

Working Title

An Innovative Approach to Legal Education and the Founding of the  
University of California, Irvine School of Law

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Legal practice requires credentialed expertise, hands-on skill in working with clients, and appreciation of the special responsibilities society grants to professionals. For the better part of the twentieth century, there has been an informal division of labor between law schools that are in the business of credentialing knowledge and first employers who are responsible for passing on the skills of day-to-day practice. Along the way, through both formal and informal channels professionals are more or less successfully socialized to take seriously their special responsibilities to society.

Beginning in the 1960s this informal division of labor between the tasks of credentialing, apprenticing, and calling began to shift as law schools played a more prominent role in passing on the skills of practice and teaching legal ethics. The demands for reform often came from stakeholders outside the legal academy, including elite leaders of the Bar and, during the 1960s, students themselves. But, we argue, the basic assumptions of this informal architecture has remained in place; we have seen tinkering around the edges of legal education, but relatively little fundamental change.

With the recent publication by the Carnegie Commission, *Educating Lawyers* (2007), there is yet again a call for reform. In many respects, the Carnegie report draws similar conclusions to earlier efforts and those earlier reports resulted in very little meaningful change in legal education. What sets this call for reform apart from earlier

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efforts, or at least provides a wedge issue that has the potential to develop a “new” division of labor, is the call for what we term an *integrated* approach to legal education, or one that gives *equal* space *within* the legal academy to credentialing expertise, hands on practice, and development of professional identity. The Report on the status of contemporary legal education coincides with the opening of a new law school at the University of California, Irvine (UCI). In many respects, the design of the new curriculum at this new law school echoes the framework proposed in the Carnegie Report, that is one where the faculty as a whole will take seriously a responsibility to teach and prepare students with the requisite legal expertise, practical hands-on skill of working with clients, and professional identity to enjoy meaningful careers across a variety of occupations of law.

Despite the fact that the UCI School of Law begins with a clean slate, institutional pressures toward conformity with the standard operating procedures of legal education are many, particularly among the elite where UCI aspires to be.<sup>1</sup> Among other factors, the institutionalization of a full-time professoriate has come to enjoy both independence and a fair amount of control over academic curriculum (but see Stevens, 198\_) and, perhaps unwittingly, has contributed to the second class status of clinical education and the teaching of legal ethics (Sullivan et al, 2007; Pearce, Rhode, etc.).

To appreciate the integrated architecture that the UCI School of Law proposes to develop as well as the challenges it faces, this article proceeds as follows: In part 1, we elaborate on the institutionalization of an informal division of labor between legal education and apprenticeship. In part 2 we then examine reform efforts to bring clinical education and legal ethics/responsibility under the umbrella of the law school curriculum

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<sup>1</sup> Reference CUNY and Antioch Law School histories and discuss.

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and then briefly summarize the essential features for reform outlined by the Carnegie Commission. In part 3 we describe UCI's proposed pedagogy for teaching professional identity and practice skills through its Legal Profession and experiential learning program. We conclude by considering the challenges to reform that UCI faces to institutionalize a new, or at least a reformed, model of legal education among its elite peers.

### **I. Modern legal education and the emergence of a full-time professoriate of law**

Across a variety of worksites, sociologists have demonstrated that professional work requires both technical expertise and hands-on apprenticeship (Freidson, Hughes, Nelson, etc.). A large body of research suggests that with time in the field and specialization in an area of practice whether anti-trust or divorce, lawyers develop a tacit knowledge about how to hear clients' stories, gain their trust, and represent them effectively (Hughes, Felstiner & Sarat, Seron, etc.). For the better part of the twentieth century, learning the skills of lawyering has been marked by an informal division of labor: professional schools focus on the cultivation of analytical thinking, expertise about the law or what is commonly referred to as "learning to think like a lawyer" and the first years of practice focus on the acquisition of hands-on, practical skills of working with clients and learning the day-to-day ropes. This informal division of labor plays out in different ways depending on incumbents' credentials and aspirations. For example, for young lawyers from prestigious schools who are launched for careers in large firms, elite parts of the federal service, or corporations, mentorship often takes place at one's first

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job, usually at a large firm (Heinz & Laumann; Heinz et al); lawyers with credentials that will gear them toward a career in solo or small firm practice are likely to acquire hands-on, practical skills at a first job working for a small firm or a government agency such as the District Attorney's office or another local government agency (Seron, 199\_). Indeed, research across a variety of sites of legal practice suggests that whatever the career trajectory, newly minted practitioners view their first job as a transitional apprenticeship. While today formal education in the law is a three-year program of graduate study at an accredited law school in preparation for a bar examination and admission to practice, informal professional socialization is actually longer and includes the first few years of practice in the field.

