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Rosalie Wahl's Vision for Legal Education: Clinics at the Heart

Abstract

Rosalie Wahl holds a special place in the hearts of Minnesota lawyers. Many women and girls, especially, were gratified when Governor Rudy Perpich appointed her the first woman on the Minnesota Supreme Court in 1977. There were no more than nine other women on supreme courts around the country at the time, and none on the U.S. Supreme Court. She served on the court until 1994, when the law mandating judges' retirement at age seventy caused her to step down from the bench. This essay highlights the significance of Wahl's work as a clinical legal educator and activist for legal education. It begins with a brief account of Wahl's growth into her work as a lawyer. The article then focuses on her time as a clinical law teacher and, later, as a leader in the ABA Section of Legal Education and Admissions to the Bar. It closes with thoughts about what Wahl's example means for law teachers.

Keywords

Rosalie Wahl, women lawyers, women judges, Minnesota, legal clinics, clinical education, legal education, law professors

Disciplines

Legal Education

ROSALIE WAHL'S VISION FOR LEGAL EDUCATION: CLINICS AT THE HEART

By Ann Juergens[†]

I. “ONE WHO WOULD THROUGH THISTLES PASS, NEEDS SHOES”	12
II. FROM THE “HEADY EXHILARATION” OF CLINICAL TEACHING TO THE PINNACLE OF THE SUPREME COURT.....	15
III. OPENING THE GATE FOR THE TEACHING OF PROFESSIONAL SKILLS: SECTION CHAIR, THE ALBUQUERQUE SKILLS CONFERENCE, THE MACCRATE TASK FORCE, AND THE WAHL COMMISSION.....	20
A. <i>The ABA Section of Legal Education and Admissions to the Bar</i>	20
B. <i>The ABA’s National Conference on Professional Skills and Legal Education, Albuquerque, New Mexico</i>	21
C. <i>The MacCrate Task Force on Law Schools and the Profession: Narrowing the Gap</i>	24
D. <i>The Wahl Commission to Review the Substance and Process of the ABA’s Accreditation of American Law Schools</i>	30
IV. ROSALIE WAHL’S EXAMPLE FOR LAW TEACHERS.....	32

I was on the front lines myself, from 1973 to 1977, establishing, directing and teaching the criminal clinical program, both trial and appellate, at William Mitchell College of Law. For those four years, student lawyers under my supervision did legal analysis, researched the law, wrote legal memos, motions and briefs, honed other

[†] Professor of Law and Co-Director of Clinics, William Mitchell College of Law. I am indebted to Rosalie Wahl herself, for giving her time for an interview, and for continuing to participate in events supporting clinical education. There were many parents of clinical education at William Mitchell, the earliest including Justice Wahl, Roger Haydock, Bob Oliphant, C. Paul Jones, Doug Heidenreich, Phebe Haugen, and Mel Goldberg. We do our best to carry the torch they first ignited.

lawyering skills, in order to represent our clients—indigent misdemeanants in municipal court and felony appellants in the state supreme court. I now sit on that supreme court, devoutly wishing that every law student could learn the law, or a significant part of it, in that crucible, looking at the system from the bottom up, holding the same end of the stick the indigent person in our society holds. How better to explicate our learning of the law, how better to indelibly impress on the minds of fledgling lawyers our ethical obligation to provide counsel for all those in need of counsel?¹

—Rosalie Wahl, 1987

Clinical education has come a long way since the late 1960s. Not far enough or fast enough—not at the heart of the legal education—but growth fought for by clinicians and their friends in the Section every step of the way.²

—Rosalie Wahl, 1995

Rosalie Wahl holds a special place in the hearts of Minnesota lawyers. Many women and girls, especially, were gratified when Governor Rudy Perpich appointed her the first woman on the Minnesota Supreme Court in 1977. There were no more than nine other women on supreme courts around the country at the time, and none on the U.S. Supreme Court.³ She served on the court until 1994, when the law mandating judges' retirement at age seventy caused her to step down from the bench.

During Wahl's time on the court, she initiated and chaired the Minnesota Supreme Court's Task Force for Gender Fairness in the

1. Rosalie E. Wahl, Remarks at the National Conference on Professional Skills and Legal Education, held in Albuquerque, New Mexico, Oct. 16-18, 1987, *in* AM. BAR ASS'N, OCCASIONAL PAPERS OF THE SECTION OF LEGAL EDUCATION AND ADMISSION TO THE BAR, No. 2, at 1.

2. Rosalie Wahl, Historical Development and Use of the Accreditation Process, Speech at the Tenth Annual Midwest Clinical Legal Educational Conference, William Mitchell College of Law (October 1995) (copy on file with author). The "Section" referenced in the quote is the American Bar Association's Section of Legal Education and Admissions to the Bar, which oversees legal education, in part, by accrediting law schools. *Id.*

3. Beverly Blair Cook, *Women Judges: The End of Tokenism*, *in* WOMEN IN THE COURTS 102-03 (Winifred L. Hepperle & Laura Crites eds., 1978). The first woman on the U.S. Supreme Court, Sandra Day O'Connor, was appointed by President Ronald Reagan in 1981.

Courts, making Minnesota the sixth state to conduct such a study,⁴ and the Task Force on Racial Bias in the Judicial System.⁵ She served as the liaison to the court's Study Commission on the Mentally Disabled.⁶ Her 549 opinions are known for their elegant clarity, and for her attention to implementing the will of the legislature, her insistence that the Minnesota courts define state constitutional standards independent of federal standards, and for her sensitivity to the minds and souls of people seeking justice.⁷ Wahl gave special support to young women lawyers and judges, a quality that has been recognized repeatedly by her fellow lawyers, locally and nationally.⁸ Her talent for helping others shone even as she engaged in the heavy lifting required of a supreme court justice.

What is not so well known in the state where she lives is that Wahl's contributions to legal education may have more national impact than her work as a state supreme court justice. For almost fifteen years beginning in the early 1980s, she was an influence and guiding hand to legal educators across the nation.⁹ Outside of Minnesota, she is known not only as a state supreme court justice, but also as a former clinical professor who instigated the 1987 American Bar Association's (ABA's) National Conference on Professional Skills and Legal Education held in Albuquerque, New

4. MINNESOTA SUPREME COURT TASK FORCE FOR GENDER FAIRNESS IN THE COURTS, FINAL REPORT, *reprinted in* 15 WM. MITCHELL L. REV. 825 (1989); Jeannette F. Swent, *Gender Bias at the Heart of Justice: An Empirical Study of State Task Forces*, 6 S. CAL. REV. L. & WOMEN'S STUD. 3, 21 (1996). Minnesota's task force on gender bias in the courts made its report in 1989, following New Jersey, New York, Rhode Island, Massachusetts, and Nevada. *Id.* at 21.

5. MINNESOTA SUPREME COURT TASK FORCE ON RACIAL BIAS IN THE JUDICIAL SYSTEM, REPORT, *reprinted in* 16 HAMLIN L. REV. 477, 479 (1993).

6. MINNESOTA HISTORICAL SOCIETY, ROSALIE WAHL: AN INVENTORY OF HER PAPERS, *available at* <http://www.mnhs.org/library/findaids/00430.html> (last visited July 19, 2003).

7. See Jane E. Larson, *The Jurisprudence of Justice Rosalie E. Wahl*, in THE SOCIAL JUSTICE, LEGAL AND JUDICIAL CAREER OF ROSALIE ERWIN WAHL 178 (Marvin Roger Anderson & Susan K. Larson eds., 2000) (unpaginated) [hereinafter CAREER OF WAHL]; Hon. Harriet Lansing, *Rosalie E. Wahl and The Jurisprudence of Inclusivity*, 21 WM. MITCHELL L. REV. 11, 11-12 (1995).

