

Educating Lawyers



T e a c h i n g L e g a l R e s e a r c h

Carnegie Report reveals new challenges, fresh possibilities for law librarians

by Judith Welch Wegner

Law librarians around the country are attentive to both persistent and novel questions. Legal educators have recently begun to reexamine persistent questions about educational focus and strategy, based on new intellectual frameworks proposed by the Carnegie Foundation for the Advancement of Teaching in its 2007 study, *Educating Lawyers: Preparation for the Profession of Law*, otherwise known as the Carnegie Report.

The Carnegie Foundation's study of legal education is part of a larger venture that focused on "Preparation for the Professions" across a variety of fields. *Educating Lawyers* sought to examine teaching and learning based on site visits to 16 law schools (14 in the United States and two in Canada) with varying missions, primarily during spring semester 2000. The study also incorporated insights from companion studies of the academic preparation of clergy, engineers, nurses, doctors, PhDs, K-12 teachers, and undergraduates.

Based on this and other recent studies, such as *Best Practices for Legal Education* (www.cleaweb.org/resources/bp.html), law librarians have an opportunity to enhance their teaching and institutional contributions as part of a broad effort to improve the preparation of lawyers. This essay outlines seven challenges (and associated possibilities) for law librarians interested in improving the education offered by law schools during these changing times.

Challenge 1: Understanding Professionals and their Work from an Educational Perspective

The Carnegie Foundation's studies of professional education considered professionals' preparation from the vantage of what professionals must do. A set of "commonplaces" developed by President Lee Shulman provides a useful point of entry. Professionals:

- Employ fundamental knowledge and skills derived from an academic base;

- Make decisions under conditions of uncertainty;
- Engage in complex practice;
- Learn from experience;
- Create and participate in responsible professional communities; and
- Have the ability and willingness to provide public service.

This formulation of the core activities of professionals provides educators with a fresh way to imagine their instructional goals, assess their responsibilities, and guide their students.

Law schools have long emphasized “fundamental knowledge” and “analytical skills” as the hallmark of legal education. Many first-year legal research courses take a similar tack and focus on “content knowledge”: what different research tools do, where they are located, how they relate to each other. The remaining dimensions of necessary preparation have rarely been presented in the Carnegie Foundation’s terms.

Unfortunately for those teaching legal research, dry presentations of content knowledge may lack the “juice” that powerfully engages law students with the “case-dialogue” method and its insistence upon confronting uncertainty whether students want to or not. Instruction featuring mere “content knowledge” can seem pale by comparison, and students may fail to engage as a result. On the other hand, those who teach legal research may be well positioned to emphasize key dimensions of professional learning that first-year “stand-up” faculty does not. They might situate legal research instruction in the context of a “complex practice” setting, rather than emphasizing only a discrete set of “practice skills” related to legal research. They could also help students “learn from experience” and structure instruction around student teams similar to those common in practice.

Fresh approaches incorporating contextualized learning (situating legal research instruction in relation to a complex master problem that requires students to use multiple research tools) and emphasizing learning from experience in a team context might significantly energize and improve instruction in legal research, if librarians rise to these challenges, as the Carnegie Report suggests.

Challenge 2: Understanding Learning

Most legal educators (including law librarians) are ignorant of the profound developments in the “learning sciences” (psychology, cognitive and neurological studies, physiology, and more) that have occurred since they attended law school, according to *How People Learn: Brain,*

Mind, Experience, and School (www.nap.edu/html/howpeople1/).

Of particular interest is the growing understanding of how “expertise” develops, since the development of “legal expertise” is the cornerstone of legal education. The development of “expertise” in legal research would merit careful study in and of itself.

“Expertise” has been studied across myriad fields ranging from chess players to historians to educators. “Experts” are those who possess both the “know what” and the “know how” that helps them solve problems in a particular domain. The trajectory of “novices” becoming “experts” occurs in varied contexts.

