

“Smart Without Purpose”

The Carnegie Foundation Critique of American Legal Education

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This is an abridged version of various presentations given in Australia during March and April 2007 at the Flinders, Monash, Macquarie and Griffith Law Schools.

- *"Law schools create people who are smart without a purpose."*
- Student "from a highly selective private law school" interviewed by the Carnegie Foundation

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
- San Francisco: Jossey-Bass
- ISBN: 978-0-7879-8261-4

The Carnegie Methodology

- Ethnography of 16 law schools: focus on the daily practices of teaching and learning
 - Classroom observations
 - Interviews with teachers and students
- Compared these practices with those of other professions
- Through the lens of contemporary understanding of how learning occurs

The Carnegie Critique

American law schools do one thing very well

- In the first year of law school students learn with impressive speed and uniformity a new method of discourse: “thinking like a lawyer”
- This is accomplished through a unique form of classroom pedagogy that motivates students through an engaging and dramatic dialogue between teacher and student

But

- The emphasis on learning to think like a lawyer is so heavy that concern for learning to perform like one is absent
- Compared with other forms of professional education the relative marginality of clinical training at law schools is striking

And

- There is inadequate support for developing the ethical and social dimensions of the profession
- For most of their students law schools do not contribute to greater sophistication of moral judgment

- A purely theoretical approach to professional ethics is unlikely to deeply affect the learner
- Ethics courses that focus on the law of lawyering are likely to limit the scope of what graduates perceive as ethical issues

- The goal of professional education cannot be analytic knowledge plus merely skillful performance.
- In practice,
 - knowledge,
 - skill,
 - *and* ethical comportment
 - are literally interdependent
- A practitioner can not deploy one without involving the others at the same time.

Being a Lawyer is Not Merely Skilful Advocacy

Louis D. Brandeis

Address to the Harvard Ethical Society (May 4, 1905)

- The ordinary man thinks of the Bar as a body of men who are trying cases
- But by far the greater part of the work done by lawyers is done not in court, but in advising men on important matters, and mainly in business affairs
- The questions which arise are more nearly questions of statesmanship. The relations created call in many instances for the exercise of the highest diplomacy.

Contrary to what might seem to be the habit of the lawyer's mind ...

- the practice of law tends to make the lawyer judicial in attitude and extremely tolerant.
- His profession rests upon the postulate that no contested question can be properly decided until both sides are heard.
- His experience teaches him that nearly every question has two sides; and very often he finds .. that both he and his opponent were in the wrong

The whole training of the lawyer leads to the development of judgment.

- The lawyer's processes of reasoning, his logical conclusions, are being constantly tested by experience.
- He is running up against facts at every point
- If the lawyer's practice is a general one, his field of observation extends, in course of time, into almost every sphere of business and of life.
- The facts so gathered ripen into judgment.

He is an observer of men
even more than of things.

- He not only sees men of all kinds,
 - but knows their deepest secrets;
 - sees them in situations which “try men’s souls.”
- He is apt to become a good judge of men.

- These are the reasons why the lawyer has acquired a position materially different from that of other men.
- It is the position of the advisor of men.

Carnegie Report

- conceptual knowledge
- + skill,
- +moral discernment
- =
- capacity for judgment
- guided by professional responsibility

The Carnegie Recommendations

- The bottom line is not what students *know* but what they can *do*
- Therefore realistic and real-life practice experiences integrated throughout the curriculum
- Students need access to interactions that embody the understanding, skill and meaning that together make up professional activity

- Assessment of practical skill and ethical decisionmaking must take place in role
- It requires a transition in perspective from observer to actor
- In medical education it is the assumption of responsibility for patient outcomes that enables the student to fully enter and grasp the disposition of a physician

The key components to ethical formation are:

- Close working relationships between students and faculty,
- The opportunity to take responsibility,
- And timely feedback.

Why *should* law schools be expected to produce graduates who are not only smart problem-solvers but also responsible professionals?

The Carnegie Report says:

- (1) To solve a crisis in the profession
- (2) To improve legal education overall
- (3) To remedy the harm the schools cause
- (4) Because schools *can* do it effectively

The Harm Law Schools Cause

Karl Llewellyn, *The Bramble Bush*:

- *" 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.*
- *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."*

Law Schools *Can* Do It

- Current discoveries in psychology and learning theory
 - The “cognitive” apprenticeship
 - Higher education can influence ethical thinking and behavior
- Examples from
 - Medicine
 - Seminars

Missing from Carnegie Report

Examples from law schools outside the United States. Therefore:

- International conference in February 2008 hosted by Georgia State
- Plans for a book
- Course at GSU on Future of Legal Education tied into conference and book
- This visit to Australia

**The Future
of Legal
Education:
Comparative
Perspectives**



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.