8. CAREER OF WAHL, *supra* note 7 (unpaginated).

9. Telephone Interview with Roy Stuckey, Professor of Law, University of South Carolina School of Law (July 10, 2003); Robert MacCrate, *Educating a Changing Profession: From Clinic to Continuum*, 64 TENN. L. REV. 1099, 1126 (1997); Millard H. Ruud, Remarks on Presenting the ABA's Kutak Award to the Honorable Rosalie E. Wahl (Aug. 4, 1994) (copy on file with author); SUSAN K. BOYD, THE ABA'S FIRST SECTION: ASSURING A QUALIFIED BAR 122 (Am. Bar Ass'n ed. 1992).

Mexico.¹⁰ This led to her conception, while chair of the ABA Section of Legal Education and Admissions to the Bar, of the Task Force on Law Schools and the Profession: Narrowing the Gap, which resulted in the “MacCrate Report” in 1992.¹¹ A few years later, Wahl chaired the Commission to Review the Substance and Process of the ABA’s Accreditation of American Law Schools, which made recommendations for changes in the accreditation standards for law schools that, among other things, emphasized skills training for all students.¹² As she acted to improve legal education, she gave encouragement to undervalued law teachers, especially clinical teachers and legal writing teachers.¹³

This essay highlights the significance of Wahl’s work as a clinical legal educator and activist for legal education. It begins with a brief account of Wahl’s growth into her work as a lawyer. The article then focuses on her time as a clinical law teacher and, later, as a leader in the ABA Section of Legal Education and Admissions to the Bar. It closes with thoughts about what Wahl’s example means for law teachers.

I. “ONE WHO WOULD THROUGH THISTLES PASS, NEEDS SHOES”

The story of Rosalie Wahl’s life and ascent to the Minnesota Supreme Court has been told before.¹⁴ Born in 1924, Sara Rosalie

10. See generally Symposium, *The American Bar Association’s National Conference on Professional Skills and Legal Education*, 19 N.M. L. REV. 1 (1989) (containing the proceedings of the conference in Albuquerque on Oct. 15-18, 1987, and published as a symposium issue) [hereinafter *Albuquerque Symposium*].

11. ABA SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (Am. Bar Ass’n ed., 1992) (reporting the work of the task force) [hereinafter MACCRATE REPORT]. The name refers to the task force’s chair, former ABA President Robert MacCrate.

12. THE COMMISSION TO REVIEW THE SUBSTANCE AND PROCESS OF THE AM. BAR ASSOCIATION’S ACCREDITATION OF AM. LAW SCHOOLS, AUGUST 3, 1995 REPORT (1995); SUPPLEMENTARY REPORT OF THE COMMISSION TO REVIEW THE SUBSTANCE AND PROCESS OF THE AM. BAR ASSOCIATION’S ACCREDITATION OF AM. LAW SCHOOLS, NOV. 27, 1995 REPORT (1995) [hereinafter WAHL COMMISSION REPORT] (copies on file with author).

13. See, e.g., Justice Rosalie E. Wahl, Speech at the Legal Writing Institute Conference (July 20, 1996), reprinted in *All the World’s A [Page]*, 3 LEGAL WRITING 67 (1997) (recounting the long-term strategy she followed to improve the status of clinical teachers and calling for treatment of legal writing teachers to be equal with that of tenure-track faculty members).

14. See Interview by Laura Cooper with Justice Rosalie E. Wahl, Minnesota Supreme Court Associate Justice, St. Paul, Minn. (Aug. 17, 1994) [hereinafter

Erwin grew up in rural southeastern Kansas. Her early life was marked by a close relation to the land, a love of reading and writing, and by great loss joined with strong family and community support. Those qualities, and the wisdom gained from them, are visible in her work to this day.

Wahl's mother died when she was three years old, and she and her younger brother went to live with their maternal grandparents.¹⁵ Four years later, Rosalie was with her brother and grandfather when they were killed by a train. Decades after the accident, in an address to farm women, she recounted that time:

We had been going in the wagon to a field on the other side of the creek. I had gone across the tracks to open the gate—opening gates is a job for seven-year-olds—when the train came around the hill late and with no whistled warning as the team and wagon crossed behind me.

There was no personal injury recovery. No settlement of any kind. The only thing the railroad company ever did was to pay Grandma \$25 when a spark from one of their engines burned the meadow. Grandma got no benefits—no insurance, no social security, no pension. The year was 1932

In all those years I never knew how poor we were. I only knew the richness—the warm, close community with our little rural school as the center, the aunts and uncles and cousins living in farms nearby—and

Down in the bend of the river
Where the horseweeds grow taller
Than the tumble-down barn
And noonsday heat
Crawls down the river bank
To rest in the cool green water
There—in the bend of the river
Where green cutlassed corn
Caresses the Wind

Interview with Wahl] (transcript on file with author and the Minnesota Historical Society); Jessica Lipsky Roe, *Justice Rosalie E. Wahl: Biography*, 20 WM. MITCHELL L. REV. 1011, 1011-12 (1994). See generally CAREER OF WAHL, *supra* note 7 (unpaginated) (recounting the life and work of Rosalie Wahl).

15. Interview with Wahl, *supra* note 14, at 1.

I found morning glories
 In guileless array
 Enslaving the militant corn¹⁶

Wahl left her close farm community to go to the University of Kansas during the first years of World War II. At Lawrence, Wahl wrote for the college newspaper, became close to a man she met in high school, and planned to marry. Again, Wahl learned the lessons taught by loss and pain. Her young man was killed in an air force training crash; she turned to writing to help her through it.¹⁷

At the university, Wahl studied sociology and, in her activities outside of class, civil rights. She married Roswell Wahl in 1946 and they soon moved to Minnesota. Wahl raised children and was involved with the community in many ways—through the cooperative movement, the schools, the library, the Society of Friends (Quakers), and local politics.¹⁸

In 1962, at age thirty-eight, two forces came together to help her decide to go to law school. First, and most simply, she needed to find some kind of employment to assist in supporting the family's four children. Second, the county commissioners voted against a proposal to build libraries that she had worked on for years and she realized she was "tired of sitting outside of doors and then having people on the inside, mainly men, be able to do this kind of thing."¹⁹ As she pondered law school, she wrote a wry poem:

On Considering the Advisability of Studying Law
 That one who would through thistles pass
 Needs shoes
 Else, barefoot,
 Stay on grass.²⁰

She decided to cobble those shoes for herself at William Mitchell College of Law, where night classes allowed her to be home at the end of her children's school day.²¹ There was one

16. Rosalie Wahl, *The Farm Woman—an Equal Partner: Legislation Affecting Farm Women*, Speech in Rochester, Minnesota (March 29, 1979), in *CAREER OF WAHL*, *supra* note 7 (unpaginated). The poem is her own.

17. Interview with Wahl, *supra* note 14, at 7.

18. *Id.* at 17-18.

19. *Id.* at 19.

20. Raquel Wood & Frank Wood, *A Biographical Account of Her Life*, in *CAREER OF WAHL*, *supra* note 7 (unpaginated).

21. Interview with Wahl, *supra* note 14, at 20.

other woman in her class. The only woman teacher was the law librarian. Wahl made it through law school in four and a half years, giving birth to her fifth child about halfway through. At 42, she became an advocate with a law license.²²

II. FROM THE “HEADY EXHILARATION” OF CLINICAL TEACHING TO THE PINNACLE OF THE SUPREME COURT

Upon graduating, Wahl pulled off another unusual feat: she found a *part-time* job as a lawyer, and it was a job that allowed her to grapple with matters of substance, such as constitutional questions and the inadequacies of the criminal justice system. The State Public Defender, C. Paul Jones, was a man ahead of his time—he understood that he could hire some of the best legal minds available if he allowed them to work on schedules that accommodated their families.²³ Wahl worked three days a week for him doing criminal appeals and post-conviction remedies for prisoners.²⁴

After five years and 109 cases argued before the Minnesota Supreme Court,²⁵ Wahl added two days a week to her work calendar and used them to begin teaching law students at the University of Minnesota in the clinics that Robert Oliphant was developing.²⁶

22. *Id.* at 24.

