

## FROM MACCRATE TO CARNEGIE: VERY DIFFERENT MOVEMENTS FOR CURRICULAR REFORM

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When I went to the ABA's "new dean school" before I commenced my position at Southwestern in 2005, one very prominent dean on the "faculty" was asked about the role of deans in developing the curriculum. To paraphrase, his message was "Do not spend your time on curricular reform. It's a waste of time. The employers don't care; students shop for whatever courses they want. They will be happy as long as the menu of offerings is sufficient, and it's too much trouble to get the faculty to agree to change."

This statement was probably accurate when he spoke, but times have changed. Now deans at Harvard, Stanford, Vanderbilt, and many others including that very dean who scoffed at the notion of curricular reform have all been trying to be in the vanguard of legal education reform.<sup>1</sup> And, indeed, the lunchtime speaker for this conference, Erwin Chemerinsky, the dean of the newly established University of California at Irvine School of

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1. E.g. Harv. L. Sch., *Program on the Legal Profession*, <http://www.law.harvard.edu/programs/plp/pages/aboutus.php> (accessed May 14, 2011); Stanford L. Sch., *Stanford Law Dean Out to Make School Best in Nation*, <http://www.law.stanford.edu/news/details/3883/> (July 26, 2010).

Law, has made educational innovation the centerpiece of the new school.<sup>2</sup>

One way to explore the context of legal education reform today is to compare it to the aftermath of the publication in 1992 of the Report of the ABA Task Force on Law Schools and the Profession entitled, *Narrowing the Gap*, but known widely as the *MacCrate Report*.<sup>3</sup> The publication of that report marked the beginning of intense discussion about the role of skills education in law schools. The report is still widely cited and discussed, and indeed many commentators see the *MacCrate Report* as the key predecessor to the *Carnegie Report*.<sup>4</sup> The *MacCrate Report* certainly had a substantial impact on legal education, but the *Carnegie Report*, in my opinion, is destined to have a greater practical impact on the reform of legal education. This conference is one indicator of that reform momentum.

I want to start the discussion of these two documents and their contexts with a few somewhat quirky disclosures. I am not starting with an empty slate. First, I am somewhat implicated in and in one respect ambivalent about the *MacCrate Report*. It is a brilliant document. Its guiding force, Robert MacCrate, a former ABA President and former President of the American Bar Foundation (ABF), was one of the people who hired me at the ABF. He was a superb president of both entities. Through his connection to the ABF, he brought Joanne Martin and me into the work of his task force. He helped secure funding for the study that we published in the *Journal of Legal Education* on lawyer skills.<sup>5</sup> In preparation of our study, we asked Chicago lawyers early in their careers what skills they most needed. The results showed the importance of communication skills in particular. We also surveyed employers for their opinions. We presented the results of that study at a task force meeting.

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2. *E.g.* U. Cal.-Irvine Sch. of L., *Erwin Chemerinsky*, [http://www.law.uci.edu/faculty/profile\\_e\\_chemerinsky.html](http://www.law.uci.edu/faculty/profile_e_chemerinsky.html) (accessed May 14, 2011).

3. Sec. Leg. Educ. & Admis. to B., *Legal Education and Professional Development—An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (ABA 1992) [hereinafter *MacCrate Report*].

4. William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* (Jossey-Bass 2007) [hereinafter *Carnegie Report*].

5. Bryant G. Garth & Joanne Martin, *Law Schools and the Construction of Competence*, 43 *J. Leg. Educ.* 469 (1993).

For the most part, our report was well-received, but one of the leading professors who helped produce the skills and values listed in that report responded by saying, “Well, one study will show one thing; another study will show another thing.” In other words, the statement of skills and values did not need to respond at all to empirical research. His approach, I can add, was not unusual at that time—prior to the recent embrace of empirical research by legal scholars. In any event, that dismissal of our research by one of the leaders left me with a little ambivalence. And the more general point is that it suggested that the statement of skill and values came from academic theory rather than what lawyers demonstrably need for success in the practice of law.

