

# Can the Carnegie Report Spark Fundamental Reforms of Legal Education?

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# The “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 Advancement of Teaching 2007

# Carnegie Foundation for the Advancement of Teaching

- Founded in 1905 by Andrew Carnegie
- Has prompted many important changes in higher education
- The 1910 Flexner Report established the standards for modern medical education

# What is Special about Carnegie Methodology

- Independent, outside perspective
  - Only 1 of the 5 authors is a lawyer or law teacher (Judith Wegner)
  - One is a moral philosopher (Bill Sullivan)
  - Three are social scientists (Anne Colby, Lloyd Bond, Lee Shulman)
- Part of a larger project: Preparation for the Professions Program
- Thus able to compare legal education with other kinds of professional education
  - Doctors
  - Nurses
  - Engineers
  - Ministers and rabbis

# Carnegie Methodology (continued)

- Applies current research on teaching and learning
- Based on visits to 16 law schools
- How teaching and learning really happens
  - Classroom observations
  - Interviews with teachers and students

# Mis-Reading the Carnegie Report

- “Law Schools Too Abstract, Report Says: Study Suggests Teaching More Practicalities” (LA Daily Journal)
- Dangerous implication
  - That the Carnegie recommendations are anti-intellectual
  - That law schools should be trade schools

- Although the Carnegie Report ***IS*** concerned about legal education that produces lawyers who lack basic skills
- The Report is much ***MORE*** concerned about the problem of producing lawyers who lack professional responsibility

## Carnegie Report says:

- The goal of professional education cannot be just 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.



# The “Prequel” to the Carnegie Report

## **Work and Integrity: The Crisis and Promise of Professionalism in America (2nd edition)**

- By William M. Sullivan
- The Carnegie Foundation for the Advancement of Teaching 2005

# Sullivan: Crisis of Professionalism

- The public's persistent worry about professionals, often somewhat misleadingly described as a concern about professional "ethics," is in fact a suspicion that professionals have broken faith with the public.
- That professionals have abandoned the public
- They have become self-protective
- And aloof from the significance of what they do.

# Sullivan: The Promise of Professionalism

- The promise of genuine professionalism is a kind of transcendence and change of self
- gaining a wider sense of identity
  - through engagement with technical excellence
  - while taking responsibility for shared ends

- Authentic professionalism can impart a strong sense of identity because, beyond providing a livelihood, it is a way of life with public value.
- It is the kind of thing one can build a life around.

# Sullivan: How to Restore Professionalism to American Civic Life

- Can a profession secure public recognition of its claims to traditional professional prerogatives on the basis of the marketability of its technical skills alone?

# No !

- There is no successful separation between the skills of problem solving and those of deliberation and judgment
- no viable pursuit of technological excellence
  - without participation in those civic enterprises
  - through which esoteric knowledge and skill discover their human meaning.

- Professional renewal has to begin with professional education, or it will have no lasting future.
- This poses the urgent curricular and pedagogical issue of how contemporary professional schools manage – or fail to manage
  - The reintegration of cognitive training
  - with the capacities
    - for skillful practice *and*
    - ethical identity

# The Carnegie Report says

American law schools do one thing very well:

- In the first year students learn a new kind of intellectual discourse called “thinking like a lawyer”
- Students learn this with impressive speed
- This method of teaching is unique to law schools
- The process is almost the same at every law school



# ***But***

- The emphasis on learning to ***think*** like a lawyer is so heavy
- that learning to ***perform*** like one is almost absent
- 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

*"Law schools create people who are smart without a purpose."*

- Said by a student "from a highly selective private American law school" when interviewed by the Carnegie Foundation

# What do American law schools teach about a lawyer's purpose?

- The law school classroom is typically a simulated courtroom
  - The students are advocates
  - The teacher is the judge
- What is the implicit lesson about the lawyer's purpose?
- To win arguments in court

# 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?

# The Carnegie Report Answer:

- Realistic and real-life practice experiences must be integrated throughout the curriculum
- Both skills and ethical decisionmaking must be learned *in role*
- The student must move from the role of observer to actor

