

Journal of Civil Rights and Economic Development

Volume 15
Issue 3 *Volume 15, Spring 2001, Issue 3*

Article 11

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CLOSING REMARKS

MARILYN V. YARBROUGH*

For those of you who do not know, let me just say a few words about the MacCrate Commission.¹ The MacCrate Commission was headed by Robert MacCrate² from Sullivan & Cromwell³ a number of years ago and it was composed of judges, legal educators, practicing attorneys and we were charged with developing a continuum of legal education that was actually pre-law through the end of a legal career. So not just looking at what should happen in law schools, but what should happen in the first years of one being a member of the Bar throughout one's legal career.

The statement of skills and values, and these are the skills that we talked about, there is a part of a chapter on legal education and reports indicate those things that lawyers should have at least some training in, I should not say mastery, but some competence for that

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¹ See James L. Baillie & Judith Bernstein-Baker, *In the Spirit of Public Service: Model Rule 6.1, The Profession and Legal Education*, 13 LAW & INEQ. 51, 72 (1994) (finding mission of Commission was to study "believed" gap between practicing law and law schools); H. Lee Hetherington, *Negotiating Lessons from Iran: Synthesizing Langdell & MacCrate*, 44 CATH. U. L. REV. 675, 678 (1995) (understanding that one of Commission's most important goals was to make recommendations on how legal profession could partake in education and training of future lawyers). See generally Hon. Alva Hugh Maddox, *Lawyers: The Aristocracy of Democracy or "Skunks, Snakes, and Sharks?"*, 29 CUMB. L. REV. 323, 337 (1998/1999) (asserting that American Bar Association established commission in 1989).

² See Wendy Davis, *ABA Emphatically Rejects MDPs*, NAT'L L.J., July 24, 2000, at A5 (noting that Mr. MacCrate was "committee head and former ABA and State Bar president"); Geanne Rosenberg, *Big Five Affiliates Pan ABA Plan to Restrict MDPs*, N.J. L.J., Aug. 7, 2000 (recognizing that Mr. MacCrate is "chair of New York State Bar's Committee on Law Governing Firm Structure and Operation"); Christopher Weems, *ABA Disapproves MDPs*, TR., Sept. 1, 2000, at 88 (mentioning that Mr. MacCrate is counsel at Sullivan & Cromwell in New York).

³ See Alison Frankel, *At Least 20 American Law Firms Now Have More Than 10 Percent of Their Lawyers Stationed in Overseas Offices*, N.J. L.J., Nov. 6, 2000 (asserting that Sullivan & Cromwell has well established practice in "representing foreign governments that issue securities for state-owned enterprises"); *Honors*, CHI. DAILY L. BULL., Feb. 11, 2000, at 3 (acknowledging that Sullivan & Cromwell's London based office received top honors based on criteria such as client recommendations, deals and achievements); *Merger Activity at Record Levels in 1995*, PR NEWSWIRE, Dec. 29, 1995 (establishing Sullivan & Cromwell as ranking third among legal advisors for 1995).

attorney attempting to represent a client without supervision. That meant that if a person were to hang out a shingle, they should at least be conversant and somewhat proficient with regard to each of these skills. Also, the notion exists that throughout one's career, more development of these particular skills would occur.

Although I ended up authoring that Chapter 7 in the MacCrate Commission Report,⁴ there was a subcommittee that hashed over these skills and values. Probably all of your professors have copies of the MacCrate report. West Publishing,⁵ just after it was out, reprinted just Chapter 7 with an introduction and conclusion⁶ and gave copies to each of the law schools to distribute to their students so they would have an idea of what types of things they should be knowledgeable about by the time they left law school. The three panelists are in a unique position to judge whether or not we are accomplishing the goals of the MacCrate report. That is a debate that has been going on around the country now for eight years and I suggest that you consult the report in order to reach your own conclusions and devise your own grades. Something that I commend to your reading so that you can, in fact, give your own grades.