I have a different stake in the *Carnegie Report*. I was one of the pre-publication readers of the *Carnegie Report*, just as I was starting my deanship at Southwestern, and I was so enthusiastic that I termed it “the best book on the analysis and reform of legal education that I have ever read.”<sup>6</sup> That was my pre-publication evaluation, and I also had a number of suggestions that the authors actually addressed in their revisions. The publisher picked up my fulsome language, sticking it as a blurb on the back cover of the book. So I am on record as an enthusiast. Part of this talk will be an explanation of that enthusiasm.

The *MacCrate Report*, unlike the Carnegie study, is a product of the ABA. One of the reactions to the *MacCrate Report*’s call for more skills instruction, therefore, was to criticize the ABA. The report, one heard, was “the ABA trying to make legal education more practical.” A similar group today reacts to Carnegie as more of the same—as a way to elevate the practice of law versus the intellectual and scholarly side. The idea—put simply as it often is—is that there is an enduring war between those who want to make legal education into a trade school versus those who favor high-level scholarship. This debate can be considered one of legal practice versus legal theory. I think that characterization is false for both enterprises—training lawyers and producing and teaching high-level legal theory.

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6. *Carnegie Report*, *supra* n. 4, on book dust jacket.

In fact, too few commentators have noted that the *MacCrate Report* had a theoretical orientation, although it was a very different theoretical orientation than Carnegie. The key to understanding the MacCrate task force and the resulting report, from my perspective, is that the report was basically the product of an alliance between the ABA and the then-emerging group of legal clinicians. The findings of the *MacCrate Report* represent a ratification of the clinicians' rise to power in the legal academy, and the clinicians quite clearly did not define themselves as simply teachers of the legal trade.

The alliance with clinicians is seen in some of the literature. One commentator wrote that the *MacCrate Report* has become "the Magna Carta" for clinicians,<sup>7</sup> and another said that there is very little scholarship and very little discussion about the *MacCrate Report* outside of clinical and skills programs.<sup>8</sup> The clinical movement, not incidentally, was well-represented in the task force, and that representation affected the findings. In a notable contrast, there was not much attention to legal writing in the report, and one reason was that legal writing faculty simply were absent from the task force. The *MacCrate Report* strongly reflects the clinical movement and its claim at that moment for a position in the mainstream of legal academia—doing legal theory rather than teaching skills.

A few examples suggest the legal theory underpinning the *MacCrate Report*. The *MacCrate Report* says that "[m]aturing professional skills programs have become increasingly sophisticated in content, in articulating the theoretical underpinnings of lawyer skills and in teaching methodologies."<sup>9</sup> It also claims that this practical teaching is, in fact, highly theoretical, justifying equal treatment in the legal academy for those who teach in the clinics. The report says that the new teaching of skills requires not simply lawyers with practical know-how but, instead, *permanent* faculty capable of mastering and contributing to the growing

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7. Wallace Loh, *Introduction: The MacCrate Report—Heuristic or Prescriptive?* 69 Wash. L. Rev. 505, 514 (1994) ("Some academics and practitioners will undoubtedly hail the MacCrate Report as the Magna Carta of clinical legal education . . .") (cited in Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, 8 Clin. L. Rev. 109, 114 n. 21 (2001)).

8. Gary A. Munneke, *Opening Remarks*, 23 Pace L. Rev. 515, 515 (2003).

9. *MacCrate Report*, *supra* n. 3, at 239.

literature of clinical scholarship.<sup>10</sup> It requires therefore that clinicians be full-time scholars who are immersed also in theoretical scholarship. In short, the *MacCrate Report* was a manifesto for clinicians and the legal theory connected to clinical professors.

The other theoretical aspect of the *MacCrate Report* is the “statement of fundamental lawyering skills and professional values.”<sup>11</sup> On one side is skills—the practice—and on the other the values—the ideals. There is nothing about how lawyers make careers, how they relate to clients, how they make money, or how professional values relate to professional careers. As in traditional law school classes, professional values are mainly admonitions to take the high road. There is, of course, a place for such admonitions, but I think it makes sense to develop another approach that is in fact consistent with the *Carnegie Report*. I will come back to this point, but the main finding here is that the *MacCrate Report*, sociologically considered, represents a ratification of the rise of clinicians to power in the legal academy. They reinforced their growing role and as a result were even given a strong place in the accreditation process. The alliance with the ABA reflected in the *MacCrate Report* was part of the process of building credibility.