# Medical School

- In medical education it is the assumption of real *responsibility* for patient outcomes that turns the student into a doctor
- Introduce students to simple tasks in caring for real patients in the first year
- Use realistic simulations to prepare students for actual patient care
- In the 3<sup>rd</sup> and 4<sup>th</sup> years give students increasing responsibility for patient care under teacher supervision



# Carnegie Report

- Research shows that higher education can promote the development of more mature moral thinking
- Students need to encounter appealing examples of professional *ideals*
- Connected to *models* of ethical commitment
- And then *reflect* on *their own emerging professional identity* in relation to those ideals and models

# Carnegie Report

- Students need the
- ability to recognize ethical questions (even when they are obscured by other issues)
- wise judgment (when values conflict)
- and integrity (to keep self-interest from clouding judgment)

# Carnegie Report

- In order to practice with integrity and purpose:
  - ***compassionate commitment*** is needed
- This is especially developed when
  - students have personal connections with those who have experienced hardship or injustice
- And
  - forming relationships with professionals who inspire is important
  - though rarely documented

# Sullivan: Work and Integrity

- Many forms of professional preparation ... can be characterized as processes in which students move through the stages of an academically controlled apprenticeship:
  - from the academic study of texts and examples,
  - to the observation of practice,
  - to assistance with practice,
  - a highly supervised and monitored practice,
  - to increasingly autonomous practice.
- Many forms of professional preparation (***though not law***) can be characterized

# Impact of the Flexner Report: From Kenneth Lumerer, Learning to Heal

- By 1910, American medical education had progressed greatly, but further improvements were needed to elevate the average school to a minimum standard of excellence as well as to institute additional improvements at the stronger schools.
- It was unclear whether further development would continue along the same gradual, evolutionary path or whether more radical, dramatic changes were in the offing.

- The difficulties that even the best schools encountered in obtaining financial support and control of teaching hospitals suggested that many hopes might not be realized until far in the future.
- There were a variety of fiercely competing models of how best to conduct medical schools.
- This was the setting for Abraham Flexner's famous report, a classic of muckraking journalism, *Medical Education in the United States and Canada*, issued in June 1910

- Immediately on publication, the Flexner report created a sensation. Fifteen thousand copies went into print
- The report made instant headlines,
- With devastating candor, the report expos[ed] scandalous conditions
- At the Kansas Medical College, the dissecting room “did duty incidentally as a chicken yard: corn was scattered over the floor—along with other things—and poultry fed placidly in the long intervals before instruction in anatomy began.

- ... the report was not original—everything in it had been said by academically-inclined medical educators since the 1870s
- it had a galvanizing effect on public sentiment, making the achievement of the ideal much more attainable.
- The report thus not only influenced the speed at which medical education in the United States developed thereafter but the form it ultimately assumed.



- In his autobiography Flexner noted, “Schools collapsed to the right and left
- There is found a striking correlation between a school’s ultimate success and its response to the Flexner report.
  - eleven replies were from schools that are now extinct, and of these, ten were hostile
- The faculties of many weak schools acknowledged openly thereafter that they had no choice but to approximate Flexner’s ideal standards or become extinct.

- Flexner had given no credence to the view that medical schools should be judged on the basis of how their students performed on state licensing examinations.
- Almost anyone could parrot enough to pass a written examination, he argued, without really understanding the subject matter or having the slightest idea of what to do with a real patient.

# From the Flexner Report Itself

- The schools had not noticed at all when the vital features of the apprentice system dropped out
- an empirical training of varying excellence, secured through attendance on a preceptor, gave way to the didactic method, which simply communicated a set body of doctrines of very uneven value;
- Didactic lectures were given in huge, badly lighted amphitheaters
  - and in these discourses the instruction almost wholly consisted.