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

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Class meeting times: to be announced

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Last updated: March 9, 2007

Students must submit an application and be accepted by Professor Cunningham to enroll. Enrollment is limited.

Application

**NOT YET POSTED:
Syllabus**

Guidelines:

-- Draft Paper due at end of summer

-- Fieldwork in other countries

-- Final Report

Articles about innovative law schools around the world:

N.R. Madhava Menon, [In Defense of Socially Relevant Legal Education](#)

(National Law School of India)

Martin Bohmer, [Access to Justice and Judicial Reform in Argentina](#)

Mariela Puga, [First Year of a Legal Clinic in the Northwest of Argentina](#)

Daniel Bonilla, [Public Interest Law Clinics in Latin America](#) (Columbia)

[Legal Clinics Foundation](#) (Poland)

Paul Maharg, [Transactional Learning Environments and Professional Legal Education in Scotland](#)

Course Description

This is a one-time course linked to the College of Law's 25th Anniversary International Conference on the Future of Legal Education to be held in Spring 2008. Students will learn about the history and structure of American legal education and then evaluate reform proposals by studying innovative law schools in the United States and other countries. A central text will be the 2007 Report of the Carnegie Foundation for the Advancement of Teaching: Educating Lawyers: Preparation for the Profession of Law. Students may apply for an additional 1-2 credit hours of Independent Research in order to write a proposed chapter for the book to be published from the proceedings of the 2008 Conference. A limited number of travel grants will be available for Independent Research students to visit law schools overseas that are the subject of their proposed book chapter and to work with their potential co-authors on the faculty of those schools. The course will be taught in two segments: Summer 2007 and Fall 2007. The summer segment will enable interested students to present Independent Research proposals. Approved Independent Research students will then be encouraged to conduct their fieldwork before Fall 2007 and present their findings in the Fall segment. Students who do not conduct fieldwork will complete their papers using conventional research resources.

N.R. Madhava Menon: In Defense of Socially Relevant Legal Education

- “Legal education [in India] continued to turn out law graduates least prepared for the social responsibilities expected of them in regard to social justice and social change.”
- “If rule of law is to be part of the democratic culture and if human rights are to be respected in governance, there is no alternative except to inform and illuminate legal education with social values drawn from the people for whom the laws are made. The days of lawyers being mere craftsmen ... are fast disappearing. ... The function of legal education is to enable people to respond to these challenges with a sense of commitment to the struggle for human rights and a feeling for the suffering of people everywhere.”

The National Law School of India

The Clinic:

- an advice and counselling centre
- two rural mediation centres in collaboration with a Women's group
- legal literacy to students in undergraduate women's colleges
- week-long residential para-legal training courses for representatives of social action groups
- field research and investigation on issues of involving social justice  reports to parties concerned and public interest litigation in the higher courts

National Law Reform Competition

- Groups of students select an appropriate community where they experience first-hand the people's experience with the law.
- They are then required to come out with proposals for reforming the law to serve the people better.
- The first year was on the subject of "Women and equality."
- As a result the Law School was commissioned by State and National Governments to assist in drafting and revising laws concerning women

Bail Project at City Jail

- Entire class in criminal law visited the Bangalore City Jail
- Interviewed every prisoner awaiting trial
- Assisted in preparing bail applications
- Worked out resolutions of many cases through mediation with complainant

Scotland-Glasgow Graduate School of Law

- Integration of university-based law faculty with post-degree apprenticeship
- Sophisticated use of IT for “virtual practice” with “on-line” clients, witnesses, etc
- Empirical research on new methods for teaching and assessing lawyer-client communication
- Professional Competence Course (PCC)
- Partnership with WS Society on PCC has brought SC methodology into the WS Signet accreditation program, which includes an ambitious plan to assess ethical-decisionmaking.