23. Interview with C. Paul Jones, Professor of Law, William Mitchell College of Law, in St. Paul, Minn. (July 10, 2002) (stating that at least 50% of his hires were women when women were less than 10% of graduates) (transcript on file with author); see also Mary Bader Papa, *Mentors: Expert Help in Climbing the Ladder of Success*, in CAREER OF WAHL, *supra* note 7 (unpaginated) (Wahl praising Jones as “one of the first legal employers who hired women.”).

24. Interview with Wahl, *supra* note 14, at 24-25.

25. *Id.* at 28.

26. Minnesota’s law school clinical programs were given impetus when the Minnesota Supreme Court decided that even persons charged with misdemeanors must have a lawyer if they were in peril of spending time in jail. See generally *State v. Borst*, 278 Minn. 388, 154 N.W.2d 888 (1967) (involving publicizing a false statement); *State v. Collins*, 278 Minn. 437, 154 N.W.2d 688 (1967) (involving drunk driving); *State v. Illingworth*, 278 Minn. 434, 154 N.W.2d 687 (1967) (involving indecent exposure). The public defenders and courts agreed that law students could help fill the suddenly increased need for counsel for indigent defendants. Interview with Robert Oliphant, Professor of Law, William Mitchell College of Law, in St. Paul, Minn. (July 24, 2002). This occurred three years before the U.S. Supreme Court made the same decision. See *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972). The Minnesota Supreme Court enacted its first Student Practice Rule in 1968, allowing law students to practice in the courts under the supervision of licensed attorneys. Interview with Oliphant, *supra*. Rosalie and Ross Wahl divorced the same year she began teaching. Interview with

The next year, Dean Douglas Heidenreich asked her to assist in establishing a clinical program at William Mitchell. She accepted and, in 1973, embarked full time upon clinical teaching. Her partner in the clinical venture, Roger Haydock, taught a civil clinic while Rosalie continued with criminal law clients.²⁷ Her speech to a recent reunion of clinic directors from those years, reprinted in this volume, vividly describes those times and what they meant.²⁸ There are several things about that early enterprise that are worth remarking upon further.

First, William Mitchell was ready to invest in specialized training for Wahl, and she took advantage of that opportunity. During the summer of 1973 she went to a National Institute for Trial Advocacy training and to a national clinical legal education conference in Buck Hill Falls, Pennsylvania.²⁹ Conferences have long served an important function for clinical educators as they gather to discuss their methods, experiments, and challenges, whether with their cases and students or their institutions. At the Buck Hill Falls conference, Wahl was exposed to the foment of ideas underlying clinical legal education. She heard talk of clinical education as a *method* of teaching law, not merely a specialized or secondary subject matter.³⁰ She met dynamic teachers from across the country who were trying to change legal education for the better, and remembers being impressed by a brilliant young woman. That woman was Rose Bird, a clinical teacher at Stanford who also taught a criminal clinic³¹ and who was to become California's first woman supreme court justice.³² It was quite a

Wahl, *supra* note 14, at 33.

27. Interview with Wahl, *supra* note 14, at 34; Roger Haydock, *Clinical Legal Education: The History and Development of a Law Clinic*, 9 WM. MITCHELL L. REV. 101, 107 (1984).

28. Rosalie Wahl, *Lest We Forget: Celebrating Thirty Years of Clinical Legal Education at William Mitchell College of Law* (March 20, 2003), 30 WM. MITCHELL L. REV. 5 (2003).

29. See *Clinical Education for the Law Student: Legal Education in a Service Setting*, Working Papers Prepared for CLEPR (Council on Legal Education for Professional Responsibility) national conference, Buck Hill Falls, Pa., June 6-9, 1973 (1973) [hereinafter *Buck Hill Falls Papers*].

30. Gary Bellow spoke at the conference on this theme. See Gary Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as Methodology*, in *Buck Hill Falls Papers*, *supra* note 29, at 374; see also Interview with Wahl, *supra* note 14, at 35.

31. Interview with Rosalie Wahl, in Lake Elmo, Minn. (Aug. 13, 2002) [hereinafter Juergens' Wahl Interview] (transcript on file with author).

32. Rose Bird was appointed Chief Justice of the California Supreme Court by

conference: "We were filled with a very heady exhilaration because legal education could never again go back to the old approach of pure academic training. We were persuaded of that."³³

Second, Wahl wrote objectives for her Criminal Law Clinic that were classic and thorough, aspiring to look at the big picture of the criminal justice system as well as at the specific work of advocating for an individual client:

This course is designed to acquaint a senior law student with the legal, practical, and ethical problems of defending or prosecuting criminal cases in the lower court system of Minnesota. It combines actual in-court field experience, in which properly certified law students interview and defend citizens charged with misdemeanor violations in St. Paul, Minnesota, Municipal court, with written materials and classroom lectures directly related to the field work. Special emphasis is placed on the adversary role of an attorney and on providing quality representation and a lawyer-like work product. The ethical problems continually faced by an attorney handling a live criminal case are explored as are the problems³⁴ of criminal justice and the lower criminal courts.

Wahl worked hard to make those objectives the reality in her course. She taught about forty students each semester, handling misdemeanors, and, in later years, felonies and appeals. Students began interviews with clients at 8 a.m. at the courthouse and Wahl was there with them every morning. She taught the three-hour seminar component two evenings a week. She enlisted public defenders and city attorneys to help in supervising her students in court.³⁵ Each misdemeanor clinic student defended indigent

Governor Jerry Brown in March, 1977, less than four months before Wahl was named by Governor Perpich. CALIFORNIA SUPREME COURT, IN MEMORIAM, HONORABLE ROSE ELIZABETH BIRD (Mar. 6, 2000), *available at* <http://www.stanford.edu/group/WLHJP/articles/BirdRose.pdf> (on file with Women's Legal History Biography Project, Stanford University). In 1986, Bird and two colleagues were voted off the bench on account of their scrutiny of the use of the death penalty. ACLU NEWS, OBITUARY FOR CHIEF JUSTICE ROSE BIRD (Jan./Feb. 2000), *available at* www.aclunc.org/aclunc/news/news12000/bird.html (last visited July 8, 2003).

33. *Albuquerque Symposium*, *supra* note 10, at 7 (opening remarks by Wahl).

34. ROSALIE E. WAHL, CRIMINAL LAW CLINIC PROCEDURE MANUAL 1 (1973-74) (copy on file with author).

35. Interview with Wahl, *supra* note 14, at 36. One of those city attorneys was Martin Costello, who, in an adjunct professor capacity, teaches William Mitchell's

accused persons, and also did a pre-trial hearing or arraignment under the supervision of a prosecuting attorney because students were to be given a look at the justice system from all sides. Students' semester-end course appraisal papers often praised this inclusive approach, even as they acknowledged the burden it put upon them to avoid conflicts of interest among clinic clients. Those papers reveal that Wahl's objectives were being met: students searched to name the larger issues that trouble the criminal justice system as they labored over their individual clients' cases. As one student put it, in terms that resonate today (except, perhaps, for the train metaphor),

Perhaps the biggest problem with the criminal justice system today is a shortage of resources Defense attorneys, prosecutors and judges are so pressured by the crowded calendars that the system takes on the appearance of a Burlington Northern speeding down the tracks Although I had read about the pressure that is put on defendants to enter pleas, I didn't realize how great it really is³⁶

Students stood in line all night before registration to be assured of a place in a clinic.³⁷ Their willingness to do so showed how hungry they were to represent real people in real cases and to grapple with justice issues in their social, political, and economic contexts.