At the same time, however, as suggested above, the clinicians remained embedded in the discourse of more traditional law school professors. They insisted within the *MacCrate Report* that they produced legal theory that distinguished them from legal practitioners. They insisted likewise that their legal theory merited places as full-time professors who should also be eligible for tenure.

Let me pause at this point to put that sociological observation into perspective. Even if the *MacCrate Report* was a kind of friendly takeover or capture by the clinical movement, it was still in my opinion a very positive force for change. I support its call for more clinical education. When I came to Southwestern in 2005, in fact, we had no clinics, and I believed that we needed the kind of teaching and practice that only legal clinics can provide. We now have three clinics and are securing funding for a new

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10. *Id.* at 245.

11. *Id.* at ch. 5.

building that will allow us to showcase and expand them further. There is still plenty of room for growth in clinical legal education.

Now let us turn to the *Carnegie Report*. One of the strengths of this report is that it brings an outsider perspective to the discussion of legal education.<sup>12</sup> Certainly major legal educators participated, including Judith Wegner, the former dean of University of North Carolina School of Law, but this report is not identifiable as inspired by legal education insiders with a particular agenda, such as the clinicians with respect to the *MacCrate Report*. The theory of the *Carnegie Report* comes from outside, from not only educational theory, but also, to a significant degree, from the social science disciplines bolstered by empirical research. The report accordingly does not push for the ascendancy of one or another group within the legal academy. This theoretical and political distance gives the report credibility, and it means that the report does not have an alliance of insiders pushing for its reforms.

By now we are all quite familiar with the three apprenticeships that are at the heart of the Carnegie critique and prescription. One is the apprenticeship of legal doctrine and analysis,<sup>13</sup> taught through the famous Harvard case method—the signature pedagogy of legal education according to Carnegie. The second apprenticeship of the *Carnegie Report* is the application of legal theory to professional practice.<sup>14</sup> This apprenticeship obviously applies especially well to legal clinics, but it also applies to other courses. And the third apprenticeship focuses on legal professionalism.<sup>15</sup> It is the apprenticeship of legal identity and its inculcation.<sup>16</sup> This third apprenticeship seeks to “link the learning of legal reasoning more directly with consideration of the historical, social, and philosophical dimensions of law and the legal profession.”<sup>17</sup>

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12. In contrast, I think that the *Best Practices* book (Roy Stuckey et al., *Best Practices for Legal Education: A Vision and a Road Map* (Clin. Leg. Educ. Assn. 2007)), which is often compared to the *Carnegie Report*, is much more a continuation of the movement embodied in the *MacCrate Report*.

13. *Carnegie Report*, *supra* n. 4, at 48, 194.

14. *Id.*

15. *Id.*

16. *Id.* at 194.

17. *Id.*

Just as the *MacCrate Report* claims that clinics are rooted in a new *legal* theory applicable to advocacy, Alternative Dispute Resolution, and clinical settings more generally, the *Carnegie Report* has its own theory. As noted before, this theory comes from outside the legal academy, however. It is not legal theory as such. It draws on educational theory—how best to teach—and the three apprenticeships stem from that theory about educating professionals. But it also insists on the place of sociological theories of the legal profession. Students are to be taught systematically about the roles and careers of lawyers. This reliance on outsider theories makes the Carnegie critique more powerful. It is not about making room for clinicians on the tenure track and charged with producing legal theory, even if a different kind of legal theory. It is about changing the approach of legal education to conform to insights from elsewhere.

