2008) (1930) (describing the law as "the thicket of thorns" and the study of the law as "[h]igh sun, no path, no light, thirst and the thorns"). Karl Llewellyn's classic advice to students was total immersion in the traditional law school's rigorous cognitive curriculum and the co-curricular experiences like law review that emphasized the lawyer's cognitive skills: "[e]at law, talk law, think law, drink law, babble of law and judgments in your sleep. Pickle yourselves in law—it is your only hope. And to do this you need more than your classes and your casebooks, and yourselves. You need your fellows. You need your neighbor on the right. . . . All of this becomes fairly obvious if you but glance at some of the things which go to make up the practice of the law." *Id.* at 102; see also Thomas L. Shaffer & Robert S. Redmont, *Legal Education: The Classroom Experience*, 52 *NOTRE DAME LAW.* 190 (1976). "American legal education has always said or implied that its commodity is the graduate who can be a good lawyer, and that nothing but American legal education itself is capable of producing this commodity. . . . The point here is neither the claim nor the fact that the criterion is self-referring; the task is to describe the system as it is described to beginning law students. That description is that their professionalism will come as a result of enduring the law-school process, but not as a result of any discrete part of the process. It will not come, for instance, as a result of assimilating information. Nor will it come as a result of taking courses (even though the visible substance of legal education is almost all in courses). Nor will it come as a result of the direct effect of modelling one's behavior on professors. . . . What appears to be the heart of this communication is that if one works very hard the commodity will appear." *Id.* at 192.

5. See *EDUCATING LAWYERS*, *supra* note 1, at 28.

6. See, e.g., Louis D. Bilonis, *Professional Formation and the Political Economy of the American Law School*, 83 *TENN. L. REV.* 895, 901–902 (2016) (discussing various programs).

7. See 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, 361–363 (2018) (noting that forty-nine out of seventy law schools that posted learning outcomes as of January 20, 2017, adopted outcomes that exceed the minimum of ABA Standard 302(c) and "further define 'professional and ethical responsibilities to clients and the legal system' to include 'values that students are expected to understand and integrate into their professional lives'"); see also ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2017–2018, at 15–16, 23–24, https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2017-2018ABASStandardsforApprovalofLawSchools/2017_2018_aba_standards_rules_approval_law_schools_final.authcheckdam.pdf [hereinafter ABA STANDARDS] (Standard 302 (requiring and specifying learning outcomes); Standard 314 (requiring assessment of student learning); Standard 315 (requiring evaluation of program of legal education, learning outcomes, and assessment methods)).

more.⁸ As William M. Sullivan, an astute student of American professional education, has observed, there is distance yet to be traveled, “[b]ut if history is a guide, the new focus in legal education on professional identity formation and the creation of core groups of faculty and staff at different schools around the country portend a possible breakthrough moment” with the potential to effect a “catalytic reframing” of legal education.⁹

With coordinated movement and mounting sense that *a movement* indeed may be underway, the prognosis for stronger emphasis on professional formation in legal education has never been better. But the opportunity will not be fully seized if law schools do not supply the all-important ingredient that *Educating Lawyers* found to be missing—*purposefulness*. Schools intent on practicing purposefulness will want to keep Professor Neil Hamilton’s contribution to this symposium close at hand.¹⁰ His distillation of the lessons to be learned from medical education’s progress on the professional identity formation front can serve as a comprehensive guide for the legal academy as it proceeds.

What I offer here might be regarded as a foreword for law faculty and staff who are readying to dig into the work that Professor Hamilton blueprints. It is a meditation on the ways of thinking—if you will, the habits of the mind—that can help the law school proceed purposefully in its support of the formation of professional identity. Sympathetic to law schools as collectives of people and as institutions, and affectionate toward their mores and idiosyncrasies, these reflections are tendered to help faculty and staff keep the tasks ahead in focus and enable themselves to move forward with greater confidence. There is no call here to abandon prevailing approaches to the cognitive and skills dimensions of a law student’s education that *Educating Lawyers* called the first and second apprenticeships, respectively.¹¹ When it comes to the third apprenticeship, however, a distinctive change in perspective is necessary—a reorientation in thinking about law students, their law school, and American legal education that faculty and staff should find invigorating. The change in the way of thinking is empowering, revealing opportunities with time, talent, space, and experiences that have been underexplored. It can leave faculty and staff with a justified sense of optimism, for it shows that important progress in American legal education is within closer reach than most have imagined.

8. See, e.g., *Report on 2014–2015 Academic Year*, HOLLORAN CTR. FOR ETHICAL LEADERSHIP PROFS., Oct. 2015, at 7–10 (describing workshops held in 2013, 2014, and 2015, attended by teams from twenty-three law schools, focusing on professional formation in the curriculum, pedagogy, and culture of law schools).

