

Professional Identity and Professionalism

Benjamin V. Madison III

Benjamin V. Madison III is a Professor and Director of the Center for Ethical Formation and Legal Education Reform at Regent University School of Law.

I thank John Berry for organizing this panel and for reviewing and offering comments on this piece. I also thank the other members of the panel, identified in note 5 below, each of whom spent considerable time preparing for our presentation.

“This is a battle for the soul of the legal profession.”¹ Moderating a panel on professional identity formation at the recent Annual Professional Responsibility Conference, John Berry’s opening comment appropriately captured what many of us believe the professional identity movement is all about. The panel, entitled “Professional Identity Formation in Public and Faith-Based Legal Education,” demonstrated the growing number of schools innovating in methods that go beyond traditional approaches to professionalism. The phrase “professional identity” had been used by legal scholars before the publication of the Carnegie Institute for the Advancement of Teaching and Learning entitled *Educating Lawyers* (Carnegie Report),² and the virtually simultaneous release by the Clinical Legal Education Association in *Best Practices for Legal Education* (Best Practices Report).³ However the Carnegie Report and the Best Practices Report, now ten years old, have brought the concept of professional identity formation to a place of deserved attention in legal education.⁴

In preparation for the panel, and during the conference, the panel⁵ agreed that perhaps the first step in addressing this topic is to distinguish “professional identity” from professionalism and the professionalism movement. In the chapter on professional identity formation in *Building on Best Practices: Transforming Legal Education in a Changing World*, Dean Natt Gantt and I offered the following distinction between professional identity and professionalism:

Lawyer professionalism has often referred to adherence to standards or norms of conduct beyond those required by the ethical rules, and the focus of the current discussion of professionalism largely remains on outward conduct like civility and respect for others. Civility and respect for others are foundational to emerging lawyers’ understanding of professional conduct, but professional identity engages students at a deeper level by asking them to internalize principles and values such that their actions flow habitually from their moral compass.⁶

In this concept, we have struck upon a truth that I believe is a universal one—a principle that can help each person, in his or her chosen job, to understand, perform, and enjoy that job more. That is why I found the story of Steve Kerr’s search for his “coaching style” so helpful and related that story in my segment at the conference. Kerr, formerly a National Basketball Association (NBA) player who won cham-

pionships with Michael Jordan on the Chicago Bulls, later became an NBA coach. His mentors include some of the greats of NBA coaching, including, for instance, Greg Popovich, longtime coach of the San Antonio Spurs, as well as National Football League coach Pete Carroll. Kerr wanted to avoid being a “clone” of Popovich—to find his own approach. He talked with his mentors about how to do that. One of his mentors told him that his coaching style had to come from his “identity.” Then the mentor asked a telling question: “Give me one of your core values.” After pondering the question, Kerr responded: “Joy.” His mentor replied: “O.k., joy. That has to be reflected in your practices every day.”⁷

Although at first I was a bit surprised to read about a basketball coach applying principles that mirror what we are seeking to do in professional formation, I recognize now that it makes sense for the approach to apply in any profession. Indeed, it is no coincidence that the Carnegie Institute has chosen to emphasize professional identity beyond law teaching. In studying education of other professions Carnegie has stressed development of professional identity as an integral part of students’ professional training.⁸ These studies consistently show, in each profession, teaching that leads students to explore their core values.⁹ The problem with lecturing students (or lawyers) to “be civil” or “be honest” is that we expect people to follow an external ideal without reflecting on *why* such conduct is likely to be consistent with his or her own value system. Professional identity formation presents students instead with a scenario in which they can act either in a civil way or badly, or in which the person can be honest or deceptive. Then the student reflects, ideally in writing, on the values that are implicated by the scenario, the available courses of action, and the consequences likely to flow from each course of action.¹⁰ Such reflection leads, at worst, to a decision that is at least a considered one and, at best, to a habit of acting ethically. It should be no surprise that a reflect-before-acting approach leads to better choices—and, ultimately, to more professional behavior.¹¹ The result of this process is usually the same as that promoted by the professionalism movement. The difference is that lawyers are more likely to act in line with professional values when they realize they are following principles in which they are invested.

One of the telling lessons of our panel was that, though two of our members were from law schools with faith-based missions, the two other panelists from public law schools and the one panelist who now works for the Department of Justice (formerly with the Army JAG) all agreed on values that they believed—if students or lawyers were prompted to search themselves—they would find. Some would call these universal values. Thus, Professor Hamilton and I can point to what our faith traditions refer to as “revealed truth,” in the Bible and/or in Church teaching for a value. Our colleagues at public universities or in military law teach the same values in different ways. For instance, the virtue ethics of Aristotle provide a rich source for defining values, as Professor McGinnis showed in our panel discussion.¹² Although for reasons of separating church and state, professors in public universities are not advocating any particular faith tradition, the reality seems to be that all students come to law school with some value system. The challenge is to help students, each at different levels of sophistication in their ethical development, to grow as decision-makers guided by a sense of conscience. By pointing students to their internal values, the professional identity movement encourages ownership of one’s decisions. Students learn that their decisions have consequences, not only for clients and others in the legal system, but also for the students’ own self-respect.

