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THE IMPORTANCE AND PLACE OF THE WISCONSIN REPORTS ON THE DELIVERY OF LEGAL SERVICES AND LEGAL EDUCATION

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I am pleased and proud that the Editors of the *Marquette Law Review* have decided to devote this issue to the reports of the State Bar of Wisconsin's Commissions on Legal Education¹ and the Delivery of Legal Services.² The fact that these reports appear in the primary journal of one of the State's two law schools is additional indication of the close relationships between the Bar and legal educators in Wisconsin. It is no small accomplishment to have the Bar and the Law Schools work so closely and agree upon such important goals and concepts. When I look at the work of the Commission on the Delivery of Legal Services and the Commission on Legal Education, I am reminded that Wisconsin, and the Wisconsin Bar, are special. Through the work of these Commissions the State Bar of Wisconsin reaffirms its national leadership in assuring that the legal profession is committed to the public interest.

The Commission reports are part of the profession's response to a growing public perception, shared by at least some lawyers, that something is very wrong with the profession and with legal education. These perceptions include a belief that there are too many lawyers and that the proliferation of attorneys has resulted in an increase in frivolous litigation and increased contentiousness. At the same time, some believe there are "too many lawyers," it has become obvious that, for many moderate and low income persons, legal services are simply not accessible and that large segments of our society have been "priced out"

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1. *Commission on Legal Education, Final Report and Recommendations*, 1996 STATE BAR OF WISCONSIN [hereinafter *Wisconsin Commission on Legal Education Report*].

2. *Commission on the Delivery of Legal Services, Final Report and Recommendations*, 1996 STATE BAR OF WISCONSIN [hereinafter *Wisconsin Commission on the Delivery of Legal Services Report*].

of the legal service market. There is widely held belief that the practice of law has lost any semblance of being a "learned profession," and that greed, avarice, and profit have become the primary motivations of lawyers.

Many established practitioners, and many members of the general public, have concluded that lawyers place insufficient emphasis on interpersonal skills and that the profession no longer is concerned about moral values, decency, ethical practice, and doing the "right" thing. Some lawyers believe that law schools are not doing a good job of training women and men to assume the varying responsibilities of a practicing lawyer and that the "academy" has moved so far away from the practicing bar that law schools are no longer training our students in the substantive law, skills, and values necessary for a practicing lawyer in today's world. Conversely, there is the belief among many involved in legal education that the bar expects law schools to do more and more without a commensurate increase in resources. A generation ago, firms expected law schools to teach legal theory, but they wanted to train young associates how to practice law according to the culture of the firm. Now these same firms expect law school graduates to have sufficiently trained students so that they can pick up a file and represent a client on the first day they are admitted to the Bar. This is a particular challenge in the one state that retains the diploma privilege when it is literally possible for a student to graduate one day and be representing a client in court the following day.

The *MacCrate Report*³ was an initial effort on a national level to spell out a long-term plan for a new partnership between the profession and legal education and to establish ground rules and processes for training law students and practicing attorneys into the next century. This training includes not only traditional substantive law, but also instruction in the skills and values necessary for lawyers today and in the future.

The perceptions that bring us to this point are obviously not all true or valid. Much of what is recalled of the "good old days" never really existed, and much of the public perceptions about the "typical" lawyer is based on dramatic characterizations of our profession or the media's depiction of a handful of "high profile" attorneys in high profile or unusual cases. In the large majority of cases, the dichotomy between legal educators and the practicing bar is considerably overstated, and

3. *Legal Education & Professional Development—An Educational Continuum, Report of the Task Force on Laws Schools and the Profession: Narrowing the Gap*, 1992 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS [hereinafter *MacCrate Report*]

many of the stereotypes about lawyers and law teachers are simply untrue.

Yet, we know that these perceptions are real and must be addressed. We also know that there is enough truth in what the public and the profession think to warrant careful attention to the issues being raised.

These Commissions are Wisconsin's response to the *MacCrate Report* and to other concerns and criticisms facing the profession. It is a credit to the Bar as a whole, and to the members of the Commission in particular, that this project has been pursued with such vigor and energy. Of course, primary credit must go to the President of the State Bar of Wisconsin, John Skilton, for his foresight, guts, and energy in proposing these commissions and making them the centerpiece of his year as State Bar President.

