

## LEARNING TO BE LAWYERS: PROFESSIONAL IDENTITY AND THE LAW SCHOOL CURRICULUM

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### I. INTRODUCTION

“Who am I as a member of this profession? What am I like, and what do I want to be like in my professional role? and What place do ethical-social values have in my core sense of professional identity?”<sup>1</sup> A report by The Carnegie Foundation for the Advancement of Teaching entitled *Educating Lawyers: Preparation for the Profession of Law* (“Carnegie Report”) makes the case that law schools fail to motivate students to ask—much less to answer—these questions.<sup>2</sup> The Carnegie Report faults legal education for focusing exclusively on doctrine and analytical skills and for neglecting the formation of professional identity.<sup>3</sup> Law schools can fix this problem, the Carnegie Report suggests, by enabling students “to encounter appealing representations of professional ideals, connect in a powerful way with engaging models of ethical commitment within the profession, and reflect on their [own] emerging professional identity in relation to those ideals and models.”<sup>4</sup>

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1. WILLIAM M. SULLIVAN ET AL., *THE CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 135 (2007).

2. *See id.* at 132–35. For a discussion of the Carnegie Report’s conclusion that law schools fail to encourage the development of professional judgment, see Clark D. Cunningham & Charlotte Alexander, *Developing Professional Judgment: Law School Innovations in Response to The Carnegie Foundation’s Critique of American Legal Education*, in *THE ETHICS PROJECT IN LEGAL EDUCATION* (Michael Robertson et al. eds., forthcoming 2011).

3. *See* SULLIVAN ET AL., *supra* note 1, at 132–33. For other prominent reports on the state of legal education, see ABA, *REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP* 5–6, 135 (1992) [hereinafter *MACCRATE REPORT*], available at <http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html>; ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* 5, 11–13 (2007); Marjorie M. Shultz & Sheldon Zedeck, *Final Report: Identification, Development, and Validation of Predictors for Successful Lawyering* 25–27 (Sept. 2008) (unpublished manuscript), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1353554](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1353554).

4. SULLIVAN ET AL., *supra* note 1, at 135.

The issue of professional identity formation has taken on greater urgency during the economic crisis of the early twenty-first century. Many new law school graduates who might otherwise have found jobs in BigLaw now enter solo or small firm practice.<sup>5</sup> Even those graduates hired by large law firms receive less training, mentoring, and guidance than did their precrisis counterparts.<sup>6</sup> Increasing numbers of new attorneys are now on their own in many ways and lack the intensive interaction with mentors and professional exemplars that is the key to their professional identity formation.<sup>7</sup>

The Carnegie Report urges law schools to fill this void by integrating “student learning of theoretical and practical legal knowledge and professional identity.”<sup>8</sup> It identifies pro bono work, clinics, and externships as sites for this sort of learning, where students can interact with members

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5. See ABA COMM’N ON THE IMPACT OF THE ECON. CRISIS ON THE PROFESSION & LEGAL NEEDS, COMMISSION ACTIVITIES 1 (2009) [hereinafter ABA COMM’N ON ECON. CRISIS], available at [http://www.abanet.org/op/lamm/docs/accomplishments\\_for\\_website.pdf](http://www.abanet.org/op/lamm/docs/accomplishments_for_website.pdf) (“Although data is not yet available, another likely consequence borne out in previous recessions is increasing numbers of solo practitioners as lawyers in all stages of their careers turn to solo practice.”); Press Release, Nat’l Ass’n for Law Placement, Inc., Entry-Level Recruiting Volumes Plunge, Some Start Dates Deferred 1 (Mar. 2, 2010), available at [http://www.nalp.org/uploads/2010\\_Perspectives\\_on\\_Fall\\_2009\\_Press\\_Release.pdf](http://www.nalp.org/uploads/2010_Perspectives_on_Fall_2009_Press_Release.pdf). (“At the largest firms, firms with more than 700 lawyers firm-wide, the median number of offers dropped from 30 in 2007, to 18.5 in 2008, and to just 8 in 2009.”); see also News Release, Bureau of Labor Statistics, U.S. Dep’t of Labor, The Employment Situation—March 2010 tbl.B-1 (Apr. 2, 2010), available at [http://www.bls.gov/news.release/archives/empsit\\_04022010.pdf](http://www.bls.gov/news.release/archives/empsit_04022010.pdf) (showing 29,900 “[l]egal services” jobs lost between March 2009 and March 2010).

6. See, e.g., STUCKEY ET AL., *supra* note 3, at 18 (“Some students are prepared for the jobs that await them, especially the top students who are hired by appellate judges or by large law firms, government agencies, and corporations that have the resources and patience to complete their education and training, *although even these employers are increasingly forcing their new hires to sink or swim.*” (emphasis added)); Joyce S. Sterling & Nancy Reichman, *So, You Want to be a Lawyer? The Quest for Professional Status in a Changing Legal World*, 78 *FORDHAM L. REV.* 2289, 2294 (2010) (“As beginning salaries have increased for new lawyers, seasoned partners have become reluctant to devote their limited time to socialization and training, feeling that these lawyers can ‘sink or swim’ on their own.”); Sterling & Reichman, *supra*, at 2309 (“With less work to go around, lawyers who remain [in large firms] are provided with few opportunities to create new lawyering skills . . . .”); Webcast: New Professionalism Opportunities in a Time of Crisis, held by the Nat’l Inst. for Teaching Ethics & Professionalism (Mar. 19, 2010), <http://law.gsu.edu/niftep/index.htm> (follow “NIFTEP Workshops” hyperlink; then select “Spring 2010 Workshop” hyperlink) (presentation of Bill Henderson, “New Models of Practice: Past, Present, and Future”) (noting that law firms have begun to move away from the Cravath system, in which highly credentialed new associates received intensive in-house training).

7. See SULLIVAN ET AL., *supra* note 1, at 135 (arguing that interaction with role models in the legal profession is essential to personal and professional identity formation); Sterling & Reichman, *supra* note 6, at 2294 (noting the decline in mentoring in large law firms).