9. William M. Sullivan, *Professional Formation as Social Movement*, 23 PROF. LAW. 26, 31 (2015).

10. See Hamilton, *supra* note 7.

11. See EDUCATING LAWYERS, *supra* note 1, at 28 (describing the intellectual and cognitive first apprenticeship of the law student’s development and the “second apprenticeship . . . of expert practice shared by competent practitioners”).

II. FIRST THINGS FIRST

Let us start with some propositions that are pivotal to orienting thinking about a law school's potential in the professional formation arena.

A. *Choose a Workable Conception of Professional Identity*

Purposefulness means being intentional about the right things, about focusing on the appropriate goals—and so, purposefulness about the formation of professional identity entails having a clear idea about what professional identity entails. It is important for law schools to remember that a clear idea is not the same thing as a bulletproof, comprehensive theory. Professional identity admits to varying definitions. This is not unusual—many accepted objectives in education are that way—but it can impede progress at a law school blessed with faculty and staff who are predisposed as lawyers to think *everything* through before recommending or taking action. Exploring the full range of theoretical possibilities has value, but it is educationally and institutionally wrong to let the existence of debatable elements in the definition of professional identity serve as a stop sign. Consensus can be found on a conception that is good enough to get on with the work.

There are conceptions of professional identity that law schools can readily use. Educators in medical schools have arrived at a broad definition that translates readily to law: 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].”¹² Apropos the legal profession and law students, I find much to commend the view that the formation of professional identity entails the student's acceptance and internalization of a personal responsibility for her or his continuing development toward excellence in all of the competencies of the profession, and the acceptance and internalization of a personal responsibility to others whom one serves as a professional, including clients, colleagues, and society.¹³ This formulation focuses on propositions that are grounded in the legal profession's social contract and in a lawyer's own self-interest in professional success: the expectation of excellence in the service provided to others and the necessity of the lawyer's ongoing capacity to provide it. It is a general definition that calls for elaboration of the competencies it references without specification, and we will touch on what

12. Richard L. Cruess et al., *Reframing Medical Education to Support Professional Identity Formation*, 89 *ACAD. MED.* 1446, 1447 (2014).

13. See Neil Hamilton & Sarah Schaefer, *What Legal Education Can Learn from Medical Education About Competency-Based Learning Outcomes Including Those Related to Professional Formation and Professionalism*, 29 *GEO. J. LEGAL ETHICS* 399, 403 (2016); William M. Sullivan, *Foreword* to RICHARD L. CRUESS ET AL., *TEACHING MEDICAL PROFESSIONALISM*, at ix, xv (Richard L. Cruess et al. eds., 1st ed. 2009).

that means for the work of a law school below. But at the outset, do note how this conception of professional identity can avoid distracting debates over subjective values¹⁴ while inviting recognition of attributes like self-direction, leadership-of-self, and commitment to improvement that are as indispensable to a lawyer's professional identity as they are critical to a law student's success in school and in the employment marketplace.¹⁵ It is a definition, then, with the potential to be unifying and workable in the law school setting.

B. See the Formation of Professional Identity as Principally a Process of Socialization

A purposeful effort to support the formation of professional identity needs not only a workable conception of professional identity, but a solid sense of what formation means. The legal academy's peers in medical education utilize an understanding of formation that should resonate with lawyers and law professors who reflect on their own development. They envision identity formation as principally a process of socialization.¹⁶ The professional-to-be begins as an outsider to the professional community and its ways, values, and norms. Through experiences over time, he or she gradually becomes more and more an insider, "moving from a stance of observer on the outside or periphery of the practice through graduated stages toward becoming a skilled participant at the center of the action."¹⁷ The process continues throughout one's career¹⁸ and features "a series of identity transformations that occur primarily during periods of transition"¹⁹ marked by anxiety, stress, and risk for the developing professional.²⁰ Educational theorists call the learning that occurs in this process of socialization "contextually situated"²¹—the product of the developing lawyer's social interactions and activities in environments authentic to the legal profession's

14. For a good exploration of alternative conceptions and definitions of professionalism, see Neil Hamilton, *Professionalism Clearly Defined*, 18 PROF. LAW. 4 (2008) (surveying academic and professional organization discussions of core values of the profession and offering a synthesis).

15. See *infra* text accompanying notes 25–32.

16. See, e.g., Cruess et al., *supra* note 12, at 1448.

17. William M. Sullivan, *Foreword* to RICHARD L. CRUESS ET AL., *TEACHING MEDICAL PROFESSIONALISM*, at ix, xii (Richard L. Cruess et al. eds., 2d ed. 2016) [hereinafter "TEACHING MEDICAL PROFESSIONALISM"]; see also Frederic William Hafferty, *Socialization, Professionalism, and Professional Identity Formation*, in *TEACHING MEDICAL PROFESSIONALISM*, *supra*, at 55, 62.

18. Lynn V. Monrouxe, *Theoretical Insights into the Nature and Nurture of Professional Identities*, in *TEACHING MEDICAL PROFESSIONALISM*, *supra* note 17, at 37, 38 ("Our identities are continually rewritten throughout our lives as we draw on the environment, from people and from objects for their content.").

