

**The Carnegie Foundation Critique
of American Legal Education:**

**Lessons for Teaching
Professional Responsibility**

Carnegie Report

**Educating Lawyers: Preparation for the
Profession of Law**

– By William M. Sullivan, Anne Colby,
Judith Welch Wegner, Lloyd Bond & Lee
S. Shulman

– The Carnegie Foundation for the
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Carnegie Report says:

- The goal of professional education cannot be just knowledge
- Or even knowledge plus skillful performance.
- Because in real-life practice,
 - knowledge,
 - skill,
 - *and* ethical behavior
 - are interdependent
- A practitioner can not exhibit one without involving the others at the same time.

What did Carnegie Find?

- Law schools provide inadequate support for developing the ethical and social dimensions of the profession
- For most students legal education does not improve their moral judgment

How Most US Law Schools Teach Ethics Now

- Courses on the “law of lawyering”
 - Model Rules of Professional Conduct
 - “common law” from malpractice cases, motions to disqualify, etc
- Teach how to avoid punishment for unethical conduct (and prep for MPRE)

Limitations of this approach

- In real life, ethical challenges are not pre-identified
- Can do more harm than good
- Because this approach may limit what graduates perceive as ethical issues

The Famous Law Professor Karl Llewellyn

- Said many years ago in a lecture to entering law students
- *" The hardest job of the first year is to lop off your common sense, to knock your ethics into temporary anesthesia.*
- *It is not easy thus to turn human beings into lawyers.*

Karl Llewellyn

- *Neither is it safe.*
- *For a mere legal machine is a social danger.*
- *Indeed, a mere legal machine is not even a good lawyer.*
- *It lacks **insight** and **judgment**."*

- Professor Llewellyn told his students that law school would "endeavor" to restore the insight and judgment that is "knocked out" of them in the first year
- But when in the American law school experience is this restoration supposed to happen?

Four Components of Moral Behavior

- See James Rest, **Moral Development in the Professions** 60-61 (1994)
- (1) Moral sensitivity: identify a moral problem in a situation – for example:
 - Duty to keep client information confidential
 - Conflict of interest
 - What client wants may harm another

- (2) Moral reasoning: balancing conflicting values to choose the moral action, e.g.
 - Client confidentiality v. honesty to the judge
 - Duty to client v. risk of harm to others
 - Clients want you to represent them jointly v risk of conflict between those clients

- (3) Moral ***commitment***: the decision to give higher priority to the moral choice than other options
- (4) ***Implementing*** the moral decision: the interpersonal skills needed to implement the decision effectively

Four Components of Professional Judgment

- Create sensitivity to ethical issues likely to arise in practice
- Build the capacity for reasoning carefully about conflicts inherent in practice
- Establish a sense of personal identity that incorporates professional norms and values
- Develop competence in problem solving including necessary interpersonal skills

Heroes & Villains Class 1

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According to the Carnegie Report

- Both skills and ethical decisionmaking must be learned *in role*
- The student must move from the role of observer to actor

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- Research shows that education can develop professional judgement
- Students need to encounter examples of professional judgment in action
- Hence the case studies in this course

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- Connect those example with *models* for conducting work with professional judgment
 - The in-class role plays
- And then *reflect* on *the student's own emerging professional identity* in relation to those example and models
 - Your papers