Finally, during her time as a clinical teacher, Wahl began to finger another set of keys to the doors that were closed to her before law school—those of the law school accreditation process. William Mitchell's facilities were cramped; this triggered an inspection by the American Bar Association.³⁸ As luck would have it, William Pincus, "grandfather of the clinical movement,"³⁹ was the

Misdemeanor Clinic to this day.

36. JOHN M. NICHOLS, SUMMARY OF COURSE EXPERIENCE PAPER FOR PROFESSOR WAHL'S CRIMINAL LAW CLINIC (Dec. 1973) (copy on file with author).

37. Interview with Wahl, *supra* note 14, at 35.

38. The Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association is the body to whom the power to accredit law schools has been delegated by the U.S. Department of Education. See WAHL COMMISSION REPORT, *supra* note 12, at 17 (laying out the background and current status of the ABA's role in the accreditation process). To that end, the Council sends inspection teams to law schools to see if they are complying with the Standards for Approval of Law Schools, which include requirements, *inter alia*, for the program of legal education and for the physical space. See www.abanet.org/legaled (last visited July 12, 2003).

39. *Albuquerque Symposium*, *supra* note 10, at 104, 107 (concluding remarks by

member of the ABA inspection team charged with looking at William Mitchell's clinical programs.⁴⁰ Wahl showed him around and they became acquainted.⁴¹ Later in her time as a clinical teacher, Wahl was asked and did serve on an inspection team for the University of Kansas Law School.⁴² These experiences with accreditation gave her the opportunity (indeed, the duty) to contemplate further the purposes and strategies of clinical teaching, and, perhaps more significantly, to study the operation of those locks on the doors of legitimacy within legal education.

The attention she paid to the gatekeeping process during her early years in legal education stood her in good stead. At Buck Hill Falls and in her teaching, she had good glimpses of how much clinical teaching added to legal education, making it more client-centered, more morally sensitive, more justice-oriented. She also saw how the accreditation process affected the law schools' efforts to teach. Soon she would learn the role of a supreme court justice in shaping legal education as well.

In 1977, Rosalie Wahl was named the seventy-second justice, and first woman, to sit on the Minnesota Supreme Court. It is not the purpose of this essay to discuss how that came to be.⁴³ Yet it is worth noting here that she did not become a justice in the usual manner. During a speech to the Democratic Farmer Labor (DFL) Feminist Caucus, Governor Rudy Perpich had promised to appoint a woman to the state supreme court. When a vacancy appeared a short time later, women in the press and women's political groups

Robert McKay).

40. Interview with Wahl, *supra* note 14, at 61. William Pincus was the director of the Council on Legal Education for Professional Responsibility (CLEPR). CLEPR and a predecessor organization were funded by the Ford Foundation from 1959 to 1978 and spent almost \$13 million, mostly in grants to law schools, to initiate clinical programs. Margaret Martin Barry, Jon C. Dubin & Peter Joy, *Clinical Education for this Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 19 (2000) (including a description, based upon multiple original sources, of the funding of clinical programs through CLEPR grants). William Mitchell never applied for nor received a CLEPR grant for its clinical programs. Interview with Wahl, *supra* note 14, at 35; *see also* Interview with Douglas Heidenreich, Professor of Law, William Mitchell College of Law, in St. Paul, Minn. (Mar. 5, 2003) (transcript on file with author).

41. Juergens' Wahl Interview, *supra* note 31, at 22.

42. *Id.* at 21.

43. One of the best sources for that story is the oral history of Justice Wahl commissioned by the court before she retired. Interview with Wahl, *supra* note 14, at 38-47. The account of the hard-fought election for her seat only a year after she was appointed is exciting too: In a nearly unprecedented move, three men—two judges and a practicing lawyer—filed against her. *Id.* at 51-61.

were ready to hold him accountable publicly to that promise.⁴⁴ Rosalie Wahl's name was on lists submitted to the governor by Minnesota Women Lawyers, the DFL Feminist Caucus, and the Minnesota Women's Political Caucus.⁴⁵ The Governor chose Wahl, and she did not forget how she got there: "This opportunity [to serve on the court] opened up because the women of Minnesota had become sufficiently organized and sufficiently powerful to say to a governor, 'Seven-zip won't do it.'"⁴⁶

III. OPENING THE GATE FOR THE TEACHING OF PROFESSIONAL SKILLS: SECTION CHAIR, THE ALBUQUERQUE SKILLS CONFERENCE, THE MACCRATE TASK FORCE, AND THE WAHL COMMISSION

A. *The ABA Section of Legal Education and Admissions to the Bar*

As an associate justice on the Minnesota Supreme Court, Wahl soon took on the job of liaison to the board of bar examiners. She was interested in bar admissions because of "the whole process of who gets into the bar and how diverse is your bar and what are your processes and are they fair."⁴⁷ Asked by the chief justice whether she would be a good liaison, one of her colleagues noted that he "liked the way she rolls with the punches."⁴⁸

Her involvement with admissions to the bar, and, according to Wahl, her position as a former clinical professor and a woman, led to an invitation to become a member of the ABA Section of Legal Education and Admissions to the Bar (the Section).⁴⁹ The Section balanced its membership of legal academics with that of practitioners and, because they are the gatekeepers of law licenses, judges. When Wahl agreed to serve, Chair Sandy D'Alemberte appointed her to the section's Accreditation Committee, which oversees compliance with the ABA Standards for Approval of Law

44. *Id.* at 39.

45. CAREER OF WAHL, *supra* note 7 (unpaginated).

46. Hon. Rosalie E. Wahl, *Some Reflections on Women and the Judiciary*, 4 LAW & INEQ. 153, 156 (1986).

47. Interview with Wahl, *supra* note 14, at 62.

48. *Id.* (Wahl quoting Justice Fallon Kelly).

49. CAREER OF WAHL, *supra* note 7 (unpaginated). Wahl was always gracious about acknowledging the diversity factors that contributed to her accomplishments, and typically underplayed her own sharp intelligence and tireless labor. *Id.*

Schools (ABA Standards).⁵⁰

Accreditation mattered to Wahl because Minnesota and many other states require that applicants for the bar be graduates of an accredited law school.⁵¹ She understood that law school accreditation was another place where values were expressed, where doors opened and closed, within the legal system. The next year, Wahl became chair of the Accreditation Committee, the first woman ever to be so.⁵² This was a stepping-stone to becoming a member of the council that governed the Section, and, in 1987, its chair. Again, she was the first woman chair of the Section of Legal Education and Admissions to the Bar, the oldest section of the ABA.⁵³ After years of flying around the country for committee meetings, Wahl earned a position from which to call for special meetings, from which to accomplish special tasks.

B. The ABA's National Conference on Professional Skills and Legal Education, Albuquerque, New Mexico

In the spring of 1987, when Wahl was chair-elect of the Section, she and the ABA's Consultant on Legal Education, James White, called on Professor Roy Stuckey, chair of the Section's Skills Training Committee, to put together a conference on clinical education to be held that fall.⁵⁴ Despite his incredulity that a conference could be planned in so short a time, Wahl convinced Stuckey to take this on. Stuckey worked with Kathleen Grove, an assistant consultant on legal education to the ABA, and put together a conference according to Wahl's request. Its purpose was "to provide a forum for law schools to share detailed information about their professional skills programs and for faculty members and members of the Bar to develop an understanding of current

50. Juergens' Wahl Interview, *supra* note 31, at 22; *see also supra* note 38 (describing the role of the ABA in the accreditation of law schools).