Australian Law Reform Commission: Report No. 69: Managing Justice

2. Education, training and accountability

- Recommendation 2. In addition to the study of core areas of substantive law, university legal education in Australia should:
 - Involve the development of high level professional skills
 - And a deep appreciation of ethical standards and professional responsibility

Examples from Australia

- Community development projects at Monash
- Kirby Cup: Law Reform Commission
- Griffith:
 - Graduates should be “committed to, and understand how to, use law as a tool for social justice”
 - “vertical subjects” in ethics, legal skills
- Flinders: LLB & Legal Practice degree
- Newcastle

“Modest Proposals”

- National award for teaching ethics
- Institute for teaching ethics
- Gather stories of exemplary lawyers
- Uniform methods across law schools to assess educational effectiveness by following graduates
- Standardized client assessment methods
- Client satisfaction surveys for clinics
 - law.gsu.edu/Communication/
 - Go to: Pilot Project to Assess Initial Interviews Client Survey Forms
 - Select: Australian form *On-Line Survey Demonstration*

ASSOCIATION OF AMERICAN LAW SCHOOLS
Conference on New Ideas for Law School Teachers: Teaching Intentionally
June 10-14, 2006, Vancouver, British Columbia, Canada

INNOVATIVE METHODS FOR TEACHING ETHICS AND PROFESSIONALISM
Web site: <http://law.gsu.edu/ccunningham/Professionalism/NIFTEP/AALS06-SessionDescription.htm>

The session will summarize innovative teaching methods from three sources: the inaugural NIFTEP workshop in 2005; the past three years of applications for the national award for teaching professionalism; and a survey of all American law schools on teaching professionalism conducted recently by the ABA Standing Committee on Professionalism.

[National Award for Innovation and Excellence in Teaching Professionalism](#) (home page)
-- [Selected Applications from 2004 - 2006](#)

[National Institute for Teaching Ethics & Professionalism](#) (NIFTEP) (home page)
-- [Program from the Inaugural Workshop](#) (2005)

ABA Center for Professional Responsibility : go to [home page](#) to download [Report on A Survey of Law School Professionalism Programs](#) (pdf file).

Cunningham: Professional Responsibility - Heroes & Villains ([Spring 06 course web site](#))
"[Whether to Go to the Supreme Court](#)" -- Bringing a Real-Life Ethical Dilemma into the Classroom
[Student email from Spring 06](#)

THE NATIONAL AWARD FOR INNOVATION AND EXCELLENCE IN TEACHING PROFESSIONALISM

Selected applications from 2004 - 2006 sorted by category.

To view an application, click on the applicant's surname. Many applications are accompanied by supporting materials such as syllabi and sample exercises which can be viewed or downloaded by clicking on the title of the item in the list of materials at the end of the application. You may want to bookmark this page before doing so because you may not be able to return to the application after clicking on some of these links.

** = First Prize Winner

* = Honorable Mention Winner

Interaction with practicing lawyers

Anthony V. [Alfieri](#) (Miami): Center for Ethics and Public Service -- Bench & Bar Group
(students provide ethics CLEs to local lawyers)

*[Lisa Brabbit & Neil Hamilton](#) (University of St. Thomas): Mentor Externship Program
(required, for-credit course that combines fieldwork with a seminar component; 360 students and 425 mentors in 2005)

*Leary [Davis](#) (Campbell University): Professionalism Development Program (student "law firms" settle family law case; firms' senior partners are leading family law practitioners)

[John Dzienkowski & Charles Silver](#) (Texas): State Bar Internship ("intern for a day" program where students observe up to three disciplinary hearings and the deliberations by the panel on each hearing observed)

[Douglas A. Kahn](#) (University of Michigan): Tax Planning for Business Transactions (co-taught with practitioner using cutting-edge cases from real life submitted by senior partners at major firms)

** [Patrick Emery Longan](#) (Mercer University): First Year Legal Profession Course (oral history assignment, Living in Law program, lawyer biography assignment)

*[Lois R. Lupica](#) (University of Maine): Professional Responsibility Re-designed (a different judge or lawyer attends each class to participate in the discussion of the day after reviewing the hypothetical in advance)

**[Sharisse O'Carroll](#) (Tulsa): "Lawyers Helping Students; Students Teaching Lawyers: Bridging the Gap Through Popular Media to Improve Professionalism in the American Legal System." (the best student team turns their presentation into a CLE seminar presented at annual state bar meeting)

Joseph B. [Tulman](#) (Univ. District of Columbia): Juvenile & Special Education Law Clinic (incorporates the training of practicing attorneys into the clinical course)

W. Bradley [Wendel](#) (Washington & Lee): Legal Ethics Institute (2 day program as part of larger course: 6-8 lawyers and judges prepare to discuss an ethical dilemma they have encountered in their practice in which the resolution was not a matter of law, but of ethical reasoning)