This informal division of labor between technical and hands-on education evolved during the first half of the twentieth century and in reaction to the laissez-faire arrangement and Jacksonian ethos of legal education in the late nineteenth century (Diver, Collins, Larson, Stevens).<sup>2</sup> The story of course begins with the development of the Socratic method of teaching at Harvard Law School (HLS) during the tenure of Christopher Columbus Langdell in the late nineteenth century. HLS is important not only because it set the standard of legal education as a graduate, three year course of study in appellate case law taught by a full-time professoriate, but also because it became the model adopted by aspiring schools at both public and private universities. Substantively,

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<sup>2</sup> In his fascinating history of the American law school, Stevens demonstrates that while the goal was standardization of legal education through accreditation, its success has been less than complete, particularly when comparing elite to regional and local law schools. Further, in some instances state legislatures tried to intervene to regulate who may teach at accredited schools. Together, the road to uniformity in legal education has been marked by contestation between and across various stakeholders, including elite members of the Bar represented by the American Bar Association, deans and law academics represented by the American Association of Law Schools (AALS), practitioners from a variety of settings, and states responsible for administering the Bar examination. Thus, the story we tell here is by no means designed to be definitive, but rather maps out some of the key tensions facing legal education and, specifically, tensions facing a school that aspires to join the elite ranks.

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Langdell's approach to legal education borrowed from the era's fascination with scientific method; in his well-known words, Langdell argued that "we have also constantly inculcated the idea that the library is the proper workshop of [law] professors and students alike; that it is to us all that the laboratories of the universities are to the chemists and physicists, the museum of natural history to the zoologists, the botanical garden to the botanists" (as quoted in Stevens, p. 146). Despite its criticisms and challenges, the case method, if with some modification, continues to enjoy pride of place as an "unparalleled method for training students to be lawyers" (Stevens 1982: 269).<sup>3</sup>

In addition to its full-time teaching responsibilities, the professoriate anchored its gatekeeping role through scholarship; reflecting the values of the modern, research university legal scholars again borrowed from the era's fascination with science and, consequently, eschewed concern about values, ethics and other such "soft" issues as what it means to be a lawyer (Pearce 1998; also see Bledstein, Ross). Like all professional schools housed in a university (e.g., medicine, engineering, architecture, business), there is an inherent tension between the commitment to prepare practitioners and the demands of the modern university that places a premium on scholarship. Beginning in the early twentieth century, the professoriate published its research in law reviews, a convenient relationship for faculty and student editors looking to fill their issues. The legal academy, like all intellectual communities, has gone through various fads and trends in its scholarly pursuits over the course of the twentieth century (see Stevens, 1982, Schlegel). But, whether the fad is legal realism in the early part of the century or Critical Legal Studies or law and economics in the later part, the assumptions, tone, and style of research is directed inward toward an audience of academic peers both within the legal academy and,

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<sup>3</sup> Add discussion of efficiency and cost effectiveness of Lang dell method as part of its appeal.

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to some extent, the broader disciplines. The institutionalization of a full-time professoriate housed in complex, research-oriented universities has left a strong imprint on the orientations, values, and concerns of the faculty to preserve their independence and to remain somewhat aloof from teaching the materials required of daily legal practice.

As Stevens' careful history shows, the institutionalization of legal education, including the requirement of an undergraduate degree, a three year course of graduate study taught by a full-time professoriate,<sup>4</sup> accreditation by the American Association of Law Schools (AALS), and bar examination by the respective states, unfolded with fits and starts, debate and contestation between and among deans of elite, aspiring, and proprietary law schools, legislators, and Bar leaders. Nonetheless, for the purposes of our story here, a particularly important theme is the ways in which those trained at elite institutions, first Harvard followed by Yale and Columbia, became key stakeholders in the new professionalism as they joined the faculties of aspiring law schools such as Stanford, Michigan, Berkeley, Northwestern, or Iowa. As Michigan, for example, sought to secure legitimacy as a premier institution, one easy and obvious step was to recruit faculty with the right pedigree—i.e., Harvard law graduates. The movement to hire at least a portion of faculty for full-time positions from elite law schools was critical for insuring legitimacy and, perhaps not surprisingly, had the serendipitous effect of solidifying and homogenizing the curriculum around an analytical focus on learning law through cases. The move toward standardization begins in the 1880s and is more or less

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<sup>4</sup> For a fascinating history of the degree to which even Harvard could maintain a full-time faculty in the early years, see Kimball's (2006) article, "The Principle, Politics, and Financing of Introducing Academic merit as the Standard for Hiring for 'the teaching of law as a career,' 1870-1900."

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in place by 1940 when the president of the AALS describes the organization as *the* “accrediting agency” of the legal academy (Stevens).<sup>5</sup>

Beginning in the later half of the twentieth century, we see a change in the credentialing of full-time faculty from law degrees from elite schools (that is often capped by service on law review and a prestigious clerkship) to law degrees and a Ph.D. in an academic discipline. The trend toward joint degrees began in the 1960’s with support from the Russell Sage Foundation (RSF). RSF supported a number of centers around the country to study “law and society,” including UC Berkeley, Wisconsin, Northwestern, and the University of Denver. In addition, RSF provided support for graduate students to enroll in joint degree programs in law and various social science disciplines, including sociology, psychology, anthropology, history, political science, and economics. While joint degree programs remain relatively small in absolute number, they have played an important, if unintended, role in further institutionalizing the orientations, interests and concerns of full-time faculty around scholarship at the expense of practice in legal education. [Add statistics on proportion of faculty at top 20 law schools that have joint JD/PhDs’ or PhDs without law degrees.]