These reports are a reaffirmation of the core values of the legal profession. If there was any question on where the Bar comes out on the questions of public service, meeting unmet legal needs, assuring that all lawyers are moral, civil, and highly profession individuals—these two reports answer the questions unequivocally. The *Wisconsin Commission on Legal Education Report* expands significantly on the values included in the *MacCrate Report* to emphasize that lawyers must develop good judgment, civility, and professionalism—including the conservation of scarce judicial and legal resources. These reports remind us that the primary duty of an attorney is to respond to a client's need as promptly, efficiently, and as competently as possible—with as little emotional stress on the client as possible. The attorney's ultimate responsibility is to the client, and these reports reaffirm this basic principle.

There are several things about these reports that are obvious, but bear mentioning. First, these Commissions are Bar generated, and the recommendations of the Commissions come from within the profession. They have not been mandated by Government, nor imposed on an unwilling profession. Secondly, through these proposals, the organized bar, the state's law schools, and individual lawyers are "stepping up to the plate," making commitments, and putting their money where their mouths are. These reports propose specific steps, specific changes in the *status quo*, and specific allocations of money. While I hope that everyone reading these reports will "feel good" about the positions taken in these reports, these are not reports intended to sit on the shelf, espousing aspirational goals. This reports are real action plans. They have goals and time lines. The reports look to the future optimistically, but realistically.

The second thing that becomes obvious from reviewing these reports

is that there remains a huge unmet need for legal services in this State. And this unmet need must be a primary concern of the Bar. It is a sad fact that almost thirty years after *Gideon v. Wainwright*⁴ and more than a quarter century after the advent of federal funding for civil legal services to poor people, funding for legal services for low income people remains inadequate and the political controversy about such programs remains; their documented good work notwithstanding. Of equal concern for the Commission is the fact that legal services for moderate income people have become *less* accessible in recent years.

For the first time, I believe, a Bar committee has candidly admitted that, at least for the present, lawyers are unable to meet the legal needs of all of our citizens. The report affirms the need for increased funding of legal services programs, expansion of *pro bono*, use of lay advocates and para-professionals, and assistance to *pro se* litigants who are not represented by anyone.

A primary concept that is central to both Commission reports is the obligation of the Bar to assure that competent legal services are accessible to all people, regardless of economic status. The *Wisconsin Commission on the Delivery of Legal Services Report* deals with these unmet legal needs in a comprehensive and challenging manner. First, the Commission recognizes the need for the organized bar and individual lawyers to expand the provision of *pro bono* activities services.⁵ This theme is also reflected in the *Wisconsin Commission on Legal Education Report* which takes *MacCrate* further and recommends that law schools begin to instill in its students the value of professionalism "including *pro bono* responsibilities."⁶ Of perhaps greater importance is the Legal Education Commission's explicit recognition that practicing lawyers must be continually retrained, updated, and reminded of their continuing duty to *pro bono* service, along with other skills and values.⁷ We are all familiar with the senior partners who relegate *pro bono* assistance to the junior-most members of the firm. The two Commission reports represent a clarion call to legal educators and the profession to reaffirm the duty of the Bar to provide unpaid legal services to low income persons and to promote the value of such services from the first day students walk into law school.

I have always believed that mandatory *pro bono* is an oxymoron and

4. 372 U.S. 335 (1964).

5. *Wisconsin Commission on the Delivery of Legal Services Report*, *supra* note 2, at 30.

6. *Wisconsin Commission on Legal Education Report*, *supra* note 1, at 20.

7. *Id.* at 64.

ultimately counterproductive. However, I believe passionately that it is the duty of all lawyers to provide uncompensated legal services. Finally, the *Wisconsin Commission on the Delivery of Legal Services Report* recommends the creation of a *pro bono* resource center to expand the provision of such services on a statewide basis.⁸ Again, the Bar is willing to go beyond mere moral support and back up its aspirational goals with funding.

But the report also wisely recognizes that *pro bono* services can never satisfy the unmet legal needs of the public. The *Wisconsin Commission on the Delivery of Legal Services Report* reaffirms this Bar's long standing support for legal services programs staffed by full time paid attorneys. The report also recognizes that alternative and stable funding sources—including the use of law school clinical programs—must be found to get legal services to poor people off the roller coaster which has plagued the program for twenty-five years.⁹

One of the most significant parts of the *Wisconsin Commission on the Delivery of Legal Services Report* is the forthright manner in which it deals with the question of lay advocates and para-professional legal assistance.¹⁰ For many years, I have been concerned that the growth of paralegals, legal assistants, and lay advocates reflected a willingness to provide second class legal assistance to low income and vulnerable people in our society. Although this danger does exist, I have mellowed on my position. It is obvious that in many situations nonlawyers can provide high quality assistance within clearly understood limits. The recommendations of the Commission for using lay advocates in some areas and supervised paralegals in others, recognize that the Bar can not meet all of these needs and that lay assistance is often extremely effective, but that ultimate accountability must remain with the lawyer.¹¹