- During the ascendancy of the didactic, school,
- the student's part was, parrot-like, to absorb.
- His medical education consisted largely in getting by heart a prearranged system of correspondences,
- What the student did not readily apprehend could be drilled into him - towards examination time –
- by those who had themselves recently passed through the ordeal which he was now approaching

- Personal contact between teacher and student, between student and patient, was lost.
- No consistent effort was made to adapt medical training to changed circumstances.
- Many of the schools had no clinical facilities whatsoever, and the absence of adequate clinical facilities is to this day not prohibitive.
- “It is safe to say,” said Henry J. Bigelow, professor of surgery at Harvard in 1871, “that no successful school has thought proper to risk large existing classes and large receipts in attempting a more thorough education.”

- it is clear that consideration for the public good has had on the whole little to do
- nor is it to be expected that this situation will very readily readjust itself in response to public need.
- A powerful and profitable vested interest tenaciously resists criticism from that point of view;
  - not, of course, openly.

- The public interest is then paramount,
- and when
  - public interest,
  - professional ideals,
  - and sound educational procedure
- concur in the recommendation of the same policy,
- the time is surely ripe for decisive action.

## The Future of Legal Education:

## Comparative Perspectives



All students at the National Law School of India are required to take three semesters of clinical education.



Two law students from the National Law School of India enter the village community center to meet with clients. The community has placed a traditional welcoming design at the entrance for them.

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### Syllabus

Guidelines:

- [Draft Paper due at end of summer segment](#)
- [Fieldwork in other countries](#)
- [Final Paper \(due November 26\)](#)
- [Independent Research Credit](#)
- [Human Subjects Research](#)

[Resources about innovative legal education](#)

### Books on Reserve

"[Smart Without Purpose](#)" (powerpoint presentation on the Carnegie Report on American Legal Education)

[International Conference on the Future of Legal Education](#) (February 20 - 23, 2008)



Seven students studied examples of innovative legal education by visiting:

- Argentina
- Australia
- India
- Scotland
- South Africa

■ Four are presenting at this conference

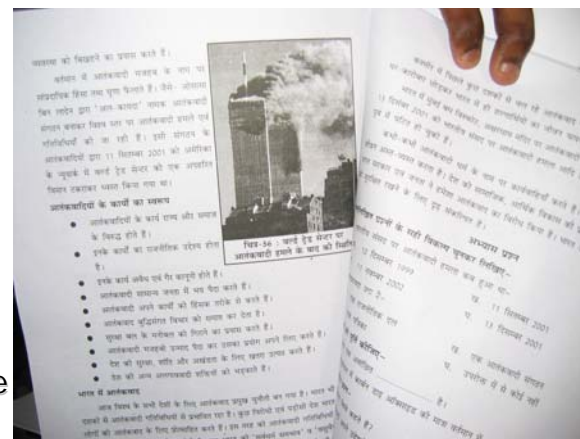


# India

July 23 – August 20







Future of Legume Production



# Street Law in Action



Durban, South Africa  
August 1- August 12, 2007

# Beyond Practicality

Campus Law Clinic



UNIVERSITY OF  
KWAZULU-NATAL

Tiffany D. Williams  
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College of Law  
Future of Legal Education



# Co-Author: Professor David McQuoid-Mason



# Resources on Innovative Legal Education

## World-wide web resources:

- **Global Alliance for Justice Education:** [www.gaje.org/](http://www.gaje.org/)  
Note especially Newsletters and Conference Reports
- **Open Society Justice Initiative:** [www.justiceinitiative.org/](http://www.justiceinitiative.org/)
- **Public Interest Law Institute (PILI):** [www.pili.org/](http://www.pili.org/) Note especially the section on [legal education reform](#), the [database on clinical legal education](#) and the [Colloquium on Clinical Legal Education](#)
- **United Kingdom (UK) Centre for Legal Education:** [www.ukcle.ac.uk/](http://www.ukcle.ac.uk/)
- **Woolf Chair in Legal Education** (Institute of Advanced Legal Studies, University of London): [ials.sas.ac.uk/research/woolf/woolf.htm](http://ials.sas.ac.uk/research/woolf/woolf.htm)
- **The Institute for Law School Teaching** at Gonzaga University School of Law [www.law.gonzaga.edu](http://www.law.gonzaga.edu)
- **3 The Complete Lawyer** No. 5 (2007): [Special Issue on "What Can Law Schools Do Better?"](#)
  - [atlanta.thecompletelawyer.com/volume3/issue5/index.php](http://atlanta.thecompletelawyer.com/volume3/issue5/index.php)