## **II. The place of professional identity and experiential learning courses in 20<sup>th</sup> century legal education**

The Harvardization of legal education as a self-contained experience housed in the academy did not unfold without dissent.<sup>6</sup> One of the ironies of this story, Stevens points out, is that the emergence of the Wall Street firm (the Cravath system) and the shift in elite practice from a focus on litigation to one of advice to industrial corporations

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<sup>5</sup> As Stevens goes on to explain, there were still states that allowed law schools to operate without accreditation through the early years after World War II (see pp. 205-216).

<sup>6</sup> Including dissent within the legal academy. For example, J. Frank’s article on education in the 1930s, a theme we pick up below. ....

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takes place just as law schools organize legal education around appellate case law (also see Auerbach, Mills ). Among graduates slated for practice in less august settings where practices are often organized around solving relatively predictable legal problems, the focus on learning through appellate case law is perhaps even more off kilter.<sup>7</sup> From its inception, then, there is (1) a mismatch between legal education and legal practice, at least from the vantage point of practitioners and (2) the institutionalization of a wedge issue for critique and reform by elite practitioners and Bar leaders, as well as their solo and small-firm counterparts. The refrain of this critique is that law school does not prepare its students for the “real” practice of law.

Against this backdrop we focus on two facets of this institutionalized critique from the Bar and, eventually, from law students themselves, the need to inculcate students with the proper attributes of their calling through an emphasis on legal ethics and responsibility and to incorporate the actual practice of law into legal education. .

*The cultivation of a professional calling and the teaching of legal ethics:*

Beginning in the early twentieth century, the role of ethics in the professionalism project moved along two somewhat antagonistic trajectories, one constructed by elites from the Bar and one from academia. On the one hand, leaders of the Bar appointed committees to draft a code of professional ethics; at its 1906 annual meeting, the Committee on a Code of Professional Ethics presented its report and “stressed the need for clear, uniform rules that could be used to discipline unethical lawyers of low character who were joining the ranks at an alarming pace” (Hayden 2002-2003:1307). The adoption of a code of ethics by the ABA in 1908 is a part of the larger professionalization project at the turn of

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<sup>7</sup> For this reason, early reformers of the profession proposed that training be bifurcated into two tracks, one echoing the English model of a barrister and a second along the lines of a solicitor (see Reed, I think; check which report....).

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the century: codes of ethics are designed to institutionalize the distinction between a professional calling and other occupations and, further, to legitimate the profession's authority to self-regulate and discipline its peers (Collins, Freidson, Larson, Abbott). On the other hand, as a full-time professoriate of law became more and more institutionalized, they were careful to protect their niche by defining and shaping the knowledge base required for entry into the profession; the professoriate became, then, the gatekeepers of what constitutes the curriculum (Freidson; Stevens).<sup>8</sup>

Before the ink was dry on the Canons of Professional Ethics adopted in 1908, there were criticisms and calls for further revision. Criticisms ranged from claims that the Canons were unnecessarily vague to concerns that they did not provide concrete guidance to discipline lawyers. Indeed, promulgation, debate, adoption, and criticism of this and subsequent codes become an institutionalized feature of bar politics (Halliday). Further, the three high water marks of debate and reform of the Canons of Professional Ethics coincide with broader watersheds in American society, i.e., the first round of rules unfolds during the Progressive Era followed by a high point of activity during the 1930s and, then, the most recent round in the 1960s to early 1970s (Hayden 2002-2003; also see Solomon). For the better part of the twentieth century, the elite of the Bar pressed the academy to incorporate courses into the curriculum designed to teach legal ethics; as many have noted, their success was mixed and highly uneven at best (Rhode, Pearce, Cramton and Kosiak).

Events in the late 1960s to early 1970s shifted the playing field and, as we shall see, the Bar eventually achieved its goals to (1) require the teaching of legal ethics in

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<sup>8</sup> Accreditation requires that a proportion of the faculty teach on a full-time basis; law schools have long filled in the teaching ranks with part-time practitioners. Our point here is that full-time faculty are the keepers of what constitutes a "proper" education in the law.

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order to secure accreditation followed by (2) a standardized, multiple-choice exam required of all individuals who sit for the bar. By the late 1960's Bar leaders reached a consensus that a "'gentleman's code' enforced by the sanction of shame" (Hayden 2002-2003:1309) was no longer adequate. At least three important events focused this concern: first there was a significant increase in the size of the profession due to the expansion of law schools largely in the public sector (Abel); second, there was the beginning step toward a notable change in the gender, racial, and ethnic composition of the profession (Abel, Nelson); and, third, and perhaps most important, there was a significant move leftward among young lawyers, particularly those at elite institutions (Powell, Stevens 1983:234).