19. Robert Sternszus, *Developing a Professional Identity: A Learner's Perspective*, in *TEACHING MEDICAL PROFESSIONALISM*, *supra* note 17, at 26, 31.

20. See Cruess et al., *supra* note 12, at 1448; see also Monrouxe, *supra* note 18, at 43.

21. See Yvonne Steinert, *Educational Theory and Strategies to Support Professionalism and Identity Formation*, in *TEACHING MEDICAL PROFESSIONALISM*, *supra* note 17, at 68, 69–71.

culture and enriched by coaching, mentoring, modeling, reflection, and other supportive strategies.²²

The periods of transition that the law student may experience thus stand out as important focal points for purposeful formation support.²³ Legal education has work to do here. The important transitions need to be identified and their relationship to the development of the student's professional competencies needs to be discerned. With those understandings in hand, strategies then can be tailored to shape environments that better support the student to and through the particular transition. A good picture of the transition periods and their effect on competencies also can reveal missing developmental experiences that would be worth creating to benefit the student.²⁴

C. *Recognize the Components of Professional Identity Formation and the Interrelationship between Them*

Newcomers to purposeful third apprenticeship work will encounter a welter of topics and terms. Much will be heard about competencies and skills, with talk that some of them are hard and some of them soft. The importance of the student's capacity for self-direction will figure prominently in discussions, perhaps phrased as self-awareness. Leadership will come up often. Sometimes the word will be used in connection with the leadership of oneself, yet another allusion to self-direction and mentioned in shorthand as "little l" leadership, to distinguish it from the "big L" leadership that many prize as among the legal profession's important contributions to society and a proper goal for the developing lawyer. Sorting out these and other expressions can be a challenge, as legal educators come to the formation project from different starting points and with different understandings, expectations, and aspirations.²⁵

Still, these are staples of purposeful formation work, and it pays to locate them conceptually and appreciate the interrelationship between them. Here is one simplified but useful way of mapping them within the profes-

22. See, e.g., *id.*; see also Cruess et al., *supra* note 12, at 1448.

23. See Sternszus, *supra* note 19, at 29–30, 33.

24. The goal is to "take explicit steps to coordinate the multiplicity of learning environments . . . [in order to] produce a professionally infused tapestry." Hafferty, *supra* note 17, at 59.

25. One reflection of this fact is the differing language that law schools use to describe their initiatives in the third apprenticeship area. Some speak in professional formation terms. See, e.g., Parris Institute for Professional Formation, PEPP. SCH. L., <https://law.pepperdine.edu/parris-institute/> (last visited January 25, 2018) (describing Pepperdine University School of Law's program in professional formation). Some choose leadership. See, e.g., Leadership Development Program, BAYLOR L. SCH., <http://www.baylor.edu/law/currentstudents/index.php?id=933501> (last visited Jan. 25, 2018) (describing Baylor's program in leadership development). Others opt for professionalism. See, e.g., Professionalism and The Work of Lawyers, U. ARK. LITTLE ROCK WILLIAM H. BOWEN SCH. OF L., <http://ualr.edu/law/academics/professionalism-and-the-work-of-lawyers/> (last visited Jan. 25, 2018) (describing University of Arkansas Bowen School of Law's elective for first-year students).

sional identity framework. Recall the conception of professional identity advanced earlier, and its concentration on the student's acceptance and internalization of a personal responsibility for continuing development toward excellence in all of the competencies of the profession, and the acceptance and internalization of a personal responsibility to others whom one serves as a professional. The definition refers out to a numerous set of professional competencies. They include cognitive skills that legal education traditionally has prioritized and practical skills that law schools have emphasized increasingly in recent decades. These correspond to the first and second apprenticeships identified in *Educating Lawyers*,²⁶ and might be rendered colloquially as the skills that go into "thinking" and "doing" like a lawyer. The third apprenticeship of professional identity and sense of purpose invites consideration of additional competencies that get at "being" a lawyer.

No agreed-upon catalogue of all of these competencies exists, and the law school has choices to make in creating the one it will use. Some competencies make their case for inclusion because clients, legal employers, and the profession's regulators have affirmed them as important to a lawyer's successful discharge of professional responsibilities. The form of the affirmation can vary. The competency might be endorsed formally in law school accreditation standards, requirements for admission to the bar, or applicable codes of ethics and professionalism.²⁷ Or its credentials might come from research into what employers or clients report that they value.²⁸ Other competencies, however, might be nominated for inclusion in the catalogue on the ground that a compendium fully reflective of the legal profession's social contract should include them, even if neither regulation nor the marketplace has so spoken. From the standpoint of ensuring purposefulness, the choices made matter less than the reasons for them. Let those reasons be clear and honest, and open and accountable to the interests of all concerned, including students and the external stakeholders that entrust law schools with the responsibility for legal education.