# Australia

- Mary Keyes & Richard Johnstone, **Changing Legal Education: Rhetoric, Reality, and Prospects for the Future**, 26 Sydney L. Rev. 537 - 564 (2004)
- **MANAGING JUSTICE: A review of the federal civil justice system** (Australian Law Reform Commission Report No 89): [Chapter 2 \(Education, Training and Accountability\)](#)
  - [law.gsu.edu/ccunningham/LegalEd/AusLawReformCommissionReport.htm](http://law.gsu.edu/ccunningham/LegalEd/AusLawReformCommissionReport.htm)
- Kingsford Legal Centre (University of New South Wales) – **Clinical Legal Education Guides**:  
[www.law.unsw.edu.au/centres/klc/clinical\\_legal\\_education\\_guides.asp](http://www.law.unsw.edu.au/centres/klc/clinical_legal_education_guides.asp)
- Law and Justice Foundation (Australia): [www.lawfoundation.net.au/](http://www.lawfoundation.net.au/)
- **Queensland University of Technology Faculty of Law** (Brisbane):  
[www.law.qut.edu.au/](http://www.law.qut.edu.au/)  
Note especially:
  - Welcome from the Dean: [www.law.qut.edu.au/about/welcome.jsp](http://www.law.qut.edu.au/about/welcome.jsp)
  - Profile of Professor Sally Kift:  
[www.law.qut.edu.au/about/staff/lstaff/skift.jsp](http://www.law.qut.edu.au/about/staff/lstaff/skift.jsp)
  - Kift, [Harnessing Assessment and Feedback to Assure Quality Outcomes for Graduate Capability Development](#)
  - Kift, [An innovative assessment framework for enhanced learning](#)
- QUT's Legal Practice Course (the Graduate Diploma in Legal Practice  
[www.law.qut.edu.au/courses/legprac/](http://www.law.qut.edu.au/courses/legprac/)



# Australia (cont.)

## ■ **Griffith Law School** (Brisbane):

- [www.griffith.edu.au/school/law/](http://www.griffith.edu.au/school/law/)
- Note especially:  
Clinical Legal Education:  
[www.griffith.edu.au/school/law/content03\\_clinical.html](http://www.griffith.edu.au/school/law/content03_clinical.html)  
Practical Legal Training:  
[www.griffith.edu.au/school/law/content04\\_pltgriff.html](http://www.griffith.edu.au/school/law/content04_pltgriff.html)  
Profile of Professor Jeff Giddings:  
[www.griffith.edu.au/school/law/staff/content\\_giddings.htm](http://www.griffith.edu.au/school/law/staff/content_giddings.htm)
- "The New Curriculum at Griffith"

## ■ **Flinders Law School** (Adelaide):

- <http://ehlt.flinders.edu.au/law/>
- Note especially:  
Practical Legal Training: <http://ehlt.flinders.edu.au/law/PLT/>

# South Africa

■ David McQuoid-Mason

- [Using your imagination to light up knowledge, skills and values for LLB students: clinical legal education and effective lessons](#) (Keynote Address at the 2006 Learning in Law Initiative, UK Centre for Legal Education)
- [Legal Aid Services and Human Rights In South Africa](#) (From the on-line library of The Public Interest Law Institute (PILI))
- [The Delivery of Civil Legal Aid Services in South Africa](#), 24 Fordham Int'l L.J. 111 (2000)
- [Access to Justice in South Africa](#), 17 Windsor Yearbook of Access to Justice 230 (1999)
- [Teaching Social Justice to Law Students Through Community Service: the South African Experience](#)
- [Clinical Legal Education and the Role of Law Clinics in South Africa](#)