8. SULLIVAN ET AL., *supra* note 1, at 13; see also *id.* at 135 (“Because law school represents a critical phase in the transition into the profession, it is inevitable that it will influence students’ image of what kind of lawyers they want to be.”).

of the profession and reflect on the models of professionalism that they encounter.<sup>9</sup> Taking the Carnegie Report's charge as a starting point, this Essay proposes an additional model for integrating a focus on professional identity into the law school curriculum.

This Essay profiles an experimental law school course that combined fieldwork observations of practicing attorneys with in-class simulations of the work of a small law firm.<sup>10</sup> The course was quite successful in prompting students to engage in an inquiry into what it is to be a lawyer and what kinds of lawyers they want to be.<sup>11</sup> For example, one student commented in a reflective assignment that his placement in a local firm (in connection with the course) allowed him to see "a new vision for what being a practicing lawyer can be."<sup>12</sup> That this sort of exposure to professional exemplars and reflection on professional identity was possible in a non-clinical course was an exciting discovery, suggesting that there may be new directions for curricular design as law schools continue to meet the challenges of the Carnegie Report.<sup>13</sup>

## II. THE FUNDAMENTALS OF LAW PRACTICE COURSE AT GEORGIA STATE UNIVERSITY COLLEGE OF LAW

### A. *Course Design and Content*

The Fundamentals of Law Practice course at Georgia State University College of Law was offered for the first time in the spring of 2010. The course combined instruction in lawyering skills, law practice management, and ethical decision making while also giving students a structured framework within which to reflect on their own developing identities as lawyers.<sup>14</sup> The inaugural class, a three-credit course co-taught by two

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9. *Id.* at 146–47.

10. *See infra* Part II.

11. *See infra* Part II.C.

12. Caleb Gross, *The Law Offices of Neal & Wright 14* (Mar. 22, 2010) (unpublished report for Fundamentals of Law Practice course) (on file with author).

13. *See infra* Part III.

14. A recent, nonexhaustive Internet search of law schools' course catalogs and law review articles turned up similar courses that are presently or were recently offered at the following law schools: Atlanta's John Marshall Law School ("Law Office Management"), Barry University Dwayne O. Andreas School of Law ("Law Office Practice"), Campbell University Norman Adrian Wiggins School of Law ("Law Practice and Management"), Chicago-Kent College of Law ("Opening and Managing a Law Office"), City University of New York School of Law ("Small Firm Practice"), Duke University School of Law ("The Law Firm"), Nova Southeastern University Law Center ("Law Office Management Workshop"), Pace Law School ("Law Practice Management"), Suffolk University Law School ("Law Practice Management"), University of Maryland School of Law ("Law Practice Management"), University of Missouri Kansas City

instructors,<sup>15</sup> consisted of fourteen students, all of whom were required to apply for admission.

Rather than a predetermined series of instructor lectures, the course began with a fieldwork component, in which the instructors paired each student with an attorney in solo practice or a small law firm. The fieldwork experience exposed students in real time to the realities of solo and small firm practice and linked them with professional exemplars on whom they could model their own professional identity development. The fieldwork component also served a purpose internal to the course: It required students themselves to begin to identify what skills, practice management tools, and ethical decision making abilities they would need when they entered practice, thereby providing the raw material from which the instructors could design the rest of the course.

To prepare students for their fieldwork, the instructors assigned excerpts from Michael J. Kelly's *Lives of Lawyers*<sup>16</sup> and *Lives of Lawyers Revisited*,<sup>17</sup> two collections of profiles of lawyers in various practice settings. Students also practiced interviewing and note taking skills by interviewing a panel of practitioners and writing a short report. In their reports and in their fieldwork, students were encouraged to adopt Kelly's value-neutral ethnographic approach: "to understand, to listen thoughtfully and to some degree respectfully, not to be an investigative reporter or a scholar burrowing into the myriad small hypocrisies that hover around almost all forms of organizational life."<sup>18</sup> The goal was to use students'

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School of Law ("Entrepreneurial Lawyering: Solo and Small Firm Practice"), and University of North Carolina School of Law ("The Law Firm"). See also R. Lisle Baker, *Enhancing Professional Competence and Legal Excellence Through Teaching Law Practice Management*, 40 J. LEGAL EDUC. 375, 377-80 (1990) (describing a law practice management course co-taught by the author at Suffolk University Law School); John M. Conley, *How Bad Is It Out There?: Teaching and Learning About the State of the Legal Profession in North Carolina*, 82 N.C. L. REV. 1943, 1944-50 (2004) (describing a course on "The Law Firm" co-taught by the author at Duke University and University of North Carolina).

15. The instructors were the author, Charlotte Alexander, and Clark D. Cunningham, W. Lee Burge Professor of Law & Ethics, Georgia State University College of Law.

16. MICHAEL J. KELLY, *LIVES OF LAWYERS: JOURNEYS IN THE ORGANIZATIONS OF PRACTICE* (1994).

17. MICHAEL J. KELLY, *LIVES OF LAWYERS REVISITED: TRANSFORMATION AND RESILIENCE IN THE ORGANIZATIONS OF PRACTICE* (2007).

18. *Id.* at 8. Kelly compares his approach to that of documentary filmmaker Frederick Wiseman, whose films adopted an "observational mode." *Id.* at 335 (internal quotation marks omitted). Following Wiseman, Kelly asked his subjects questions such as: "What's going on in the practice these days? 'How is the organization doing?' 'What do you like about this practice and what about it annoys you?'" *Id.* at 336. His "main line of questioning was to get people to describe how law practice works for them and what they think about issues that face the organization in which they are located." *Id.*

observations of the realities of solo and small firm practice as the course's text.

Students then began their fieldwork, which spanned the first seven weeks of the semester. To the greatest extent possible, students were matched with attorneys who practice in the subject area that the students saw themselves entering. These subject areas included family law, workers' compensation law, general business and transactional law, intellectual property law, immigration law, criminal defense law, personal injury law, community and homeowner's association law, environmental law, and bankruptcy law. The instructors recruited field placement attorneys through a local bar association's small firm and solo practice section and through the College of Law's alumni network. Students and attorneys signed a field placement agreement that outlined both parties' responsibilities. In addition, where the field placement would likely expose students to attorney-client interaction, both parties signed a confidentiality agreement.