The use of external theory makes the Carnegie critique more powerful than the one emanating from the *MacCrate Report*. Reliance on external theory could of course make the critique more marginal in the legal academy, which generally digests legal theory more easily. But for a variety of reasons, the critique is having a greater impact. One reason is simply because of the quality and the scope of the critique. It rings true and provides a vocabulary that encompasses a wide range of concerns with legal education, including concerns about too much reliance on the Socratic Method, unhappiness with the upper-level curriculum, and a neglect of educational theory within the confines of the law schools. The link to the Carnegie name long associated with professions is also part of the strength of that critique. The principal authors took the time to produce a report worthy of the Carnegie name.

A key difference in the contexts of the two reports has nothing to do with the actual content of their critiques. There has been a noticeable heating up in the competition for status and prestige among law schools. Curriculum has finally become part of that competition. Depending on the constituency linked to each school, law schools promote themselves as, for example, places to learn problem solving, places where graduates hit the ground running, or places for the production of leaders, and the students are now savvy enough to ask what these slogans mean in terms of the actual curriculum and teaching program. Brochures are

much more likely to feature curricular innovation than they were in the past.

The weak economy has added to this pressure by creating an incentive for law firms to pay more attention to the actual skills of those they hire—not simply their class ranking or the school from which they graduated. Many commentators exaggerate the extent to which the current crisis will lead to a rewriting of the rules for hiring, compensation, and promotion, but there is evidence that some corporate law firms are paying more attention to the actual skills of those they hire. Again, these changes are in sharp contrast to the statement that I heard at new deans' school in 2005—employers do not care at all about what courses students take or what skills they have—except for the skill of writing exams.

Curriculum reform, in short, is moving faster today than at any time I can remember. It is fueled by the logic of the *Carnegie Report*, competition among law schools, and a new interest by employers in what the people they hire can bring to the workplace.

The most important innovation in the *Carnegie Report* is the focus on the third apprenticeship. The first apprenticeship names what law schools have for the most part been doing since the nineteenth century. The *Carnegie Report* actually praises the law schools for using the Socratic case method to sustain student engagement in learning legal theory. It may be, as Michael Hunter Schwartz argued at this conference, that the authors of the *Carnegie Report* exaggerated the efficacy of this approach for this generation of students.<sup>18</sup> It is doubtful that they really do play along with the classroom conversation instead of doing some form of multitasking aided by the Internet. More can be done to facilitate the teaching of legal theory, but still this aspect of law school teaching has overall been relatively successful.

The second apprenticeship as interpreted also does not really threaten the first. Applying theory to practice can be a kind of an add-on. One can hire clinicians to assume what are now relatively well-defined positions with established sets of norms and practices. The clinics do not necessarily disturb anything else going

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18. Michael Hunter Schwartz, Presentation, *Legal Analysis Education: It's Not What the Carnegie Report Cracked It Up to Be* (Chi., Ill. July 29, 2009).

on in the curriculum. Clinics raise some issues of status—should clinical law professors in fact and form be the same as other full-time faculty, for example? Similarly, there are questions about whether clinics are too expensive or serve too few students, but, again, the clinics do not pose a fundamental challenge to the traditional model of legal education.

The third apprenticeship is more innovative and provocative, and it is what drew me to the *Carnegie Report*. It provides a vocabulary to articulate concepts that many scholars of the legal profession already perceived in one form or another. There are already a number of law schools that are trying to take this apprenticeship seriously. One is the Maurer School of Law at Indiana University, Bloomington, where, under the leadership of Professor William Henderson and Dean Lauren Robel, there is now a mandatory first-year course that includes both professional ethics and detailed material on the legal profession.<sup>19</sup> The new law school at the University of California-Irvine has also built the same kind of required first-year legal profession class that Indiana has mandated.<sup>20</sup> As at Indiana, scholars with strong interdisciplinary research interests, including Ann Southworth, have developed the course.

At Southwestern, we have also developed a variety of initiatives.<sup>21</sup> One is a vehicle for me as dean to teach first-year students at the beginning and end of their six-credit legal writing course entitled LAWS (Legal Research, Analysis, Writing, and Skills).<sup>22</sup> At the beginning, I present data from the *After the J.D.* study, which is a longitudinal study following close to 5,000 law-

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19. Ind. U., Bloomington Maurer Sch. of L., *Doctor of Jurisprudence (JD): A New Educational Model*, <http://www.law.indiana.edu/degrees/jd/curriculum.shtml> (accessed May 14, 2011) (discussing The Legal Profession course).

