

PROCEEDINGS

ONLINE JOURNAL OF LEGAL WRITING CONFERENCE PRESENTATIONS

VOLUME 1, ISSUE 2

WINTER 2020

* * *

PROFESSIONAL IDENTITY FORMATION
AS A POWER SKILL

L. DANIELLE TULLY

PROCEEDINGS

VOLUME 1

ISSUE 2

PROFESSIONAL IDENTITY FORMATION AS A POWER SKILL

L. DANIELLE TULLY¹

Law school is disorienting, especially in the first year, as students begin their socialization to the profession. This socialization impacts professional identity construction by defining roles, communicating norms, and unspooling narratives about what it means to be a lawyer and to practice law. For too long, the end goal of this socialization has been to “think like a lawyer,” and thinking like a lawyer has meant mastering black letter law, tactical issue spotting, and dispassionate communication.² As a result, many new law students find themselves quickly adrift, cut-off from their former selves.

The False Narrative of Neutrality

Despite decades of critique and various reform efforts, the traditional law school curriculum continues to replicate White dominant social culture and perpetuate a false narrative that law—not to mention the study of it—is neutral. Although some first-year podium professors integrate critical perspectives into their courses, most of these courses are taught exclusively from edited appellate decisions that gloss over human context and long-entrenched power structures. While focusing on black letter law to the exclusion of most everything else, first-year podium courses flatten the law and,

¹ L. Danielle Tully is a professor at Northeastern University School of Law.

² See Stephen Wizner, *Is Learning to “Think Like a Lawyer” Enough?*, 17 *Yale L. & Pol’y Rev.* 583, 589 (1998) (suggesting that it is “possible to discourage fuzzy thinking and sentimentalism, and to teach ‘abstract hypothetical-deductive critical thinking skills,’ while at the same time raising and addressing moral issues and encouraging humane responses to human experience”) (footnote omitted).

as Lucy Jewel notes, “privilege[] technical form and levels of legal authority over social contexts and moral issues.”³

Even in their more intimate legal writing courses, students focus on form—like mastering predictive analysis—rather than context. While some legal writing professors have embraced concepts such as cultural sensibility and social cognition, the discipline as a whole has not. Few legal writing textbooks discuss how social cognition and culture impact laws’ creation, interpretation, and implementation. And, none address race or structural oppression.

Challenging the White-normative professional identity framework is essential to rebuilding the legal profession. And, rebuilding the profession begins with what we teach our students. To prepare law students to practice law ethically, promote justice, and improve the legal profession, law professors must invite their students to connect their multidimensional experiences to their study and practice of law.

Professional Identity Formation

All professors of 1L courses can support professional identity development before their courses begin and keep the conversation going all semester long. Those who teach smaller sections of 1L students are particularly well-positioned to guide students in professional identity formation, but all professors can take small steps to assist students in developing their authentic identity as lawyers.

Refocusing Introductory Surveys. Prior to the semester’s start, professors can create an introductory survey with questions that subvert the typical gatekeeping questions about prior educational

³ Lucille A. Jewel, *Bourdieu and American Legal Education: How Law Schools Reproduce Social Stratification and Class Hierarchy*, 56 *Buff. L. Rev.* 1155, 1196 n.226 (2008).

and work experiences, which may entrench race, class, and gender hierarchies rather than level the playing field.⁴ Instead, survey questions can invite law students to consider their personal and cultural experiences before law school because those experiences will impact how they interpret, apply, and communicate the law. For example, I ask students to tell me how they approach problem solving either by explaining their process or by telling me a story about a problem they tried to solve. I also ask them to briefly describe any paid and unpaid work experience that they bring with them to law school. I ask them to tell me what they learned from these experiences and how that learning will help them on this new journey. I also let them control the response medium. They can tell me one story or several, and they can share a written document, audio recording, or video. I prime the answers by sharing my own.⁵

⁴ See Christopher Williams, *Gatekeeping the Profession*, 26 *Cardozo J. Equal Rts.* 171 (2020) (discussing various gate-keeping functions at work from law school admissions to post-graduate legal employment).

