ONE EXAMPLE OF MANY: HOW CAN A LAW SCHOOL BECOME MORE CARNEGIE-LIKE?[*]

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So what can a school do to become more Carnegie like? There are probably as many answers to that question as there are law schools. That is the first lesson for innovators. But I will tell the one story I know best. I will tell the story of how my school, the College of William and Mary became more Carnegie like. But I must begin by saying that we became more Carnegie like not only before there was a Carnegie report, but before there was a MacCrate report. This story begins in the mid-1980s, years before there was a MacCrate report, let alone a Carnegie Report. This program is now 20 years old. It is eligible to vote, and soon will be able to legally drink alcohol in any of the 50 states.

In the mid-1980s, my school had a failing research and writing program. It was staffed in a woeful manner by a single, year-to-year contract faculty member and a small team of teaching assistants. That staff was to teach an entire first year of objective legal research and writing, as well as a one-semester, second-year appellate advocacy course. I need say no more for you to know that a course staffed in that manner could not succeed. So the story of the birth of our Legal Skills Program at William and Mary is a story that begins in failure. And I'm not surprised. I would not be surprised if many important changes in curriculum were born of deep disappointment with the existing curriculum.

I will tell you more about the program itself in a few minutes. But let me tell you first a few things about how it came to be. We made some good decisions, and we were lucky. We could not have done this without some of each.

There were some simply fortunate circumstances that led to the beginning of our legal skills program in 1988. Some stars simply aligned properly. First, as I mentioned, the current legal research and writing program was failing. It was staffed by a single faculty member, and he was leaving for another law school. As a result, there was no legal research and writing constituency to protect its turf, nor its way of doing its teaching. Second, the professional responsibility course was at that time staffed by two faculty members, neither of whom would continue to teach it for much longer. One of them was a retired dean, near the end of his teaching time. The second was a visiting faculty member, to whom the law school had no commitment. As a result, there was no professional responsibility faculty to protect its turf, nor its way of doing its teaching. Third, the only two other faculty members who were teaching skills related courses were both fully committed and supportive of a creative solution. One was teaching our trial advocacy course and the other our interview and negotiating course. They became my partners in this enterprise.

When my faculty set out to solve the problem of its failing legal research and writing course, it did not merely decide to place more resources in the current program.

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That would have been a sensible solution given the paltry staffing situation in the failing program. Instead, however, the faculty looked for more creative opportunities to create something good from the bad situation. It looked broadly to include consideration of other skills courses, and at my suggestion, the professional responsibility course.

Some political choices were made in the design of the program to make it more likely to be adopted. As we all know, the first-year curriculum has a deeply entrenched constituency supporting the status quo. It has been said correctly that changing the law school curriculum, especially the first-year curriculum, is like trying to move a graveyard. We decided to leave the first-year curriculum alone except for the addition of our new course operating in place of the abandoned legal research and writing course. No credit hours were taken from any existing first-year course. There was no synergy sought between the subject matter of any first-year course and our new program. Although there is attraction in combining a skills course with a substantive law topic, the complications of doing so with an ever-changing ever- realigning first year faculty were thought simply to daunting a task to undertake and sustain. Notice I said "sustain." From the first, we decided that we wanted to create a program that could last. Leaving the first-year curriculum alone was a key to accomplishing that goal. Except for noticing an improvement in their students thinking skills early in the first semester, no first year faculty member was affected by the adoption of this program.

Rather than seek partnership with any substantive first-year course, we partnered with the also poorly-staffed professional responsibility course. We thought then, and we think now that there is great advantage to combining the teaching of lawyer skills courses, that is, how lawyers do their work, with the lawyer ethics course, that is, how the law regulates the way in which lawyers do their work. We undertook to be not only a comprehensive lawyer skills course covering the ordinary range of lawyers skills subjects, but also the required professional responsibility course for our law school. That was a frightening undertaking and a weighty decision. To me, that one decision more than any other has distinguished what we have done from other similar efforts at other schools. And it is what makes our course a richer, more meaningful more significant Carnegie like innovation.

Briefly then, what does this mean to the students in the program? How does it work? Students in the program are placed in law office groups of about 16. They stay together for the four required semesters of the course. During those four semesters students cover the material that would otherwise be in a research and writing course, an interviewing and counseling course, a negotiation course, a pretrial practice course, a very basic trial practice course and the professional responsibility course. Combining those materials into one teaching vehicle creates efficiencies and learning opportunities that do not exist in the separate courses. Students make connections among these subjects and lawyer activities that they cannot make when studying each in isolation. They negotiate matters on which they have themselves gathered the facts. And when that negotiation ends, they will proceed either to draft the required documents or on to litigation as the case may lead them. They look back and learn about one activity already

performed as they engage in another activity for that same client down the representation road.

The students proceed on two parallel tracks. First, at any given time, they are having weekly class meetings with readings materials to discuss, sometimes in-class, role play activities, sometimes in-class demonstrations sometimes in-class simulations of a law office meeting. At the same time, they are representing a series of four simulated clients from beginning to end. Each of their client's representation begins when the students interview someone assigned to play the role of their client. The representation, guided by assignments from their faculty supervisor, proceeds through steps to some end to the representation. In some cases, that end will be a negotiation and document drafting. In other cases, that end will be the end of litigation through the first appeal. The simulated clients and problems are designed to mesh with the skills and ethics subject matter of the parallel classroom activities.

The result has been a program that has graduated nearly 4000 students over its 20 year life. Our efforts to gauge the success of the program have been extensive. In a significant survey any of 1000 graduates of four law schools including our own, we learned that our graduates regarded their preparation for practice and for identifying and solving lawyer ethics issues to be far superior to the graduates of the three other similar schools. We chose schools for the survey, with many similarities to our own except for the manner of their skills and lawyer ethics teaching. I encourage you to read the article describing the survey as our time today does not allow me to discuss it in detail. Professional Preparedness: A Comparative Study of Law Graduates' Perceived Readiness for Professional Ethics Issues, 58 Law & Contemporary Problems 259 (1995)
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We also learned in recent years that there is interest in our work outside the United States. In 2005, we were contacted by a law school in Osaka, Japan and after they visited Williamsburg and I visited Osaka, they started a pilot course for selected students that was modeled on our course. Through rule of law work, I have also been able to work with legal educators in five countries on new courses that partake of the flavor of our course. That work has been richly rewarding to me.

As I said, there has been some luck and some hard work in our success at starting this program in 1988 and sustaining it for these twenty years. I remember telling my colleagues as we began the first year that our aspiration should be to survive the first year. We did that and allowed our aspirations to grow from there. We are one of many examples of how a law school can become more Carnegie like, even if our example began even before MacCrate.