Simulations

*Leary [Davis](#) (Campbell University): Professionalism Development Program (student "law firms" settle family law case; firms' senior partners are leading family law practitioners)

[Lawrence M. Grosberg](#) (New York Law School): Standardized Clients in First Year Lawyering Course

[Rebecca Morgan & Roberta Flowers](#) (Stetson): Interactive Multimedia Presentation of Ethical and Professional Issues Encountered in an Elder Law Practice

*James E. [Moliterno](#) (William & Mary): Legal Skills Program (four semester course of comprehensive skills and ethics development; students are members of 16-person "law offices")

Public service in the real world

*[Judith Maute](#) (Oklahoma): "Students For Access to Justice" (pro bono program)

William Wesley [Patton](#) (Whittier): Legal Policy Clinic ("clientless" clinic where students select the substantive topic and specific legal issues)

Joseph B. [Tulman](#) (Univ. District of Columbia): Juvenile & Special Education Law Clinic

[The award application required the teacher to certify as follows: "I understand that this application and all materials I submit in support of this application become the property of the selection committee. I further authorize the selection committee to distribute and publish this application and any supporting materials on the world-wide web and in print media, unless listed below as confidential (e.g. student evaluations). If materials developed by others (including students) are included with this application, I hereby confirm that I have secured their permission to disseminate this work."]

W. LEE BURGE ENDOWMENT FOR LAW AND ETHICS
GEORGIA STATE UNIVERSITY COLLEGE OF LAW
Web site: <http://law.gsu.edu/Professionalism/>

[The National Institute for Teaching Ethics and Professionalism \(NIFTEP\)](#)

A consortium of five nationally-recognized university centers on ethics and professionalism, sponsored by the American Bar Association Standing Committee on Professionalism and the Georgia Chief Justice's Commission on Professionalism. The Fall 2005 Teaching Workshop took place in Atlanta September 23 - 25, 2005. Clark D. Cunningham, the W. Lee Burge Professor of Law & Ethics at the Georgia State University College of Law, is the director of NIFTEP.

[The National Award for Innovation and Excellence in Teaching Professionalism](#)

(co-sponsored by the American Bar Association Standing Committee on Professionalism and the Conference of Chief Justices and supported by the Burge Endowment for Law & Ethics)

The [Effective Lawyer-Client Communication Project](#)

[Valuing What Clients Think: Standardized Clients and the Assessment of Communicative Competence](#)(pdf) Karen Barton, Clark D. Cunningham, Gregory Todd Jones & Paul Maharg, to appear in the **Clinical Law Review** (Fall 2006) (presented October 28, 2005 at the 6th International Clinic Conference (sponsored by UCLA Law School and the Institute of Advanced Legal Studies at the University of London)

Clark D. Cunningham, [Legal Education After Law School: Lessons from England and Scotland](#), 33 *Fordham Urban Law Journal* 193 (2005)).

-- [Speciality Accreditation in Scotland](#) (webcast)

Clark D. Cunningham, [How to Explain Confidentiality?](#), 9 *Clinical Law Review* 579 (Spring 2003) Click [here](#) to (1) read an on-line version with direct links for viewing videotaped simulations and other materials discussed in the article, (2) go directly to on-line viewing of the videotapes, or (3) download a pdf version of the article.

Adrian Evans & Clark D. Cunningham, [Speciality Certification as an Incentive for Increased Professionalism: Lessons from Other Disciplines and Countries](#) , 54 *South Carolina Law Review* 987 (Spring 2003) (contains pdf text of article and links to web site information on specialization).

The [Heroes & Villains Professional Responsibility Course](#)

-- [Origin and Design of the Course](#) (pdf excerpt from *How to Explain Confidentiality?*)

-- [Use of Multimedia to teach Legal Ethics \(2001 Video-Washington University\)](#)

[Rethinking the Licensing of New Attorneys—An Exploration of Alternatives to the Bar Exam](#), 2004 Georgia State University Law Review Symposium

-- see also **[Essays on Other Lawyer Licensing Processes and Alternatives to the Bar Examination](#)** , by Clark D. Cunningham, Paul Maharg, John M. Law, Nigel Duncan, Lawrence M. Grosberg, Hon. Linda S. Dalianis, Sophie M. Sparrow, and Susan M. Case. The Bar Examiner: Volume 74, No. 4, November 2005.

