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Ann Juergens
Mitchell Hamline School of Law, ann.juergens@mitchellhamline.edu

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Using the MacCrate Report to Strengthen Live-Client Clinics

Abstract
Clinical teachers can use the "MacCrate Report"—the Report of the ABA Task Force on Law Schools and the Profession: Narrowing the Gap and its Statement of Skills and Values—in a variety of ways to help live-client clinics. This paper assumes that the reader has basic background knowledge of the MacCrate Report. It also makes a fundamental judgment about the value and role of live-client clinics: it assumes that strengthening live-client clinics is important for the future of legal education. Strategies for negotiation for educational change, of course, must be tailored to each negotiation's context. Each law school has its own history, mix of faculty and other teachers, places where its graduates tend to practice, and geographic location. This essay is not intended as a blueprint, but only as a sketch for clinicians and proponents of skills training who are negotiating for changes along the lines suggested by the MacCrate Report.

Keywords
Pedagogy, legal education, MacCrate Report, legal training

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USING THE MACCRATE REPORT TO STRENGTHEN LIVE-CLIENT CLINICS

ANN JUERGENS*

Clinical teachers can use the "MacCrate Report"—the Report of the ABA Task Force on Law Schools and the Profession: Narrowing the Gap and its Statement of Skills and Values1—in a variety of ways to help live-client clinics. This paper assumes that the reader has a background knowledge of the basics of the MacCrate Report. It also makes a fundamental judgment about the value and role of live-client clinics: It assumes that strengthening live-client clinics is important for the future of legal education.4

The MacCrate Task Force’s purpose was to "stud[y] and improv[e] the processes by which new members of the profession are

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* Professor, William Mitchell College of Law. I thank the Midwest Clinical Law Teachers, for whom I first formulated these ideas.

1 AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION 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 (1992) (hereafter cited as "MacCrate Report"). The "Statement of Skills and Values" appears as a portion of this Report (see id. at 138-221) and also was published as a separate, freestanding document.

2 For purposes of this paper, the term "live-client clinic" will be used to refer to a clinical program in which students represent real clients under the close supervision of an attorney-teacher. See also ASSOCIATION OF AMERICAN LAW SCHOOLS—AMERICAN BAR ASSOCIATION, CLINICAL LEGAL EDUCATION: REPORT OF THE AALS-ABA COMMITTEE ON GUIDELINES FOR CLINICAL LEGAL EDUCATION 12 (1980) (defining "'client clinic'" as "a course in which law students work on live cases or problems"). For a description of the wide variations in live-client clinics' subject matter focus, programmatic structure, and pedagogical approaches, see Report of the Committee on the Future of the In-House Clinic, 42 J. LEGAL EDUC. 508 (1992).


prepared for the practice of law." The resulting Report has reached the notice of most law school deans, administrators, faculty and alumni/aes. It is a document that provides clinical law teachers with a new opportunity to strengthen clinical education through negotiation within the law school and with the larger legal community.

If clinicians do not engage in this negotiation, the law schools either will ignore the MacCrate Report or impose their own reading of the Report's mandate. The latter could mean increased funding for simulation-based courses but none for clinics. It may mean an increase in "skills" training without attention to "values" training, thereby submerging the long tradition in most clinics of linking the two. It may mean that the number of skills courses increases but the experience of those hired to teach them comes to resemble more closely that of teachers in the traditional classroom — i.e., excellent academic record at an "elite" law school, law review, clerkship for an appellate judge, perhaps a few years at a big law firm, but relatively

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5 AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, STATEMENT OF FUNDAMENTAL LAWYERING SKILLS AND PROFESSIONAL VALUES 1 (1992) (hereafter cited as "SSV").

6 See, e.g., Wallace Loh, The MacCrate Report: Heuristic or Prescriptive, 69 WASH. L. REV. 505 (1994) (describing responses to the Report by law school deans, faculty, and bar associations, and observing that "[t]here is a freight train gathering speed on the tracks of legal education, and it is called SSV," id. at 505).