Together, as many have documented, these events, along with a protest movement against the Vietnam War, challenged the values, assumptions, and orientations of the traditional elite of the Bar. Then, of course Watergate happened and the Bar's concern that so many of the key players were in fact lawyers. Whether Watergate "caused" the adoption of a stronger Code, or was simply the event that pulled the lever remains a debate for others to sort out. For our purposes here what is significant is that in 1970, the ABA adopted a code that included "Disciplinary Rules, albeit also retaining (in the Ethical Considerations) the fraternal voice of the Canons" (as quoted in Hayden (2002-2003:1311). Complementing the move toward a more expansive code that includes disciplinary rules, in 1973 the ABA adopted Standard 302(1), which required that all accredited law schools provide "instruction in the duties and responsibilities of the legal profession" as well as "training in professional skills, such as counseling, the drafting of legal documents and materials, and trial and appellate advocacy" (as quoted in Hayden

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2002-2003:1331). Capping off required training in legal responsibilities and lawyering skills, by 1980 prospective lawyers were required to sit for the Multistate Professional Responsibility Exam (MPRE), a national bar exam on legal ethics.

Evidence suggests, however, that in their quest to modify law school curriculum to include courses in legal ethics and professional responsibility coupled with the MPRE the leaders of the Bar may have won the battle but lost the war in the transformation of legal curriculum. Anecdotal and systematic evidence suggests that, at best, these courses are given short shrift at most law schools, or that is the consensus one gleans from reading the secondary literature (See e.g., Pipkin, Cramton and Kosiak, Rhode, Pearce).

*Learning the skills of legal practice and the emergence of clinical education:*

The story of the role of experiential learning courses in the professionalism project also begins in the early twentieth century, and runs along two antagonistic trajectories with basically the same players on each side. The institutionalization of a full time professoriate, situated in a university and committed to the case method of teaching and scholarship, successfully opposed efforts of law students, legal scholars, and the American Bar Association to fully incorporate clinical education into the law school in the 20<sup>th</sup> century. But even with such sustained and ongoing resistance, clinical education increasingly played a role in educating law students, particularly in the second half of the last century.

In the early 1900s, shortly after the case method emerged as the predominant form of teaching in the university law schools, students at a handful of schools made the first efforts to incorporate experiential learning into legal education, by creating volunteer organizations that provided legal assistance to indigent persons. Some organizations

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were affiliated with existing legal aide offices, and others served as the only free legal service provider in the community (Barry, et.al., Bradway). A few legal scholars, particularly legal realists, applauded these student-initiated efforts to incorporate experiential learning. They argued that clinical coursework should become an integral part of every law student's education, and every law school's curriculum (see Rowe, Bradway, Frank, Llewellyn).

Also in the early 20<sup>th</sup> century, the Carnegie Foundation for The Advancement of Teaching funded a study on Legal Education. The resulting report ("Reed Report") identified three components necessary to prepare students to practice law: at least two years of pre-legal college education; a theoretical knowledge of the law; and practical skills training (Barry, et al., Stevens, Reed). In 1921, no state yet required attendance at law school as a condition for bar admission, proprietary schools were still prevalent, and legal apprenticeship remained the sole training for many entering the profession. In the course of the next two decades, the ABA and AALS both chose to focus their reform efforts on getting their membership to adopt standards requiring college education for admission to accredited law schools (Stevens). Neither organization, however, made efforts to advocate a requirement for practical skills training (Barry, Stevens).

Despite the lack of any efforts by bar leadership to promote the inclusion of experiential learning in law school curricula in the first half of the 20<sup>th</sup> century, a small, but growing number of clinical courses appeared at various law schools. By the late 1950's, 35 out of 126 ABA approved law schools offered some kind of clinical experience. The majority of these programs were still volunteer projects for both students and faculty (Barry et.al. Joy). Only fifteen schools offered academic credit for clinical

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work, and only five schools had clinical courses in which professors received teaching credit (Blaze, Barry et.al.).

During the second half of the 20<sup>th</sup> century, however, clinical education courses increasingly appeared in law school curricula, due to at least three factors: the advent of substantial outside funding for clinical education programs within law schools; student demand for social relevance in legal education; and the increasing role of the ABA in promoting clinical education (Barry et.al.).

Money made a difference. Beginning in 1959 and continuing until 1978, the Ford Foundation provided funding to law schools for the development of clinical programs. From 1959 to 1965, through a program administered by William Pincus, the Foundation provided \$500,000 to 19 law schools in intermittent grants. In 1965, it made additional grants totaling \$950,000. From 1968 to 1978, the Foundation granted an additional \$11 million to the Council on Legal Education for Professional Responsibility (“CLEPR”), the final name of Pincus’s program. CLEPR awarded 209 grants to 107 ABA–approved law schools, totaling approximately 7 million dollars. In 1978, the final year of the Ford Foundation grants, the federal government stepped in to provide additional funding for law school clinics. From 1978 to 1997, the Department of Education awarded \$87 million to at least 147 law schools. Many new clinics sprung up in law schools around the country, and with them, an ever increasing number of clinical teachers became full time employees of law schools.

Law students continued to play a role in the development of clinical education in the second half of the twentieth century. According to Stevens, “growing student demands for relevance, and the increasing sense of boredom felt by the elite law schools’

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carefully selected students in their second and third years, fueled the demand for clinical studies” (1982:\_\_\_).