When the law school is identifying competencies, there likely will be references made to so-called "hard" skills and "soft" skills. Shorthand has its place, but a caution about its use in this endeavor is in order. Labeling competencies as "hard" or "soft" involves neither science nor art, and the use of such labels can lead to unconscious indirection and the introduction

26. See *EDUCATING LAWYERS*, *supra* note 1, at 28.

27. See, e.g., *ABA STANDARDS*, *supra* note 7, at 15–16 (Standard 302 (requiring and specifying certain learning outcomes in a program of legal education)); Hamilton, *supra* note 14 (reviewing requirements set forth in professional codes and bar admissions).

28. See, e.g., NEIL W. HAMILTON, *ROADMAP: THE LAW STUDENT'S GUIDE TO PREPARING AND IMPLEMENTING A SUCCESSFUL PLAN FOR MEANINGFUL EMPLOYMENT* 251–257 (Am. Bar Ass'n ed., 2015) (gathering empirical evidence on competencies important to legal employers in hiring decisions); Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions*, 36 L. & SOC. INQUIRY 620, 623–625, 630 (2011) (reviewing research on lawyer effectiveness and identifying effectiveness factors).

of unspoken new considerations. Do the adjectives “hard” and “soft” refer to the comparative worth of the skill? If so, by what measures and according to whose values? Do the adjectives refer to comparative rigor? If so, rigor on what axis, and with what relevancy to someone’s development as a lawyer? Do they refer to comparative amenability to teaching? If so, by what calculation, upon what assumptions about what it means to teach, and again with what relevancy? These questions suffice to demonstrate that using and giving weight to the labels “hard” and “soft,” without uncovering the premises and connotations that the adjectives might be masking, only makes purposefulness harder to attain. Better to steer clear of the adjectives and get to the real points instead.

Among competencies, the capacity for self-direction (sometimes addressed as self-directed learning, self-awareness, or leadership-of-self) occupies a crucial place, because so much else turns on it.²⁹ The professional’s ability to continually pursue and maintain excellence depends on it, as does her or his ability to serve others responsibly, and to provide leadership. Before serving and leading others, one must first be able to serve and lead one’s self.³⁰ Research indicates that many law students are at relatively early stages of development with respect to self-direction,³¹ a fact immediately consequential for work across the law school. Faculty may not use the term self-direction, but they have the concept in mind when they contrast the unfocused, struggling student with the successful one who has command of law school’s challenges. Advisors in academic success programs have the concept in mind daily in their work, as do career services counselors when they report that students who take insufficient personal ownership of their job searches face greater difficulty obtaining meaningful employment upon graduation. A law school that prioritizes student success will not overlook self-direction and associated capacities like resourcefulness, resilience, and critical reflexivity.³² The school also will recognize

29. See, e.g., MALCOLM KNOWLES, *SELF-DIRECTED LEARNING: A GUIDE FOR LEARNERS AND TEACHERS* 18 (1975) (defining self-directed learning as “a process in which individuals take the initiative, with or without the help of others, in diagnosing their learning needs, formulating learning goals, identifying the human and material resources for learning, choosing and implementing appropriate learning strategies, and evaluating learning outcomes”).

30. See Sullivan, *supra* note 17, at xiv (noting that “a strong professional identity requires that students develop a proactive stance toward their own learning and career choices” and that being a “self-directed learner . . . [is] an essential quality for a successful later life” as a professional).

31. See Neil Hamilton, *A Professional Formation/Professionalism Challenge: Many Students Need Help with Self-Directed Learning Concerning Their Professional Development Toward Excellence*, 27 *REGENT U. L. REV.* 225, 230–236 (2014).

32. See, e.g., Brian D. Hodges, *Professional Identities of the Future: Invisible and Unconscious or Deliberate and Reflexive*, in *TEACHING MEDICAL PROFESSIONALISM*, *supra* note 17, at 277, 283–285 (advocating a professional’s need for “critical reflexivity” to meet future challenges; “[i]f we are to realize a future in which the formation of identities is deliberate and reflexive, watchwords for educators in the twenty-first century will need to be *adaptive expertise, metacognition, cognitive flexibility, and critical reflexivity*”); Cruess et al., *supra* note 12, at 1450

that faculty and staff across the enterprise can contribute to and profit from the school's efforts to support development of these competencies.

III. FRAMING: THE FAMILIAR AND THE NEW

It is human to make assumptions that frame issues in ways that misdirect us or obscure possibilities. Three such framing assumptions, reflecting familiar understandings about legal education, particularly threaten to distort a law school's thinking about professional formation. Examining them will bring to the fore new ways of thinking that better serve purposeful and effective efforts.

A. *What "We" Do: It Is Important, But Only One of Many Means to the End*

Gather a group of law professors to consider how their school might be more purposeful with regard to professional formation, and it is likely they will turn forthwith to the things "we" do and might do in our roles as teachers. There will be right times and places for engaging in this reasonable way of thinking, but not at the outset.

