

The Shared Responsibility for a Profession

Robert MacCrate

Follow this and additional works at: <http://scholarship.law.marquette.edu/mulr>



Part of the [Law Commons](#)

Repository Citation

Robert MacCrate, *The Shared Responsibility for a Profession*, 80 Marq. L. Rev. 745 (1997).
Available at: <http://scholarship.law.marquette.edu/mulr/vol80/iss3/8>

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Law Review by an authorized administrator of Marquette Law Scholarly Commons. For more information, please contact megan.obrien@marquette.edu.

THE SHARED RESPONSIBILITY FOR A PROFESSION

ROBERT MACCRATE*

I. INTRODUCTION

This symposium is a fitting salute by the *Marquette Law Review* to the Wisconsin legal profession, whose three branches—Bench, Bar, and Academy—have worked together in an exemplary manner to address matters of national concern and to fashion action programs appropriate to Wisconsin.

The leadership of the State Bar perceived the need for a thoughtful study by all segments of the profession of two pressing areas of concern: first, Legal Education and, second, the Delivery of Legal Services; and convened two blue-ribbon Commissions, one to address each subject area. The Final Reports and Recommendations of the two Commissions¹ published in 1996 are models of how an engaged profession in an individual State can address matters of concern to the national legal community and design actions within that State which contribute significantly to the national agenda of legal reform and enhance the role of the law and lawyers in society.

Each of the two studies drew insights from national initiatives of the American Bar Association² and proceeded to relate those insights to the

* Former President of the American Bar Association and chair of the ABA Task Force that authored LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM in 1992. Mr. MacCrate is currently Senior Counsel to Sullivan & Cromwell in New York City and a member of the Executive Committee of the Council of the American Law Institute.

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

2. *Legal Education & Professional Development—An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*, 1992 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS [hereinafter *MacCrate Report*]; *ABA Blueprint for Improving the Civil Justice System, Report of the American Bar Association Working Group on Civil Justice System Proposals*, 1992 A.B.A.; *Findings of the Comprehensive Legal Needs Study*, 1994 A.B.A.; *Just Solutions, Seeking Innovation and Change in the American Justice System, A Report on the American Bar Association's "Just Solutions" Conference and Initiative*, 1994 A.B.A.

profession in Wisconsin. The Legal Education study focuses on the issue of how Wisconsin lawyers acquire the lawyering skills and professional values that are essential to a competent and responsible profession today. The Delivery of Legal Services study, while employing those lawyering skills and pursuing those professional values, advances an action program to promote equal access to justice in Wisconsin among all its citizens.

II. THE COMMON ENTERPRISE IN WISCONSIN TO ENHANCE THE PROFESSIONAL DEVELOPMENT OF ITS LAWYERS

In 1992, an ABA Task Force on Law Schools and the Profession published a report entitled *Legal Education and Professional Development—An Educational Continuum*.³ The central message of that report was that legal educators, practicing lawyers, and members of the judiciary together are engaged in a common enterprise: the education and professional development of a great profession.⁴ At the heart of the common enterprise is the development of the lawyering skills and professional values essential to a competent and responsible profession along a continuum that starts before law school, reaches its most formative and intensive stage during the law school years, and continues throughout a lawyer's professional career.

The ABA Task Force advanced the concept of the continuum of professional development as an integrating and unifying force to sustain and enhance the legal profession.⁵ The various segments of the profession in each State were challenged by the Task Force to define their roles in building that continuum.⁶ It was recognized that there was no single or right way in which to construct the continuum; rather, it was for the law schools, the bar, and the judiciary working together in each State to develop a coherent pattern of training and preparation of lawyers appropriate to that State.⁷

This is precisely what the State Bar's Commission on Legal Education has done for Wisconsin. The Commission's report separately addresses, from a Wisconsin perspective, "the role of the law schools,"⁸ "the transition to practice,"⁹ and "career continuing legal education."¹⁰

3. See *MacCrate Report*, *supra* note 2.

4. *Id.*

5. *Id.* at Part III.

6. *Id.* at 284-85.

7. *Id.*

8. *Wisconsin Commission on Legal Education Report*, *supra* note 1, at 25-43.

9. *Id.* at 45-46.

10. *Id.* at 57-64.

This is done against the background of the unique relationship between the State judiciary and the law schools, fostered by the diploma privilege,¹¹ which survives in no other State. The Commission addressed each of these three areas by assigning to Wisconsin law schools certain primary responsibilities while avoiding "externally imposed requirements"¹² upon the schools; by calling for a commitment by Wisconsin lawyers and judges to support the law schools in teaching lawyering skills and professional values; and by requiring 60 hours of education in skills and values in a learning-by-doing format for newly admitted lawyers during their first four years of practice.

