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The MacCrate Report: Ten Years Later-Symposium: Opening Remarks

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Opening Remarks

by Gary A. Munneke*

Thank you Kevin, and I thank all of you for joining us this morning. I look forward to a stimulating day discussing a topic that has been on my mind in one form or another over most of the last quarter of a century: how do we train and educate competent, qualified lawyers who can provide services in a way the public needs and wants?

In 1992, the American Bar Association's MacCrate Task Force issued a report that described a set of fundamental lawyering skills and values.¹ This report was circulated widely among practitioners, the judiciary and educators. In a way, it has been a mixed blessing for those of us in legal education, because the report has done wonders in pushing law schools to offer clinical and skills courses; I doubt whether there is a law school in the United States today that does not have more of these courses than it did in 1992, when the report was released. On the other hand, the report has had relatively little impact outside the clinical field.

When I became involved in this project, one of the first things I did was to ask the Law Review staff to collect all of the literature that had been written on professional skills. I was amazed to see that perhaps 99.9% of it had been written by clinicians, who already were teaching professional skills. It struck

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1. A.B.A., *LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP* (1992) [hereinafter MacCrate Report].

me that the MacCrate Report has become the Magna Carta² for clinicians. The Magna Carta, of course, was signed by the King of England, under pressure from the nobles to grant them basic rights.³ The barons, in later years, would wave the Magna Carta whenever the King encroached too much on their prerogatives. In a way, the clinicians have used the MacCrate Report to say to our modern day kings, the deans, that they need more support for clinics, a strategy that for the most part has worked.

Interestingly, there is hardly any scholarship, and very little discussion, about the MacCrate Report outside of the clinical and skills programs in the traditional segments of legal education. I am not a clinician, although in the past I have taught courses in interviewing and counseling, and negotiations. I teach Law Practice Management and Professional Responsibility, which address professional skills and values; but I teach Torts as well, and my Torts colleagues, like teachers in other traditional subjects, really do not focus on these issues very much. So, one of the things I wanted to do with this symposium was to pull together a different set of speakers and a different group of people, other than those who have been discussing professional skills and values for the past decade. I tried to identify people who were not just teaching in clinics or skills, to bring in some new perspectives. If you look at the agenda for this symposium you will see that the speakers today come from a wide range of places, they have different perspectives, and, yet, they are all interested in skills and values.

I use the term "Skills and Values" deliberately. When we first started planning the symposium, we focused primarily on skills, but not values. One of the first people I talked to was Bob MacCrate, a senior partner at Sullivan & Cromwell, past President of the American Bar Association, and most importantly, chair of the Task Force that drafted the report that carries his name. In addition, Bob MacCrate chaired a New York State Bar Association Task Force (New York MacCrate Report) that looked into the issue of multidisciplinary practice, and in

2. See MAGNA CARTA (1215), available at <http://www.cs.indiana.edu/statecraft/magna-carta.html> (last visited Dec. 29, 2003).

3. See generally WILLIAM F. SWINDLER, MAGNA CARTA: LEGENDS AND LEGACY (1965).

that report he returned to the subject of professional values.⁴ The New York MacCrate Report used the concept of core values of the profession as a basis for opposing an extension of multidisciplinary practice in the legal profession.⁵ When I spoke to Bob, he said that one of the first things he would want to see in a conference on the 1992 Report would be a discussion of values in addition to skills.⁶ While skills have been discussed considerably in the literature of the profession, values have been given less attention. So, at Bob's suggestion, we incorporated values and skills into this symposium.

Little by little the ideas came together. My ultimate goal in this whole undertaking is to put together a collection of articles, written by a variety of different commentators with different backgrounds, which raises again the issues that the MacCrate Report talked about in 1992. As Kevin suggested, much has happened in the profession over the past decade. Anyone who is in the practice of law will tell you that legal work today is different from what it was in 1992. Society is different. Technology is different. Clients are different. Lawyers are different. Given these differences, it is appropriate to look back on the 1992 Report, and ask: Given all of these changes, are the skills and values necessary to competent law practice the same as they were then, or have they metamorphosed into something new? If they are the same, how are we doing in terms of preparing people to practice law with those skills and values? If they have changed, how have they changed? How well are we doing teaching these new skills, and have we accommodated emerging professional values?

It is appropriate to review the 1992 MacCrate Report to assess its impact looking back across the years. There have been movies that I watched ten years ago, which were very popular at the time, but if I went back to view them today, they would

4. N.Y.S.B.A., PRESERVING THE CORE VALUES OF THE AMERICAN LEGAL PROFESSION: THE PLACE OF MULTIDISCIPLINARY PRACTICE IN THE LAW GOVERNING LAWYERS, REPORT OF THE NEW YORK STATE BAR ASSOCIATION SPECIAL COMMITTEE ON THE LAW GOVERNING FIRM STRUCTURE AND OPERATION (2000), available at <http://www.law.cornell.edu/ethics/mdp.htm> (last visited Dec. 26, 2003).

5. *See id.*

6. Interview with Robert MacCrate, Senior Partner, Sullivan & Cromwell, during the American Bar Association Midyear Meeting, in Philadelphia, PA. (Feb. 4, 2002).

seem dated and even corny. Other films of the same era, however, I could go back and watch a hundred times. Last week, as I was flipping through the channels, I caught *Casablanca*, which I watched for about the fortieth time, and it is as current now as it was the first time.

In the literature of the legal profession, modern scholars should go back and look at the icons of our faith, and examine them critically. The *Pace Law Review* wanted to bring together people who could look at the MacCrate Report critically, who were not tied to any particular position, people who would think independently, and say what they thought. I believe that we certainly found panelists today who would do just that.

The other thing we did in planning this program was to try to create more than an educational program; we wanted to create a dialogue among people who could share their own thoughts with the presenters. Thus, this symposium was an invitational event. We identified people who had written on professional skills and values, people who taught in the areas of professional skills and values, not just in clinics, but legal writing, law practice management, legal technology, interviewing and counseling, trial and appellate advocacy, and practitioners. The objective was to find people who would be interested in this particular topic, and who could help to generate the ideas that would lead us into the next century.

My personal goal, and I think the goal of the *Law Review*, is to produce a symposium issue that will, in its own way, reflect some of the timelessness of the 1992 MacCrate Report.⁷ There have been a number of programs on the tenth anniversary of the MacCrate Report, but I think that this is the first law review symposium. A symposium produces intellectual scholarly papers, which will be circulated among the legal community, and hopefully generate continuing dialogue. I am convinced that this symposium issue will act as a catalyst for ongoing debate on skills and values in legal education over the course of the next decade.

7. See generally MacCrate Report, *supra* note 1.