This is a more important point than its simplicity might suggest. What "we" as law professors do is only a means to the relevant end—here, the student's personal development of a professional identity. Analysis that begins with means rather than ends runs the risk of missing the mark. The risk is a particular concern here because framing from the "we," rather than from the student's socialization journey and what it entails, likely will exclude a world of possibilities from the picture.

Many of the factors that can influence a student's formation of professional identity lie beyond what the law school customarily contemplates legal education to encompass. When it comes to a student's education in legal doctrine and the cognitive competencies of lawyering, the faculty's role is dominant, with staff within the school and individuals and organizations outside the school playing smaller parts, if any. The formation of professional identity, on the other hand, is a socialization process that is (and can be) affected by countless experiences that have much less to do directly with the professors. Consider the experiences that make up the process of seeking and obtaining summer and then post-graduation employment, experiences during internships or part-time employment, or experiences that take place in the diverse extracurricular activities in which students engage. Those potentially influential experiences happen at a *time* during the student's law school years preceding professional employment but not a time that the faculty customarily considers its immediate responsibility. They occur in a *space* that the student frequents during the law school years preced-

(noting that "although there are clearly core elements that are foundational and seem to be timeless, some aspects of the traditional professional identity must change").

ing professional employment but not a space over which the faculty customarily assumes active jurisdiction. They occur in the proximity of *people* who can greatly influence the experience, but they are people other than the student's professors—among them, career counselors, interviewing employers, moot court judges, lawyers in a student's summer workplace or externship placement, attorneys invited to participate in brown bag lunches, formal and informal mentors, and peers on their own professional socialization journey.

Starting with the "we" of law professors constricts legal education's palette, obscuring experiences, time, space, and talent that legal education has within its reach to better support the student's formation of professional identity. A premature focus on the "we" also tends to bring vying priorities and interests to mind too soon, before the potential benefits to student professional identity formation have been fully and independently explored. That is likely to yield a cloudy analysis that impedes purposefulness.

B. What We Can "Do:" It Is Not Limited to Conveying Expert Knowledge, But Includes Taking Responsibility and Asserting Leadership

Law professors contemplating what their school can do to better help students in their formation of professional identity likely will seek answers that involve the conveying of expert knowledge. After all, isn't that what a law school does?

It is an assumption about what we "do," of course, and a limiting one. Framing the law school's capacities in this way defines legal education and the law school's appropriate functions in legal education too narrowly. The transmission of expert knowledge—viz., the sage on the stage, imparting doctrinal wisdom and honing skills in analysis and synthesis—figures importantly, but the education of the American lawyer involves more. Other fundamentally different experiences also are formative for the developing lawyer and hence, in a real and meaningful sense, an integral part of the legal education. The challenge for law schools is not merely to see legal education in those broader terms, but to recognize that society expects law schools to take responsibility for it in those broader terms. The social contract will hold law schools responsible for the pre-professional-employment period of a lawyer's development in all of its facets.

How do we know? Because law schools are being held accountable for the outcomes of that developmental period. Today, those outcomes include successful admission to the bar and success in obtaining employment, and the accreditation regime, the rankings and reputational environment, and the admissions marketplace all impose accountability. Trends in higher education, moreover, suggest the future will judge schools by the success of their alumni on a growing array of outcomes achieved after graduation. It is no

answer to competitively disadvantageous outcomes that the law school conveys expert knowledge well. Law schools increasingly will be pressed to leave no professional development stone unturned.

Assuming this responsibility means embracing a leadership challenge. The question is not so much what additional expert knowledge the law school can convey, but rather what the school can do to maximize the formative potential of the pre-professional-employment period. A purposeful effort will depend on three key steps.

First, it is necessary to be frank about the period for which the law school bears responsibility. A traditional “conveying of expert knowledge” way of thinking would mark the start of this period at law school matriculation and its end at graduation, with the summers after the first and second years of law school characterized as “breaks.” Law schools now acknowledge, at least implicitly, that the period of their responsibility extends further because they explicitly treat their field of competition and marketplace accountability as extending further. The period actually begins, not with matriculation, for instance, but with increasingly intensive recruitment and admissions processes that initiate the student’s professional socialization. The period ends, not with graduation, but extends to the taking and passing of the bar examination and the securing of a job—activities that law schools are supporting with expanded post-graduation services. And those summers are not breaks that punctuate the period, but months designated for the pursuit of alternative experiences that schools promote and facilitate, and even create and subsidize, because they are central to development.

The second step is to sweep into view the diverse formative experiences that do or could occur in that pre-professional-employment period, together with the varied time, space, and talent that might be associated with those experiences. These represent the assets that can be committed to supporting students in the formation of their professional identity. Purposeful deployment of them inevitably will require a more detailed inventorying that associates each experience with one or more of the competencies that the school sees as integral to its working conception of professional identity. The first job interview, for instance, might be regarded as a critical developmental moment for a student’s self-direction and self-awareness competencies. A summer internship, on the other hand, might be the focus for developing a student’s responsiveness and teamwork skills.