The Report places on the table the concept of “unbundling” services whereby a lawyer provides some services to a client, but the client completes the matter *pro se*.¹² This is a controversial issue, but one which recognizes the economic barriers to full service legal assistance for many people. If the Bar opposes “unbundling” as contrary to the interests of the public, we must be prepared to identify ways in which full scale legal services can be brought within the means of moderate

8. *Wisconsin Commission on the Delivery of Legal Services Reports*, *supra* note 2, at 30.

9. *Id.* at 45.

10. *Id.* at 37.

11. *Id.*

12. *Id.* at 29.

income people. The Report calls for further study of this question, and certainly merely raising the issue at this point is important.

Finally, the *Wisconsin Commission on the Delivery of Legal Services Report* deals directly with “no bono” representation—people in need of legal services who will be required to represent themselves without any legal representation. As much as we don’t want to talk about it, there are still many people who will not be able to obtain any form of legal assistance, and we can not turn our back on such people. It is a credit to the Commission that it recognizes that there will remain some people who do not obtain, and sometimes cannot obtain, legal services. We must be concerned about those people as well. The recommendation that the self-service center in Brown County and the South Madison community Legal Resource Center be funded with Bar money demonstrates the commitment to this group of legal services consumers.¹³

Nevertheless, in the end, we are left with the anomalous fact that while some people think there are “too many” lawyers, large segments of the community have no access to the services of an attorney at all. One of the long term issues which is raised by the *Wisconsin Commission on the Delivery of Legal Services Report* is how ultimately the profession will assure that all citizens have access to such services and that law school graduates are encouraged to meet these unmet needs.¹⁴ Obviously, this means that these jobs must be attractive in terms of compensation, location, quality of life, and quality of practice. This is a long term challenge for legal educators and the profession which is not answered by these reports, but the issue is well joined by the Commissions.

The *Wisconsin Commission on Legal Education Report* takes *MacCrate* to a new level in a very important way. First, it reiterates an important underlying assumption of *MacCrate* that legal education is not solely the task of law schools.¹⁵ Secondly, however, the Wisconsin report makes very specific recommendations beyond merely articulating skills and values.¹⁶ As I have noted, the Wisconsin report adds important values not mentioned in *MacCrate*.¹⁷ The Wisconsin Commission has concluded that we must endeavor to teach law students and lawyers how to exercise good judgment, how to be civil, and the full

13. *Id.* at 43-44.

14. *Id.* at 28.

15. *Wisconsin Commission on Legal Education Report*, *supra* note 1, at 2.

16. *Id.* at xiii.

17. *Id.* at 17-23.

ramifications of being the member of a learned profession.¹⁸ While these values are inherent in *MacCrate*, in Wisconsin the Commission concluded that should be explicit.¹⁹

The core of the *Wisconsin Commission on Legal Education Report* is an effort to identify the skills and values that can and should be taught in law schools and those that are best dealt with through post-graduate education. This is an important step beyond *MacCrate* and represents an effort to assist law schools develop curricula which both respond to our traditional obligation of assuring that students understand substantive law, while expanding and refining our traditional course offerings to assure that students are also gaining the skills and values needed for practice and serving the public interest.

It is fair to say that not everyone involved in legal education in Wisconsin appreciate the Commission's efforts to explicitly identify the skills and values appropriate for a law school curriculum. To some, this appears to be the Bar dictating the law schools' curricula. On a national level, at least, there has been strong resistance from within the "academy" to any effort by the organized bar to determine what should be taught in law school. However, if one reads the *Wisconsin Commission on the Delivery of Legal Services Report*, it is clear that the skills to be included in law school curricula (problem solving, legal analysis and reasoning, legal research, communication, and recognizing ethical dilemmas)²⁰ are so central to the lawyering function, that it is impossible to envision a law school curriculum which would not include these skills. Similarly, the values of competent representation; promotion of justice, fairness, and morality; improving the profession; and the importance of continuing self-development are inherent in much of what we do.²¹ I understand the concern of some legal educators that the organized bar is trying to decide on what and how we teach, but I think that those concerns are unwarranted when the specifics of the proposals are reviewed.

In some states, I see a danger which simply does not exist here. The relationship between the Bar and legal educators in this state is very different—and much better and stronger—than in any other state with which I am familiar. In Wisconsin, at least, these recommendations represent a partnership between the practicing bar and legal educators,

18. *Id.*

19. *Id.*

20. *Id.* at 17.