20. U. of Cal.-Irvine Sch. of L., *Curriculum: First-Year Curriculum*, <http://www.law.uci.edu/registrar/curriculum.html> (accessed May 14, 2011) (discussing the Legal Profession courses).

21. An antecedent to some of these courses is what John Connelly, a law professor and anthropologist at North Carolina, has been doing some for some time. He developed a course on professional responsibility in law firms and as part of that course would have the students interview North Carolina graduates and talk to them about their careers. He would use his anthropological expertise to help make sense out of what these people have done.

22. Sw. L. Sch., *First Year Legal Writing*, <http://www.swlaw.edu/academics/courseinfo/firstyear> (accessed May 14, 2011).

yers admitted to the bar in the year 2000.<sup>23</sup> The project is headquartered at the American Bar Foundation and involves the NALP Foundation among others.<sup>24</sup> We have data from three years and seven years and will soon collect a third wave of data.<sup>25</sup> I do a PowerPoint presentation that shows our students what difference it makes in early careers where one attends law school; what city or region one chooses to begin the career; what law school grades are received; gender, race and ethnicity effects; earnings in various settings; and the job satisfaction of people in different positions.

We candidly discuss hierarchies in the profession and patterns of employment to give students a sense of how the structure of the profession and legal education sorts people into various careers. One of the goals is to make students aware that the almost imperceptible hierarchies and patterns should not be taken as the only options, and another is to discourage students from internalizing more or less arbitrary professional hierarchies. We also address the issue in the press about whether law school is a bad investment unless one starts a career in a highly paid corporate practice. The available data do not support the scare stories in the media. One's first job is not the key to handling law school debt, but it is important for students to see the data themselves. Data from surveys of our own alums and others confirm that the law degree, still, is a ticket to a very good professional career characterized by, on balance, high degrees of personal and professional satisfaction.

Then, in the spring, I have the students read and discuss interviews that I have completed with Southwestern graduates. We discuss where the interviewees grew up, what kind of family they had, why they went to Southwestern, what they liked and disliked about law school, how they got their first job, how they developed their career, and how they built stature in the profession. The point is not that students can follow someone else's career strategy, but the interviews help students open and maintain mental files about themselves and professional opportunity.

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23. Am. B. Found., *After the JD*, <http://www.americanbarfoundation.org/research/project/44> (accessed May 14, 2011).

24. *Id.*

25. *Id.*

In addition to this part that I teach, which is not as systematic as a course would be but lets me interact and develop a relationship with the entering class, we have developed capstone courses that seek to integrate the three Carnegie apprenticeships. The capstones include entertainment law, civil practice, criminal justice, and mass torts. In addition, under the guidance of our Vice Dean, Austen Parrish, we are developing a series of three courses as “windows to practice,” examining solo and small firms, government and non-profit organizations, and larger law firms.

Most of the responses to the *Carnegie Report's* third apprenticeship are add-ons in the same way that the legal clinics are. They add one more dimension by adding another course. The focus on the third apprenticeship has the potential to pose a greater challenge to legal education and scholarship. It raises questions about the dominance of legal theory and legal ideology in legal education. Law professors want to teach doctrine, and students are more comfortable with doctrine than they are with cross-disciplinary insights. An earlier wave of sociological research on the legal profession in the 1960s and 1970s, for example, pushed the legal profession courses of an earlier generation to include more sociology and history—as suggested once again by the *Carnegie Report*. I believe that today most of the legal profession courses instead teach the law of professional ethics. As the *Carnegie Report* notes, it is as if students are taught professional responsibility the same way they are taught contract law.<sup>26</sup> Students argue both sides on the issue of whether, for example, the law requires disqualification of a lawyer for a particular conflict of interest. This kind of teaching fits the comfort zone of professors and students. The professors find it easier to teach and the students find it easier to make sense of what they are learning—and then to prepare for and answer a quite recognizable law school examination.