A richer picture of the pre-professional-employment period allows the law school to move to the third step—the formulation of a purposeful strategy to unite the formation experiences into a coherent, staged, sequenced, and supported whole that maximizes the benefits for students. It may be helpful to see this as a two-dimensional project. On a more general level, relationships and collaborations need to be forged among the many people and organizations that afford students formation experiences. Lines of communication between these parties need to be opened. Ways of coordinating,

enhancing, reinforcing, and leveraging their varied efforts need to be imagined and implemented. These things will not occur unless the law school takes the lead in spearheading them. On the finer level of specific strategies and actions, clearheaded appraisals of the value and potential of each formation experience need to be conducted. What pedagogies can be introduced around each experience—before, during, and after it—to maximize its benefit? Who among the many, from the school’s faculty and staff to stakeholders and participants outside the school, are best situated to help the student maximize that experience, and in what way may they help? What formative assessment opportunities are presented by the experience? What developmental milestones, or assessments that might later be bundled into a summative assessment, might be involved? Schools have Professor Hamilton’s contribution to this symposium as a guide for undertaking these appraisals and generating concrete action plans.³³ But once again, the work will not be done unless the law school asserts its leadership.

C. *How We “Teach”: The Centrality of Curating and Coaching*

I suggested that law professors tend to conceive of teaching as the conveying of expert knowledge. Clinical professors and professors of practice especially recognize, however, that “sage on the stage” ways of thinking about teaching do not exhaust the possibilities. Supervising the practical experiences of students provides those faculty members natural opportunities to try out a “guide on the side” approach to teaching. That approach deserves the fullest exploration by everyone involved when it comes to supporting students in their third apprenticeship of professional identity and sense of purpose. Framing teaching in more traditional “knowledge transmission” terms does not merely limit the options; it averts our eyes from the real action.

What Dr. Robert Sternszus has said for medical education holds equally for law: “the role of professional education should be to guide and support learners in the process of identity formation, rather than ensuring that learners understand medical [or legal] professionalism and demonstrate professional behaviors.”³⁴ Students need experiences as active participants in environments that signal the profession’s shared values, beliefs, and behaviors. They need encouragement to make the process of their identity formation their own and to reflect on the process as it unfolds. They need assistance in comprehending what they are going through.³⁵

33. See Hamilton, *supra* note 7.

34. Sternszus, *supra* note 19, at 31–32.

35. See Cruess et al., *supra* note 12, at 1449 (noting that “the goals are to engage learners as active participants in the process of identity formation and to encourage them to trace their own progress through the journey”); Richard L. Cruess et al., *Introduction* to RICHARD L. CRUESS ET AL., *TEACHING MEDICAL PROFESSIONALISM*, *supra* note 17, at 1, 2–3 (noting that “[t]he role of faculty is to assist students in understanding the process of identity formation and of socialization,

This calls for teachers who curate and coach. By curating, I mean staging the experiences and environments that will promote professional identity development, connecting them conceptually to one another in an intelligently sequenced fashion, and guiding students through them with a framework that helps the students understand their own development through the process.³⁶ Students thus experience their pre-professional-employment third apprenticeship much like a well-crafted ongoing interactive exhibit that purposefully raises and reinforces themes and meanings.³⁷ Coaching takes the “guide on the side” philosophy to the personal level, meeting the student where she or he actually happens to be and providing assistance tailored to support the next step and capitalize on its developmental potential:

Coaching is the thread that runs through the entire apprenticeship experience and involves helping individuals while they attempt to learn or perform a task. It includes directing learner attention, providing ongoing suggestions and feedback, structuring tasks and activities, and providing additional challenges or problems. Coaches explain activities in terms of the learners’ understanding and background knowledge, and they provide additional directions about how, when, and why to proceed; they also identify errors, misconceptions, or faulty reasoning in learners’ thinking and help to correct them. In situated learning environments, advice and guidance help students . . . to maximize use of their own cognitive resources and knowledge, an important component in becoming a professional.³⁸

and to engage them in monitoring their own journey from layperson to professional,” and further observing that role modeling, mentoring, experiential learning, and reflection are the educational methods most relevant to identity formation).

36. See Sternszus, *supra* note 19, at 32 (noting that the cognitive base of professionalism still needs to be explicitly taught, but that the focus shifts “to providing learners with a framework with which to understand their own personal identity development”).