7 The MacCrate Report should be used to accomplish other goals besides advancing the cause of clinical education, of course. Yet in all of the Report's discussion of skills and values in legal education, there is remarkably little about how well suited live-client clinics are to meeting its goals. And, though in a footnote the Report "encourages schools to recognize the value of live-client clinical experiences and to explore ways to expand the availability of courses that offer such experiences," it simultaneously endorses the cautionary view that "[a] goal of offering enrollment in a live-client in-house clinic to every student before he or she graduates may not be feasible from a budgetary perspective for some time." MacCrate Report, supra note 1, at 254 n.1. In sum, clinicians cannot assume that the MacCrate Report will be used in their favor.

8 Most live client clinics have a justice mission as well as a goal of teaching practice skills. This has roots in their history of serving the poor. Many student practice rules allowing supervised student practice in the courts were adopted in the 1960's in the wake of Gideon v. Wainwright, 372 U.S. 335 (1963), with the idea, among others, that law students would help make social justice a reality. See, e.g., Henry P. Monaghan, Gideon's Army: Student Soldiers, 45 B.U. L. REV. 445 (1965) (examining the then-innovative idea that Gideon's mandate might be made a reality through the use of supervised student attorneys). See also Arthur B. LaFrance, Clinical Education and the Year 2010, 37 J. LEGAL EDUC. 352 (1987). Many student practice rules still require that the clients served be indigent.

little first-hand knowledge of dealing with clients, transactions, the courtroom, real-life conflict and problem solving.

Why should law schools listen to clinicians about how to implement MacCrate? Because clinicians have expertise and a record of interest in teaching skills and values. Non-clinical faculty have not taught many of the skills and values discussed in MacCrate because that is not asked of them. Moreover, to many of them, the material will seem unfamiliar or difficult. Some will regard it as less prestigious than a doctrinal area and therefore less appealing.

Why should clinicians care about the MacCrate Report? It has the potential to strengthen the programs that we have been building for years. Yet it also has the potential to harm those programs. Resistance to the Report largely comes from fear (of expense, difficulty, change, etc.) or from lack of respect for the changes it endorses. Yet fear and contempt offer opportunities that indifference does not offer: The attention of law school leaders, at least, has been engaged by the Report. And clinicians can assuage fears and enlighten those who lack respect.

But as good practitioners know, a negotiating strategy is needed. What follows are some elements for inclusion in negotiation strategies. They will require adaptation to take into account the context of each particular law school.

A. Preliminary Moves

1. Develop Counter-Narratives.

One of the first tasks for clinicians is to stop defining our work in the terms with which others define it. A prevailing theme in discussions of live-client clinics is that clinical teaching is not as analytically rigorous as the “substantive” classroom courses. Even though clinics teach some of the most challenging substantive material in the curriculum, many people — including clinicians — refer to courses as either “substantive” or “clinical”. This encourages a view of clinical programs as being less important than classroom courses.

Instead of uncritically adopting this language, clinic proponents need to develop what might be called counter-narratives. If the theme is that clinics are insubstantial, the counter-narratives must explain and reinforce clinic substance. Good clinical teaching does far more than wed knowledge of legal doctrine and legal analysis (presumably acquired in the traditional classroom) with common sense (presumably acquired during life before law school). As the MacCrate Report details, the education of competent lawyers requires that students learn values and a sophisticated set of problem-solving skills in addition to the skill of legal analysis. Clinical programs have specialized in
teaching those problem-solving skills linked with values. Effective and ethical practice is as "substantive" as anything the law schools have a duty to teach. Our language for discussing that substance needs further development. The MacCrate Report provides both impetus and material for that task.

A second oft-heard theme about live-client clinics is that they are expensive, a drain on law school budgets. Clinic costs per student are compared to traditional lecture courses or simulation program costs and those costs are seen as high. Such talk justifies law schools' parsimony toward clinic budgets, and tends as well to keep clinicians from asking for more from their institutions.

Clinic proponents need to develop counter-narratives to this theme as well. For example, when communicating with a dean or other faculty members or alumni and there is a reference to the great cost of clinics, one might say, "Wait a minute, we accept the expense of the library. The clinic, in its way, is just as important to good law teaching as is the library." Turn the subject to how much upper-level seminars, the law review or the moot court programs cost to run. Speak about the cost of all the new technology that law schools are infusing into their buildings in order to keep pace with the outside world.

Discussions of the purportedly high cost of clinics typically treat clinics as if they were an add-on, a special interest seminar, rather than a component that is as critical to a good legal education as other small courses, the library, the law review or connections to the Internet. In sum, do not let conversations about the expense of clinics take place without adding context about tolerance for other expensive education programs at the law schools.