During the latter half of the 20<sup>th</sup> century, the ABA increasingly supported the incorporation of clinical education into law school curricula. In 1969, the ABA adopted a Model Student Practice Rule that sets forth requirements which, if satisfied, would allow a law student to engage the varied aspects of a legal practice, under the close supervision of an attorney. Soon after the ABA adopted this model rule, many jurisdictions that did not already have such a rule adopted one (Joy). In 1992, The ABA McCrate Report recommended that law schools teach lawyering skills and professional values by means of well structured clinical programs. In 1996, the ABA amended its accreditation standard to require that every ABA accredited law school “offer live-client or other real-life practice experience” (ABA Standard 302(d)). [??? In \_\_\_\_\_ section 302 (d) was eliminated, and Section 302 (b) was amended to incorporate the experiential learning requirement:

“(b) A law school shall offer substantial opportunities for:...

(1) live-client or other real-life practice experiences, appropriately supervised and designed to encourage reflection by students on their experiences and on the values and responsibilities of the legal profession, and the development of one’s ability to assess his or her performance and level of competence.”

Interpretation 302-5, adopted in \_\_\_\_ clarifies that “substantial opportunities” does not mean a law school must make clinical education available to everyone:

“The offering of live-client or real-life experiences may be accomplished through clinics or field placements. A law school need not offer these experiences to every

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student nor must a law school accommodate every student requesting enrollment in any particular live-client or other real-life practice experience.

In the late 1970's the ABA began to express concern about the value, or lack thereof, that law schools were placing on the teaching of skills, and the related status of clinical teachers within the legal academy. [Add short discussion of ABA's development of standards concerning the status of clinical faculty, eventual requirement of some form or security of position, long term contracts being sufficient, and continued efforts by ALDA to have standard weakened or repealed]

As of 2009, every ABA accredited law school has an experiential learning program that includes in-house clinics, externships, or both (cite). Nonetheless, at most law schools, clinical education still is not fully incorporated into the curriculum, and both clinical courses and the faculty who teach them are marginalized. Very few of those schools have a requirement that each student participate in an experiential learning course; none of the schools that have such a requirement are ranked in the top twenty by *U.S. News and World Report* [note re schools that report having an experiential learning requirement and those ranked in the top twenty].

In many respects, the antipathy toward incorporating "practical," hands-on lawyering skills and to take seriously a pedagogy organized around legal ethics should come as little surprise. Just as Bar leaders worked over most of the twentieth century to move their agenda, the professoriate institutionalized its commitment to a scholarly pursuit of the law and its pivotal gatekeeping role with respect to curriculum. We began by noting that professional work requires both technical expertise and tacit understandings derived from practice. The "hybrid" (Sullivan et al 2007) nature of

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professional work is institutionalized in the legal academy between and among the competing interests of students, most of whom seek to be practitioners, practitioners themselves, who argue that graduates need to be prepared for the “real” world of work, and academics who enjoy relative independence to shape how law is taught while pursuing their own scholarly interests. Summarizing his exhaustive and provocative history of American legal education, Stevens speculates that:

Students will continue to reiterate the complaints about law schools that have been mouthed with remarkable regularity since the Harvard student survey of the 1930s. Faculty solutions will involve reforms requiring more student research in a period when students are apparently increasingly less interested in things academic, as well as require a faculty-student ratio that would be unthinkable even if universities were not in a financial crisis (1982:278).

So, is reform of legal education possible? While Stevens and others (cites) suggest that there is not much room for optimism, it is nonetheless against this backdrop that the Carnegie Commission issued its recent report on the status of legal education in the United States and, closer to home, that the University of California, Irvine (UCI) launches its new law school. In a word, the Carnegie Commission proposes that law schools reorganize the informal division of labor between the teaching of legal expertise, hands-on practice, and professionalism that has evolved over the course of the twentieth century. Beginning with a clean slate, the UCI School of Law seeks to design a program that takes seriously the concerns raised by the Commission. First, we provide a synopsis of the Carnegie recommendations, and then turn to the UCI School of Law’s plan.

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*The Carnegie Commission's Recommendations:* The report card for legal education from the Carnegie Commission circa 2000 is: “A-” for teaching students how to “think like a lawyer,” but a “C” to “C+” at best for craft and ethical-social responsibility. This is hardly a surprise in light of the direction that legal education has taken, particularly in the second half of the twentieth century. In thinking through their analysis of legal education, the authors of the Report begin with two concepts; first, they ask, what are the “signature pedagogies” of legal education and, second, what are the “apprenticeships” required of professional education? They borrow the concept of “signature pedagogies” from linguistic theory, focusing on the “surface structure,” “underlying intentions,” “values,” and “shadow structure” of teaching law (p.24); by contrast, the concept of apprenticeship derives from the “learning sciences” which shows, they argue, that “experts” in a field possess two kinds of knowledge, one derived from mastery of material, or “‘schemas’ for thinking and acting” and a second that is “conditioned, or related to contexts” (p. 25).<sup>9</sup> Integrating these concepts, the authors argue that professional education is best understood as three “apprenticeships:” (1) intellectual/cognitive, (2) expert practice, and (3) identity and purpose. While the intellectual/cognitive apprenticeship may be quite comfortably housed in the university, they argue, apprenticeships in practice and identity must draw upon the settings where “competent practitioners” work (p.28).