The dominance of legal theory and legal ideology, as I suggested, was in fact reflected in the approach of the clinicians seeking legitimacy through the MacCrate task force. One could find innumerable examples of that dominance in how law professors and students think about the law and the legal profession. As I

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26. *Carnegie Report*, *supra* n. 4, at 135–136.

was preparing this talk, I picked up a really interesting book entitled *Constitutional Law Stories*,<sup>27</sup> and the purpose of the chapters is to reveal the stories behind leading constitutional cases. Of the fifteen fascinating essays in the book, only four, at most, actually pay attention to the lawyers. Narratives proceed at times in such terms as “plaintiff argued this, defendant argued that.” The authors only rarely consider how these cases get to the lawyers, why these particular lawyers are chosen, or what their terms of engagement are. They do not consider that the identity of the lawyer is one key aspect of a constitutional case. We barely have a vocabulary in law schools to address who the lawyers are and what role they play so students may appreciate that lawyers are not just vehicles for plaintiffs’ or defendants’ arguments.

Similarly, law schools and students themselves often portray their career choice in the dichotomy of public interest versus private gain—sometimes with the idea that one side is virtuous and one side is bad. Again, anybody who studies legal careers knows that there is a lot of blending and ambiguity. Reputations for virtue are part of a long-term strategy—not necessarily intentionally—for commanding a higher price. A famous human rights advocate may be the perfect person to hire when particularly heinous behavior is alleged. Clients recognize that the stature or reputation for virtue of a particular lawyer can provide credibility for the clients. BCCI—the scandal-ridden bank—sought power lawyer/statesman Clark Clifford for his name more than for his professional expertise, for example.

What I try to teach in the class at Southwestern is that it is important *who* you are in the law. When one teaches legal doctrine in the first year in particular, part of the learning exercise is that the litigants and lawyers are deemed to be irrelevant. The student who argues that a sympathetic plaintiff, or an expensive or high prestige lawyer, makes a difference in the legal outcome is sure to lose points on an exam; but, in the real world, the people do matter. It matters who you are in the legal profession, whom you know, and who answers your phone calls. Legal arguments as such certainly count, but some lawyers are able to get more attention and credibility than others from judges and fellow law-

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27. *Constitutional Law Stories* (Michael C. Dorf ed., 2d ed., Found. Press 2009).

yers. The more general point is that for advocates as well as lawyers in other roles, it is important to build stature. Pro bono, for example, is not just doing good or learning skills; it is about building professional stature. The dichotomy between legal skills and legal values that defines the *MacCrate Report*, in other words, hides the role of values in building meaningful and lucrative careers.

Law professors in general are there because they were really good at writing exams. So law professors tend to think that the winner in a legal argument is the one who wrote the best exam equivalent—the most cogent legal analysis. Most lawyers know that it is not just about the quality of the argument. It matters whose name is on the brief. It matters who is making the argument. It takes credibility to succeed in getting certain arguments taken seriously. This proposition is very hard for law professors to teach in institutions where legal theory and ideology is so dominant. Lawyers in general need to understand what it takes to make one's way in the legal world.

I will give a few examples based on personal interviews conducted for the *After the J.D.* project. We talked to two corporate lawyers in Washington, D.C. who were suffering as a result of the economic downturn. Both were from elite schools, and each had worked toward partnership at prestigious D.C. firms for more than eight years. Both had just learned that they would not be made partners and that they needed to look for work elsewhere. They had done everything they were told. They had given up their lives for nine years, billing out well over 2,000 hours per year. They had been told they were doing very well. Yet, they now had the realization that they were doing very well for the partnership but not for themselves. They had few friends in the legal profession, few helpful contacts in the social world, and, in fact, not very well-developed legal skills. They had gotten very bad advice from the partners who employed them, and they did not understand how bad it was. No one taught them that hiding in an office and accumulating hours was not the ideal way to build a professional career. They, instead, just did what they were told.