The themes of the prohibitive expense and insubstantial nature of clinics seem ubiquitous. But other myths and superstitions about clinical education (and clinical teachers) abound, for which counter-

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10 In the school where I teach, this was part of a successful strategy used to move the clinical teaching positions to the tenure track approximately six years ago. The people who were attached to seminar teaching or to the law review were not enthusiastic about the prospect of the school's evaluating their programs with the type of zero-based cost analysis they were proposing the school use to assess the cost of the clinics. There were other components to the strategy, including educating the faculty about the pedagogical merit of clinical teaching. See Eric Janus, Clinics and 'Contextual Integration': Helping Law Students Put the Pieces Back Together Again: Designing an Integrating Curriculum in Lawyer Education at William Mitchell College of Law, 16 WM. MITCHELL L. REV. 463 (1990).
narratives also need to be developed. For example, some law schools or law school faculty view their clinics as politically active in an inappropriate way or as staffed with people who could not “make it” in either practice or academia. The design of effective counter-narratives to these sorts of ideas of course will vary with the context of each individual law school.

2. Develop Multi-Year Strategies for Clinical Programs.

Clinicians need to take the long view on the negotiation suggested here. Strategies for strengthening clinical programs should be multi-year ones. Many clinicians are still on year-to-year contracts, but the goals of the MacCrate Report cannot be accomplished in one year or even in a few years. In my own eleven years of clinical teaching at William Mitchell College of Law, the live-client clinicians have moved from being primarily half-time grant-funded clinical instructors to becoming tenured full professors. Clinical methods of teaching have become better understood by the rest of the faculty, who are experimenting with those methods in the classroom. The (private) law school’s debt to the larger community seems more accepted by the faculty and administration than before. Piecemeal and incremental changes happen, though it is a continuing struggle to keep the discussion in terms that are respectful of clinics.

A drawback of multi-year strategies, however, is that they tend to include goals that are less precisely defined and more flexible than those ordinarily pursued in short-term negotiations. Almost by definition, long-term negotiations require that one pursue goals that will never be accomplished in addition to goals that can be attained. At times, this may feel like failure. But one may think of it instead as dreaming. For example, for all the travel I have done, I have mentally sketched out about five times as many trips as I have actually taken. Let us imagine what a clinic-friendly law school would look like, and plan a multi-year strategy around that image. If over time we can make 20 percent of those dreams come true, we will be doing pretty well.

B. Subjects for Negotiation

There are a number of areas where the MacCrate Report may be used strategically to strengthen clinics. This paper will focus on two of them: the curriculum and hiring.
1. Curricular Change.

a. Initiate it.

The MacCrate Report explicitly calls for expanded teaching of skills, particularly with clinical methodology, in non-clinical courses.\(^{11}\) Clinicians are experts in teaching skills and values within the law schools. Yet if the deans and traditional faculty have not been paying attention to the clinics, they may not know of (or remember) that expertise.

Therefore, clinicians should not wait for an invitation before offering their advice about what their school’s responses to the MacCrate Report ought to be. Outreach is a more powerful strategy than passivity. It is also necessary: Experience to date shows that those charged with implementing the Report do not seem to be looking to clinicians for their recommendations.\(^{12}\) In sum, clinicians should initiate discussions with their deans and colleagues of what the MacCrate Report is going to mean for the curriculum at their schools.

b. Distinguish the Educational Value and Use of Live-Client Clinics from that of Simulation Courses.

It is not unreasonable to fear that the Report will lead law schools to take money from live-client clinics and put it into simulation-based skills courses, or to put new resources into simulations instead of clinics. Simulation courses can be cheaper and can reach greater numbers than live-client clinics, especially if one-on-one reviews of student performances in the simulation are not too frequent.\(^{13}\) It may be easier for some deans and faculty to grasp the content of simulation courses because the cases they use for study have well-defined boundaries and the educational content is predict-

\(^{11}\) See, e.g., *MacCrate Report*, supra note 1, at 128 (SSV is to be used to “revis[e] . . . conventional courses and teaching methods to more systematically integrate the study of skills and values with the study of substantive law and theory”); *id.* at 330-32 (Recommendations C.4, 5, 6, 8, 12, 13).