Each student began his or her fieldwork with an in-person interview of the attorney, followed by an observation of the attorney at work. Students' observations ranged from sitting in on initial intake interviews and follow-up client meetings, accompanying attorneys to court hearings and mediations, and observing depositions. Students observed their attorneys delivering bad news to clients, making strategic decisions about how to present their clients' case to the court, and counseling their clients about whether to accept a settlement offer.

Students also observed attorneys at work in their offices. Several students sat in on file review and case planning sessions, in which attorneys and their support staff reviewed the status of each of their cases and discussed pending deadlines and the division of labor on each case. Other students sat with their attorneys while the attorneys generated bills and observed the attorneys' exercise of billing judgment. Finally, some students accompanied their attorneys to bar association section events, where they met other attorneys in the legal community and observed how their attorneys developed and maintained a network of professional colleagues.

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Professor John Conley's courses at Duke University and University of North Carolina also incorporated "lengthy, in-class ethnographic interviews with a substantial number of lawyer-informants chosen to represent the wide range of settings in which lawyers practice." Conley, *supra* note 14, at 1947; *see also* Baker, *supra* note 14, at 378 (advocating that students interview practicing attorneys to "find someone who has done it before, ask how, and then adapt what [they] learn").

This fieldwork experience culminated in a written report by each student,<sup>19</sup> which accounted for forty percent of the grade. The written reports sought to answer the following questions:

- In metro Atlanta in 2010, what is it like to be a solo practitioner or a member of a small firm?
- What is it like to start a solo practice or small firm?
- What knowledge, skills, and professional qualities should a law student aim to acquire to prepare for entry into a solo practice or small firm?
- How can law schools better assist law students' acquisition of the knowledge, skills, and professional qualities necessary for a solo practice or small firm?

Students' experience interviewing their fieldwork attorneys, recording the information gathered, and synthesizing it into a written report was an exercise in skills development and professional identity formation. On the one hand, the fieldwork assignment mimicked the sort of factual investigation that attorneys frequently perform. The instructors required students to plan their investigation, memorialize and organize the information they gathered in an accessible form, and evaluate the information gained through their fieldwork experience.<sup>20</sup>

On the other hand, the fieldwork component exposed students to professional exemplars, providing them with an opportunity to reflect on what constitutes a lawyer's professional identity. In the language of the Carnegie Report, students were learning through an "apprenticeship of identity and purpose," in which they could reflect on "the skills and inclinations and the ethical standards, social roles, and responsibilities that mark the professional."<sup>21</sup> By observing attorneys counseling clients, interacting with judges, and networking with their colleagues, students had the opportunity to reflect on what it means to be a lawyer.<sup>22</sup>

Students recognized both the professional identity and skill building aspects of the fieldwork requirement. One student reflected on what he saw

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19. Each student's report was subject to review and approval by his fieldwork attorney before it was submitted to the instructors. Each report was not shared with anyone outside the class without the permission of the fieldwork attorney.

20. The MacCrate Report identifies these skills as necessary for practice. See MACCRATE REPORT, *supra* note 3, at 138–39 (listing skills associated with "[f]actual investigation" as "[f]undamental [l]awyering [s]kills"); see also Shultz & Zedeck, *supra* note 3, at 26 (listing questioning and interviewing skills as factors that contribute to attorney effectiveness).

21. SULLIVAN ET AL., *supra* note 1, at 28.

22. In their course evaluations, students gave the fieldwork component of the course very high marks. All but one listed the fieldwork experience as the element he liked best about the class, and a majority described the fieldwork as "very educational."

as the key to his fieldwork attorney's professional identity: not court victories or large fee awards, but rather the attorney's ability to interact well with his clients.<sup>23</sup> The student observed the following over the course of a tough divorce negotiation:

The lawyers . . . engage[d] their clients in almost therapeutic conversations . . . explain[ing] legal consequences of various proposals while, at the same time, negotiating a veritable minefield of emotion. Both attorneys and the mediator were very skillful in their abilities to support and advocate for their clients, while at the same time encouraging progress toward resolution of the case.<sup>24</sup>

The student concluded that the characteristics he "observed [had] not been the focus of any of [his] coursework" and that "observation and practice would be the only real way to develop them."<sup>25</sup>

A second student was struck by his fieldwork attorney's use of the pronoun "we" to refer to the attorney and his client.<sup>26</sup> Though the student was initially confused by the use of "we," once he "realized that [the attorney] was referring to clients using the pronoun '[w]e' . . . the conversation came into focus."<sup>27</sup> This realization led the student "to think about the attorney-client relationship"—the attorney's behavior as a professional in relation to his client—"in a somewhat different light."<sup>28</sup> These student comments confirm the Carnegie Report's observation that "when students form relationships with professionals who inspire them, they can internalize new images of what they want to be like more deeply and vividly than they are likely to do through reading."<sup>29</sup>

With respect to skills development, the same student commented that his fieldwork project taxed the note taking methods he had developed in law school, in which he sought essentially to transcribe his professors' lectures.<sup>30</sup> While conducting his fieldwork, he was required "to be an

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23. Bryant Rogowski, Field Report 9–12 (Mar. 22, 2010) (unpublished report for Fundamentals of Law Practice course) (on file with author).

24. *Id.* at 11.

25. *Id.*

26. See Eli Bennett, Writing Assignment 7: *Hallman & Wingate* 5 (Mar. 22, 2010) (unpublished report for Fundamentals of Law Practice course) (on file with author).

27. *Id.*

28. *Id.*

29. SULLIVAN ET AL., *supra* note 1, at 146.

30. See Bennett, *supra* note 26, at 6–7.

active listener in a small group or in a one-on-one situation.”<sup>31</sup> As the student commented:

I usually try to engage the speaker non-verbally by making eye contact and nodding my head if I understand, and this can make comprehensive note-taking very difficult. I often found myself playing catch up after a point of conversation had already been covered. The other primary difficulty arises out of my tendency to try and take comprehensive notes, a function of the obsessive compulsive plenary note-taking behavior that I developed in law school.

