

# Educating the Next Generation of Environmental Lawyers

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In 2007, the Carnegie Foundation for the Advancement of Teaching published the results of an intensive, multiyear study of legal education in the United States and Canada. See, WILLIAM M. SULLIVAN, ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) [hereinafter Carnegie Report]. The authors identified two major limitations of the existing legal education model: “[m]ost law schools give only casual attention to teaching students how to use legal thinking in the complexity of actual law practice” and “[l]aw schools fail to complement the focus on skill in legal analyses with effective support for developing ethical and social skills.” CARNEGIE REPORT SUMMARY at 6. Accordingly, the Carnegie Report concluded that the critical challenge for today’s legal educators is achieving “civic professionalism.” The authors define “civic professionalism” as the integration of professionalism and practical lawyering skills with the more traditional case method of legal education:

Legal education needs to be responsive to both the needs of our time and recent knowledge about how learning takes place; it needs to combine the elements of legal professionalism—conceptual knowledge, skill and moral discernment—into the capacity for judgment guided by a sense of professional responsibility. Legal education should seek to unite the two sides of legal knowledge: formal knowledge and experience of practice.

*Id.* at 8. Law schools “face an increasingly urgent need to bridge the gap between analytical and practical knowledge, and a demand for more robust professional integrity” and, therefore, “[t]he existing common core of legal education needs to be expanded to provide students substantial experience with practice, as well as opportunities to wrestle with the issues of professionalism.” *Id.* at 6–8. The Carnegie Report authors urge legal educators to move beyond their long-held mantra of teaching students to “think like a lawyer.” Future law school graduates should not only *think* but also *behave* like lawyers (and skillful, ethical lawyers to boot).

This article, expanding on remarks at a faculty workshop presentation at Pace Law School in March 2010, examines efforts by environmental law professors to meet the Carnegie Report’s challenge. Specifically, it sets forth a sampling of efforts aimed at advancing civic professionalism in the education of future environmental and natural resources lawyers. Before listing my findings, however, a quick caveat on methods is in order. To survey current approaches I informally solicited the assistance of environmental law professors with a request disseminated into cyberspace targeting members of an environmental law professor Listserv (maintained by Professor John Bonine at the University of Oregon). Admittedly, this approach was neither

scientifically rigorous nor statistically significant. Yet in the bountiful responses from environmental law professors scattered across the country, I received a rather generous sampling of ideas, strategies, and suggestions for integrating practical skills training and professional ethics into the law school curriculum. I hope in sharing these responses, professors and practitioners alike will be impressed and inspired by the creativity and range of opportunities already in place for advancing the civic professionalism of future environmental lawyers.

The responses from environmental and natural resources law professors fell generally into the following categories: (1) in-class exercises, (2) stand-alone skills courses, (3) clinical education programs, (4) extra-curricular activities (i.e., moot courts), and (5) the ever-handly catchall “other.” Based on the responses, many law professors already actively incorporate practical lawyering skills into traditional environmental law and natural resources law courses. Classroom skills exercises typically included the use of case studies, practicums, simulations, and role-playing. Environmental law professors are having their students *do* all of the following and more: draft legal memoranda for hypothetical clients based on complex case study scenarios (similar to the business school case study method); negotiate disputes applying applicable state laws (e.g., negotiate facility siting disputes given applicable state siting laws); prepare citizen suit 60-day intent to sue notices and motions for rehearing; draft legal memoranda for hypothetical clients with specific compliance concerns; prepare agreements incorporating resolutions reached in mock negotiations of international environmental law conflicts; analyze proposed land development projects in the context of existing local land use regimes (e.g., students advise clients whether a proposal may proceed or not, and, if not, what changes are needed to proceed); engage in mock administrative hearings and courtroom advocacy exercises (students represent environmental groups, regulated entities, and agency officials and practice introducing evidence, rebutting testimony, reviewing transcripts, negotiating with potential allies, and drafting settlement agreements); prepare public comments on and rewrite draft administrative agency regulations; engage in rate-setting exercises before mock public utility commissioners; conduct FRCP Rule 16 Pre-Trial conferences (based on actual toxic contamination decisions); mediate disputes and practice client counseling in the context of complex land use controversies; attend administrative agency public meetings, agency permit proceedings, rulemaking hearings, enforcement hearings, and town land use or conservation commission sessions (and in some cases give testimony before such bodies); review environmental assessment reports for local projects; and draft Freedom of Information Act information requests. And for those technically inclined, Florida State University College of Law has plans to test pilot citizen suit simulation software (reportedly already widely used in Scottish legal education).