\(^{12}\) For example, relatively few live-client clinicians were present at *The MacCrate Report: Building the Educational Continuum*, a national invitation-only conference held in Minneapolis-St. Paul from September 30 to October 2, 1993, sponsored by the American Bar Association, West Publishing Company and the University of Minnesota Law School. Of the 159 participants at the conference, approximately 17 were affiliated with clinical programs in law schools. Of those 17, eight were from the school where the conference was held—the University of Minnesota Law School. *MacCrate Report Conference Proceedings*, *supra* note 8, at x-xxi. It seems fair to infer that the participants roughly reflect the proportions of those who were invited to attend the conference.

able. The educational content of live-client clinics, on the other hand, is characterized by its creative chaos and lack of boundaries.

Rather than fight off simulation courses, however, teachers of live-client clinics should differentiate their teaching from that of simulations and then embrace them.14 How can we persuade our faculties and deans that simulations are not a less expensive alternative to live-client clinics for meeting the mandate of the MacCrate Report, but that law schools should have each type of program? Before we can do that, we need a better understanding than we have at present of the relative merits and uses of the two approaches.

Perhaps the most widespread simulation courses are in legal research and writing, appellate advocacy, interviewing and counseling, negotiation, alternative dispute resolution, and trial advocacy. Of the ten Fundamental Lawyering Skills analyzed by the MacCrate Report—problem solving, legal analysis and reasoning, legal research, factual investigation, oral and written communication skills, client counseling, negotiation, litigation and alternative dispute resolution procedures, organization and management of legal work, and recognizing and resolving ethical dilemmas15—parts of each may be learned well through simulation. In addition to subjects taught in the traditional manner, simulation courses provide the first steps in learning the range of necessary lawyering skills.

The key is that a third or fourth step is also needed, and that step is the live-client clinic. Clinics can integrate a foundation in the ten fundamental lawyering skills with instruction in advanced aspects of these skills, ethical judgment and values, the distribution of justice, and the lawyer’s pro bono obligation. Moreover, clinics allow students to use lawyering skills in a real-world context and to discover for themselves how they respond to the role of “lawyer”.

Some will still contend that there is not much that one can teach in live-client clinics that cannot be taught more efficiently— with less mess— in a simulation. Simulations have become increasingly sophisticated, and computer-based instruction promises further development of multi-layered hypotheticals. There are simulations that factor in cost considerations, ethical judgment, “difficult” clients and planned factual surprises. Simulated law firms using a wide range of hypothetical client problems are able to replicate office practice settings and court settings as well.

Yet there are subparts of the ten fundamental lawyering skills that are virtually impossible to teach through simulation. Who has

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14 There are schools where that is done, of course, or where simulations are solely or primarily taught in the live-client clinic(s).
15 MacCrate Report, supra note 1, at 138-207.
seen a simulation for effective client communication or fact investigation that approximated the complexities of those arts in the real world? What problem-solving simulation teaches “keeping the planning process open to new information and ideas” and to the constantly shifting aspects of the client’s situation?16 The importance and difficulty of good client communication, of thorough fact-gathering, of working with the client to identify and evaluate her options, of acknowledging ethical limitations when it would be easier and less painful to ignore them — these are the sorts of skills that may be outlined in simulation, but cannot really be grasped except in context. Among other things, in simulations everyone understands that the “client” or the “judge” or the “opposing counsel” is merely playacting a role for the purpose of educating the student.

One of the most important educational differences between simulations and representation of real clients lies in the moral depth that real situations present. In simulation courses, one may have responsibility for one’s student partners, or for one’s self, but the responsibility revolves around a grade in the course and the participants’ education. In clinics, one experiences a defining characteristic of lawyering — responsibility for another’s affairs.17 In clinics, that responsibility will likely revolve around clients’ homes, children, freedom, employment, income maintenance, medical care or physical security. Other persons’ dignity, trust for the legal system, and sometimes survival are in one’s hands. This has profound moral implications for every person who takes on that responsibility. Before graduating, every law student should have the opportunity both to study how they react to that responsibility and to reflect upon its meaning. The opportunities for moral education available in simulations are by definition much narrower than those available in clinics.