37. Elsewhere, I described the curating idea as follows: “Imagine the law school . . . crafting the program much as a curator assembles and maintains an ongoing exhibit. The curating law school scans its activities, seeing that different works by different actors in the law school (shall we call them artists, keeping with the curating image?) share the common formation theme. It names the theme and elaborates its meaning. It pulls the works together, at least conceptually, so students may experience them as the equivalent of a curated exhibit. It guides students through the exhibit, communicating to them how the various works they are experiencing relate and contribute to the theme. It encourages students to reflect on the theme and make it their own. With formation-oriented work across the law school assembled into focus this way, improvements can be pursued with purpose. The curating law school can assess the quality of the exhibition, looking to exhibitions that other schools have assembled for inspiration. The contributing artists can revise or add to their works to reinforce the exhibition’s theme. The existence of gaps in the exhibition—opportunities to strengthen it—likely will surface. New artists, inside or outside the law school, can be invited to contribute. Resources permitting, a new work might even be commissioned from time to time—especially when it does double-duty to promote other priorities that the school has identified. Sponsors to underwrite particular works, or perhaps the entire exhibition, can be sought.” Bilonis, *supra* note 6, at 905–906 (footnotes omitted).

38. Steinert, *supra* note 21, at 70 (emphasis and footnote omitted).

Note well the time, space, and talent implications of teaching as curating and coaching. Curating makes the third apprenticeship coherent and knowable. Faculty and staff can share a cogent understanding of professional identity formation and the school's strategy for its promotion and then see new possibilities for their own supportive participation in the effort. A contracts professor, for instance, might turn to team-based exercises not just to spice up the teaching of doctrine and analysis, but to afford interactions that introduce the importance of collaboration when serving clients and the value to one's own development of lifelong learning through engagement with other professionals. A professor might treat a seminar discussion of contemporary policy challenges as the occasion to also coach on the role that lawyers play as thought leaders in their communities. Counselors in the career services office might take their meetings with students about job searches as coaching interactions about the fundamentals of self-direction, self-awareness, and leadership-of-self. No one who works at the law school lacks a potential role, for everyone can speak to and endorse the significance of professional identity formation in the same way that they speak to and endorse the values of thinking like a lawyer, doing like a lawyer, and striving for excellence.

Professional identity formation thus becomes a purposeful, enterprise-wide affair at the law school that involves more experiences, more people, more times, and more spaces. The hidden curriculum—the acts of commission and omission within the school that signal meaning every bit as powerfully as the lessons of the formal curriculum³⁹—can be consciously appropriated and turned into a productive asset.

The centrality of curating and coaching also points the way to doing assessment right in the professional identity formation area. Everyone who coaches or observes a student in a curated experience is positioned to offer potentially valuable feedback and information. As Professor Hamilton details, a broad array of observers inside and outside the law school can provide formative assessments to benefit students in their development along one or another competency. Those assessments can form the basis for reflection and coaching, and they can be pooled and considered collectively to mark a student's progress against milestones that reflect the stages of development envisioned for the competency.⁴⁰

IV. THE LAW SCHOOL'S OWN PROFESSIONAL IDENTITY FORMATION

Having come to this point, we can now enjoy a delicious coincidence: as law schools take on the challenge to better support their students' profes-

39. See Bilonis, *supra* note 6, at 897. For an earlier, but still apt and illuminating exploration of the hidden curriculum of the law school, and its tendency to be counterproductive to professional identity formation, see Cramton, *supra* note 2, at 248–262.

40. See Hamilton, *supra* note 7, at 340–342.

sional identity formation, the schools themselves enter a challenging period of transition for their own professional identity. Like the disruptive transition period that a developing professional experiences, it presents the potential for anxiety, tension, and risk. The school's professional competencies will be tested and, if things go well, strengthened and expanded. To successfully bring purposefulness to its support of students, the law school thus needs to be purposeful about its own development.

A. *The Need to Support the Law School's Own Professional Development*

A lot has happened in and to American legal education in recent years. Economics and technology have begun to appreciably reshape the demand for legal services and the legal profession that provides them.⁴¹ Obtaining meaningful employment has gotten significantly harder for law students, and the law school's responsibility for the success of its graduates in the employment market has heightened. Law school enrollments and revenues have declined. Outcome-based education has made its arrival in the company of accreditation reform.

In the matter of the third apprenticeship, much has occurred as well. When we talk today about professional formation, we talk differently from how we did when *Educating Lawyers* was a fresh read. Research and thinking about how to support law students in the formation of professional identity have advanced considerably. Medical education, meanwhile, has taken professional identity support to new frontiers, expanding the range of considerations and possibilities to take into account. New ideas, theories, themes, and vocabulary continue to enter the discussion.

To absorb it all requires making claims on the law school's capacity for self-directed lifelong learning and its adaptability. The best advice to law schools is to follow the same advice they would give to a similarly situated developing lawyer: tend consciously and resourcefully to your developmental needs. Faculty and staff need to come up to speed before they can move ahead efficiently and effectively, and a plan to make that happen should be devised.⁴² No school needs to reinvent the wheel. It can count on ready, willing, able, and generous assistance from the growing network of educators who are focusing on professional formation. The Association of American Law Schools and the National Association for Law Placement exist to help their members meet new developmental challenges, and they

41. See, e.g., RICHARD SUSSKIND, *THE END OF LAWYERS?: RETHINKING THE NATURE OF LEGAL SERVICES* (2008) (assessing forces that are driving change in the demand and provision of legal services).