51. Interview with Wahl, *supra* note 14, at 61-62.

52. Juergens' Wahl Interview, *supra* note 31 at 23. In fact, when she joined in 1982, Wahl was one of the first women members of the Accreditation Committee; the other was a law librarian—the majority of librarians then were women. *Id.*

53. BOYD, *supra* note 9, at 4, 11, 137-38. The chair of the Section is also chair of the council. The Section was formed in 1893, but was preceded by the Standing Committee on Legal Education and Admission to the Bar, formed along with the ABA in 1878. *Id.*

54. Telephone Interview with Roy Stuckey, *supra* note 9. James White became Consultant to the Section of Legal Education and Admissions to the Bar in 1974. BOYD, *supra* note 9, at 138.

trends and evolving norms in professional skills education.”⁵⁵

Half of American law schools sent representatives, most of them involved in clinical and skills teaching. One-third of the attendees were women, an unusually high quotient for law school conferences. According to Wahl, this occurred because clinics were where women were allowed a foothold in law schools.⁵⁶ Care was taken to solicit the presence of ABA President Robert MacCrate, several former presidents of the ABA, four former chairs of the Section, and other ranking members of the bar who had been involved in legal education.⁵⁷ They assembled in October, 1987, at the University of New Mexico Law School in Albuquerque.

Wahl opened the conference. Her speech was inspiring and set the tone.⁵⁸ It also foreshadowed her charge to the MacCrate Task Force:

The issue then is not whether the law schools should go on teaching legal analysis, or conducting skills training, but which legal analysis and skills the law schools should teach and how much of each. Have we really tried in law schools self studies to determine what skills, what attitudes, what character traits, what quality of mind are required of lawyers?⁵⁹

She went on to ask why so few schools required any clinical training before graduation, and why the ABA Standards obligated schools to “offer” instruction in professional skills, rather than require it for all graduates. Though Standard 302(a)(iii) did mandate that law schools offer “adequate training in professional

55. Roy Stuckey & Kathleen Grove, Foreword, in *Albuquerque Symposium*, *supra* note 10, at 1.

56. BOYD, *supra* note 9, at 122.

57. Hon. Rosalie Wahl, *Building the Educational Continuum*, in THE MACCRATE REPORT: BUILDING THE EDUCATIONAL CONTINUUM 79 (Joan S. Howland & William H. Lindberg eds., 1994) [hereinafter MACCRATE CONFERENCE PROCEEDINGS]; AGENDA, in *Albuquerque Symposium*, *supra* note 10, at 3-4 (naming many conference participants).

58. See, e.g., Symposium, Daniel Greenberg, *Reflections on the New Mexico Conference: What Would You Have Said Before You Came to Law School*, 19 N. M. L. REV. 171 (1989) (praising Wahl’s invocation and upbraiding those who focused on skills instruction without a similar accompanying message of values and justice); *Albuquerque Symposium*, *supra* note 10, at 104-05 (concluding remarks by Robert McKay).

59. *Albuquerque Symposium*, *supra* note 10, at 7 (opening remarks by Wahl). Robert MacCrate quoted this portion of her speech and called it “the predicate” of the MacCrate Report. Robert MacCrate, *The Last Word on a New Beginning*, in MACCRATE CONFERENCE PROCEEDINGS, *supra* note 57, at 145.

skills,” there was no clear definition of what constituted “adequate” skills training.⁶⁰ “We’re not doing enough,” she urged. “We have to work together, you in the law schools, we in the courts and in the Bar, and continue to push [for recognition of] the importance of clinical programs to the profession and to the public.”⁶¹

Finally, Wahl moved to a topic that she had raised before,⁶² although this time she was addressing an elite and focused group of 200 leaders in legal education and the bar. Echoing her plea that they recognize the importance of clinics and skills instruction, she next implored them to integrate matters of the heart alongside matters of the intellect in law school and practice. She quoted a newspaper piece, *The Heart of the Law Is the Heart of the Lawyer*, written by Curtis Berger in 1976:

Legal education is an intensely cerebral pursuit. Inside the classroom, students listen as we dissect court opinions, ridicule fuzzy-headed thinking, stifle passions as unprofessional. We praise our students by telling them they “think like a lawyer,” an ability requiring a wholly analytical matrix for dealing with problems Students soon conclude that if we—and society—are to judge them highly, they must prove themselves with their heads.

I believe that the head is attached to the heart—not only biologically—and that it is the pulsating heart of the professional man or woman that legal education has avoided.

I do not assert that legal education makes our graduates evil, but I do believe that legal education makes our graduates less feeling, less caring, less sensitive to the needs of others, less tolerant of the frailties of their fellow creatures, even less alarmed about the injustices of our society, than they were when they entered law school.

What concerns me is the mind-set and the heart-set into which we mold our students: that it is better to be smart than passionate, that people who feel too deeply tend not to think too clearly, that a fine intellect can rationalize any position or state of affairs, no matter how outrageous or indecent or unjust.⁶³

60. *Albuquerque Symposium*, *supra* note 10, at 8 (opening remarks by Wahl).

61. *Id.*

62. See Rosalie Wahl, Commencement Address at William Mitchell College of Law (May 21, 1978), *reprinted in* CAREER OF WAHL, *supra* note 7 (unpaginated).

63. *Albuquerque Symposium*, *supra* note 10, at 9 (opening remarks by Wahl)

Wahl wanted to stem what Berger saw happening in the law schools. She wanted to think about how to train lawyers “to start making moral judgments and to stop turning their backs on complex situations.”⁶⁴ Clinical education, instruction in skills and ethics alongside values such as justice, fairness, and morality, offered a possible way through that door.

The conference lasted four days. Participants referred to it for years.⁶⁵

*C. The MacCrate Task Force on Law Schools and the Profession:
Narrowing the Gap*

After the exciting gathering in Albuquerque, Wahl found herself thinking that more was needed.⁶⁶ She noticed several things at the conference: teachers were exploring a great variety of skills teaching, but there was no consensus on what skills should be taught to law students; and—an example of her trademark willingness to listen to information from the emotional realm—many of the clinic and skills teachers there were upset and frustrated because their work was treated as second-class by the law schools.⁶⁷ It all added up to professional skills not being given enough emphasis.⁶⁸ What could be done?

Wahl wanted to gain the support for clinicians’ work that it deserved.⁶⁹ Somehow, clinical teaching needed to be unified with classroom legal education; heart and moral sense unified with the cerebral law enterprise. She was wise enough to understand that this would require a consensus, or at least a common model “about

quoting Curtis Berger, N. Y. TIMES, July 6, 1976).

64. *Albuquerque Symposium*, *supra* note 10, at 9 (opening remarks by Wahl).

65. See, e.g., Rosalie Wahl, *Building the Educational Continuum*, in MACCRATE CONFERENCE PROCEEDINGS, *supra* note 57, at 79; Michael Norwood, *Scenes from the Continuum: Sustaining the MacCrate Report’s Vision of Law School Education Into the Twenty-First Century*, 30 WAKE FOREST L. REV. 293, 294 (1995); Robert MacCrate, *The Last Word on a New Beginning*, in MACCRATE CONFERENCE PROCEEDINGS, *supra* note 57, at 145.

66. Interview with Wahl, *supra* note 14, at 63-64; Juergens’ Wahl Interview, *supra* note 31, at 25; Wahl, *All the World’s a [Page]*, *supra* note 13, at 72.

67. Juergens’ Wahl Interview, *supra* note 31, at 25; Interview with Wahl, *supra* note 14, at 64; Wahl, *Building the Education Continuum*, in MACCRATE CONFERENCE PROCEEDINGS, *supra* note 57, at 80; see also Telephone Interview with Roy Stuckey, *supra* note 9.