Echoing reports of this kind over the course of the twentieth century, *Educating Lawyers* begins with the premise that there is a “crisis of professionalism” (See Solomon 19\_\_). The roots of this crisis are familiar as well: the public lacks confidence in

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<sup>9</sup> Of course this theme very much echoes findings from the studies of professionals at work; see e.g., Hughes, etc.

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professionals; there have been scandals, for example Enron, where professionals have played a notable role. Equally, there is a claim of “declining morale” among practitioners, many noting that they would not enter the practice of law if they had it to do over again. One, clear response to this “crisis” is to reform legal education by giving *equal* commitment to the three legs of the professionalization stool: expertise, practice, and identity. Further, it is time, the authors argue, to take seriously the “latent” messages that the current emphasis on cognitive/intellectual education sends, particularly the cordoning off of values or ethics.

To put matters in context, today’s law schools, as we have seen have robust clinical programs offering opportunities to learn lawyering skills in a variety of areas. Further, law students take courses in the legal profession and ethics. The problem is, then, not so much that these courses and opportunities for balanced apprenticeships are not present in law schools. Rather, the problem is, first, the integration across apprenticeships is skewed and, second, apprenticeships in practice and identity do not enjoy “legitimacy” in the academy (p. 89). Thus, what is being called for by the Carnegie Commission is a more balanced integration across and legitimacy to the domains of professional education.

### **III. The UCI School of Law**

Beginning in the fall of 2008, the founding faculty of the UCI School of Law took careful steps to reform the curriculum. The founding faculty were already seasoned teachers and scholars in their respective fields of expertise.<sup>10</sup> Faculty developed a first year curriculum cognizant of the “standard” first year curriculum in most elite law schools, anxieties and concerns typical of first year law students that they learn the

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<sup>10</sup> List faculty: ?

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“right” materials, and reality that faculty themselves would likely be comfortable with reform or tinkering but uncomfortable with a more radical transformation in curriculum. In addition, they had some reading assignments, including the most recent Carnegie Commission report (2007) and the work of Shultz and Zedeck (2009). Through a series of meetings, the faculty asked themselves: what are the substantive issues, skills, analytical techniques and professional training that are required to begin legal practice? What is the most effective order for passing on the intellectual training required for legal practice? How can the curriculum at the UCI School of Law be innovative and responsive to changes in legal practice yet build from the traditions of legal education?

The balance between innovation and tradition is struck with an emphasis on highlighting the “methods of legal analysis and skills that all lawyers constantly use. Students thus will receive an education that includes the traditional areas of legal doctrine, but in an innovative context designed to prepare them for practice in the 21st century” (<http://www.law.uci.edu/registrar/curriculum.html>, retrieved 8/25/2009). The emphasis on modes of analysis required of practitioners is captured in the innovative titles of the courses; the descriptions of these courses defer to tradition. Together, the goal is to introduce students to the multiple ways of thinking and conceptualizing problems required for effective practice. In the fall semester, as described on the School’s website, first year students are enrolled in the following courses: (1) Common Law Analysis: Private Ordering (focusing primarily on the common law of contracts to teach a form of legal analysis in which the law is derived from judicial decisions rather than statutes or the constitution); (2) Lawyering Skills I ( a two semester course focusing on teaching skills that all lawyers use, such as fact investigation, interviewing,

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counseling, negotiation, legal writing and analysis, legal research, and oral advocacy ); (3) Legal Profession (described in detail below); (4) Procedural Analysis (using civil procedure as the foundation for teaching students about areas of law in which there are procedural rules, and how analysis and arguments are made in such contexts); and (5) Statutory Analysis (using criminal law as a basis for teaching students the methods employed in all areas of law for analyzing statutes). In the Spring Semester students will continue to be enrolled in the Lawyering Skills and Legal Profession courses, and additionally will take: Common Law Analysis: Government Regulation (which will use torts as a way to further examine the common law, and how lawyers reason and develop arguments in this area; Constitutional Analysis (which will teach students basic areas of constitutional law such as separation of powers, federalism, and individual liberties. It will focus on how constitutional arguments are made, and how courts and lawyers analyze constitutional issues); and International Legal Analysis (to be described briefly below). One might argue that the curriculum at UCI School of Law has a very familiar ring; read in one way, students will be taking courses in Contracts, Civil Procedure, Criminal Law, Torts and Constitutional Law. But, the faculty believe that wording and phrasing matter: emphasis will be placed not so much on packing in a body of knowledge, but rather on cultivating a facility with different forms of legal analysis.

Beyond this, however, two innovations do stand out. First, students are enrolled in a first year course (fall and spring semesters) in the Legal Profession. This course covers relatively familiar territory of legal ethics and professional responsibility, but then extends its reach to introduce students to interdisciplinary scholarship through a discussion of practice settings of the various occupations of law. As we have noted, all

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students at accredited law schools are required to take a course on professional responsibility, but it is rarely taught in the first year and it generally focuses on a relatively narrow set of topics. Second, and recognizing the changing terrain of legal practice, in the second semester students will enroll in a course that introduces them to international legal analysis and consider developments in international law, sending a distinct message that many practitioners of the 21<sup>st</sup> century will be practicing on a global stage.