The legal profession in Wisconsin for more than 20 years has recognized the need for substantive career education throughout a lawyer's career.¹³ A continuing legal education requirement for Wisconsin lawyers was initially put in place in 1977 and during the 1980s a professional responsibility requirement was added.¹⁴ In these circumstances, the Commission found no reason for overhauling the CLE system in the State that seemed to work, but it did call for making technology a more integral part both of the substance of career continuing legal education and of the method of delivery.¹⁵

The Commission on Legal Education in preparing its report had systematically studied the ABA Task Force's Report.¹⁶ They closely analyzed the Statement of Skills and Values proffered by the ABA Task Force¹⁷ in the light of the actual practice of law by Wisconsin lawyers.¹⁸ Recognizing that lawyering skills alone will not sustain a true

11. The report notes that the diploma privilege saves Wisconsin and Marquette graduates the substantial expense of preparing for and taking a bar exam, which commonly costs as much as \$1,500. *See id.* at 55.

12. *Id.* at 29.

13. *Id.* at 58.

14. *Id.*

15. *Id.* In August 1996, the ABA House of Delegates approved amendments to the Model Rule for Minimum Continuing Legal Education to afford MCLE credit for technology-based CLE.

16. *Id.* at 2.

17. In its Statement of Skills and Values, the ABA Task Force identified ten lawyering skills as fundamental: problem-solving; legal and analysis and reasoning; legal research; factual investigation; oral and written communication; counseling; negotiation; understanding the procedures of litigation and alternative dispute; organization and management of legal work; and recognizing and resolving ethical dilemmas. *See MacCrate Report, supra* note 1. To these ten skills, the Task Force linked four professional values to which lawyers have traditionally aspired: the value of providing competent representation; the value of striving to promote justice, fairness and morality; the value of maintaining and striving to improve the legal profession; and finally, the value of professional self-development. *Id.*

18. *See Wisconsin Commission on Legal Education Report, supra* note 1, at 3.

profession, the Commission emphasized the primacy of professional values and that a skill can be described as a "lawyering" skill only when it is fused with the body of values to which the legal profession aspires.¹⁹

To stress the link between lawyering skills and professional values, the Commission on Legal Education recommended adding to the ten skills identified by the ABA Task Force, what might be described as four amalgams of skills and values: "Judgment," "Professionalism," "Civility," and "Conservation of Justice System Resources."²⁰ The recommendation to add these four skill-value amalgams is a reflection of the thoroughness with which the Commission addressed the issues and its dedication to identifying effective ways to enhance skills and values instruction for the profession in Wisconsin.

In explanation of selecting "Judgment" for special attention, the Commission's report emphasizes the importance of this quality in "problem-solving" (Skill 1),²¹ the first skill identified by the ABA Task Force.²² "Judgment" also plays a central part in using the other skills enumerated by the Task Force: in proper legal analysis (Skill 2);²³ in efficient legal research (Skill 3);²⁴ in pursuing useful factual investigation (Skill 4);²⁵ in effective communication (Skill 5);²⁶ in wise counseling (Skill 6);²⁷ in negotiating (Skill 7);²⁸ in conducting litigation (Skill 8);²⁹ and in resolving any ethical dilemma (Skill 10).³⁰ As the Commission on Legal Education noted, "Judgment" is central to lawyers' work of every kind.³¹

In its discussion of "Judgment," the Commission also called attention to the creative work of Dean Paul Brest and Professor Linda Krieger of Stanford Law School in developing an approach for teaching professional judgment as an all-pervasive ability.³²

19. *Id.* at 17.

20. *Id.* at 17-23.

21. *Id.* at 19.

22. *MacCrate Report, supra* note 1, at 150-51.

23. *Id.* at 151-57.

24. *Id.* at 157-63.

25. *Id.* at 163-72.

26. *Id.* at 172-76.

27. *Id.* at 163-72.

28. *Id.* at 184-90.

29. *Id.* at 191-99.

30. *Id.* at 203-07.

31. *Wisconsin Commission on Legal Education Report, supra* note 1, at 18.

32. *Id.*

The Commission's discussion of "Professionalism," "Civility," and "Conservation of Justice System Resources" reflects the significance assigned by the Commission to each of these qualities for a properly functioning profession, invoking the ABA's 1986 Report on Professionalism,³³ Walter Lippmann's classic statement on the traditions of civility in a democracy,³⁴ and the present overburdening of the resources of the judiciary,³⁵ all by way of explaining the Commission's special attention to these additional amalgams of skills and values.