... Note-taking and interviewing skills are important to all aspects of [lawyers’ lives], and this observation exercise taught me quite a bit about how to practice these skills more effectively.<sup>32</sup>

These and other real world lessons from students’ early fieldwork reports influenced the design of the rest of the course. The final seven weeks of the semester focused on topics drawn from students’ own assessments of the skills, practice management tools, and ethical decision making abilities they would need in practice.<sup>33</sup> The instructors structured the remainder of the course not only to give students substantive information on each of these topics but also, through a combination of teaching techniques and course requirements, to force students to take on the professional identity of attorneys and begin to be, rather than merely to think like, lawyers.<sup>34</sup>

### *B. Learning to be Lawyers*

As much as possible for a nonclinical course, the class attempted to place students in-role as attorneys and to create an authentic experiential learning environment that replicated the high stakes and pressures of law

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31. *Id.* at 7.

32. *Id.*

33. These topics included the following: intake procedures, conflict checking, file management, engagement letters and fee arrangements, trust accounting and billing practices, choosing and staying current in a practice area, drafting a business plan and choosing a business form, staffing and setting up a solo or small plan, networking strategies and learning a local legal culture, advertising and marketing, malpractice insurance, and the logistics of court appearances.

34. See Baker, *supra* note 14, at 376 (“Thinking like a lawyer is worthwhile, but in the meantime practicing lawyers have pressing work to do . . . . Even though the work requires considerable thought, its emphasis on action makes it useful to call it ‘acting like a lawyer.’”); see also SULLIVAN ET AL., *supra* note 1, at 7 (noting that legal education “emphasize[s] legal knowledge and reasoning at the expense of attention to practice skills, while the relations of legal activity to morality and public responsibility receive[] even less direct attention in the curriculum”).

practice.<sup>35</sup> The course did so by using five strategies: (1) instituting a timekeeping requirement; (2) using case management software; (3) assigning frequent, graded projects with relatively short deadlines; (4) requiring student presentations; and (5) conducting a simulated client intake. The instructors designed these requirements to encourage students to develop lawyering skills and their professional identity—to be organized, self-disciplined, and motivated.

Although most attorneys would likely agree that these basic professional qualities are essential to a successful law practice, they receive little explicit attention in law schools.<sup>36</sup> In fact, as one student observed in his fieldwork report, the traditional model of legal education may encourage students to develop the opposite set of habits:

Unlike many other educational experiences, law school is almost exclusively focused on end results. Very few classes are graded based on more than a final exam. . . . Overall, the entire system leads to focus and planning for distant and singular events. There is no need to develop skills around regular recordkeeping and follow up. Instead, students tend to become rather insular as they develop whatever personal system will help them to best regurgitate and utilize what is taught in class . . . when final exams come around.

I think these are habits which have to be broken in order to be successful in practice. Regular maintenance of files, recording of time, and follow up with clients is absolutely vital to success. Clients cannot be put off ‘until finals.’<sup>37</sup>

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35. See James E. Moliterno, *An Analysis of Ethics Teaching in Law Schools: Replacing Lost Benefits of the Apprentices System in the Academic Atmosphere*, 60 U. CIN. L. REV. 83, 114 (1991) (“Role-sensitive activities not only provide significant learning about the data that gives meaning to many standards governing lawyer behavior, but they also hold out the greatest hope for replicating the best aspects of the apprenticeship system . . .”); see also Karen Barton et al., *Authentic Fictions: Simulation, Professionalism and Legal Learning*, 14 CLINICAL L. REV. 143, 145 (2007) (“One theme running through the many contemporary versions of experiential learning is that of ‘authenticity’—the correspondence, in some way or other, of learning to the world of practice that exists outside of teaching institutions.”).

36. To the extent that they appear at all, organizational skills are mentioned only indirectly in the MacCrate Report’s list of skills as “concepts required for efficient management.” MACCRATE REPORT, *supra* note 3, at 140. Shultz and Zedeck list “Organizing and Managing One’s Own Work” as a factor that contributes to lawyer effectiveness. Shultz & Zedeck, *supra* note 3, at 26.

37. Rogowski, *supra* note 23, at 8. Another student made similar observations, even going so far as to recommend that law school classes “include projects and assignments designed to force a student to handle multiple deadlines of simple assignments each week over a wide variety of time frames and communication methods which are essentially designed to make a student miss deadlines.” Jonathan Call, *Being a Solo Practitioner in Atlanta* 13 (Mar. 22, 2010) (unpublished report for Fundamentals of Law Practice course) (on file with author). According to the student, this system would “force the students to create a system of tracking such assignments and

The instructors designed the five strategies used in this course to encourage students to develop better habits, which they could then carry into practice. First, throughout the course, the instructors required students to keep records of the time spent on coursework and submit them each week.<sup>38</sup> If students did not meet their weekly reporting deadlines, the instructors asked them to provide an explanation that would satisfy a client. Students were instructed that falsification of their timesheets or “padding” of their hours could lead to a failing course grade, a referral to the school honor board, and a report as part of the character and fitness review for bar admission.<sup>39</sup> The timekeeping requirement sparked extended class discussion about the ethics and logistics of timekeeping (for example: How detailed a description to record? What increments to use? How to avoid double-billing?), a task that combines knowledge, skill, and professional qualities that students acknowledged would be necessary in nearly any private practice setting. The requirement also encouraged students to reflect on their own time management practices. Additionally, the weekly time reporting requirement gave students an ongoing deadline to meet throughout the semester that they could not, in the students’ words, “put off until finals.”<sup>40</sup>

Second, students were required to use a web-based case management software program called Clio to keep their time, upload their written assignments for instructor review, make to do and task lists, calendar important dates, and share documents with classmates.<sup>41</sup> Because Clio is

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deadlines now before they get in the real world and the missed deadlines result in lost cases and malpractice lawsuits.” *Id.* Similarly, another student suggested that, in order to teach professionalism, “a professor might require students to maintain a certain dress standard, or have a professional notebook that is reviewed by peers weekly, so that students are mindful of how they present themselves to others.” Lisa Cupid, *Starting a Solo Practice* 12 (Mar. 22, 2010) (unpublished report for Fundamentals of Law Practice course) (on file with author).

