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 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 cannot 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

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