Research illuminates the characteristics of “experts,” and scholarly law librarians might study the development of research expertise accordingly. Experts notice patterns not seen by novices, possess a great deal of content knowledge, and organize, or “chunk,” that knowledge in ways that reflect deep understanding. Expert knowledge develops through experience with myriad scenarios involving poorly-defined problems. Key insights are internalized so they can be retrieved with little conscious effort. Tacit learning (observation, imitation, and experience) is important in the development of expertise that far surpasses “book learning.” Expertise develops in stages, from initial acclimation through competence, to proficiency and ultimately excellence.

Law librarians typically have rather limited opportunities to help students and beginning lawyers develop legal research expertise through advanced courses, workshops, or informal tutorials. Nonetheless, they might consider developing systematic means of articulating developmental stages in legal research expertise in order to guide those they instruct to develop requisite abilities and stretch beyond their current limits.

Challenge 3: Understanding Teaching

Most educators believe that teaching fuels learning. The Carnegie Foundation’s work has put that assumption on the table and probed “how” teaching shapes learning. While many prior reports, such as the ABA’s 1992 MacCrate Report (*Legal Education and Professional Development: An Educational Continuum*), have endeavored to push law schools to incorporate fresh content and emphasis that exposes students to “skills and values” as well as content knowledge, few have put the act and theory of teaching in the forefront as the Carnegie Report has sought to do.

One of the guiding questions of the Carnegie Foundation’s “Preparation for

the Professions” Program concerns the distinctive “signature pedagogies” used in particular disciplines. Foundation President Lee Shulman has used this phrase to spotlight the widely adopted approaches to teaching that reflect an alignment of theory and practice in particular fields and possess unusual power in shaping students’ understandings, detailed in his summer 2005 article for *Daedalus*, “Signature Pedagogies in the Professions.” Shulman has argued that “signature pedagogies” have multiple dimensions: a surface structure (the action of teaching and learning), a deep structure (based on assumptions about how best to teach), an implicit structure (reflecting judgments about attitudes, values, and dispositions in the field), and a “shadow” dimension that represents what a given pedagogy leaves out.

The power of “signature pedagogies” may be attributed to several factors. Most signature pedagogies involve pervasive repetition and routine, resulting in “habits of mind” that can be automatically employed when engaging in complex problem solving. Students are required to “perform” in a “public” setting before others. As a result, student activity, interaction, and visibility foster accountability and confrontation with uncertainty that helps develop professional judgment. The emotional stakes are often high (coupling excitement with anxiety), resulting in experiences that shape students in profound ways, influencing their values and dispositions as future professionals.

This description of “signature pedagogy” brings to mind the experience of beginning law students in first-year classrooms where instructors employ the “case-dialogue” method, as depicted in *The Paper Chase* by John Jay Osborne, Jr., (1971) and *One-L* by Scott Turow (1977). Present day teachers are generally less intimidating than John Housman, but they continue to use variations on this method to engage students in dialogue featuring the question-answer rhythm found in courts using authentic legal artifacts (cases and statutes).

The dialectical approach allows instructors to force students to confront the inherent uncertainty at the heart of many legal problems. This approach also fosters the development of critical thinking, moving students through the full range of educational objectives articulated by Benjamin Bloom in *Taxonomy of Educational Objectives, Handbook 1: Cognitive Domain*: knowledge, comprehension, analysis, application, synthesis, and evaluation. It allows instructors to make student thinking visible, then coach students to the next level, before fading away when students can stand on their own.

The case-dialogue method also conveys implicit values and assumptions for good or ill: who is visible, who gets to speak, what counts as authority, and what forms of conflict resolution (most often litigation) are the norm.

For all the power of the case-dialogue method, it has important downsides. While an excellent tool for building analytical abilities, it is not particularly well suited to developing other “practice-oriented” skills, raising issues of professional identity and values, or fostering social justice critiques. It is also so powerful that it raises the adrenalin level of students significantly, then resulting in boredom when repeatedly used in the second and third years. The case-dialogue method also lacks the capacity to “stage” student learning progressively so as to build sophistication in subsequent years. It is well suited to engaging students in large classes but less so in smaller discussion settings, seminars, and clinics. In these respects, the “case-dialogue” method’s shadow side is apparent.