Before turning to a more in-depth examination of the innovative features of the Legal Profession course, we consider another feature of the first year curriculum at UCI, the pedagogical space given to learning the craft of lawyering. Deference to craft is captured in a more expansive take on the traditional requirement to teach Legal Writing as part of the first year curriculum. At UCI, students will enroll in a year long course entitled “Lawyering Skills,” which includes legal writing and analysis as well as “fact investigation, interviewing, . . . legal research, negotiation, and oral advocacy.” Building from course work, students also will get their hands “dirty:” in the second semester the course in Lawyering Skills will move out of the classroom to clinical settings where students will conduct intake interviews of actual clients for legal service organizations in Orange County. Additionally, each student is assigned both a junior and senior “lawyer mentor” and will be required to spend a specified number of hours observing lawyers at work. Thus, exposure to practice begins early and is systematically built into the first year curriculum. In the second year, students will select the experiential learning course they intend to take in the third year, either an in-house clinical course or an externship course. During the second year, each student will then take one or more courses

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designated as prerequisites for the experiential learning course. The Legal Profession course, Lawyering Skills course, and other prerequisite courses are designed to help lay the foundation for, to borrow the language of the Carnegie Commission, an apprenticeship in “expert practice” as integral to legal education.

Against this backdrop, we describe the plan for the course in the Legal Profession and Clinical Education at UCI School of Law.

*Legal Profession:* Practical and philosophical considerations drove the decision to teach the Legal Profession over two semesters in the first year of study. Practically, many students work in legal organizations between their first and second year and need to have a rudimentary understanding of issues of legal ethics and professional responsibility. Faculty reached a consensus that effective practice requires more than the tools of legal analysis in its various forms: practitioners of the 21<sup>st</sup> century will need to be somewhat conversant with interdisciplinary perspectives. Experience suggests that it is often hard to persuade law students to value interdisciplinary scholarship, but this essential skill may be seen as more “relevant” when taught in a context that is useful to students’ professional careers. Thus, through study of legal sites of work, a goal of the course is to examine the ways in which context shapes practice and decision-making. Philosophically, the founding faculty took seriously the refrain of many commission reports over the 20<sup>th</sup> century (including the recent Carnegie Commission Report) that law schools do not spend a sufficient amount of time cultivating students’ professional “judgment.” In part this is the case because “judgment” is difficult to assess using traditional academic techniques; in part, this is the case because learning “judgment,” of necessity, requires

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exposure to situations and challenges that cannot be gleaned from textbooks (Sullivan et al 2007:173). To address this concern, the Legal Profession course will include a series of experiential learning exercises and role-playing “based on typical problems confronted in practice” as well as a series of speakers where practitioners from various settings (e.g., solo and small firm, large firm, general counsel, government, nonprofits, etc.) will introduce students to the challenges and pitfalls of various career trajectories. Finally, placing the Legal Profession course in the first year sends the very important practical and philosophical message that legal ethics and professional responsibility as well as the cultivation of identity and judgment matter for a meaningful career in the law.

Building from these goals, the Legal Profession course will begin with a consideration of the role of the lawyer and the legal profession in society followed by discussions of attorney’s duty of confidentiality and conflicts of interest. In subsequent modules students are exposed to interdisciplinary scholarship by reading about legal practice in “context,” including research on criminal practice, the “hemispheres” of private practice demarcated by individual and small businesses on the one hand and corporate and large-scale organizations on the other and the public interest sector (e.g., legal aid, cause lawyers, etc.). Further exposure to interdisciplinary scholarship unfolds through a reading of the challenges practitioners face in the 21<sup>st</sup> century, including access to legal services, diversity (minorities and women), and discipline and malpractice among other topics. The course is grounded in both the traditional, bread and butter materials of legal ethics and responsibility as well as the more innovative, interdisciplinary research that examines lawyers at work.

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Summarizing the faculty's deliberations with respect to a required course on the Legal Profession, it was suggested that too often the professional responsibility course is treated as the "driver's ed" of legal education, that is, students need to take the course and they need to pass the multiple-choice MPRE to get their license. The goal of the UCI Legal Profession course is, however, much more comprehensive: it takes seriously the School's commitment to cultivate professional craft and identity as central to legal education.

*Clinical Education:* The faculty's decision to require an experiential learning course for all UCI law students is premised on the belief that every law student should learn, as part of their formal legal training, what it means to be a lawyer by actually practicing law. This practice should take place under the close supervision of an experienced attorney and involve opportunities for simulated practice, feedback on performance, and reflection. Each experiential learning course should provide the student with the opportunity to engage in some of the specific skills they will use in their chosen practice. It should also provide the student with opportunities to consider questions of ethics and professional responsibility in the context of the actual legal problems of real clients.