68. Telephone Interview with Roy Stuckey, *supra* note 9.

69. Interview with Wahl, *supra* note 14, at 64; Juergens’ Wahl Interview, *supra* note 31, at 25.

what a lawyer should be and do and who had the responsibility for training that lawyer to do that.”⁷⁰ And she knew that a one-time conference was not enough.

Again, with the support of Consultant Jim White, Wahl turned to Roy Stuckey and asked him to draft a proposal to create a task force.⁷¹ The proposal pledged to build on five previous studies by the ABA that were related to professional skills.⁷² Stuckey and Wahl laid out seven proposed objectives:

1) to survey professional skills instruction programs and document the current status of professional skills instruction in American legal education.

The timing closely coincides with the twentieth anniversary of the funding of CLEPR by the Ford Foundation to stimulate the growth of clinical education in American law schools.

2) to more specifically define the meaning of Standard 302(a)(iii): “law schools shall provide [adequate] instruction in professional skills”

3) to describe in detail some models of all forms of experiential learning which are designed to enhance professional skills instruction, including simulation courses, other skills courses, and in-house and field placement clinics.

4) to address the question of when and how students should obtain supervised live-client practice experience.

The client has been the missing element in legal education, and it may be the most critical ingredient in law students' understanding of law practice and professionalism. The Task Force should consider whether it is time to require supervised live-

70. Juergens' Wahl Interview, *supra* note 31, at 27.

71. Telephone Interview with Roy Stuckey, *supra* note 9.

72. See ROY STUCKEY, PROPOSAL TO CREATE A TASK FORCE OF THE ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR (1988) (copy on file with author). See five previous studies at THE REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS OF THE ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR (1979); THE REPORT AND RECOMMENDATIONS OF THE SPECIAL ABA COMMITTEE FOR A STUDY OF LEGAL EDUCATION, LAW SCHOOLS AND PROFESSIONAL EDUCATION (1980); THE REPORT AND RECOMMENDATIONS OF THE ABA TASK FORCE ON PROFESSIONAL COMPETENCE (1983); ABA COMMISSION ON PROFESSIONALISM, “. . . IN THE SPIRIT OF PUBLIC SERVICE”: A BLUEPRINT FOR THE REKINDLING OF LAWYER PROFESSIONALISM (1986); REPORT OF THE COUNCIL OF THE ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LONG-RANGE PLANNING FOR LEGAL EDUCATION IN THE UNITED STATES (1987).

client practice experience before licensing new lawyers for general practice, whether through law school programs or through post graduate programs.

5) to explore how law schools can more effectively involve practicing attorneys and judges in professional skills instruction

6) to create an agenda for accomplishing any changes in legal education which are recommended in the Final Report

7) to assess the needs of law schools for facilities and the other resources they will need to accomplish the agenda described above⁷³

They used this proposal to convince Robert MacCrate to chair the task force. Wahl wrote him: "The stage is set for fundamental changes in law school instruction. All that's missing is clear guidance and motivation. This project can provide it."⁷⁴ They then persuaded the ABA to approve the creation of the task force. Once that was accomplished, Wahl handpicked every member of the task force, with an eye for heft and balance, and recruited them.⁷⁵ Though she conceived the task force,⁷⁶ was a member of it, and active in a crucial subcommittee, with typical humility she said that she considered her "greatest contribution" to its work to be "getting a lot of really good people on it," including MacCrate to lead.⁷⁷

73. STUCKEY, *supra* note 72 (emphasis added). The proposal stated that it was "drafted by Roy Stuckey at the request of Chairperson Rosalie Wahl." *Id.* It was straightforward—only four pages long.

74. Letter from Rosalie Wahl, Associate Justice, Minnesota Supreme Court, to Robert MacCrate (July 12, 1988) (copy provided by Roy Stuckey and on file with author).

75. Telephone Interview with Roy Stuckey, *supra* note 9; Interview with Wahl, *supra* note 14, at 64. "The fact that the Report was produced by a combination of highly prestigious practicing lawyers, bar leaders, judges, deans and law teachers is intended to signify to the various constituencies of legal education that their interests were considered, were protected and through deliberation were integrated into a consensus of views that also reflects the public interest." John Elson, *The Regulation of Legal Education: The Potential For Implementing the MacCrate Report's Recommendations for Curricular Reform*, 1 CLINICAL L. REV. 363, 373 (1994).

76. MacCrate, *The Last Word*, in MACCRATE CONFERENCE PROCEEDINGS, *supra* note 57, at 145 (stating that the task force would not exist "but for the inspiration and initiatives of Justice Rosalie Wahl").

77. There were twenty-six members, plus consultants and staff. Bob MacCrate raised much of the money needed to operate the task force. Interview with Wahl, *supra* note 14, at 64.

The list of seven objectives was distilled to three more general ones as the MacCrate Task Force set to work.⁷⁸ It commissioned studies of practice and of law school skills offerings, and held public hearings. It engaged in a serious effort to outline a set of skills and values that every lawyer entering practice should possess. Wahl worked actively on the subcommittee charged with building that comprehensive statement. The twenty-six members and consultants labored for three years, then published a lengthy report in 1992.⁷⁹

The document triggered a lively discussion as soon as it was completed. Proponents praised its Statement of Fundamental Lawyering Skills and Fundamental Lawyering Values (SSV) as a watershed, and convened meetings to implement the report's recommendations.⁸⁰ Skeptics critiqued the contents of the SSV, and expressed concerns that ranged from its recommendations being impossibly expensive to worries that the report would be used to justify supplanting client representation clinics with simulations.⁸¹ The document was used as an organizing tool by

78. See Norwood, *supra* note 65, at 294.

79. MACCRATE REPORT, *supra* note 11 (totaling 414 pages). After describing the legal profession at length, the MacCrate Report analyzes ten fundamental lawyering skills and four fundamental lawyering values. *Id.* at 141-221. The ten fundamental skills are: problem solving, legal analysis and reasoning, legal research, factual investigation, communication, counseling, negotiation, litigation and alternative dispute-resolution procedures, organization and management of legal work, and recognizing and resolving ethical dilemmas. *Id.* at 141-207. The four fundamental lawyering values are: provision of competent representation; striving to promote justice, fairness, and morality; striving to improve the profession; and professional self-development. *Id.* at 207-21. The Report concludes with a total of sixty-four recommendations for law schools, the practicing bar, licensing authorities, continuing legal education providers, and advisers to pre-law students. *Id.* at 325-38.

80. See, e.g., Peter Toll Hoffman, *Clinical Scholarship and Skills Training*, 1 CLINICAL L. REV. 93, 98 n.19 (1994) (the SSV is "already [the] most influential catalogu[e] of lawyering skills"); Robert MacCrate, *The Pursuit of Excellence in the Law*, 75 MICH. BAR J. 1012, 1014-15 (1996) (detailing some of the positive responses to the Report, including discussions at conferences and studies of curricula to see if they covered the fundamental skills and values); Norwood, *supra* note 65, at 295 ("The SSV is . . . the Task Force's most important contribution to the advancement of lawyers' professional development."); Peter A. Joy, *The MacCrate Report: Moving Toward the Integrated Learning Experiences*, 1 CLINICAL L. REV. 401 (1994); Ann Juergens, *Using the MacCrate Report to Strengthen Live-Client Clinics*, 1 CLINICAL L. REV. 411, 416 (1994).