Legal educators, including law librarians, need to consider new types of “signature pedagogies” that might be employed in settings other than large introductory courses. Law librarians may need to reconsider how pedagogies of “presentation” could be transformed to engage and stretch students, perhaps by taking into account opportunities for contextualized learning, teamwork, and learning by doing outlined above.

Challenge 4: Addressing Gaps

The Carnegie Foundation’s “Preparation for the Professions” program has brought to bear comparative insights that illustrate the multiple dimensions of professional education. The Carnegie Report employs a three-fold framework that emphasizes three “apprenticeships” characteristic of professional education across diverse fields, as students learn to “think and know,” “do and act,” and “believe and be.” Legal education embraces the first of these apprenticeships wholeheartedly, the second episodically, and the third little at all.

The first, “cognitive” apprenticeship, focuses on developing students’ thinking skills in the specific context of legal materials and law-related content. It has both a knowledge context and an epistemological character. Students must learn “what counts” as knowledge and how knowledge is constructed by professionals within the field of law. The “cognitive” apprenticeship fits exceptionally well with the case-dialogue method and with legal education’s place in the academy. Not surprisingly, the Carnegie Report found that legal

education handles the cognitive apprenticeship very well.

The second apprenticeship, of “skill and practice,” focuses on developing students’ abilities to understand and intervene in particular contexts and to “perform” as “expert” professionals responsible for the well-being of others. The second apprenticeship is one that law schools have approached in a patchwork fashion, adding “skills” courses, including advanced legal research, externships, and clinical opportunities in recent years. Legal education has unfortunately failed to embrace the need for students to learn to “do and act” in a systematic or comprehensive fashion and has not appreciated the ways in which “doing and acting” are powerful means of fueling learning of substantive topics as well.

The third apprenticeship, “of identity and purpose,” concerns the development of students’ appreciation for professional roles, conflicting dimensions of those roles, ethical obligations, and the meaning derived by professionals from the work they do.

This apprenticeship is most absent and least well understood within legal education today. While law schools have required courses in “professional responsibility” at the behest of the American Bar Association since the Watergate scandal of the 1970s, many such courses focus on imparting “the law of lawyering,” rather than grappling with deeper issues of lawyers’ values, roles, and identities. Instead, students must rely upon the “hidden curriculum” (optional speakers, orientation programs, and extracurricular activities), pro bono initiatives, and clinical offerings to probe the questions that are nearest and dearest to their futures and their hearts.

Law librarians instructing students through the formal curriculum, or in more informal contexts such as enrichment programs for students starting summer clerkships, have an opportunity to address fundamental gaps like these. Students typically wish to “do and act” like lawyers, advocates, and legal scholars. Approaching such teaching and learning opportunities with an eye to the realities of law practice and related ethical dilemmas should engage students and provide them with a “value-added” educational experience absent elsewhere.

Challenge 5: Embracing Assessment

The Carnegie Report also found that legal educators generally lacked appreciation for the nuances and power of assessment. There are generally two types of assessment: “summative”

assessment and “formative” assessment. Summative assessment involves a snapshot judgment of what a student knows at a particular time and is often used as a tool to evaluate where a student stands in terms of achieving ultimate educational objectives (or where the student stands with respect to others).

Summative assessment is much more prominent in law schools, as students are graded based on their performance at the end of the term on “story problem” or multiple-choice examinations or papers. Strikingly, essay exams track “expertise” in dealing with complex factual scenarios, but grading systems in law schools fail to recognize that expertise develops over time. Formative assessment on the other hand is designed to provide feedback and guide students to improve, based on feedback designed to enhance their capacities to build on what they know and address areas of misunderstanding.