The development of UCI Law School's experiential learning curriculum is still in its initial phase. The law school intends to provide a one or two semester in-house clinic experiences to most, if not all, of its law students. In the first several years of the program, the law school plans to provide 70 to 75% of its students an in-house clinical experience, with the remaining students satisfying the requirement through externship

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placements. To achieve this goal, the law faculty has reserved 10 out of the planned 50 full time faculty positions for clinical faculty. The law school plans to hire one to two clinical faculty each year over the next several years until the ten clinical faculty positions have been filled. Clinical faculty will be hired into a clinical tenure track or tenured position. Faculty with clinical tenure enjoy the same job security as non-clinical tenured faculty and have the right to vote on all matters with the exception of the tenure of academic faculty, due to a system-wide rule of the University of California that the law school may not override. The number and status of clinical faculty was one of Dean Chemerinsky's top priorities in his negotiations with the university prior to accepting his position. Dean Chemerinsky believes that "leveling the playing field" among all UCI law faculty, to the greatest extent possible, is necessary in order to have an outstanding experiential learning program, and for sending a signal to students and others of the importance of practiced based learning.

The school is using several criteria to determine the type of clinical courses to be included in the program. First, each course must provide each student with the opportunity to serve as the primary advocate for a client in whatever context the legal problems addressed by the clinic arise. For example, if the clinic represents clients in litigation, the student must be the legal representative who appears in court on behalf of the client. (California student practice rules permit certified students who have completed the first year of law school and enrolled in Evidence to appear in court and perform all other functions of a lawyer, provided the work is done in the presence of a supervising attorney.) Second, the clinic must provide sufficient intellectual challenges for the student, ideally both in the substantive legal issues involved and the skills being

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developed. Third, the substantive law and skills learned in the clinic should, to the extent possible, be those that the student will use in their chosen area of practice. Fourth, to the extent possible, the law school intends to develop clinical courses that will complement areas of expertise and scholarship of non-clinical faculty. Fourth, also when possible, the clinic should provide opportunities for students to work with professionals and graduate students in other disciplines, to prepare them for the interdisciplinary nature of a 21<sup>st</sup> century legal practice. Finally, the clinics must provide their services pro bono to clients who otherwise would not be able to obtain legal representation.

In order to address the third criteria, the law school plans to have roughly an equal number of transactional and litigation clinics. Toward the end of the first year, the school will survey the career interests of the first class and use the information in planning the subject matter of the initial in-house clinics and externship offerings.

As the law school currently has two non-clinical faculty with expertise in environmental law, two with expertise in immigration law, and two with expertise in intellectual property law, the faculty appointments committee has decided that hiring clinical professors to develop environmental, immigration and intellectual property clinics is a priority. Developing clinics in these subject matter areas will allow for potential collaboration with non-clinical faculty, ranging from providing expertise to some supervision of student practice. Law school deans and faculty are currently meeting with UCI faculty in several other academic disciplines within the university to explore the potential for interdisciplinary clinics.

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The law school intends to structure its clinical program in a manner that will help to address some of the greatest unmet needs for legal services in Orange County. To this end, faculty and staff are meeting with numerous legal service attorneys in the Orange County community to gather information on this subject. These meetings also provide the opportunity for UCI to explore the potential for externship placements and/or teaching collaborations with interested legal services attorneys. The law school will give priority to developing courses that can both help to address an unmet need for legal services and satisfy the broad pedagogical goals outlined above.

The existence of a “blank slate” on which to write a blueprint for development of the law school’s experiential learning program, and the commitment of substantial resources to build from that blueprint provide a unique opportunity to create a program that focuses closely on providing experiences that will better meet the needs of all law students at UCI.

## **Conclusion**

The blueprint for the UCI School of Law takes seriously a more integrated approach to legal education. As we argued in Part 1, the incorporation of coursework in legal ethics and responsibility and clinical education have a prominent role in contemporary legal education, but the commitment to making them integral to the curriculum has been somewhat haphazard and uneven. By making the concept of “practice” central to the mission of the UCI School of Law there is the expectation that

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students' preparation for careers in the law will be more integrated and comprehensive. In its commitment to interdisciplinarity the School takes seriously what decades of sociological research on legal practice has repeatedly demonstrated: Professional practice is as much about technical or cognitive expertise as it is about judgment, craft, and responsibility. Further, the School recognizes that a more integrated legal education requires resources, including smaller classes and full-time faculty lines for clinical education. The blueprint sets aside those resources to realize its mission.

Despite these commitments we close by speculating on the institutional forces that challenge the UCI School of Law's creative blueprint. While the School opens with a clean slate, it nonetheless operates within a highly developed institutional field of legal education where taken-for-granted practices constitute the markers of prestige and reputation.

Discuss:

1. Resources: Clinical education that takes seriously the need to insure the legitimacy and respect of its faculty costs money—and, may take resources from other areas. Can this be sustained?

2. Prestige and reputation “measured” by faculty publications; integrated legal education is very labor intensive; takes time away from publishing. How will the School balance commitment to secure high ranking and labor intensive education? Added to this, U.S. News rankings place real pressures on deans (see Espeland ASR article).

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3. Inertia: reforms must be adopted by faculties who are invested in the system that created and rewards them.

4. Critical mass of clinical faculty at UCI and nationally (anomaly or model)