In contrast, we met somebody who was in one of the firms on the west coast that fell apart when the economy collapsed. He had built relationships with lawyers who had gone in-house over

a period of time, however. He called them and found that they valued him and his work. He went solo and took the business that came from his friends in-house. He reported that he was happier and more prosperous than he was in the past. He had hobbies and leisure time. The point was that he systematically took advantage of the contacts he made with people who were strategically placed to help him. He did not have a theory to call on, but he had an instinct that paid off.

In fact, however, these situations are matters that *can* be theorized and taught about, and students can do very well if they gain some mastery of the theory and its applications. We do not have that in most law schools, but the promise of the *Carnegie Report* is that law schools will bring in outside theories to make sense of the apprenticeship of professional identity. We have war stories taught by practitioners in law schools, but we do not really have the importation of a systematic theory that will help students understand who they are, where they are, where they are going, and how they might get there.

The Carnegie authors, in my opinion, missed an opportunity to suggest how these kinds of expertise and theory might be better integrated into the law schools. They may underestimate the traditional opposition within law schools to outside theories. A look at business schools might have been illuminating. The Carnegie scholars studied other professionals, but they did not study business schools, because the Carnegie Foundation limited the study to the so-called professions. From the perspective of making sense of the apprenticeship of professional identity, I can understand that choice. Business schools do not produce members of a distinct profession. On the other hand, business schools produce graduates who occupy positions where they build their careers by mimicking professional strategies associated in particular with the legal profession.<sup>28</sup> Further, business schools provide the most direct competition with law schools to attract talented college graduates into leadership positions in the state and the economy. Business schools even build programs dealing with

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28. Christopher D. McKenna, *The World's Newest Profession: Management Consulting in the Twentieth Century* (Cambridge U. Press 2006).

nonprofits and social entrepreneurship to try to attract the kind of idealists that law schools have long attracted.

Business schools do not have the unifying theory and ideology that law schools have. This lack of a unifying language and theory can be a disadvantage, but it also means that business schools tolerate and even encourage a pluralism in theoretical approaches. Accordingly, they hire economists to be economists, sociologists to be sociologists, and psychologists to be psychologists. They study careers as well as companies, personal networks as well as mergers and acquisitions. The exams are not limited to a blending of these disciplines into a particular unifying theory, as is mostly the case in law schools—the psychological contribution to the law of this field, or the economics of these legal rules, for example. The business schools can ask what can be learned from empirical economics, what can be learned from empirical sociology, and the like. Law schools have trouble welcoming the insights of the social sciences on their own terms. I believe we would be stronger in our law schools if we hired empirical sociologists and economists, for example, and had them work on such topics as lawyers, the legal profession, and professionalism. They would be encouraged to push the boundaries in law school and expand systematic knowledge about the social world of lawyers.

The real challenge of the *Carnegie Report*, then, is not just to find ways to add on the apprenticeship of professional identity. The implications of theories of legal practice that can instruct students in their own pathways are even more fundamental, because systematic knowledge beyond war stories will necessarily feed back into the curricular programs of each school. As I have stated many times, law schools must have good data on their students and graduates both to be better law schools and because that know-how is essential to effectively teach the apprenticeship of professional identity. Law schools need to know where the graduates are, what kinds of jobs they get, their levels of compensation, and even how these factors vary according to race, gender, and ethnicity.

Knowing your graduates is a little subversive, because once you know your own graduates, then you have to trigger what the

*Carnegie Report* calls the intentionality of the teaching program.<sup>29</sup> That is to say, we need to ask how all three of these Carnegie apprenticeships bolster the opportunities and chances for success in the actual careers that our graduates have and aspire to. It forces legal educators to make sense of the teaching program—how it fits together and how it relates to the people who come to and are produced by a given school.

This approach is in many ways consistent with the outcomes measures that are now being pushed in many settings, including potential law school accreditation standards. Whether we need to prescribe outcomes measures at this point can be debated, but I think that whether or not they are prescribed, law schools increasingly will have to demonstrate to the individual students that there is a tailored program based on a systematic understanding of how graduates of any given school make their careers.