Law librarians may have slightly different understandings of assessment than other legal educators. Those who teach first-year legal research may rely on completion of assignments or multiple-choice tests to encourage students to do required work, even if grades are ultimately awarded on a pass-fail basis. Those who teach advanced research courses may require students to develop “pathfinders” on particular topics or complete discrete tasks, such as development of legislative histories or exploration of international materials in lieu of examinations. In either case, law librarians may appreciate the truth that “assessment drives learning,” as well as registering learning that has taken place. In that regard, they may be ahead of other legal educators who laugh when students ask “Will this be on the test?” but fail to recognize how assessment drives their own learning (for example, when *U.S. News and World Report* ratings drive admissions decisions and resource allocations).

Because of the arenas in which most law librarians teach (beginning legal research; advanced legal research; not-for-credit workshops; and “coaching” of library assistants, students, and faculty), they may be in an excellent position to reconsider how formative assessment can be used to drive learning. If librarians do so, they will provide important models for other colleagues to emulate.

Challenge 6: Fostering Progression and Integration

The Carnegie Report urges law schools to consider how to create more meaningful progression in legal education beyond the first year. At present, most schools give students the option to choose

from a wide menu of “foundational,” “bar,” elective, and seminar courses, with weak advising systems to assist in developing meaningful professional trajectories. Moreover, the educational techniques employed beyond the first year in non-clinical courses are generally quite nondescript, ranging from lecture, to modified case-dialogue, to discussion. Although master teachers may be able to grip students through varied instructional approaches, few can match the power of initial immersion in the “case-dialogue” method. Law schools generally have not taken steps outside clinical settings to integrate the “three apprenticeships” (cognitive, skill/practice, and identity/values) in order to fuel student learning along the trajectory from student to professional.

Law librarians may be able to foster progression and integration in at least two ways. First, they can create fresh “pathways” of development for expert legal researchers. Often, advanced instruction has centered on adding new tools or techniques not covered within the first year (legislative histories, regulations, and international resources). Merely adding “content knowledge” of this sort does not, however, engage the minds or enthusiasm of students who can gain more significantly from learning to use such tools in particular substantive contexts and integrating cognitive content knowledge with the ability to “do” and appreciate the values and characteristics of outstanding researchers who are also practicing lawyers (rather than full-time law librarians). Second, they can build bridges that allow law librarians to collaborate more significantly with faculty in substantive fields in order to fuel such progression and integration in powerful ways.

Challenge 7: Encouraging Institutional Innovation

Law librarians sometimes fear that their voices are not heard in the process of deliberation about significant law school decisions. An important opportunity is available for those who choose to use it, however. Many law schools are giving serious consideration to the recommendations of the Carnegie Report and the CLEA Best Practices initiative. Law librarians can play an important role in bringing about needed change in at least three ways.

First, they can consider how academic law library collections could incorporate (or access) materials on teaching and learning to help law faculty members develop fresh approaches to teaching, assessment, and educational design. As a related matter, libraries can acquire more practice-related and

audio-visual materials that would allow interested faculty to incorporate “practice-related” elements into substantive courses and enhance the opportunities for deeper instruction in lawyers’ professional roles and values.

Second, law librarians can use their strong networks to track innovative educational initiatives and experiments within American legal education and around the world. Curriculum committees and faculty leaders at a host of schools are currently trying to identify innovations that have been developed elsewhere so as to access expertise, instructional materials, and analyses of what does or doesn’t work. There are very few means to access information about evolving trends without perennially reinventing the wheel. An effort by academic law librarians to become involved in individual schools’ innovation efforts and to share information on fresh strategies could benefit all.

Finally, academic law librarians could join with law librarians affiliated with the courts, law firms, and bar groups to build stronger connections between efforts by law schools to innovate and the recommendations and initiatives of practicing lawyers and judges. For example,

members of the profession have often worked together to develop professionalism initiatives, continuing legal education programs, and strategies for improving access to justice. Law schools around the country would benefit by knowing about such developments, and information shared between law librarians may provide an important missing link.

Conclusion

This essay has summarized key findings of the recent Carnegie Report and highlighted seven challenges (with related opportunities) that could be pursued by interested law librarians. Legal education will be better if law librarians rise to these challenges and imagine fresh possibilities for the greater good in these changing times. ■

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