Another important contribution of the panel was to reveal some common misconceptions. The first misconception is that faith-based schools approach this subject rigidly. Professor Neil Hamilton and I explained that our schools relied primarily on Judeo-Christian values, but that we have students consider and discuss the principles at the root of other faith traditions and philosophical systems, including, for instance, virtue ethics of classical philosophers such as Aristotle. Indeed, the panel recognized that Professor Hamilton's article on the manner in which all major faith traditions and virtue ethics emphasize the responsibility of each person to one's fellow human beings is perhaps one of the best examples in scholarship of the breadth of sources available to encourage formation of values.¹³ The second misconception is that any of us teaching in this field believe that pointing students to external sources alone will do any good. Instead, the whole point is to have the students reflect on his or her own values and whether they align with these core values. Thus, those of us at faith-based schools have as much of a challenge in cultivating professional identity as those teaching in public schools. If a law student knows biblical passages, he or she has not necessarily (and likely has not by law school) internalized those values. Indeed, most students by the time they reach law school, regardless of whether it is a faith-based or public school, are at an early stage of moral development.¹⁴ Our job is to use the innovative approaches growing out of the professional identity movement to help them progress. We are seeking to spur students to reflect, to look inside, and to internalize values. As Dean Debra Curtis, Professor McGinnis, and Mr. Ben Grimes demonstrated in their remarks, public schools and the military are likewise cultivating reflection on, and internalization of, values.

The recognition that professional identity formation comes from the inside out thus represents its greatest contribution. In opining that the Carnegie Report would likely have a greater impact on legal education than the well-known MacCrate Report, Dean Bryant Garth recognized that "the most important innovation in the *Carnegie Report* is the focus on the third apprenticeship [i.e., the 'professional identity' apprenticeship]."¹⁵ Dean Garth realized that the professional identity component was developing a meaningful approach to helping ethical growth. Dean Garth's prediction, we hope, is starting to become a reality.

An unexpected reward of this movement ought not to be overlooked. Our panel saw in the professional identity movement hope for problems that have long plagued the profession. Anyone who has paid attention to the statistics on lawyers' substance abuse, depression, and suicide ought to wonder why the rates for these ailments are so much higher for lawyers than the general population. These troubling symptoms, observers have opined, could result from the disconnect between lawyers' internal values and their actions.¹⁶ Unless someone is intentional about reflection, he or she can act in ways that create the disconnection without even realizing what damage it is doing. The theory that lawyers' mental, emotional, and addiction issues derive solely from stress ought to be thoroughly reviewed. Sufficient research and discussion suggest that the lack of internalized and intentional commitment to one's values plays a part in this troubling phenomenon.¹⁷ It may take time for the effect of the professional identity movement to begin showing an impact on lawyer well-being. It does, after all, require a commitment—a commitment to greater reflection, to acting consistently with one's values, and ultimately to be true to oneself. Such is not a quick fix. Yet, as our panel maintained, the internal awareness we are advocating may in time be one of the most significant steps toward improving lawyer well-being in recent memory.

My fellow panelists and I appreciated the opportunity to engage in conversation on this important topic. Some have been part of this movement since even before the 2007 Carnegie and Best Practices Report. The movement has gained a foothold in legal education and we appreciate the American Bar Association providing an opportunity to expose more leaders in the profession to it. My hope is that, through such discussions, the profession will appreciate increasingly the innovation that this concept—and relevant teaching tools—represents.

Endnotes

¹ The quote derives from JUSTICE E. NORMAN VEASEY, THE ROLE OF STATE SUPREME COURTS IN ADDRESSING PROFESSIONALISM OF LAWYERS AND JUDGES, KEYNOTE ADDRESS AT ABA CONFERENCE: REGULATORY AUTHORITY OVER THE LEGAL PROFESSION AND THE JUDICIARY: THE RESPONSIBILITY OF STATE SUPREME COURTS (March 14-15, 1997).

² WILLIAM M. SULLIVAN, ET AL., EDUCATING LAWYERS (2007) [hereinafter EDUCATING LAWYERS in notes and “Carnegie Report” in text].

³ ROY STUCKEY, ET AL., BEST PRACTICES FOR LEGAL EDUCATION (2007) [hereinafter BEST PRACTICES in notes and The Best Practices Report in text].

