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A PATHWAY OF PROFESSIONALISM — THE FIRST DAY OF LAW SCHOOL AT THE UNIVERSITY OF IDAHO

Dean Donald Burnett
University of Idaho College of Law

You are now entering a profession shaped by values. Popular culture and talk show cynicism notwithstanding, real lawyers and real judges confront ethical dilemmas honestly and they resolve those dilemmas by reference to rules and unselfish principles. They represent clients, while exercising independent professional judgment; they serve as conscientious officers of the legal system; and they accept a unique responsibility for the quality of justice. Every element of expertise you develop in law school, and every skill you acquire during your legal education, must be guided in its application by a strong sense of ethics and a personal commitment to professionalism. That commitment starts today.

This is the message students receive during their first day of orientation at the University of Idaho College of Law. The message is delivered, not only in welcoming remarks, but also (and more influentially) by more than thirty judges and lawyers who come to the College every year for a program of face-to-face dialogues with entering students about the meaning and importance of professionalism. The program – formally entitled “Professionalism: First Step in Law School – Foundation of a Career,” and known informally as our “Day One” program – is a joint undertaking by the College and the Idaho State Bar. The program identifies core values and illuminates a pathway to life-long fulfillment through devotion to the law as a high and noble calling.

WHY IS PROFESSIONALISM IMPORTANT ON DAY ONE?

Professionalism has not always been a priority in legal education. American law schools have long wrestled with their dual identity as graduate schools and professional schools, combining scholarly inquiry into what the law is (and should be) with the preparation of students to practice law ethically and effectively. In 1984, the American Bar Association held a conference entitled: *Legal Education and the Profession: Approaching the 21st Century*. It was followed in 1986 by the work of an ABA Commission on Professionalism that firmly planted “professionalism” into the discourse on the education and work of lawyers.¹ In 1987, the ABA conducted the National Conference on Professional Skills and Legal Education. One of the conveners of the 1987 conference, Minnesota Supreme Court Justice Rosalie Wahl, noted the importance of combining professional values with professional skills:

Have we really tried in law school to determine what skills, what attitudes, what character traits, what quality of mind are required of lawyers? Are we adequately educating students through the content and methodology of our present law school curriculum to perform effectively as lawyers after graduation?²

In the same year, another ABA task force – the Task Force on Law Schools and the Profession: Narrowing the Gap, chaired by Robert MacCrate – issued its landmark report, *Legal Education and Professional Development – An Educational Continuum (MacCrate Report)*. The *MacCrate Report* noted that professional skills and values typically had received inadequate attention in

law school (a juncture along the “legal education continuum”).³ This report was reinforced by new calls for law schools to inculcate a greater sense of special calling and civic duty among future lawyers.⁴ The result has been the emergence of a now-familiar trilogy in legal education – doctrine, skills, and values – adding complexity to the already dynamic relationship between the graduate and professional dimensions of the American law school.⁵

The movement toward strengthening the professional side of legal education received an additional thrust in 2007 with the publication of two profoundly important studies. The Clinical Legal Education Association (CLEA) issued its *Best Practices* report, providing a vision of what legal education might become if legal educators were to focus more intensely on how they can most effectively prepare students for practice.⁶ The other major study, published by the Carnegie Foundation, drew upon extensive field work in comparing the teaching observed at law schools with the teaching approaches observed in other professions (e.g., medicine and engineering). The report found that American legal education is powerfully effective in developing analytical ability – “thinking like a lawyer.” On the other hand, the report found law school remarkably ineffective in developing practice effectiveness and what the report called civic professionalism. Reprising an old concept of apprenticeship, the report recommended that law schools provide not only an intellectual, cognitive apprenticeship in the growth of legal expertise and analytical capacity, but also a practice-based, hands-on learning apprenticeship as well as an apprenticeship in the development of professional identity and purpose. Without all three of these apprenticeships, the report argued, legal education is incomplete and fails to prepare students adequately for their professional lives.⁷

Of course, legal education is not limited to preparing lawyers for practice or for careers as judges. The Juris Doctor degree is a key that also unlocks doors of opportunity in business, nonprofit entities, public administration, social services, higher education (law as well as other disciplines), and the burgeoning forms of dispute resolution. There is no single “profession” for which our students are being prepared. Yet the early segments of these career paths have many similarities; indeed, the very fact that the Juris Doctor degree is a common point of departure evidences a universal demand for a lawyer’s endowment of knowledge

and analytical ability, adaptable skills, and good character – all nurtured and reinforced by a sense of professional identity and purpose.