38. *See also* Law Office Management Workshop Syllabus 2 (Fall 2009) [hereinafter Workshop Syllabus] (on file with the Maryland Law Review) (describing the timekeeping requirements established by Professor Elena Lagan in her Law Office Management Workshop at Nova Southeastern University Law Center).

39. Students were assured, however, that the instructors would understand if they could not always complete every assignment each week, but that under no circumstances should students falsely report having done an assignment.

40. Rogowski, *supra* note 23, at 8 (internal quotation marks omitted). The Law Practice Management course at Suffolk University Law School also requires students to maintain time logs. *See* R. Lisle Baker, Law Practice Management I Syllabus 6–7 (Spring 2008) (on file with the Maryland Law Review); *see also* Baker, *supra* note 14, at 378 (describing a timekeeping requirement as a way “to imitate good practice habits: [students] keep logs of the time they spend on the course (in and out of class) and submit periodic ‘invoices’ for it”).

41. For a product description of Clio, *see About Clio*, <http://www.goclio.com/about.html> (last visited Jan. 15, 2011).

designed for solo and small firm practitioners,<sup>42</sup> students may use the program itself or similar timekeeping or case management software once they enter practice. Using Clio allowed students to experiment with different methods of organizing and tracking their work. It also exposed them to the ways that technology contributes to efficient and effective law practice management.

Third, the instructors required students to complete frequent writing assignments with relatively short deadlines. These assignments, along with students' time records, made up a portfolio for each student, which accounted for thirty percent of the students' final grades.<sup>43</sup> The instructors designed the frequency and relatively short turn around times of these assignments to mimic the time-sensitive, high-stakes work practicing lawyers face.<sup>44</sup> Students in the course had to prioritize and budget their time effectively in order to do quality work and turn in assignments on time. In addition, because the assignments and the timeliness and quality of their time records contributed to the portfolio portion of the final grades, everything in the course, in effect, "counted." As in practice, where all client work counts, students who neglected their ongoing responsibilities suffered the negative consequences in their portfolio grades.

Fourth, the instructors required students to research a particular substantive topic, such as retainer agreements or engagement letters, and to give a short presentation to the class. This assignment comprised the final thirty percent of the grades, and the instructors assessed the students based on their creativity and initiative in seeking out information and finding resources, as well as the quality of the presentation. The instructors designed the assignment not only as a way for students to share substantive

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42. *Id.* (explaining that the product was designed by a company "dedicated to providing . . . practice management solutions to the small firm marketplace").

43. Midway through the semester, the instructors gave students a provisional portfolio grade to indicate their class performance up to that point. Unlike summative final exams, this type of formative assessment was designed to allow students to correct deficiencies and improve their performance by the end of semester. *Cf.* SULLIVAN ET AL., *supra* note 1, at 171 ("[W]e believe that assessment should be understood as a coordinated set of formative practices that, by providing important information about the students' progress in learning to both students and faculty, can strengthen law schools' capacity to develop competent and responsible lawyers."). The course at University of Missouri-Kansas City School of Law also adopts a "portfolio" grading approach, and the course at Nova Southeastern University Law Center similarly requires that students comply with "standing weekly assignments." *See* Entrepreneurial Lawyering: Solo and Small Firm Practice (Law #638R) Syllabus 2 (Summer 2009) (on file with the Maryland Law Review) (requiring a portfolio of all assignments and workshop notes); Workshop Syllabus, *supra* note 38, at 1 (describing the course's "standing weekly assignments").

44. *Cf.* Neil J. Dilloff, *The Changing Cultures and Economics of Large Law Firm Practice and Their Impact on Legal Education*, 70 MD. L. REV. \_\_, \_\_ (2011) (arguing that "[l]aw schools should teach time management, efficiency, and organizational skills").

presentations with their classmates but also as an opportunity to familiarize themselves with the resources they might consult to educate themselves on the skills, practice management tools, and ethical decision making abilities they might need to start their own practices.<sup>45</sup>

Finally, students were required to participate in a simulated client intake process. Students conducted a conflict check, interviewed a potential client, took notes, reviewed the client's documents, decided on a fee structure, wrote an intake memorandum and engagement letter, recorded their time, and generated a bill using Clio. The simulated intake assignment brought together many other strands of the course: the timekeeping requirement, the substantive instruction on topics such as engagement letters, and the modeling of attorney-client interaction that students observed during their fieldwork. It also allowed students, in-role as attorneys, to continue developing their interviewing and note taking skills and to learn how to communicate simply, clearly, and effectively with clients, both orally and in writing—a professional quality necessary for good lawyering.<sup>46</sup>

### C. *Insights from the Course*

One of the most striking aspects of the first offering of Fundamentals of Law Practice was the course's ability to encourage student reflection on issues of professional identity. The course was designed (1) to provide students instruction in "hard" lawyering skills through simulations and (2) to guide them through a "soft" process of observing professional exemplars and reflecting on their own identity development, engaging in what the Carnegie Report calls the "apprenticeship of identity and purpose."<sup>47</sup> The success of this second aspect of the course has been a welcome surprise.

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45. Students received feedback on their presentations from the instructors and their classmates in the form of anonymous evaluations. The instructors then gave students the opportunity to give a short follow-up presentation during the last two class meetings, incorporating the guidance they received. The structure of this course draws on both formative assessment techniques and the concept of the 360-degree performance evaluation. See John E. Montgomery, *Incorporating Emotional Intelligence Concepts into Legal Education: Strengthening the Professionalism of Law Students*, 39 U. TOL. L. REV. 323, 345 & n.175 (2008) (describing the 360-degree performance evaluation as "an evaluation and feedback process commonly used in business where all people both reporting to and supervising an individual provide feedback on performance and abilities").

46. See MACCRATE REPORT, *supra* note 3, at 138–39 (listing counseling and communication as essential lawyering skills); see also Baker, *supra* note 14, at 378 (stating that students should be "asked to imitate good practice habits," which include "draft[ing] model operational documents, such as client engagement letters that set forth the work that is to be done and the basis of fees").