A fuller comparison of simulations with live-client education settings is beyond the scope of this paper. In a world of limited resources, legal educators who wish to implement the MacCrater Report’s SSV must analyze the content of their curricula and attempt to wring the greatest educational benefits from each kind of course that is offered. That entails thinking through the sequence of courses as well as their educational content. Pedagogically, it makes sense to

16 Id. at 147 (analysis of Skill of Problem-Solving, subpart 1.5).
17 See, e.g., James D. Fellers, Marvin S. Kayne, Bruce S. Rogow, Howard R. Sacks & Andrew S. Watson, Lawyers, Clients & Ethics (Murray Teigh Bloom, ed., 1974). See also MacCrater Report, supra note 1, at 203-207 (analysis of and commentary on the skill of recognizing and resolving ethical dilemmas, which requires a familiarity with the concept of law as an ethical profession, and which requires engagement at the level of conscience as well as through the professional rules); id. at 207-12 (analysis of and commentary on the value of providing competent representation).
proceed from more controlled and skeletal learning situations to the more unbounded and fully fleshed. In this writer’s opinion, effective and ethical lawyering is best learned when students first study basic lawyering skills through simulation courses and the traditional curriculum, and then situate and deepen their understanding by means of a live-client clinic setting.

c. **Build Coalitions Within the Law School.**

Clinicians need an integrated approach even as they argue the wisdom of a curriculum that integrates theory and practice, skills and values. Building coalitions within the faculty may seem more daunting than building coalitions in the surrounding neighborhood, but clinicians cannot hope for success in this work without such coalitions. Many faculty in the traditional curriculum already understand the limits of the Langdellian case method of instruction, and welcome educational experiments for their classrooms.\(^{18}\)

Clinicians should also go to the writing teachers and the librarians and learn what they are planning in response to the MacCrate Report. Research and writing teachers have a real stake in the use of the MacCrate Report within the law school curriculum. For example, the Report exhorts law schools to make further efforts “to teach writing at a better level than is now generally done.”\(^ {19}\) Law librarians, too, have an interest in keeping up with the uses of the Report in order to anticipate changes that will be needed in their collections and in their technology. Also, many librarians are involved in the teaching of research, and libraries are often the entry point for the skills-oriented computer assisted learning materials that are being developed. Librarians deserve more faculty attention — which they tend to get only when faculty need something — and generally will welcome inclusion in discussions of the educational program of the law school.

While attempting to build support within the law school, clinicians should keep in mind that a few of the traditional clinical teaching goals may distract some colleagues from the educational merit of clinical programs. Law clinics historically have been linked to social justice struggles and to poor people. Clinical programs often include in their goals teaching about all the people for whom justice is not a reality, teaching with an emphasis on law reform and social change, and teaching about lawyers’ responsibility for the results of their work. For those who may not be comfortable with these goals, it is

\(^{18}\) *Cf.* e.g., *MacCrate Report, supra* note 1, at 243 (“Other skills [than legal analysis and reasoning] and values described in the Statement require more versatile and extensive instruction than can be accomplished solely through the analysis of appellate cases.”).

\(^{19}\) *Id.* at 332 (Recommendation C.14).
important also to explain how effectively clinics teach ethical judgment, client communication, the integration of fact investigation with legal analysis, the *pro bono* obligation, and so forth.

We should not, however, overlook opportunities to educate skeptical colleagues about the pedagogical validity of teaching law students about social justice issues. The MacCrate Report helps in that it explicitly combines a discussion of values and justice training with skills training. In particular, the Report's Value § 2: Striving to Promote Justice, Fairness, and Morality and Value § 3: Striving to Improve the Profession should aid clinicians whose teaching goals embrace justice issues within skills training. What does promotion of justice, fairness and morality mean? How does the profession need to be improved? These important issues cannot be addressed adequately by merely offering more professional responsibility courses or improving future lawyers' understanding of business transactions. To appreciate the Report's Value § 2, students need to understand that the majority of the critical legal needs of the poor go unmet. Clinics provide an ideal vehicle for explicit discussions of class privilege as law students deal with indigent clients, and explicit discussions of race as students grapple with clients or decision-makers who are of a race other than their own. Respect for and sensitivity to difference, the extremity of the maldistribution of justice — these are among the things clinics can and must teach, whether termed skills or values, substance or procedure, theory or practice.

2. *Hiring.*

How can clinicians use the MacCrate Report in hiring? This is obviously an easier task when clinicians have a formal voice in hiring decisions. But even clinicians who do not have a voice or vote in hiring other faculty may prompt the faculty hiring committees to think about using the MacCrate Report.