⁴ At this point, more than 25 schools have curricular initiatives that address cultivation of professional identity. See L.O. Natt Gantt, II, and Benjamin V. Madison, III, *Self-Directedness and Professional Formation: Connecting Two Critical Concepts in Legal Education*, 13 UNIV. ST. THOMAS L. J. n.99 & accompanying text (forthcoming 2017) (listing the schools that now have such curricular initiatives). The Institute for the Advancement of the American Legal System, encouraged by Carnegie lead author William Sullivan, established an initiative called Educating Tomorrow’s Lawyers. The criteria for membership require schools to demonstrate a commitment to implement the three apprenticeships recommended in Carnegie. See Institute for the Advancement of the American Legal System, *Consortium Information* (Criteria for Membership), <http://educatingtomorrowlawyers.du.edu/about-etl/about-our-consortium/consortium-member-criteria/> (last visited June 20, 2017). In short, these schools are among those who have formally declared their agreement with Carnegie’s recommendations.

⁵ In addition to John Berry, who served as moderator, and the author, the following educators spoke on the panel: Deborah Moss Curtis, Associate Dean for Academic Affairs and Professor of Law, Shepard Broad College of Law, Nova Southeastern University; Benjamin K. Grimes, Deputy Director of the Department of Justice Professional Responsibility Advisory Office; Neil W. Hamilton, Holloran Professor of Law at St. Thomas University School of Law and Director of Holloran Center for Leadership in the Professions; Michael S. McGinnis, Associate Professor of Law at North Dakota School of Law.

⁶ L.O. Natt Gantt II & Benjamin V. Madison, III, *Teaching Knowledge, Skills, and Values of Professional Identity Formation*, in BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD 253, (Deborah Maranville et al. eds., 2015).

⁷ Chris Ballard, *The 25 Leadership Lessons of Steve Kerr*, SPORTS ILLUSTRATED (May 16, 2017).

8 The professions studied in the five Carnegie reports are clergy, engineering, medicine, nursing, and lawyering. See Neil Hamilton, *Fostering Professional Formation (Professionalism): Lessons from the Five Carnegie Foundation's Five Studies on Educating Professionals*, 45 CREIGHTON L. REV. 763 (2012).

9 See *id.*

10 Gantt & Madison, *supra* note 7, at 265-70.

11 Conversely, lawyers who do not stay in touch with their values will often experience the disintegration that occurs when he or she believes that when taking on the "role" of advocate allows the lawyer to discount his or her internal values. Indeed, one scholar has described the kind of disintegration of self (or "dissonance") that occurs when lawyers act according to the belief that they can separate their personal and professional values:

The lawyer who suppresses moral scrutiny can fall prey to a kind of self-loathing that those with integrity can resist. By ignoring early dissonance, a lawyer suppresses her moral identity instead of silencing it. She may overcome alienation by subtly reshaping who she is as a person. Incrementally, these changes are almost imperceptible. This is human character in moral drift. Although personal change can signify moral progress, not all fluidity is compatible with integrity. Moral development emerges from braving the discomforts of self-scrutiny. It arises from caring about personal betterment and moral knowledge. Self-protective maneuvers produce dissonance and alienation instead. Eventually, the lawyer adapts to avoid discomfort and remove moral impediments. Instead of humble, she becomes servile. What was at first professional inauthenticity slips into a newly authentic, lesser self. Self-loathing emerges because squelching the moral self leaves lingering guilt and regret.

Reed Elizabeth Loder, *Integrity and Epistemic Passion*, 77 NOTRE DAME L. REV. 841, 877 (2002); see also L.O. Natt Gantt II, *Integration as Integrity: Postmodernism, Psychology, and Religion on the Role of Moral Counseling in the Attorney-Client Relationship*, 16 REGENT U. L. REV. 233, 251 (2004) (offering evidence of how "sharp separation between lawyers' professional and personal identities can actually lead to emotional maladjustment.").

12 Michael S. McGinnis, *Virtue and Advice: Socratic Perspectives on Lawyer Independence and Moral Counseling of Clients*, 1 TEXAS A & M L. REV. 1 (2013).

13 See Neil Hamilton, Madeline Coulter & Marie Coulter, *Professional Formation/Professionalism's Foundation: Engaging Each Student's and Lawyer's Tradition on the Question "What Are My Responsibilities to Others?"*, 12 U. ST. THOMAS L.J. 271 (2016).

- 14 Neil Hamilton & Verna Monson, *Legal Education's Ethical Challenge: Empirical Research on How Most Effectively to Foster Each Student's Professional Formation (Professionalism)*, 9 U. ST. THOMAS L.J. 325 (2011) (relying on renowned psychologists Lawrence Kohlberg, James Rest, and others to show that the process of forming one's ethical professional identity is not likely to be fully developed in law school, but that law school can have a significant impact spurring the person to grow).
- 15 Bryant G. Garth, *From MacCrate to Carnegie: Very Different Movements for Curricular Reform*, 17 J. LEGAL WRITING INST. 261, 267 (2011).
- 16 Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness*, 11 CLINICAL L. REV. 425 (Spring 2005).
- 17 See, e.g., JOSEPH ALLEGRETTI, *THE LAWYER'S CALLING* 19, 68 (1996) (contending that lawyers who separate their personal morality from their professional role suffer from "a kind of moral schizophrenia," which ultimately causes the lawyers' professional amorality to "infect" their personal life).