I have assigned a potential transformative role to reforms that take the third apprenticeship seriously. There is room for debate about the impact that this aspect of the *Carnegie Report* will have. It could be that the impact of the third apprenticeship will be that a few more courses on the structure of the legal profession will be created. That impact might even be less than the *MacCrate Report's* strengthening of clinical education. When the “legal process” course was created back at Harvard in the 1950s, it was supposed to be a supreme distillation of all the lessons of legal realism. It was going to be really helpful to students in everything they were going to do. The students, however, increasingly got tired of this seemingly aberrant part of the curriculum. It just did not make a whole lot of sense and eventually it was discarded. Many people after the fact said there was no reason for the course, but this is a cautionary tale. The fate of legal process—with a core of books created and professors produced—reminds us that we cannot take for granted even that the first-year innovations at Indiana and Irvine, for example, will take hold.

On the other hand, there are also reasons to expect a larger impact this time than came from the *MacCrate Report*. I have already given some reasons, including the competition now in

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29. See *Carnegie Report*, *supra* n. 4, at 179–180 (discussing “intentional learning”).

curricular reform. Another is that, unlike that period when the *MacCrate Report* was coming out, we now actually have a cohort of materials and people centered on these issues of the legal profession. We have the Harvard Center on Professionalism, we have the Georgetown Center, we have a Stanford Center, we always had the ABF, and we have the data that is being produced by *After the JD* and by other projects that are related to it. We have a social science that is interested in these issues. More generally, the legal academy has come to assign more value to empirical studies. Law professors have for the most part learned that they can no longer dismiss an empirical study by saying that one study will show one thing, but that does not prove anything. The Law School Survey of Student Engagement (LSSSE) has also moved relatively quickly into the mainstream, and it generates data that can match very well with the studies of law graduates and their careers.

These courses and the more general focus on this third apprenticeship will still run against the grain of most law schools and professors, but I believe that the students will understand that they will get real value from the insights available from this orientation. They will not, for example, make the dumb mistakes of simply hiding in a law office and not keeping up with their peers. They will actually get out and about and build careers in a more sensible way. They will learn better how to navigate their legal world.

Another reason to expect this trend to last is that employers are beginning to demand more. At a recent Harvard conference on the profession, one of the law firm representatives insisted that, as part of the evaluation of associates at his law firm, the firm ask the associates if they are networking with their fellow alumni. He noted that some of the senior partners wondered why the associates would be encouraged to do anything outside of their offices. But the career counselor now working with the associates insists that this networking is crucial to building their value even to the law firm. This kind of law firm activity will feed very nicely into systematic attention to the *Carnegie Report's* apprenticeship on professional identity.

I do not think we need to add draconian professional regulation, but imagine what would happen if, in addition to a librarian and clinician on every ABA law school inspection committee, we

had a sociologist or other social scientist examining the data on careers, the preparation that students have for the careers that they will pursue, and the quality of the teaching and evaluation assessment related generally to the third apprenticeship. I would not promote this, but it is a nice thought experiment about how it would be if we actually did force schools to come to grips with what this third apprenticeship actually means. It points in the direction of giving a real voice in the legal academy to kinds of expertise not linked to some potential new legal theory. The *Carnegie Report* to my mind both pushes in that direction and feeds into trends that are already underway.

Finally, I want to close with a word about globalization. One of the criticisms of the *Carnegie Report* has been that it neglects the internationalization of the practice of law. The report makes some mention of it, but I want to point out that here, too, the key is not to teach foreign cultures as exotic things to be learned. It is not about finding the equivalent of United States legal theory. I think that what law students need to learn about the international is also what they need to learn about the domestic. That is, how do you make your way? Who are the lawyers abroad? How do Americans intersect? How are the rules being produced? Such information will enhance the prospects for graduates to navigate the more globalized world of law. There is plenty of opportunity to build up our teaching and research programs around these issues.

In short, the *MacCrate Report* focused on clinicians, and it helped to bring them legitimacy, expansion, and coexistence with the rest of the faculty. The logic of the *Carnegie Report* as it plays out in today's legal environment ought to shake things up much more. The inevitably interdisciplinary third apprenticeship, I hope, is going to be the key.