First, law schools can assess faculty candidates on more than just their ability to produce doctrinal scholarship. Creation of the MacCrate Task Force was inspired, in part, by the perception of a growing disjunction between law school education and the needs of the practicing bar and judiciary. The legal academy is the subject of increas-

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21 For an incisive critique of law schools' penchant for hiring "top students... who have had no real-world legal experience," see Patricia Wald, *Teaching the Trade: An Appellate Judge's View of Practice-Oriented Legal Education*, 36 J. Legal Educ. 35, 44 (1986).

22 See MacCrate Report, *supra* note 1, at 3.
ing criticism for producing scholarship that is divorced from, and law graduates who lack an understanding of the needs of the profession. Most theory needs practice to test its merit.

Therefore, why not hire teachers who can help us meet the goals of the MacCrate Report as well as those who can produce traditional law review publications? The educational perspective of each newly hired faculty member is critical because few faculty members will be hired over the next 20 years. Each new faculty member needs to understand the worth of skills and values teaching.

Second, even apart from the question of what a new professor would teach, the Report can be used in the hiring process to appraise a candidate's likely teaching skills and ability to appreciate law school pedagogy. Prospects for teaching jobs can be given a copy of the Report in advance and then asked their thoughts about it. What does the candidate think a lawyer needs to learn in law school? How would the candidate teach the skill of ethical decision-making in addition to doctrine and analysis? What can the school learn about the candidate's own problem-solving skills? Has she or he pursued a largely vertical field of intellectual inquiry, or does her or his knowledge have some sweep, some integration?

By asking those questions, one can change, even if only incrementally, the tenor of the search. Some faculty prospects will have a brittle response, others will welcome the questions, and that will reveal something about each of them. Even the most traditional faculty member should notice the difference.

Then, after a new person is hired who values that teaching, clinicians can help that teacher discover that the clinic is a place filled with sharing and good spirits. It helps the clinic's long-range plan if new teachers find out that the clinic is a place where staff and professors and students work collaboratively to solve interesting problems, and where people are grounded in their work by contact with real-life problems. And though new faculty may still be reluctant to teach a clinical course until after they get tenure, the goal over time is to draw them to the clinic. Clinicians should assure new teachers that they will get help — if they want it — every step along the way when they teach a clinical course. Even if new colleagues continue to decline to

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24 My clinical colleague, Peter Knapp, calls it "modelling the joyful practice of law."
teach in the clinic, they will have learned a little more about our methods and values.

C. Support and Advocacy from Outside the Law Schools: Bar Examiners, the Bar and Alumni/ae.

Some non-clinical faculty, perhaps especially those who have little practice experience, are unaware of the importance of what clinics teach. They may be unable to appreciate why it is worth their time to engage in a dialogue that would enlighten them as to the importance of the clinical endeavor and its theoretical aspects. At schools where faculty and the dean do not yet acknowledge the worth of clinical teaching, clinicians are likely to need outside help. There are three sources of outside influence available to clinical teachers and proponents of clinical teaching: bar examiners, the state bar associations, and alumnae and alumni.

State bar examiners may soon pressure schools to increase skills training in the wake of the MacCrate Report. There are at least three jurisdictions that are now examining bar applicants in practice skills.25 The National Conference of Bar Examiners is considering whether to develop a performance test for national use. There also have been discussions of reducing or eliminating the bar exam and emulating Canada's practice of several months of bridge-the-gap intensive skills training following law school and preceding admission to the bar.26

Thus, there is obviously increased interest in examining or otherwise training new law graduates in practice skills. The MacCrate Report recommends that licensing authorities revisit their requirements and consider examining for practice skills.27 Such a change in bar exams would push even the most reluctant law schools to orient more of their offerings toward practice.

Clinicians need to work with their state bar examiners and influence their decisions. Bar examiners will listen with interest to clinicians, even when deans and faculty may be reluctant or even unwilling to do so.Clinicians should find out what the state's bar examiners are

25 Those states are California, Alaska and Colorado. See MacCrate Report, supra note 1, at 280-82.

26 The MacCrate Report expressly considers "transition education programs" and recommends, among other things, that sponsors of these programs study the programs in the State of Washington and in Commonwealth countries. Id. at 335 (Recommendations D.6, 7, 8, 9, 10); id. at 405-411 (Appendix E, Practical Skills Training in Commonwealth Jurisdictions).