42. See, e.g., Sylvia R. Cruess & Richard L. Cruess, *General Principles for Establishing Programs to Support Professionalism and Professional Identity at the Undergraduate and Postgraduate Levels*, in *TEACHING MEDICAL PROFESSIONALISM*, *supra* note 17, at 113, 116 (describing elements of a well-planned faculty development program for medical schools).

have begun to add professional identity formation to their programming. In doing so, these associations are following the lead of other professional organizations associated with legal education that have been providing their members with programs conducive to the support of professional identity formation.

B. Purposefulness in Project Management

Institutions rarely have latitude to wait on change until all the angles have been worked out. The law school's responsibilities to students and its social contract, as well as the forces of the legal education marketplace, dictate forward movement now in the support of professional identity formation even though many specifications of a full-fledged program remain uncertain. A purposeful third apprenticeship in American legal education will be a case of stage development.

The law school's project management competencies will be pressed here. The challenge is to divide the creation of a curated formation-support program that spans the pre-professional-employment period of a student's development into manageable projects that the school can sequence appropriately and with timely support. Some projects likely will stand out for faster-track work because they concern inevitable components of a solid program and qualify as low-hanging fruit from a resource standpoint. Enriching the career services environment to include coaching and support on self-direction, self-awareness, and leadership-of-self falls into this category. The same may be said for remodeling the school's orientation program to introduce experiences for first-year students that situate professional identity formation as fundamental to their legal education. Revamping the way the school communicates its vision of legal education—formally and in the hidden curriculum—to ensure that the third apprenticeship holds an importance equivalent to the first and second might be yet another such project.

A second group of projects will appear to merit early action because an immediate leveraging opportunity presents itself. The requirement to comply with new accreditation standards, for instance, makes now the right time to establish learning outcomes linked to professional identity formation at both the law school program level and the course specific level. When seizing opportunities like this, good, purposeful work depends on the school's ability to anticipate and meet the development needs of its faculty and staff.

A third set of projects likely will feature a pace that varies with increments. These are initiatives critical to the goal and hence necessary to begin. But they involve matters about which we have very much to learn, and hence, they invite an iterative development process or, as Neil Hamilton describes, treatment as representative experimental pilot programs.⁴³ Efforts

43. See Hamilton, *supra* note 7, at 357–361 (setting forth a strategy for pilot projects on competencies, stage-development models, and corresponding assessment).

to: inventory the influential periods of transition that students experience, learn what makes them so, and then map them to competencies, fall into this category. Devising stage development rubrics for those competencies and fashioning a comprehensive assessment model deserve similar recognition.

C. Relationships and Collaborations

A fully realized third apprenticeship would span the pre-professional-employment period of a student's development as a lawyer, curating experiences inside and outside the law school, enriched by coaching, reflection, and other pedagogies. Students would interact with a broad array of professionals who, in addition to aligning the environment with the legal profession, serve as role models, mentors, coaches, and providers of feedback. Formative assessments from those participants would culminate in summative assessments of the student's progress against competency milestones rooted in well-conceived models of stage development. As best it can with the significantly more limited resources that it enjoys, legal education thus would have created its counterpart to medical education's apprenticeship of professional identity formation.

Meaningful progress toward that vision could be enough to bring about a true transformation of legal education. Pursuing that vision necessitates that the law school stretch another set of its core professional competencies—its ability to form fruitful relationships, collaborations, and teams, and to work across differences. Old hierarchies within the law school can be relaxed without fear in favor of an enterprise-wide commitment to student success that unites faculty and staff in teamwork. Old distinctions between the law school and the legal profession, between the so-called ivory tower and the so-called real world, can be transcended in favor of a vision of student development that takes place in a supportive pre-professional-employment environment where diverse stakeholders are partners in the profession. These things can happen, but only if they are pursued with conscious purpose.

V. PROFESSIONAL FORMATION AS EMPOWERMENT

When a law school supports a student's formation of professional identity, it promotes the student's empowerment. The student and the people close to her or him, future clients and colleagues, the profession, and society all gain strength from the fuller realization of human potential and a deepened commitment to an ethic of excellence in service.

Taking professional identity formation seriously empowers the law school as well. What constitutes teaching, who does it, when and where it occurs—all carry broader meanings that a law school will discover in a purposeful effort to educate in the professional formation area. The school

will see underutilized assets and unexplored potential that it can unleash to better pursue its mission.

Perhaps most empowering for the school, however, will be the experience of conscientiously striving to fulfill its responsibility to its students, the profession, and society. That is the strength that comes from reaffirming one's own professional identity.