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"Skilling" Time

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Abstract

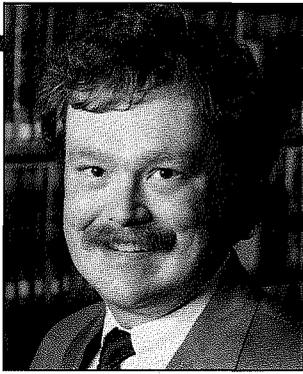
This article describes disagreements about the "MacCrate Report" on skills education for law students, as well as the connections between the Report's recommendations and legal education at William Mitchell College of Law. The final commentary focuses on what William Mitchell can do to further ensure that teaching prepares students for the learning they will have to do when they begin working as lawyers.

Keywords

MacCrate Report, legal education, legal curriculum, William Mitchell College of Law, law school, legal practice, legal instruction, legal practicum, legal clinics

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'SKILLING' TIME

By Peter B. Knapp

Every January hundreds of law school professors and deans gather for the annual meeting of the Association of American Law Schools—a prospect some outsiders must find downright scary in itself. Inevitably, there's some new controversy to capture the attention of the conventioners. This year's meeting in San Francisco was no exception. Disagreement over the "MacCrate Report" on skills education for law students and lawyers diverted attention even from such hardy perennials as the disputes over the meaning of justice or the meaning of Justice Antonin Scalia of the U.S. Supreme Court.

The MacCrate Report, titled "Legal Education and Professional Development—An Educational Continuum," was published nearly a year ago, so it's not exactly hot off the press. But it's some 400 pages and thus has required time to read and digest.

There have been other blue ribbon reports on teaching and acquiring lawyering skills, but the MacCrate Report takes a new approach. Rather than starting with law-school education, it looks first to *practice*, asking what skills and values new lawyers need in a variety of practice settings. It then examines where those skills can best be taught, scrutinizing professional development during law school, in the transition from student to practitioner, and in practice.

The report created controversy for at least three reasons. First, it raises the old issue of whether law school should be a place for studying an academic science

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or training lawyers.

The MacCrate Report caricatures the traditional law school myopia: "We teach them how to think, we're not trade schools, we're centers of scholarship and learning, practice is best taught by practitioners."

Evenhandedly, it caricatures the practitioners' time-honored response: "They can't draft a contract, they can't write, they've never seen a summons, the professors have never been inside a courtroom."

The MacCrate Report raises the old issue of whether law school should be a place for studying an academic science or training lawyers.

The report calls for strong, well-regulated clinic and skills programs, but tries to find the middle ground. It emphasizes that many lawyering skills can be taught in the traditional classroom.

Second, the report calls for creating an "American Institute for the Practice of Law"—although it's not very specific about what the institute would do. It suggests that the institute could conduct research on practice skills and sponsor continuing legal education (CLE) programs.

With many states mandating CLE—and, in some states, specifically *skills* CLE—educational programs for the practicing bar have become big business. Some law schools use CLE programs to

generate revenue and may view the institute as an unwelcome poacher on their territory.

Third, the report offers many specific recommendations for development of law-school education. Some would not raise an eyebrow of the most dyed-in-the-wool traditionalist. Example: "Law schools should continue to emphasize the teaching of the skills of 'legal analysis and reasoning.'" Far more controversial are such recommendations as: "Law schools should assign primary responsibility for instruction in professional skills and values to permanent full-time faculty" and "Law schools through well-structured clinical programs should help students understand the importance of the skill of 'organization and management of legal work.'"

For some traditional law schools, implementing the latter recommendations would be not only difficult and controversial but also expensive. Faculties and administrations at some of the more traditional law schools have complained that the MacCrate Report is trying to "micromanage" legal education.

At William Mitchell College of Law, reaction to the MacCrate Report has been one of some accomplishment rather than a fear of the future. The college has a long-standing commitment to teaching more than case analysis in the classroom. Several of our traditional "doctrinal" courses, for example, evidence and business organizations, emphasize problem-solving skills. In others, students complete writing and research assignments, conduct simulated client interviews, draft legislation, and hone other practical skills.

In the clinical and skills area, William Mitchell has a 20-year head start on many law schools. Nearly half the full-time faculty have taught in the clinic and

skills area. The college has a half-dozen courses in which students represent real clients in civil and criminal litigation, criminal appeals, and business matters. Another eight courses each semester place dozens of students in "externships" with judges and practicing lawyers.

The college's six-credit legal writing course is a required part of every student's first-year education. In addition to a two-credit required course in trial advocacy, the college teaches a variety of other practical skills in simulated settings in such courses as litigation skills, client interviewing, counseling, drafting, negotiation, and mediation.

The clinic and skills courses not only give students a chance to develop their lawyering skills, they also give them an opportunity to have those skills critiqued by members of the local bench and bar.

William Mitchell's faculty, after lengthy study and discussion, recently approved major changes in the college's curriculum requirements. Although the total number of required courses is reduced, the amount of skills training required of each student is increased—to 11 of 45 credits in required courses.

Each student will continue to take a six-credit legal writing course in the first year. Students also will be required to take an expanded three-credit course in basic lawyering skills, as well as an additional two credits of skills, writing, or clinical training.

According to the MacCrate Report, "practicing lawyers believe that their law school training left them deficient in

skills that they were forced to acquire after graduation." Realistically, that will always be true. Clinic and skills courses can help, but there are pressures in practice that law schools can't—and probably shouldn't—try to simulate. We should, however, give our graduates the tools they will need to acquire those skills. To do that, we faculty members must constantly work to improve our understanding of the needs of the practice.

"Every new lawyer says, 'I wish law school had taught me—' We need to learn how they finish that sentence."

It is easy for law professors to lose sight of the realities of practice. It is no surprise to read in the MacCrate Report that "practitioners tend to view much academic scholarship as increasingly irrelevant to their day-to-day concerns." If law schools cannot learn to be more attentive to these everyday concerns of the practice, their graduates will come to believe that legal education is increasingly irrelevant. The MacCrate Report recommends that law school faculty keep in touch with the practice through participation in bar-association and continuing-education programs. William Mitchell faculty have a good record in that regard, but talking to lawyers about

the law is not enough. We need to listen to what the practicing bar has to say about *legal education*.

The college is well-positioned to do that. Our adjunct faculty are a natural bridge between the practice and the classroom. Starting this fall, full-time and adjunct faculty who teach in the same field will meet regularly to talk about course content. It is an important first step, but more needs to be done. We've long asked our students for evaluations at the end of each course. We should ask our graduates for evaluations of their education at the end of two years of practice. We also should ask for evaluations from the lawyers who mentor our graduates and continue the training process. Every new lawyer says, "I wish law school had taught me—" We need to learn how they finish that sentence.

The MacCrate Report sends us two critical messages. It is a wake-up call for those of us working in law schools. Law schools and the practicing bar need to work together to train lawyers. We have to make sure that our teaching prepares students for the learning they will have to do when they begin working as lawyers. Those of us who work at the front end of the training process need to do a better job of listening to what lawyers have to say about the skills and abilities the practice demands.

The second message, equally important, is a needed reminder that, as the late Yale law professor Arthur Leff wrote: "Ultimately, the law is not something that we know, but something we do."



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