Because the development of professional identity and purpose is (and perhaps always should have been) a centerpiece of American legal education, the process ought to begin on the first, formative day of law school. Idaho has been a leader, incorporating professionalism into its law school orientation since 2003. The Day One timing is both functional and symbolic. It informs students at the outset that law school is not just another form of graduate education. Moreover, it gets the students' ethical gyroscopes spinning early in their professional training, and it validates the worthy impulses of students who have been attracted to the law as a service profession. For those who may be less altruistically motivated, or who are simply seeking the career flexibility that a Juris Doctor degree provides, the Day One program sends an up-front message that genuine success and professionalism are linked in any context. This message is strengthened by the symbolism of being delivered in person, before doctrinal legal education has even begun, by judges and lawyers whose personal achievements have been shaped by professional values.

Although the values that inform professional identity and purpose do not yield to simplistic definition, they encompass, at minimum, an understanding that membership in a profession, unlike a mere occupation, entails an obligation to act beyond self-interest. This obligation is not limited to complying with the letter of standards prescribed by law; it also includes fulfilling the spirit of such standards, by acting honorably even if the standards leave room for interpretation or may be unenforceable by discipline, and by striving to resolve ethical dilemmas in a manner consistent with the public good (even when – and especially when – overreaching clients or market forces tempt a professional to do otherwise).⁸ These values reside at the heart of the professionalism program that marks a distinctive first day of law school at the University of Idaho.

ESTABLISHMENT AND OPERATION OF THE "DAY ONE" PROGRAM

When the College of Law approached the Idaho State Bar in the fall of 2002 with a proposal to collaborate on a professionalism program featuring face-to-face dialogue with entering students, the idea received an enthusiastic response. Indeed, the Bar's newly formed Professionalism and Ethics Section had presented a lecture-style program on professionalism at the College during the prior academic year. The Section also had completed, in cooperation with Idaho's federal and state courts, a comprehensive set of civility standards for lawyers and other officers of the courts, including the judges themselves.⁹ (The standards have been reprinted in this edition of *The Advocate*, starting on page 18.) The Section and the College recognized that a professionalism program for entering law students would heighten awareness of those standards by future lawyers. With financial support raised within the Bar and other organizations by attorney Allyn Dingel, as well as contributions to the law school from private sources including retired professor Myron Schreck's family foundation, the program made its debut on the first day of orientation for the entering class of 2003.

The program consisted, as it has in the ensuing five years, of a plenary opening session with a presentation on the meaning and importance of professionalism, followed by break-out sessions for student dialogues on ethics and professionalism scenarios, and then a second plenary session in which student groups report their responses to the scenarios and the students hear concluding remarks on professionalism as a continuing expectation in their lives. The break-out sessions are the most dynamic feature of the program. Each break-out group is composed of five or six students, together with one or two judges or lawyers whose function is to guide the discussion and stimulate student participation. The judges and lawyers – known as the "mentors" – are selected by the Bar in consultation with the College, the primary criterion being a reputation for high ethical standards. In addition, the Bar and the College undertake to show the "face" of the profession by providing as much diversity as possible in terms of professional specialty, geography, and demography. Each year some new mentors are invited to participate and usually are paired with experienced mentors. The mentors and plenary session speakers have included justices of the Idaho Supreme Court, judges of the Idaho Court of Appeals, federal judges, state trial judges, attorneys engaged in civil or criminal trial work, administrative law practitioners, and transactional lawyers from all parts of Idaho, plus a few from Washington. The mentors have donated their time and efforts; many have even "forgotten" to ask for reimbursement of their travel expenses.

The discussion scenarios for the break-out sessions contain fact patterns framing ethics or professionalism dilemmas. For example, scenarios have included civility issues arising from short-notice and no-show depositions; ethical challenges posed by clients who seek a lawyer's assistance in perpetrating apparent frauds; problems regarding the treatment of witnesses, or candor toward the tribunal, in criminal or civil cases; questions regarding the fairness of attorney fees in an estate planning situation; direct and indirect conflicts of interest; and the professional responsibility for rendering pro bono services to assure access to justice. Although the students obviously do not know the Rules of Professional Conduct or the Standards of Civility, they are asked to identify the issues in each scenario and to discuss what they believe the appropriate principles of ethics or professionalism should be. The mentors help the students acquire a broad appreciation for the duties – and relationships among the duties – lawyers have as representatives of their clients, as officers of court, and as public citizens with a special responsibility for the quality of justice. The students are drawn into a discourse framed by positive values, and they are disabused of negative stereotypes. Invariably, the mentors have reported at the end of the day that they found the students to be earnest, the discussions stimulating, and the experience often heart-warming – engendering renewed hope for the future of the profession.