## South Africa (cont.)

- Filip Czericki, Filip Wejman & Izabela Gajewska-Krasnicka, [Legal Clinics in South Africa: Study Tour Report](#) (Proceedings of the 2002 Fifth Annual Colloquium on Clinical Legal Education, Warsaw, Poland)
- <http://law.gsu.edu/ccunningham/LegalEd/SouthAfricareportPolandGroup.pdf>
- Peggy Maisel, [An Alternative Model to United States Bar Examinations: The South African Community Service Experience in Licensing Attorneys](#), 20 Ga.St U. L. Rev. (2004)

## South Africa (cont.)

- Thuli Mhlungu, [Educating and Licensing Attorneys in South Africa](#), 20 Ga.St U. L. Rev. (2004)
- Asha Ramgobin, [Access to Justice: the Social Responsibility of Lawyers: Reflections on the Challenges Facing Public Interest Lawyers in Post-Apartheid South Africa; Case Study: Balancing the Interests of Land Claimants with the Need for Low Cost Housing in Cato Manor](#), 7 Wash. U. J.L. & Pol'y 77 (2001)
- **University of Kwazulu-Natal:**  
<http://www.nu.ac.za/law/>  
Note especially:  
Overview of Profession:  
<http://www.ukzn.ac.za/law/overviewprof.html>  
Campus Law Clinics: <http://www.ukzn.ac.za/law/clc.html>

# India

- N.R. Madhava Menon
  - [In Defense of Socially-Relevant Legal Education](#) (1996) [www.gaje.org/History/Menon-DefenseOfSociallyRelevantLegalEducation.htm](http://www.gaje.org/History/Menon-DefenseOfSociallyRelevantLegalEducation.htm)
- - **A Handbook on Clinical Legal Education** (1998)
  - Chapter 1: *Clinical Legal Education: Concepts and Concerns* (includes history of clinical legal education in India)
  - Chapter 15: *Development of Clinical Teaching at the National Law School of India: An Experiment in Imparting Value Oriented Skills Training*
- Frank S. Bloch & M.R.K. Prasad, [Institutionalizing A Social Justice Mission for Clinical Legal Education: Cross-National Currents from India and the United States](#), 13 *Clinical Law Review* 165 - 212 (2006)

# India (cont.)

## ■ V. M. Salgaocar College of Law (Goa):

<http://www.vmslaw.edu/>

Note especially:

- Cyber Legal Aid:

<http://www.vmslaw.edu/cyberaid/index.htm>

- Legal Aid Society:

<http://www.vmslaw.edu/legalaid.htm>

- Legal Aid Cells: <http://www.vmslaw.edu/lacells.htm>

- [Improving Access to Legal Aid as Part of Building an Integrated Approach to Reduce Vulnerability of Women and Children to Sex Tourism and Trafficking in Goa](#)

## ■ National Law Institute (Bhopal):

<http://www.nliu.com/>

Course of study: <http://www.nliu.com/academics.htm>

- [Legal Aid Committee](#)

# Scotland

- **Glasgow Graduate School of Law:**  
<http://www.ggsl.strath.ac.uk/>
- Professor Paul Maharg
  - Blog on legal education
    - <http://zeugma.typepad.com/>
  - **Transactional Learning Environments and Professional Legal Education in Scotland**, [Bar Examiner \(Nov. 2005\)](#), pp. 9-13
  - ["Valuing What Clients Think: Standardized Clients and the Assessment of Communicative Competence"](#) (co-authored with Karen Barton, Clark D. Cunningham & Gregory Todd Jones), 13 Clinical Law Review 1 (2006)

# Latin America

- Martin Bohmer, [Access to Justice and Judicial Reform in Argentina](#)
  - law.gsu.edu/ccunningham/LegalEd/Bohmer(2002)
- Daniel Bonilla, [Public Interest Law Clinics in Latin America](#)
  - law.gsu.edu/ccunningham/LegalEd/Bonilla-ClinicsInLatinAmerica.pdf
- Mariela Puga
  - **Challenges for Legal Clinics in Argentina**, The Law Teacher (2003)
  - [First Year of a Legal Clinic in the Northwest of Argentina](#)
    - [www.gaje.org/History/ClinicInNorhwestArgentina.htm](http://www.gaje.org/History/ClinicInNorhwestArgentina.htm)