81. See, e.g., John J. Costonis, *The MacCrate Report: Of Loaves, Fishes, and the Future of American Legal Education*, 43 J. LEGAL EDUC. 157 (1993) (criticizing the Report's recommendations as too costly); Beverly Balos, *Conferring On the MacCrate Report: A Clinical Gaze*, 1 CLINICAL L. REV. 349, 351-54 (1994) (expressing concern,

clinicians and others who sought to implement its recommendations and integrate skills and values instruction throughout the curriculum. Though it is not as often referenced by name more than a decade after it was produced, the MacCrate Report's influence has continued. The most current appraisal, Russell Engler's article, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, gives a thorough and thoughtful account of the ongoing importance of the Report's goals and methodology, particularly lauding its focus on teaching the values of justice, fairness, morality, and the pro bono obligation.⁸²

The authors of the MacCrate Report explicitly intended it to be a starting point and a resource for collaborations on how to ensure that lawyers acquire good professional skills and values.⁸³ There is little doubt that the report constructed a sturdy model around which to conduct that discussion, for it continues today, more than eleven years after the Wahl-selected task force fanned its spark into a flame.⁸⁴

based on law school deans' speeches at MacCrate conference, that the academy would implement the Report using the least-expensive means possible, without weighing the educational content and merit of those means); Carrie Menkel-Meadow, *Narrowing the Gap By Narrowing the Field: What's Missing From the MacCrate Report—Of Skills, Legal Science and Being a Human Being*, 69 WASH. L. REV. 593 (1994) (criticizing the report); Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, 8 CLINICAL L. REV. 109, 117-20 (including an overview of criticisms of the Report).

82. See Engler, *supra* note 81; see also Barry et al., *supra* note 40, at 20, 23-24, 72-73 (recounting the history of clinical legal education and projecting its future, while situating the MacCrate Report within that history and future).

83. Recommendation A.2 states: "The Statement of Skills and Values should be viewed as a work in process and the initial formulation of the Statement should be discussed, critically analyzed and progressively refined . . ." MACCRATE REPORT, *supra* note 11, at 327; Juergens' Wahl Interview, *supra* note 31, at 27-28 ("[The MacCrate Report] started a real dialogue."); see also Curtis J. Berger, *Teaching "S & V" Beyond the Live Client Clinic: We Can Do Far More without Spending Far More*, in MACCRATE CONFERENCE PROCEEDINGS, *supra* note 54, at 69 ("The second feature of the Report that makes it a living document is its call for a continuing dialogue . . . Unlike most Reports, [the MacCrate Report] is intended as the opening conversational sally rather than as the portentous last word.").

84. See sources cited *supra* notes 78-81; see also J.P. Ogilvy & Karen Czapanskiy, *Clinical Legal Education: An Annotated Bibliography*, Special Issue No. 1 CLINICAL L. REV. 1, 31-47 (Spring 2001) (listing articles on the topics of Lawyering Skills using the MacCrate taxonomy, and Professional Responsibility); John B. Mitchell et al., *And Then Suddenly Seattle University Was on Its Way to a Parallel, Integrative Curriculum*, 2 CLINICAL L. REV. 1 (1995); Roy Stuckey, *Education for the Practice of Law: The Times They Are A-Changin'*, 75 NEB. L. REV. 648 (1996).

Wahl's gift to legal education—with the birthing of the MacCrate Task Force—was her conviction that every lawyer should have instruction in professional skills, broadly interpreted. The MacCrate Report's articulation of a set of fundamental *values* also advanced the idea—so strong in clinics—that lawyers do not exercise their skills in a moral or social or economic vacuum.

Finally, Wahl's task force built upon a theme that underpins the very concept of clinical legal education—that every lawyer must learn to learn from experience.⁸⁵ This became the MacCrate Report's organizing idea that the education of lawyers continues over a lifetime. One of the SSV's four fundamental values of the profession was “professional self-development,” which includes “making use of the process of reflecting upon and learning from experience.”⁸⁶

To further cultivate the idea that each lawyer must learn from experience, the MacCrate Report recommended that the bar and academy establish a new “American Institute for the Practice of Law.”⁸⁷ Though that institute has not yet come into existence, one of its proposed activities has gone forward without the benefit of a formal institute: “Fostering research and development to enhance the profession's understanding of lawyering skills and professional values and the means and methods by which lawyers learn.”⁸⁸ A swelling of scholarship by clinical teachers in the wake of the MacCrate Report has begun to fulfill that portion of the unrealized institute's mission, and promises to continue to do so as the academy slowly becomes more supportive of clinical scholarship.⁸⁹

85. See, e.g., Kenneth R. Kreiling, *Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience Through Properly Structured Clinical Supervision*, 40 MD. L. REV. 284 (1981).

86. MACCRATE REPORT, *supra* note 11, at 218. The Report's discussion of the “professional self-development” value cites, *inter alia*, Anthony Amsterdam, *Clinical Legal Education—A 21st Century Perspective*, 34 J. LEGAL EDUC. 612, 616 (1984). *Id.* at 220.

87. MACCRATE REPORT, *supra* note 11, at 337-38 (setting out Recommendations F.1 through F.5).

88. *Id.* (setting out Recommendation F.4).

89. See Engler, *supra* note 81, at 117, 144 (referencing clinicians' scholarship on these topics post-MacCrate); cf. Ogilvy & Czapanskiy, *supra* note 81 *passim* (providing further evidence that scholarship on the means and methods by which lawyers learn increased after MacCrate). While one cannot imply a simple cause-and-effect relationship between MacCrate and the increase in clinical scholarship, one must acknowledge that the Report and its SSV have inspired much scholarly discussion. More empirical research is needed on “the means and methods by which lawyers learn.” See Stuckey, *supra* note 84, at 680 n.113 (highlighting “. . .

D. The Wahl Commission to Review the Substance and Process of the ABA's Accreditation of American Law Schools

Wahl officially called the Albuquerque conference, commissioned the MacCrate Report, asked good people to accomplish both, helped with the efforts, and gave thanks and credit to others for the results. Then, shortly before she retired from the Minnesota Supreme Court, she accepted a request from the Section that she guide and chair a study of a sensitive subject—the involvement of the ABA in law school accreditation and the standards it applied during accreditation.⁹⁰

One of the issues for study was the MacCrate Report's recommendation that several of the ABA Standards be altered. The MacCrate Report wanted the standards to clarify the "interaction" between core subjects and skills instruction, and to add language requiring that law schools prepare their graduates not only to qualify for admission to the bar, as the then-current standard stated, but also "to participate effectively in the legal profession."⁹¹

The MacCrate Report's recommendation that law schools be obliged to prepare students for the practice of law (and not merely to pass the bar) was adopted into the ABA Standards in 1993.⁹² But further recommendations of the MacCrate Report for changes in the ABA Standards were met with recalcitrance by the Section, even in the face of pressure from the ABA to adopt those recommendations.⁹³ It was then that Wahl rolled up her sleeves

the ability of an in-house clinic to produce a reasonably controlled environment for the collection of data and the study of theories about law practice. . . [and that] the use of the clinic as a laboratory for the study of law practice will increase in the future").

90. WAHL COMMISSION REPORT, *supra* note 12, at 2-3 (including the following specific areas for Commission review: the designation of the Council as the entity to administer the accreditation process; content of the standards for approval; structure and process by which accreditation is administered; costs and financing of the accreditation process; and implications of the recent Department of Education regulations relating to accreditation agencies, particularly those relating to agency independence, financing, and consumer notification and protection).

91. MACCRATE REPORT, *supra* note 11, at 330-31 (setting out Recommendations C.2, C.4, and C.7).

92. WAHL COMMISSION REPORT, *supra* note 12, at 9; *cf.* Stuckey, *supra* note 84, at 655-58 & nn.41-45 (describing the impact of the MacCrate Report and its specific effect on the accreditation standards).

93. Telephone Interview with Roy Stuckey, *supra* note 9; Stuckey, *supra* note 84, at 656 nn.41-43 ("The Section . . . did not rush to support the

again and accepted the charge of the Commission to Review the Substance and Process of the ABA's Accreditation of American Law Schools.