[Professionalism and the Certified Specialist](#) (materials prepared for the 2004 ABA National Roundtable on Lawyer Specialty Certification)

- **[PowerPoint Presentation](#)**

- **[More information on specialty certification](#)**

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**[How the Burge Endowment
for Law & Ethics Was Funded](#)**

Back to **[Home Page](#)** for
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Clark D. Cunningham



W. Lee Burge Professor of Law & Ethics

The Burge Chair was established by an endowment from the U.S. District Court for the Middle District of Georgia, using funds collected for alleged lawyer misconduct to promote ethics, professionalism and access to justice.

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[Selected Publications](#)

[Resume](#)

[Affirmative Action Web Site](#)

[Professionalism Web Site](#)

[In The News ...](#)

[Recent and Upcoming Activities](#)

Last updated July 28, 2006

Education: A.B., 1975, Dartmouth College; J.D., 1981, Wayne State University

Teaches:

[Professional Responsibility: Heroes & Villains](#) [Criminal Justice Fieldwork & Law Reform](#)
[Criminal Justice Clinic](#) [Judicial Power](#)

On June 1, 2002 Professor Cunningham became the first incumbent of the W. Lee Burge Chair in Law & Ethics at the Georgia State University College of Law. He is a member of the Chief Justice of [Georgia's Commission on Professionalism](#) and the [Fulton County Criminal Justice Blue Ribbon Commission](#). In 2004 he served as Co-Reporter to Georgia's [Commission on Indigent Defense](#). He is the director of the [National Institute for Teaching Ethics & Professionalism](#) (NIFTEP) and chairs the Selection Committee for the [National Award for Innovation and Excellence in Teaching Professionalism](#), which is co-sponsored by the ABA Standing Committee on Professionalism and the Conference of Chief Justices. He has served as an [expert on legal ethics](#) in a number of major cases and his reasoning has been adopted by the Missouri Supreme Court and federal courts in Georgia and Illinois in decisions disqualifying lawyers for conflicts of interest.

Professor Cunningham is a widely cited expert on the lawyer-client relationship and directs the [Effective Lawyer-Client Communication Project](#), an international collaboration of law teachers, lawyers and social scientists. In 2006 he was admitted to membership in [The Society of Writers to Her Majesty's Signet](#) in recognition of his work which is leading to fundamental changes in the ways client relationship skills are taught in Great Britain. He is only the second American to become a member of The Society, the oldest professional association of lawyers in the world, which is charged with custody of the royal seal of the British monarchy

He publishes on a variety of topics with an emphasis on interdisciplinary and comparative scholarship. His [article in the Iowa Law Review](#), applying semantics to analyze the ways the meaning of "search" has evolved in U.S. constitutional law, won the national Scholarly Papers Competition sponsored by the Association of American Law Schools. His *Yale Law Journal* article, "[Plain Meaning and Hard Cases](#)," co-authored with three linguists, has been cited by the U.S. Supreme Court in three different cases. His article, "[Passing Strict Scrutiny: Using Social Science to Design Affirmative Action Programs](#)," *Georgetown Law Journal* (2002), was co-authored with two social scientists and was based on a friend of the court brief he filed in [Adarand Constructors v Mineta](#), argued in the U.S. Supreme Court in 2001.

He is a leading American scholar on the legal system of India and has consulted around the world on reform in legal education. He has been a visiting scholar at the Indian Law Institute, Sichuan University (China), the University of Sydney (Australia), University of Palermo (Argentina), and the National Law School of India. He directed a three year Ford Foundation project to support the development of human rights clinics in Indian law schools and was one of two Americans to serve on the first steering committee of the [Global Alliance for Justice Education](#). In 1997 he organized and chaired an international conference, [Rethinking Equality in the Global Society](#), that brought together leading legal scholars, social scientists and policy makers from India, South Africa and the United States to examine affirmative action policies from a cross-national and interdisciplinary perspective.

He has been an active public interest lawyer, as a legal aid lawyer and civil rights litigator prior to his academic career, as a clinical professor at the University of Michigan, as director of the Washington University Urban Law Clinic (1989-94) and as director of the Washington University Criminal Justice Clinic (1995-98). He has litigated a number of federal class action law suits, argued before the Missouri Supreme Court and the U. S. Court of Appeals for the Sixth Circuit, and authored friend-of-the court briefs filed in the Michigan Supreme Court and the U.S. Supreme Court. From 1987-89 Professor Cunningham was a Clinical Assistant Professor of Law at the University of Michigan Law School. From 1989-1993 he was an Associate Professor at the Washington University School of Law in St. Louis; he was promoted to full Professor with tenure in 1993 and continued to teach at Washington University through May 2002