47. SULLIVAN ET AL., *supra* note 1, at 28.

Students' comments in their fieldwork reports and course evaluations revealed the extent to which they reflected on their own "identity and purpose" as developing lawyers. For example, one student concluded his report with the following observations:

My last day in the office was a Saturday, and I sat in on [a client meeting]. . . . This Saturday really drove home for me how different life at a small law firm can be. There was such a feeling of freedom and genuineness; all images of the faceless machine that I often picture when thinking of big firm life vanished. I saw a new vision for what being a practicing lawyer can be. [The fieldwork attorneys] were serving their clients on a Saturday, not because they had to, but because they wanted to.<sup>48</sup>

Another student's anonymous course evaluation echoed this "new vision" of life as a practicing attorney:

I enjoyed getting to interview and write about one of the first . . . solo practitioners who really opened up to me about what solo practice is really like. For me, that was one of the earth-shattering moments when I realized that this dream of mine to practice solo is truly possible, and that feeling has been growing in me as a result of this class ever since.<sup>49</sup>

These deep reflections on professional identity might not be surprising in a clinical or externship setting, where students work closely and at length with practitioners who model professional behavior.<sup>50</sup> Indeed, the Carnegie Report singles out "well-designed experiences of pro bono and service work, of good externships, and especially of clinical courses" as sites in which students "encounter appealing representations of professional ideals, connect in a powerful way with engaging models of ethical commitment within the profession, and reflect on their emerging professional identity in relation to those ideals and models."<sup>51</sup> The fact that students could engage in a similar process of reflecting "on their emerging professional identity"<sup>52</sup> as a result of a fieldwork experience in a nonclinical, simulation-based

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48. Gross, *supra* note 12, at 14–15.

49. Anonymous Course Evaluation A (Mar. 18, 2010) (unpublished course evaluation for Fundamentals of Law Practice course) (on file with author).

50. See Peter A. Joy, *The Ethics of Law School Clinic Students as Student-Lawyers*, 45 S. TEX. L. REV. 815, 837 (2004) ("Clinic faculty are important role models for clinical students."); Bridget McCormack, *Teaching Professionalism*, 75 TENN. L. REV. 251, 260 (2008) ("The clinical setting emphasizes professionalism not only through students' increased exposure to the interactions among other professionals, but also through the intimacy that characterizes their relationships with clinical faculty.")

51. SULLIVAN ET AL., *supra* note 1, at 135, 147.

52. *Id.* at 135.

course like Fundamentals of Law Practice is an exciting and promising discovery.

A second insight also comes from the world of clinical scholarship. As might be expected, the intensity and high-stakes nature of the Fundamentals of Law Practice course met with some resistance from students. For example, one student noted on his anonymous course evaluation that, with “so many little deadlines, it has been tough to keep up with everything.”<sup>53</sup> Clinical scholarship, however, suggests this sort of intense practice-based experience may allow instructors to identify and remedy problematic student behavior before students carry those behaviors into practice.<sup>54</sup> In her article on teaching professional responsibility in a law school clinic, Professor Antoinette Sedillo Lopez relates stories of students with substance abuse issues and students with problems identifying and respecting professional boundaries.<sup>55</sup> Only in the high-stakes, intense environment of the clinic did the students’ issues emerge, allowing counseling and correction to occur before these students graduated to the even higher-stakes environment of law practice.<sup>56</sup> The timekeeping requirement and frequent, relatively short deadlines of the Fundamentals of Law Practice course provided a similar opportunity, in a nonclinical setting, for early detection of potential problems and constructive feedback and remediation.

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53. Anonymous Course Evaluation B (Mar. 17, 2010) (unpublished course evaluation for Fundamentals of Law Practice course) (on file with author). The student went on to acknowledge, however, “I realize this is what it’s like in practice.” *Id.* Another student made similar comments, noting that “the professors are very demanding,” but concluding, “I really do believe that EVERY law student should be required to take this course.” Anonymous Course Evaluation C (Apr. 20, 2010) (unpublished course evaluation for Fundamentals of Law Practice course) (on file with author). Professor Baker reports similar results. *See Baker, supra* note 14, at 379 (acknowledging that students in his Law Practice Management course “find the work arduous but empowering”).

54. Antoinette Sedillo Lopez, *Teaching a Professional Responsibility Course: Lessons Learned from the Clinic*, 26 J. LEGAL PROF. 149, 153–56 (2002) (describing lessons learned from experiences with problematic student behavior in the author’s clinical program).

55. *Id.*

56. The experience of the medical profession also reveals links between unprofessional behavior during medical school and subsequent problems during practice. For example, a study of physicians who were disciplined for unethical or unprofessional behavior by their state licensing boards revealed that the disciplined physicians were “three times as likely to have displayed unprofessional behavior in medical school than were control students.” Maxine A. Papadakis et al., *Disciplinary Action by Medical Boards and Prior Behavior in Medical School*, 353 NEW ENG. J. MED. 2673, 2679 (2005). The types of unprofessional behavior in which the physicians engaged as students are the same sorts of behavior that instructors might identify—and correct—in a simulation-based law school course such as Fundamentals of Law Practice: unreliable attendance, lack of follow-up, failure to accept constructive criticism, argumentativeness, poor relationships with team members, lack of motivation or enthusiasm, and passivity. *See id.* at 2679 tbl. 3 (listing “[t]ypes of [u]nprofessional [b]ehavior” documented).

## III. IMPLICATIONS FOR CURRICULAR DESIGN

Although law schools have long come under fire for their failure to focus on issues of professional identity, critiques such as those voiced in the Carnegie Report have taken on new relevance in light of the changes in the legal profession caused by the recent economic crisis.<sup>57</sup> New lawyers are increasingly on their own, regardless of practice setting; many are starting their own solo practices or small firms, and large law firms have shifted their associate training dollars to other priorities.<sup>58</sup> Courses such as Fundamentals of Law Practice and its counterparts at law schools around the country offer a partial solution, guiding the formation of law students' professional identities and providing practical instruction in lawyering skills, practice management techniques, and ethical decision making.<sup>59</sup> If law schools are truly to integrate "student learning of theoretical and practical legal knowledge and professional identity,"<sup>60</sup> this type of course should be only one offering on a much larger menu of experiential instruction.