Before I open this up to questions, let me remind you that you have the questions at the beginning of the section on this panel. You have them in the brochure as well. I think each of them have been

⁴ See Alan M. Lerner, *Law & Lawyering in the Work Place: Building Better Lawyers by Teaching Students to Exercise Critical Judgment as Creative Problem Solver*, 32 AKRON L. REV. 107, 132 (1999) (finding negotiation to be one of ten necessary lawyering skills); Maddox, *supra* note 1, at 337 (focusing on law schools' role in developing law students for legal careers); Steven Zeidman, *Sacrificial Lambs or the Chosen Few?: The Impact of Student Defenders on the Rights of the Accused*, 62 BROOK. L. REV. 853, 887 (1996) (reviewing data that addressed skills that are essential for sufficient legal practice).

⁵ See Mary Lyons, *Creative Capital*, STAR TRIB., Oct. 22, 2000, at 9D (noting that West Publishing is known as "leader in small-press world"); *West Group Technology Showcased by Microsoft Chairman and Chief Software Architect Bill Gates at Comdex*, PR NEWSWIRE, Nov. 13, 2000 (noting formation of West Group from merger of West Publishing and Thomson Legal Publishing). See generally Symposium, *Civic Education: Recent History, Current Status, and the Future*, 62 ALA. L. REV. 1425, 1443 (1999) (noting that West Publishing published educational materials that attempted to empower individuals through law-related education).

⁶ See *A Student Edition of the MacCrate Report Released*, ILL. LEGAL TIMES, Dec. 1993, at 18 (identifying student edition of MacCrate Report that will aid students in their legal profession). See generally Andrea L. Johnson, *Distance Learning and Technology in Legal Education: A 21st Century Experiment*, 7 ALB. L.J. SCI. & TECH. 213, 230 (1997) (recognizing that MacCrate Report calls for law schools to offer more hands-on, practical course work); Laurie A. Morin, *Reflections on Teaching Law as Right Livelihood: Cultivating Ethics, Professionalism, and Commitment to Public Service from the Inside Out*, 35 TULSA L.J. 227, 239 (2000) (finding that MacCrate Report calls on law schools to promote fundamental values in their students that are essential to profession).

addressed. Are we graduating lawyers who prepare to serve the needs of the profession and society, we have heard a yes, for the most part, especially with regard to skills and knowledge. Maybe we could do a little more especially when we talk about things like advocacy for the needs of the poor.

Some examples of legal reform, whether we are talking about correcting some of the systems that are not quite where we want them to be or helping people negotiate systems such as immigration laws.

The second question was, what has been the effect or impact of the increased emphasis on skills training and legal education. You have seen the grades. You have heard some other discussion about this increased emphasis. Judge Weinstein said it was useful, but marginal. We can come back to that too.

What role does legal scholarship have with respect to judicial decision-making. You remember Professor Elson said this morning that the question whether or not...to say without speculation, whether legal scholarship has any legal affect on the legal profession, the legal system, judicial decision-making.⁷ We have heard an emphatic yes at least from one side of the panel and I think some agreement from others on the panel as well.

Our fourth question, does the law school curriculum over-emphasize the role of courts in the development of law? As Judge said, what are we supposed to say, what are the judges supposed to say? Yes, that is the central part of it but no, I think that as we heard from our last speaker, the critics of that so-called over-emphasis may not be as convergent as with what is going on in law schools today as one should be.

⁷ See *Ethics Forum*, PA. L. WKLY., Sept. 18, 2000, at 4 (asserting that judge's case load can diminish time spent on judicial scholarship); Ugo Mattei, *An Opportunity Not to Be Missed: The Future of Comparative Law in the United States*, 46 AM. J. COMP. L. 709, 714 (1998) (finding effect on quality and quantity of scholarly production when legal scholar devotes majority of her time to practicing law); see also David A. Rier, *The Future of Legal Scholarship and Scholarly Communications: Publication in the Age of Cyberspace*, 30 AKRON L. REV. 183, 198-99 (1996) (quoting Hibbitts who states that through hypertext individuals involved in legal system can be "heard for themselves in legal scholarship, instead of being (re)presented and (mis)understood through filters of words written on page").