21. *Id.* at 17-18.

but a usurpation of power by practicing lawyers.

Although the Commission recommends that these skills and values now be identified specifically within the curriculum, the Commission clearly has not dictated the manner in which these skills and values are to be taught, or the courses in which they should be taught.²² This is left to the law schools.²³ Neither *MacCrate* nor the Wisconsin Commission report has advocated wholesale changes in law school curricula nor a shift from traditional classes to clinical classes. There are a variety of ways in which the law schools can respond to the opportunity presented by *MacCrate* and the Wisconsin Report.

On the other hand, legal educators must heed the message of the Wisconsin Report, and the forces within the profession and the public that gave rise to *MacCrate* and its progeny. The public has the right to expect that graduates of our law schools have achieved sufficient competence in substantive law, skills, and values to represent clients. This obligation is particularly acute in Wisconsin when graduation from Marquette or U.W. results in automatic admission to the State Bar. We must come to grips with the fact that many of our graduates will be representing clients soon after graduation, and we have an obligation to the public—as well as to the student and the profession—to make certain that the young lawyer has attained the necessary competencies. The substantial majority of law school graduates practice law in some form. That is the fact. We in legal education can no longer avoid our duty to train our students for that purpose by rationalizing that we do not train lawyers. We do. In fact, the two Wisconsin law schools do so very well. In a diploma privilege state with such a close ties between the State Supreme Court, the Bar, and the law schools, this obligation is even more central to our mission.

It is also notable—particularly to those of us in legal education—that the Commission recognizes the duty of lawyers to support the activities of the law schools in this state.²⁴ Support them with their time, input, and—yes—with their dollars. As the alumnus of one of the state law schools, and Dean of the other, I know the very real financial pressures on law schools today, both public and private. Support from our alumni and from friends within the Bar is critical to meeting the goals of the Commission and the *MacCrate Report*.

The *Wisconsin Commission on Legal Education Report* goes further,

22. *Id.* at 29.

23. *Id.*

24. *Id.* at 41.

however, and provides a blueprint for post-graduate education.²⁵ Recommendations are made that all new lawyers devote their first years of continuing legal education to additional training on the skills and values identified by the Commission.²⁶ The Commission also recommends that such training not be taught exclusively through the "talking head," lecture, model, but that interactive learning be adopted.²⁷ The Commission further restates Wisconsin's commitment to meaningful, high quality, continuing education for all lawyers, regardless of seniority and regardless of specialty or area of practice.²⁸ The Commission also reminds even the most skilled and seasoned lawyer that the skills and values spelled out in its report pertain to them, as well as the newest lawyer in the Bar.²⁹ These reports speak to all members of the State Bar of Wisconsin, from those who will be admitted this year to the most senior practitioner.

The report recognizes that modern technologies have changed the nature of education, both within law schools, and that use of these technologies can reduce the cost, improve the quality, and expand the coverage of education both within law schools and for continuing legal education.³⁰ Through various forms of "distance learning," a great variety of high quality C.L.E. can be made available to lawyers throughout Wisconsin, at reasonable cost.³¹ The Commission's recommendations will make clear to the profession nationally that Wisconsin remains on the cutting edge of continuing education.

Taken together, these two reports represent a blueprint for the legal profession in Wisconsin in the twenty-first century. The reports spell out a partnership between the practicing bar and legal educators. It affirms in explicit terms the life-long commitment to the values of our profession.

I hope the public and the media understand the significance of the work of these Commissions. Here you have the Bar saying loudly and clearly we want to recommit ourselves to serving the public interest. We are committed to an explicit set of skills and values, which protect individual clients as well as the public interest. As legal educators, we recognize and accept our obligation to assure that the graduates of U.W.

25. *Id.* at 57-64.

26. *Id.* at 57-59.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.* at 61-52.

31. *Id.*

and Marquette attain proficiency not only in substantive law, but also in explicit skills and values. These reports belie the perception that lawyers are interested only in making as much money as possible, and that the public be damned. Put in a national context, the work of these Commissions is extraordinary—and I do not think that is too strong a word. In a relatively short time, the Commissions have put together an impressive plan for assuring that the legal profession meets the challenges of the twenty-first century. The challenges of unmet legal needs, of the high cost of legal services, or lawyers who may not understand the basic skills and values of the profession, and of assuring that lawyers in this state, at least, remain ultimately committed to serving the ends of justice by competently representing clients.