Law schools might offer a program of layered, practical, experiential instruction that complements the substantive instruction offered by traditional classroom courses.<sup>61</sup> The first layer could be a simulation-based course like Fundamentals of Law Practice, in which students begin to learn lawyering skills, practice management, and ethical decision making in a simulated setting.<sup>62</sup> The stakes for students in such a course are high, but they are not yet representing live clients; the stakes for, and risks to, third parties are therefore minimized.<sup>63</sup> The Fundamental Lawyering Skills class

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57. See, e.g., Michelle M. Harner, *The Value of "Thinking Like a Lawyer,"* 70 MD. L. REV. \_\_, \_\_ (2011) (exploring how "[t]he economic stress of the 2008 recession" has impacted the legal profession).

58. See ABA COMM'N ON ECON. CRISIS, *supra* note 5, at 1; Sterling & Reichman, *supra* note 6, at 2294.

59. See *supra* note 14 and accompanying text.

60. SULLIVAN ET AL., *supra* note 1, at 13.

61. See *id.* at 12–14 (advocating for a model of legal education that integrates traditional classroom knowledge with practical experience).

62. See *id.* at 158–59 (characterizing "simulated practice" as "an important site for developing skills and understandings essential for practice" and "teaching the ethical demands of practice"); Moliterno, *supra* note 35, at 122–34 (arguing in favor of implementing a simulation-based "comprehensive skills development" program in law schools).

63. The practice of using simulation, rather than a live-client clinic setting, as law students' first exposure to client representation addresses the criticism that many forms of clinical legal education tend to use low-income, vulnerable client populations as "guinea pigs" for the learning experiences of novice, yet privileged, law students. See, e.g., Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 FORDHAM L. REV. 997, 1007 (2004) (summarizing this critique with the following questions:

at Fordham University School of Law is another example of this kind of first layer course.<sup>64</sup> All students who wish to enroll in a live-client clinic are required to take the course, which provides simulation and role play-based instruction in “fact analysis, interviewing, counseling, negotiation, case theory, and planning.”<sup>65</sup> Harvard Law School recently began offering a similar course for first-year students, the Problem Solving Workshop, which “presents cases that begin with the initial contact between lawyer and client” rather than with an appellate court decision.<sup>66</sup> The course “supplement[s] the technical skills students learn in regular courses with an emphasis on common sense, judgment, even wisdom.”<sup>67</sup>

The second layer of instruction might come in the form of externship placements in a variety of practice settings complemented by structured reflection guided by law school instructors.<sup>68</sup> Here, students would take the lessons learned in their simulation-based course and put them into practice in a real life setting.<sup>69</sup> Students’ introduction to real life practice would be gradual, however, as they would be closely supervised by their externship supervisor and subject to evaluation and feedback from their law school instructor.<sup>70</sup> Because law students in most externship programs are assigned to discrete projects and do not act as primary case handlers, clients and other third parties face minimal risk.<sup>71</sup> Though many, if not most, law schools offer externship programs,<sup>72</sup> the Mentor Externship Program at the

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“Why should clients serve as guinea pigs for students who, if permitted to take primary responsibility, may provide inferior legal services? What is the virtue of treating clients as fodder for voyeuristic analysis?” (footnotes omitted).

64. *Fundamental Lawyering Skills*, FORDHAM UNIV. SCH. OF LAW, <http://law.fordham.edu/registrar/16090.htm> (last visited Jan. 15, 2011).

65. *Id.*

66. Elaine McArdle, *Beyond the Case Method: A First-of-Its-Kind Problem-Solving Workshop Prepares 1Ls for the Realities of Law Practice*, HARV. L. BULL., Summer 2010, at 4, 4–6, available at <http://www.law.harvard.edu/news/bulletin/2010/summer/classroom.php>.

67. *Id.* at 5.

68. See J.P. Ogilvy, *Guidelines with Commentary for the Evaluation of Legal Externship Programs*, 38 GONZ. L. REV. 155, 159–60 (2002–2003) (stating that one value of externships is that they allow students to confront problems lawyers face in practice while under close faculty supervision).

69. See *id.*

70. Cf. *id.* at 160 (explaining that with externships the “faculty supervisor . . . is more likely to guide the student through the process of reflecting on the fieldwork experience”).

71. See *infra* notes 78–79 and accompanying text.

72. *Directory of Law School Public Interest and Pro Bono Programs*, ABA STANDING COMM. ON PRO BONO & PUB. SERV., [http://www.abanet.org/legalservices/probono/lawschools/pi\\_externships\\_internships.html](http://www.abanet.org/legalservices/probono/lawschools/pi_externships_internships.html) (last visited Nov. 13, 2010) (listing public service externships and clinical programs at more than one hundred law schools around the country).

University of St. Thomas School of Law provides an example of a comprehensive program that emphasizes structure, quality control, and feedback:

Each year of law study, students are paired with a respected lawyer or judge in the community. Mentors introduce students to a range of legal tasks and activities such as depositions, client meetings or appellate arguments. Beyond introducing students to foundational lawyering responsibilities, mentors share the traditions, ideals and skills necessary for a successful law career. Mentors also help students understand professionalism in ways that traditional classroom lecture cannot capture.<sup>73</sup>

The third layer of instruction could be the live-client legal clinic.<sup>74</sup> The Carnegie Report singles out legal clinics as “key settings in which students learn to integrate not only knowledge and skill but the cognitive, practical, and ethical-social facets of lawyering as well.”<sup>75</sup> Although examples of such clinics abound,<sup>76</sup> few law schools make participation in a clinical program a requirement for graduation. In a live-client clinic, students take direct responsibility for a client’s case, experiencing in real time what it is to be a lawyer.<sup>77</sup> Clinics, though subject to their own set of critiques,<sup>78</sup> could provide a capstone experience for law students who have already completed a simulation-based course and an externship, exposing them to the realities of practice with high stakes—not only for themselves, but also for their clients.<sup>79</sup> The new experiential third-year program at Washington & Lee University School of Law provides a model for how a clinical third layer might function.<sup>80</sup> Designed to “produc[e] future lawyers that [sic] will be ready for practice from day one,” the third-year curriculum

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73. *About the Mentor Externship Program*, UNIV. OF ST. THOMAS SCH. OF LAW, <http://www.stthomas.edu/law/programs/mentor/about/default.html> (last visited Sept. 2, 2010).