27 Id. at 334 (Recommendations D.2. & D.3.). See also Erica Moeser, At the Gap: Bar Admission Issues That Are Relevant to the MacCrate Discussion, in MACCRATE REPORT CONFERENCE PROCEEDINGS, supra note 8, at 83.
thinking, and set up meetings with state bar presidents. The bar examiners may be under pressure from the local bar to change the bar exam in order to test more effectively for lawyering competence.

The practicing bar is a powerful potential ally for increasing lawyering skills training in the law schools. What are the practicing bar’s interests in the implementation of the MacCrate Report? They are manifold and a full discussion of them is beyond the scope of this paper. Briefly, the practicing bar wants to be able to hire law school graduates who already have some competence in the practice of law. A competitive market has increased pressure to not charge clients for time spent in training new associates. For example, clients will no longer automatically pay for a senior and a junior attorney to attend a deposition if one attorney will do. It is in the practicing bar’s interest for the law schools to train students in client communication, negotiation, fact investigation, theory development, and so forth. In this manner, the students and law schools will share the cost of the training with the law firms and their clients. Better training in lawyering skills also is likely to reduce consumer complaints to the disciplinary divisions of the state bars.

Finally, clinicians should recruit development officers and alumnae offices as allies. Development officers’ jobs of raising money and communicating with alumnae require that they be in touch with the practicing bar. Clinicians should talk with them about reaching people who prefer to give money for concrete social justice or legal education reform projects — i.e., for the law school clinic and lawyering skills training — as contrasted with donors who give money to create named chairs or “bricks and mortar.” Development officers, if they understand the potential impact of the MacCrate Report, will have good ideas about how to direct more resources to the clinic. Their

28 Many state bar associations have had, or are planning, conclaves to respond to the MacCrate Report. The Clinical Legal Education Section of the Association of American Law Schools and the Clinical Legal Education Association (CLEA) are encouraging and coordinating clinical teacher input into those conclaves. See CLEA NEWSLETTER (Sept., 1994) at 9.

29 See Linda L. McDonald, Legal Education and the Practicing Bar: A Partnership of Reality, in MacCrate Report Conference Proceedings, supra note 8, at 105-110 (describing the partnership between the State Bar of New Mexico and the state’s only law school in helping law graduates make the transition from law school to practice).

30 See Diane C. Yu, The Role of the Bar Association, MacCrate Report Conference Proceedings, supra note 8, at 111-115 (describing the involvement of the State Bar of California in promoting the teaching of skills and values as motivated in part by the desire to eliminate the problems that give rise to client complaints against their lawyers).

31 There is some evidence that women in particular give money to their former schools in order to produce change. See Liz McMillen, College Fund Raisers See Their Alumnae as Untapped Donors, The Chronicle of Higher Education, April 1, 1992; Fox Butterfield, As for That Myth About How Much Alumnae Give, N.Y. Times, Feb. 26, 1992.
offices may be more effective than clinic teachers in inspiring deans and faculty to embrace the promise of the Report.

CONCLUSION

Critics of the MacCrate Report have been quick to point out that previous Reports of this sort (the 1979 Cramton Report and the 1921 Reed Report) have come and gone without making much of a change in legal education. The MacCrate Report may indeed meet that same fate, but this can be avoided. One of the key factors that will make a difference is if legal educators concerned with preparing students for practice — clinical teachers leading the way — make use of this window of opportunity to change legal education. The Report is ready and waiting to give a boost to the ongoing work of making law school teaching more congruent with the needs of clients, students, practicing lawyers, and the public.

Strategies for negotiation for educational change, of course, must be tailored to each negotiation's context. Each law school has its own history, mix of faculty and other teachers, places where its graduates tend to practice, and geographic location. This essay is not intended as a blueprint, but only as a sketch for clinicians and proponents of skills training who are negotiating for changes along the lines suggested by the MacCrate Report.

That work is important: The shape of the legal system and of the law itself are at stake. For the real life practice of law makes a deep mark upon its "substance."

32 See e.g., Costonis, supra note 9, at 162-64; Loh, supra note 6, at 507 n. 5.
33 Wald, supra note 21, at 44.