⁵ Here are my responses to those two questions this year: (1) For this question, I think about the various problems I have solved or attempted to solve and how. **Think, research, plan, try, recalibrate, try again.** Those five verbs capture my general process, but they don't always happen in that order. Sometimes problems emerge that require a different order. If the problem involves other people two other verbs are important: **listen and communicate.** One other thing I continue to work on is **embracing failure** as part of my learning and problem-solving processes. **I am also very determined.** (2) Between college and law school, I coordinated a five-agency initiative that sought to build community and enhance economic development in East Boston. As part of my job, I raised and managed the project's annual operating budget of \$150,000, developed and implemented action plans, and worked with diverse partner organizations to support community development. **Here I learned to listen to competing constituency interests and find common ground.** During college, I was a dishwasher and waitress, and I took care of school-aged children. **Here I learned patience, clear communication, and humility.** During two college summers I worked at Summerbridge Portland teaching rising 7th, 8th, and 9th graders and serving on the program's leadership team. **Here I learned how to be a member of and how to lead a high functioning team.** During time-off from college, I was a failed au pair in Madrid, Spain. **Here I learned that it is okay to quit.** I also spent six months volunteering at an orphanage in Honduras. **Here I learned the difference between service that builds dependency and service that supports self-determination.** I worked and volunteered in high school, too, where **I learned how to juggle multiple obligations.**

Beyond introductory surveys, professors should encourage students to continue to explore their personal, intersectional identities through frequent self-reflection. Using podcasts or TED Talks as a spring board, professors can ask students to think about how their own identities and experiences impact their reaction to and understanding of the material they are encountering.⁶ In addition to deepening a student's understanding of their own identities, purposeful discussions of the legal profession, lawyering, and professional identity development can help students to feel a sense of belonging and agency. This is particularly important given continuing segregation in law schools and institutions of higher education. Once started, professors should keep the conversation going throughout the 1L year.

Incorporating Ethics. Currently, most law students learn about legal ethics in a separate, required, upper-level professional responsibility course. Instead, students should consider the ethical and moral dimensions of law and law practice from the start of their education.⁷ They can do this by specifically exploring and critiquing the ethical rules governing the profession and imagining “a new code of ethics for lawyers,” as Purvi Shah implores in *Rebuilding the*

⁶ I developed an exercise that I have given my students during the first week of the fall 1L semester as part of setting ground rules and course expectations based on a TED Talk by Taiye Selasi. (https://www.ted.com/talks/taiye_selasi_don_t_ask_where_i_m_from_ask_where_i_m_a_local?language=en). After watching the TED Talk together, students consider the rituals, relationships, and restrictions that impact their identities. The exercise is meant to help students consider how identity shapes our role as lawyers and how it informs, changes, and reifies the law.

⁷ See Nelson P. Miller, *An Apprenticeship of Professional Identity: A Paradigm for Educating Lawyers*, Mich. Bar J. (2011) (available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1924917) (arguing that the integration of ethical and moral considerations into more traditional, doctrinal courses allows for more nuanced professional identity development that incorporates a humanistic approach to the profession).

Ethical Compass of Law, “that is aspirational and inspirational; an ethical north star versus a bare minimum.”⁸

When building “traditional skills,” like case reading and rule synthesis, professors should expose students to how mental schema and master narratives impact their understanding of the law and impact legal problem solving. For example, professors can assign not only Orin Kerr’s *How to Read A Legal Opinion*⁹ but also Bennet Capers’s *Reading Back, Reading Black*¹⁰ and engage students in exploring the form and function of legal authority. On the one hand, legal opinions “follow a simple and predictable formula”¹¹—a genre students can learn. The “Facts of the Case” is one component of this genre.¹² Contrary to Kerr’s suggestion, though, the facts don’t just tell us what happened. They tell us which facts the judge selected from the facts presented by the parties. They tell us “a” story about what happened. Rather than accepting the facts at (neutral) face value, professors should encourage students to engage in transformative legal analysis¹³ by evaluating how culture, context, and cognition affect which facts are included and which are omitted from legal opinions. Doing so invites students to adopt a critical lens and understand how legal authority functions to produce and reproduce meaning.¹⁴ As Kerr aptly notes, “[i]f you don’t know the facts, you can’t really understand the case and can’t understand the law.”¹⁵

⁸ Purvi Shah, *Rebuilding the Ethical Compass of Law*, 47 Hofstra L. Rev. 11, 16 (2019).

⁹ Orin Kerr, *How to Read A Legal Opinion: A Guide for New Law Students*, 11 Green Bag 2d 51 (2007).

¹⁰ I. Bennett Capers, *Reading Back, Reading Black*, 35 Hofstra L. Rev. 9 (2007).

¹¹ Kerr, *supra* note 9, at 51.

¹² Kerr, *supra* note 9, at 53.