For their part, the students each year have been surveyed for their impressions. Consistently, they have ranked their Day One professionalism experience among the most highly stimulating and useful parts of an overall orientation program that covers nearly a week. Narrative comments from students

have expressed amazement that “such important people would spend a day with us,” gratitude that people in “the real world” take ethics seriously, and deepened satisfaction with the decision to go to law school.

The success of the Day One program has prompted exploratory discussions, at the College of Law and in the Section of Professionalism and Ethics, of additional programs that would reinforce core values and give students a progression of mentoring experiences throughout law school. Such programs would enrich a curricular pathway of professionalism that already includes the College’s professional responsibility course, its distinctive mandatory *pro bono* program, and its doctrinal and clinical courses where professionalism and ethics components are embedded.

New forms of collaboration will emerge. The Day One program has strengthened the connection between the legal academy and the legal profession in Idaho. The result is, and will continue to be, enhanced cooperation in developing the professional identity and purpose of the Idaho-educated lawyer.

ABOUT THE AUTHOR

Donald Burnett is the Dean of the University of Idaho College of Law, a past President of the Idaho State Bar, and a past chair of the Professionalism Committee of the American Bar Association’s Section of Legal Education and Admissions to the Bar. The author gratefully acknowledges Lee Dillion, Instructor and Director of External Programs at the College of Law, for his contributions to the professionalism program discussed in this article and for his suggestions regarding the article itself.

ENDNOTES

¹ American Bar Association Commission on Professionalism, “In the Spirit of Public Service”: A Blueprint for the Rekindling of Lawyer Professionalism (1986).

² Recounted by Robert MacCrate in his “Foreword,” at page vii, to the “Best Practices” book described later in this article and cited at n. 6 *infra*.

³ *Legal Education and Professional Development – An Educational Continuum*, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap (Robert MacCrate, chair), American Bar Association (1992).

⁴ See, e.g., Anthony T. Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (Harv. Univ. Press 1993); Jerome Shestack, *President’s Message: Defining our Calling*, 83 A.B.A.J. 8 (1997). In a similar vein, the ABA Model Rules of Professional Conduct for Lawyers have been amended to emphasize the roles of lawyers as officers of the legal system and as public citizens with special responsibilities for the quality of justice, vis-à-vis their role as representatives of clients. See, e.g., Rules 1.6 (confidentiality and its exceptions) and 1.13 (duties of the lawyer for an organization). American Bar Association Center for Professional Responsibility, *Model Rules of Professional Conduct* (2004) (*hereinafter* the Model Rules). The Idaho Rules of Professional Conduct express the same general themes.

⁵ Professionalism is now becoming an integral part of legal education in other countries as well. See, e.g., James R. Maxeiner & Keiichi Yamanaka, *The New Japanese Law Schools: Putting the Professional into Legal Education*, 13¹¹³

PAC. RIM L. & POL’Y J. 303 (2004).

⁶ Roy Stuckey et al., *Best Practices for Legal Education: A Vision and A Road Map* (Clinical Legal Education Association, 2007). The book is available from CLEA or can be accessed on-line at <http://cleaweb.org>.

⁷ William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* (Carnegie Foundation for the Advancement of Teaching 2007). A fuller summary of the “Carnegie Report” as well as “Best Practices” may be found in D. L. Burnett, Neither Mess nor Menace: Legal Education and the Erudite Apprentice, 18 *The Professional Lawyer* 2 (American Bar Association, 2008). Elements of that summary have been synopsized here.

⁸ See generally “President’s Messages” of Deborah Rhode and John Sexton, respectively, in *Association of American Law Schools Newsletter* (Apr. 1997 and Apr. 1998).

⁹ See Richard C. Fields, Preserving the Profession: The Idaho State Bar’s Professionalism & Ethics Section, 39 *Idaho L. Rev.* 479 (2003),

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