74. McCormack, *supra* note 50, at 260.

75. SULLIVAN ET AL., *supra* note 1, at 160.

76. *See supra* note 72 and accompanying text.

77. *See* McCormack, *supra* note 50, at 260 (describing the kinds of real world practice to which clinical students are exposed).

78. *See, e.g.*, Steven Hartwell, *Moral Development, Ethical Conduct, and Clinical Education*, 35 N.Y.L. SCH. L. REV. 131, 147–49 (1990) (discussing difficulties in teaching ethical principles in a clinical setting); Moliterno, *supra* note 35, at 122–29, 132–33 (cautioning about the monetary costs of live-client clinics and the limits of the legal clinic as a site for instruction in legal ethics); Wizner & Aiken, *supra* note 63, at 1007 (voicing the critique that clinics use vulnerable client populations as the subjects for law student learning).

79. *See generally* SULLIVAN ET AL., *supra* note 1, at 159–60 (discussing the benefits of clinical legal education).

80. *See generally* *About the J.D. Program at W&L*, WASHINGTON & LEE UNIV. SCH. OF LAW, <http://law.wlu.edu/admissions/page.asp?pageid=311> (last visited Jan. 15, 2011).

“is entirely based on learning through engagement—combining practicum courses, practice simulations, client interactions, the formation of professional identity and the cultivation of practice skills.”<sup>81</sup> Legal clinics figure heavily in the new third year as a setting in which students will, “with guidance and supervision, engage in the craft of lawyering.”<sup>82</sup>

The fourth, and final, layer of instruction might happen outside the law school’s doors, after graduation. At least two law schools, City University of New York School of Law (“CUNY”) and University of Maryland School of Law, presently offer a support system—either sponsored directly by the law school, in CUNY’s case, or associated more loosely with the law school, in University of Maryland’s case—for graduates who have entered solo or small firm practice.<sup>83</sup> These support programs link graduates with others in the same practice areas, provide case referrals, and offer instruction on basic business skills.<sup>84</sup> The program at CUNY also offers an “incubator” for a small number of graduates entering solo practice, providing low-rent office space and some startup financial support for a period of eighteen months.<sup>85</sup>

In some ways, these programs act as professional “finishing schools” or residencies for law school graduates, resembling the practice-based postgraduate programs of legal education in other countries.<sup>86</sup> In Scotland, for example, students are required to complete three years of additional training, which includes a closely supervised traineeship with a practicing attorney, after completing an undergraduate degree in law.<sup>87</sup> Only after

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81. *Id.*

82. *The Third Year in Detail*, WASHINGTON & LEE UNIV. SCH. OF LAW, <http://law.wlu.edu/thirdyear/page.asp?pageid=651> (last visited Jan. 15, 2011).

83. See generally *Community Legal Resource Network (CLRN)*, CUNY SCH. OF LAW, <http://www.law.cuny.edu/clinics/JusticeInitiatives/Community.html> (last visited Sept. 2, 2010) [hereinafter CUNY, CLRN] (describing the Community Legal Resource Network as “a collaborative that supports CUNY Law School graduates as they work to set up and run solo or small-group practices”); *UMD Affiliations*, CIV. JUST., <http://www.civiljusticenetwork.org/pages/umd.html> (last visited Jan. 24, 2010) (“Civil Justice is an affiliated program at the University of Maryland School of Law and works closely with the School of Law to promote public interest legal careers for students and graduates.”).

84. CUNY, CLRN, *supra* note 83.

85. Jonathan D. Glater, *Lawyers Learn How to be Businesslike*, N.Y. TIMES, Jan. 9, 2008, at B6.

86. The University of Missouri-Kansas City School of Law has also recently launched an incubator program for graduates entering solo or small firm practice. See *Solo and Small Firm Incubator*, U. MO.-KAN. CITY SCH. LAW, <http://www.law.umkc.edu/Incubator/index.htm> (last visited Feb. 2, 2011).

87. See Clark D. Cunningham, *Should American Law Schools Continue to Graduate Lawyers Whom Clients Consider Worthless?*, 70 MD. L. REV. \_\_, \_\_ (2011) (describing the Scottish professional training program for students who have a university law degree).

87. *Id.* at \_\_.

completing this traineeship may students apply for certification to enter the legal profession.<sup>88</sup> Whether this fourth layer of experiential learning takes place in practitioner offices, as in Scotland, or in law school-sponsored support programs, such as at CUNY and University of Maryland, these programs ensure that new lawyers have access to mentors and professional exemplars, whether they are hanging their own shingle or taking an associate position at a large law firm.

#### IV. CONCLUSION

The economic crisis of the early years of the twenty-first century has given new meaning to long-standing critiques of American legal education.<sup>89</sup> If law schools teach only how to think like lawyers, and not how to be lawyers, then the legal academy is surely failing its students, who, today more than ever, must take on the identity of “lawyer” from the moment they join the bar. Courses like Fundamentals of Law Practice at law schools around the country are a first step in the right direction. Law schools, however, should reexamine the basic shape and content of their curricula and develop a robust system of experiential legal education, beginning with simulation-based courses, progressing through externships and clinics, and culminating with ongoing training and support programs for new lawyers.<sup>90</sup> By implementing a variety of layered strategies that complement traditional substantive classroom instruction, the legal academy will be able to ensure its graduates have developed both the professional qualities and the skills they need to take on their new identities as lawyers.<sup>91</sup>

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88. *Id.* at \_\_.

89. *See supra* note 57 and accompanying text.

90. *See supra* Part III.

91. *Cf. SULLIVAN ET AL.*, *supra* note 1, at 160 (“Through ever-closer approximations to actual practice, in a range of settings, students can be helped to develop insight into the full dimensions of the identity and purposes proper to a lawyer.”).