The Commission at the beginning of its report embraces the principle that "[t]he law schools, the bar and the courts have a shared responsibility and an obligation" to meet the expectations of the public and the consumers of legal services "that lawyers, including recent law school graduates, are competent to practice law."³⁶ To that end, the *Wisconsin Commission on the Delivery of Legal Services Report* systematically address each phase of a lawyer's professional development and, drawing upon the experience and rich traditions of the law in Wisconsin, offer a model program for building the educational continuum in the State that will help the lawyers of Wisconsin to be competent, trusted, and responsible professionals.

III. DISCHARGING THE LAWYERS' RESPONSIBILITY FOR THE DELIVERY OF LEGAL SERVICES

In the ABA Task Force's Statement of Fundamental Lawyering Skills and Professional Values, the second stated professional value was "striving to promote justice, fairness, and morality" that begets the public responsibility of every lawyer for the legal system.³⁷ An explicit element of this value as articulated by the Task Force (§2.2) is "Contributing to the Profession's Fulfillment of Its Responsibility to Ensure that Adequate Legal Services Are Provided to Those Who Cannot Afford to Pay for Them."³⁸

In an exemplary exercise of the responsibility for the effective operation of the legal system, the Commission on the Delivery of Legal Services, comprised of a representative cross-section of the legal profession in Wisconsin, prepared its insight in the *Wisconsin Commis-*

33. *See id.* at 19-20.

34. *Id.* at 21.

35. *Id.* at 22.

36. *Id.* at 2.

37. *MacCrate Report, supra* note 2, at 213.

38. *Id.*

sion on Legal Education Report, approved by the State Bar Board of Governors in June 1996.³⁹

The Commission in preparing its Report drew upon the diverse experience of its members, referenced the extensive array of available materials from across the United States, examined existing delivery systems for legal services in Wisconsin,⁴⁰ revisited existing paradigms for the delivery of legal services to the poor, listened to Wisconsin witnesses speaking from the perspective of both providers and consumers of legal services, sought out promising projects already begun within the State, and fashioned concrete proposals to fulfill its charge of providing equal justice to all citizens in the State.⁴¹ Helping to assure that the Report and its Recommendations lead to action, the Commission suggested means for funding, implementing, and evaluating the various projects spawned by its efforts.⁴²

The strong message of the Commission's Report is that all players in the legal system must take a leadership role in developing new integrated delivery systems, that the services of the legal community must be unbundled,⁴³ and that lawyers must learn to work with a range of service providers to help create a "one-stop-shopping" system to assist low-income individuals to handle the routine problems of life with which they are confronted.⁴⁴

The Final Report and Recommendations of the Commission on the Delivery of Legal Services has provided the legal profession in Wisconsin with an exciting plan for renewing its commitment to equal justice for all.

IV. COMMENDATION

If the public profession of law is to continue as a respected calling, each generation of lawyers must earn the public's trust by acquiring the learning, the skills, and the professional values essential to fulfilling their responsibilities to the justice system and to all those whom the profession serves.

The central elements of professionalism must be preserved: a

39. See generally Wisconsin Commission on Legal Education Report, *supra* note 1.

40. Indicative of the thoroughness with which the Commission worked was the creation of five separate subcommittees to examine the existing systems: (1) lawyer's delivery; (2) lawyer-assisted delivery; (3) non-lawyer delivery; (4) pro bono delivery; and (5) pro se delivery. *Id.* at 3.

41. *Id.* at 1-23.

42. *Id.* at 27-48.

43. *Id.* at 29.

44. *Id.* at 33.

provider of legal services who possesses a special knowledge, systematically formulated, and who represents that she or he has the skill to apply this special knowledge to useful ends. In the application of the knowledge to the problems of a client, the client is asked to trust the provider, that the professional knows better than the client. A Latin student would say, *credat emptor*—let the buyer trust, and not the warning of the marketplace, *caveat emptor*—let the buyer beware.

Each generation of professionals must earn that trust by training and acquiring the skills and the values which define the profession.

The Wisconsin legal profession—Bench, Bar, and Academy—by their two studies of Legal Education and of the Delivery of Legal Services have acknowledged the shared responsibility of the entire profession for promoting that trust and have developed action programs appropriate to this goal in Wisconsin, for which the Bench, Bar, and Academy are to be commended.