After a year's study, the Wahl Commission called for amendments to the ABA Standards that would implement the spirit of the MacCrate Report's recommendations.⁹⁴ The urged changes cover a lot of ground (as they also responded to antitrust and Department of Education concerns); the proposal pertaining to clinical education, skills, and values education may be summarized as follows:

- All law graduates should understand that "law is a public profession requiring the performance of *pro bono publico* legal services";⁹⁵
- The program of education must offer *all* students instruction in professional skills, just as all students must be offered instruction in "core" subjects and at least one rigorous legal writing experience;⁹⁶
- When law schools conduct their self-studies for accreditation, they should be required to show how the school is seeking to accomplish the goal of preparing students to participate effectively in the legal profession and to deal with both current and anticipated legal problems;⁹⁷
- The ABA Standard requiring that law schools offer all students instruction in professional skills should be interpreted as including any (but not necessarily all) of the skills articulated in the SSV, and those skills should be set forth in a formal interpretation

recommendations The creation of the Wahl Commission was a preemptive action taken to head off threats that the ABA would establish its own commission to consider the MacCrate Report and to look into the accreditation standards and process." See also Michael Ariens, *Law School Branding and the Future of Legal Education*, 34 ST. MARY'S L.J. 301, 316-17 (2003) (relating how the ABA agreed to create the special commission under pressure from the Justice Department); Elson, *supra* note 75, at 374-76 (discussing the battle between the ABA's House of Delegates, led by representatives from local bar associations, and the Council of the ABA Section of Legal Education and Admissions to the Bar and the Association of American Law Schools (AALS) over implementing the MacCrate recommendations); James P. White, *Commentary: State Supreme Courts as Regulators of the Profession*, 72 NOTRE DAME L. REV. 1155, 1163 (1997) (describing how the Wahl Commission was formed to respond to concerns of the Department of Education).

94. WAHL COMMISSION REPORT, *supra* note 12, at 18-29.

95. *Id.* at 20.

96. *Id.*

97. *Id.* at 22.

of the Standard.⁹⁸

Within about a year from when these recommendations were promulgated, all of them were enacted into the ABA Standards by the ABA's House of Delegates.⁹⁹ The amendments in some cases exceeded the Wahl Commission's recommendations, for example, by mandating (as contrasted with suggesting) that: full-time clinical teachers be able to earn job security reasonably similar to tenure; there be some offering of live-client or other real-life practice experience for credit (not necessarily for all students); and full-time legal writing directors and teachers be provided conditions adequate to attract and retain competent teachers.¹⁰⁰

The road to changes in the ABA Standards was long and arduous. While understanding that rule change cannot substitute for culture change,¹⁰¹ these were rules designed to help bring about culture change. They required legal educators to think about how their educational programs support their goals (at least while writing their schools' self-studies), and required that one of those goals be to educate for the practice of law. The rules forced the schools to pay attention to their professional skills offerings and their professional skills teachers:

[The ABA] Standards . . . if not the battleground, at least have been the field of action on which the Section and the ABA House of Delegates are hammering out recognition by the profession . . . that clinical legal education, with its emphasis on lawyering skills and values, with all its pedagogical and philosophical ramifications, is an essential, integral, legitimate part of legal education.¹⁰²

These amendments to the ABA Standards were among the accomplishments about which Wahl was most hopeful.¹⁰³

IV. ROSALIE WAHL'S EXAMPLE FOR LAW TEACHERS

More than a decade after the SSV was published, and after the ABA Standards have been altered, clinical education methods and values are more esteemed than ever. They are being used to revise

98. *Id.* at 23.

99. *See* Engler, *supra* note 81, at 145; Juergens' Wahl Interview, *supra* note 31, at 31.

100. Engler, *supra* note 81, at 145.

101. *Id.* at 148 & n.187 (citing Gary Bellow and Mark Galanter for why new rules by themselves do not produce changes in the status quo).

102. Wahl, *supra* note 13, at 73.

103. Juergens' Wahl Interview, *supra* note 31, at 29-31.

conventional courses and teaching methods,¹⁰⁴ and are gaining the attention of administrators and law school admissions and development offices. The idea that law schools must prepare their graduates for the practice of law, place greater emphasis on the values of the profession, and offer some live-client experiences is more widespread than it was before the ABA Standards actually mandated that it be so.

Rosalie Wahl would insist that any recounting of these accomplishments give credit to all the people who helped with these projects—and help her they did, every step of the way. But it was she who knew how to coax that help into harness and get everyone pulling in the same direction. She pulled too, and earned her collaborators' loyalty with her own hard work, gentle hands, and creative spirit.

We will continue to learn from her example, for she is alive and well in Minnesota. Yet it is not too early to pull several themes from her work and apply them to our own.

Seek integration in the law school curriculum. Wahl sought wholeness for legal education: In order to accomplish the law school mission, clinical education needed to be brought in from the margins and unified with the core curriculum. In fact, she had a vision where every law school subject or class would have its own clinic.¹⁰⁵ Wahl's method was unifying too. She brought diverse individuals into coalitions—most famously in the composition of the MacCrate Task Force, but also in the invitations to the Albuquerque conference, and in her work on the Section—and kept her eyes on what all the constituencies had in common without losing sight of her own goals.

The underlying unity that lawyers must seek is that of heart with intellect. Wahl prized goodness and kindness equally with intelligence, and found them everywhere in people. She listened to emotional information and valued it when solving problems. She was very good at reasoning, but never presumed that reason excludes perceptions gained from emotion.¹⁰⁶ Every lawyer needs to learn to include emotion in his analysis, poetry in her prose.

104. This was explicitly called for in the MACCRATE REPORT, *supra* note 11, at 128; *id.* at 330-32 (setting out Recommendations C.4 through C.6, C.8, C.12, and C.13); *see also* Barry et al., *supra* note 40, at 49 (“[I]t is apparent that there is motion towards infusing the whole curriculum with clinical teaching methods . . .”).

105. Interview with Wahl, *supra* note 14, at 38.

106. Lansing, *supra* note 7, at 11.

Wahl knew that adding clients to legal education is one powerful way to infuse emotional, social, and economic context into the legal problems that we are teaching our students to solve. Clients can assist law teachers in pushing against law schools' tendency to make law students "less feeling, less caring, less sensitive to the needs of others, less tolerant of the frailties of their fellow creatures, even less alarmed about the injustices of our society."¹⁰⁷ Uniting head and heart is one of the things that clinical education, at its best, can do for law students, but clinics are not the only place where that may be taught.¹⁰⁸

Roll with the punches. Life taught Wahl to take a punch, and that ability helped her be productive in situations where a less resilient and tolerant person would have fled in frustration. She appeared to be as comfortable with senior partners in the Manhattan boardroom at Sullivan & Cromwell as she was in southeastern Minnesota with a group of farm women. Her grace in working with those who did not necessarily share her egalitarian, liberal ideals is one of her strongest qualities, and it allowed her to accomplish projects in the face of repeated setbacks.

Finally, Wahl is an example of a person who has spent her life striving for "fairness, justice and morality," and no one ever had to prod her to do it.¹⁰⁹ Let it be so for the rest of us.

107. *Albuquerque Symposium*, *supra* note 10, at 9 (opening remarks by Wahl quoting Berger).

108. See Peter Knapp, *From the Clinic to the Classroom: Or What I Would Have Learned If I Had Been Paying More Attention to My Students and Their Clients*, 30 WM. MITCHELL L. REV. 101 (2003) (exploring how the absent client may be brought back into the traditional classroom).

109. Telephone Interview with Roy Stuckey, *supra* note 9.