Additionally, a good number of law schools offer stand-alone skills courses to interested students. For example, Pace Law School offers a four-credit Environmental Skills course, New England Law offers an Environmental Advocacy seminar, Boston College Law School offers a Regulatory Practice Skills Workshop, and the University of Miami and several

others offer Environmental Litigation courses. Other examples of stand-alone skills seminars and workshops include Environmental Dispute Resolution, International Environmental Negotiation, Land Use (from a Practitioner's Point of View), Land Finance, Representing the Corporate Client in Environmental Regulation Settings, Environmental Practice, and an Environmental Legislative Issues Workshop. On the professionalism side, the University of Nebraska offers students an Environmental Ethics seminar.

Clinical programs comprise yet another spoke in the practical environmental skills wheel. Numerous respondents to my query identified environmental law and policy clinics as prime opportunities for supervised practical experience, and some fifteen to twenty law schools already have such clinical programs incorporated into their curriculum. See [www.law.mercer.edu/elaw/eltc/clinics.htm](http://www.law.mercer.edu/elaw/eltc/clinics.htm) (listing and providing links to law school environmental clinical programs). Environmental law clinics provide students with the chance to represent real clients, in real controversies, before real decision makers (judges, hearing examiners, commissions, and mediators). Paradoxically, despite serving as an ideal means for meeting the Carnegie Report challenge, law school legal clinics have recently come under fire from other sources—their industry targets and industry supporters in government. See Ian Urbina, *School Law Clinics Face a Backlash*, N.Y. TIMES, A12 (Apr. 3, 2010).

Less controversial than clinics, but also one step removed from the actual practice experience offered by clinical programs, are moot court competitions. One highly respected and popular competition is Pace Law School's National Environmental Law Moot Court Competition, which hosts over two hundred student competitors from law schools across the United States on an annual basis. See [www.pace.edu/page.cfm?doc\\_id=23579](http://www.pace.edu/page.cfm?doc_id=23579). The Pace competition engages students in appellate procedure, brief writing, and oral argument on complex, multifaceted environmental litigation problems. Students may alternatively opt to participate in international law competitions, such as Stetson Law's International Environmental Moot Competition, or in negotiation, mediation, and dispute resolution competitions, such as the State Bar of California's Environmental Negotiation Competition and the Robert R. Merhige, Jr. National Environmental Negotiation Competition.

In the *other* category are a potpourri of internships, externships, and fellowships opportunities. For example, the University of South Dakota offers public interest grants for and has an academic fellow working on various environmental projects, including a project researching water quality provisions for the Flandreau Santee Sioux Tribal Code; Indiana University (at Indianapolis) offers a credit vehicle, the "advanced classroom-related experience," that allows students to invent and receive credit for their own environmental and natural resources projects as add-ons to standard environmental law classes; and Boston College Law School offers students a wide range of clinical placements (e.g., at EPA's Regional office, the Environmental Bureau of the State Attorney General's Office, and the Conservation Law Foundation). In addition, law schools will couple these programs with in-class ethics and professionalism components.

As a notable aside, many respondents volunteered up their favorite written materials for advancing and supplementing skills and professionalism training. In particular, the following texts each had their share of faculty member fans and received high praise: *Environmental Law Practice: Problems and Exercises for Skills Development* by Jerry Anderson and Dennis Hirsch; *Environmental Law Stories* by Richard Lazarus and Oliver Houck; *Negotiating Environmental Agreements: How to Avoid Escalating Confrontation, Needless Costs, and Unnecessary Litigation* by Lawrence Susskind, Paul Levy, and Jennifer Thomas-Larmer; and *Environmental Protection and Justice: Readings on the Practice and Purposes of Environmental Law* by Kenneth Manaster. In addition, many respondents both relied on and recommended the Stanford Law School Environmental Case Study Collection online at [www.law.stanford.edu/publications/casestudies/](http://www.law.stanford.edu/publications/casestudies/).

Altogether the responses manifest a rather robust commitment by environmental and natural resources law faculty to infuse legal education with opportunities for practical skills training – a trend in line with the Carnegie Report recommendations, appeals from the practicing bar, and the interests of the students themselves.

[Author's Note: The author plans to construct a Web page listing in more detail the various efforts outlined in the article and providing links to faculty members who have implemented such efforts at their institutions. The goal is to facilitate sharing of ideas and materials for advancing civic professionalism. Please feel free to contact her at [mkass@tjssl.edu](mailto:mkass@tjssl.edu) for additional information or to provide additional items for inclusion.]

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