¹³ L. Danielle Tully, *The Cultural (Re)Turn: The Case for Teaching Culturally Responsive Lawyering*, 16 Stan. J. C.R. & C.L. 201, 237-38 (2020). I note in the article that the term “transformative legal analysis” is inspired by the work of Professor Lucy Jewel, a legal writing and rhetoric scholar. *Id.* at 207 n.27; see also Lucy Jewel, *Neurorhetoric, Race, and the Law: Toxic Neural Pathways and Healing Alternatives*, 76 Md. L. Rev. 663, 680 (2017).

¹⁴ See Capers, *supra* note 10, at 11 (noting “judicial opinions function as grand narratives, as master texts that contribute to an ideology of race and racial hierarchy.”).

¹⁵ Kerr, *supra* note 9, at 57.

Deepening the Human Context. Professors should also aim to counteract the prevalence of one-dimensional “cardboard clients”¹⁶ by considering the identities and experiences of the fictional characters who people their simulated legal problems or hypotheticals. While simulated clients can never replicate live-client representation, fictional clients can reflect the intersectional identities born of our lived realities. To this end, rather than waiting until a 2L externship placement or 3L clinic, professors can help students develop cultural sensibility in the 1L year by introducing Professor Sue Bryant’s seminal piece: *The Five Habits*.¹⁷ Professors in legal writing courses can have students complete an exercise based on the first habit, “Degree of Separation and Connection,” to understand their similarities to and differences from simulated clients. As part of the exercise, the students would discuss how the similarities and differences affect their ability to gather facts, identify legal issues, and communicate with their clients.¹⁸ Professors in podium courses can extend this exercise by considering concepts like reasonableness and asking students to imagine the “reasonable person.”¹⁹ In addition, they can assign law review articles, book chapters, and podcasts to help students

¹⁶ See Ann Shalleck, *Constructions of the Client Within Legal Education*, 45 *Stan. L. Rev.* 1731, 1733-39 (1993) (discussing the construction of clients in a typical law school classroom).

¹⁷ Susan Bryant, *The Five Habits: Building Cross-Culture Competence in Lawyers*, 8 *Clinical L. Rev.* 33 (2001).

¹⁸ See Tully, *supra* note 13, at 251. For other suggestions on applying *The Five Habits* in large first-year required courses, see Mikah K. Thompson, *Toward a Pedagogy of Cultural Self-Awareness in the First-Year Law School Classroom*, *Cultural Competence in Higher Education*, forthcoming (available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3435854).

¹⁹ Thanks to Professor Osamudia James for this idea. In her Torts class, she asks students to close their eyes and picture the reasonable person. She asks: Who is this person? What do they look like? Where do they live? How do they move around the world? Students then open their eyes, and she asks a series of questions about who or what they conjured. Osamudia James, Professor, University of Miami Law School, Presentation at the Boston University School of Law Symposium: *Racial Bias, Disparities and Oppression in the 1L Curriculum: A Critical Approach to the Canonical First Year Law School Subjects* (Feb. 28, 2020) (remarks on file with author).

connect with and contextualize the cases they read.²⁰ Adding context and dimensionality allows professors to engage students in conversations about the complex people and stories they will encounter in practice. It also allows students to connect their identities and experiences to their law study.

Conclusion

Inviting students to cultivate their professional identities as a power skill during their 1L year reinforces the notion that, much like a lawyer's duty of competence under the Model Rules, professional identity development requires an ongoing commitment to self-reflection, inquiry, and growth. When professors approach teaching professional identity development (and all lawyering skills) through an intersectional lens, we can begin to create an educational space that is a little less disorienting, and a profession where everyone feels they belong.

²⁰ For a simple, engaging addition to a discussion on "reasonable person," include the podcast "Mr. Graham and the Reasonable Man." Radiolab, *Mr. Graham and the Reasonable Man*, More Perfect (2017), <https://player.fm/series/radiolab-presents-more-perfect/mr-graham-and-the-reasonable-man> (last visited Dec. 1, 2020). For examples of scholarship on the reasonable person standard see Ann C. McGinley, *Reasonable Men?*, 45 Conn. L. Rev. 1 (2012) (discussing the reasonable person standard in negligence law and Title VII); Lucy Jewel, *Does the Reasonable Man Have Obsessive Compulsive Disorder?* 54 Wake Forest L. Rev. 1049 (2019) (exploring the cultural and legal attributes of the reasonable man).