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From 10 to 20: A Guide to Utilizing the MacCrate Report Over the Next Decade

by Russell Engler*

I. Introduction

Ten years ago, the MacCrate Report focused attention nationally on the need to enhance our teaching in the areas of skills and values in order to produce competent and ethical lawyers.¹ Regardless of whether many in the world of legal education have moved beyond the MacCrate Report, the primary goal of producing competent and ethical lawyers remains as important today as it was a decade ago. The ten-year anniversary of the Report provides an opportunity to assess the current status of our efforts to teach skills and values and to develop strategies for filling gaps that we identify.

This article provides a roadmap for us to do so. The MacCrate Report reminded us that legal education and professional development occur on a professional continuum, involving not simply the law schools, but the practicing bar as well.² Nonetheless, since the law schools are in the business of legal education, it falls on those of us in the law schools to remain in the forefront of the efforts to assess and reassess whether we are properly preparing law school graduates to participate effectively and responsibly in the legal profession.³

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

2. See, e.g., MacCrate Report, *supra* note 1, at 3.

3. ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS, Standard 301(a) (2001) [hereinafter ABA STANDARDS].

Figuring out how to begin the process of assessment may seem so daunting that it derails the endeavor before it begins.⁴ Recognizing that danger, this article is prepared as a guide for busy faculty members facing typical pressures of our teaching, scholarship, service and law school governance. The article is designed to enable those committed to enhancing skills and values instruction at their law schools to begin the process of assessment and programmatic development. It offers specific strategies, opting for lists and brief explanations over grand theory and extensive prose.

Part Two describes a general approach to assessing our current efforts to teach skills and values and developing strategies for filling the gaps we identify. The first section of Part Two revisits five primary tools for assessing the impact of the MacCrate Report at individual law schools, which I developed in an earlier article.⁵ The second section provides more detailed questions and objective measures that may be used to refine the initial assessment tools. The third section describes the need to use the assessment tools as a backdrop for the more fundamental objective of identifying gaps in our teaching of skills and values. Part Two concludes by suggesting a process for identifying strategies for filling the gaps, which includes sharing the information from our individual schools and positioning ourselves in turn to receive information about what has worked at other law schools.

Part Three turns to the example of a particular gap at an individual law school, demonstrating the utility of the assessment tools presented in Part Two for identifying important gaps to be filled. Using New England School of Law in Boston (New England), where I teach, this part focuses on the set of values that relate to "Pursuing Equal Justice" and describes recent efforts to build a lasting public service community at the law school. The tools of assessment have been helpful to those efforts, revealing gaps at New England. In response, we have begun a series of concrete steps to develop a coherent program to

4. "[B]usy faculty members are unlikely to set aside the time to study assessment." GREGORY S. MUNRO, *OUTCOMES ASSESSMENT FOR LAW SCHOOLS* 85-86 (Institute for Law School Teaching ed., 2000).

5. See Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, 8 CLINICAL L. REV. 109 (2001).

fill those gaps. Since the initiative remains a work-in-progress, the section ends with a discussion of some of the challenges that lie ahead. By illustrating the importance of using a systematic approach to produce a coherent program to fill an identified gap, Part Three serves not simply as an example for those seeking a program for "Pursuing Equal Justice," but also for those seeking an approach to identifying and filling gaps generally.

While this article stands as a self-sufficient document, my earlier article marking the tenth anniversary of the MacCrate Report serves as one backdrop.⁶ That article began by providing a summary of the MacCrate Report, the activity in the world of legal education after the Report's publication, and the scholarly debate that accompanied that activity.⁷ The article described the curricular changes at New England that occurred in the years following the MacCrate Report's publication, as well as the process that led to the changes.⁸ It included a discussion of assessment, proposed tools for assessment and, in light of the tools, drew conclusions about the impact of the Report at New England. Finally, the article turned to the national stage, in an effort to draw conclusions about the Report's impact nationally.⁹ The article concluded by examining a series of questions relevant to the development of coherent skills and values programs in light of the scholarship published and initiatives undertaken since the publication of the MacCrate Report.¹⁰

6. *Id.*

7. *Id.* at 113-24.

8. *Id.* at 124-38.

9. *Id.* at 138-49.

10. See Engler, *supra* note 5, at 149-68.

In light of the scholarship on learning theory, Part III explores choices involving higher and lower credit programs, full-year and one-semester programs, programs that depend on careful sequencing versus programs that do not, and programs beginning in the first year versus programs focusing on the upper-level classes. Building on this analysis, Part III shifts to the debate regarding the relative merits of in-house clinics versus externship programs and the resulting implications for an overall skills and values program. Finally, recognizing that recent initiatives regarding pro bono programs and "Pursuing Equal Justice" reflected ongoing gaps in the teaching of particular values identified by the MacCrate Report, Part III ends with a discussion of strategies for filling those gaps.

Id. at 112 (citations omitted).

The MacCrate Report itself also serves as a backdrop. Throughout this article, I return to the MacCrate Report for its conclusions, recommendations and methodology.¹¹ The authors of the Report have provided a goldmine for those of us determined to maintain our law school's focus on the fundamental mission of providing our students with appropriate instruction in the skills and values necessary to the practice of law and the development of lawyers. As we strive to assess the effectiveness of our efforts, we should not forget the importance of the MacCrate Report as a tool for its recommendations and methodologies.

II. Approaching the Next Ten Years

A. *Identifying Tools for Assessment*

It is one thing to note that the ten-year anniversary of the Report provides an opportunity to assess the current status of our efforts to teach skills and values, and to develop strategies for filling gaps that we identify. It is another thing to figure out how to do so. This part discusses specific strategies for utilizing the MacCrate Report over the next ten years in an effort to reinvigorate an examination of our teaching of skills and values at our various law schools.

As a threshold step we should assess, both at our individual law schools and nationally, what we believe the impact of the MacCrate Report was. A tremendous amount of energy was committed to the writing, publication and implementation of the MacCrate Report in the 1990s.¹² As we enter the second decade since the Report's publication, we would be remiss if we did not ask the question: "What was the impact of the MacCrate Report at each of our schools, and nationally?" That inquiry requires us also to ask: "On what would we base that assessment?"¹³

11. "Embodied in the *MacCrate Report* are strong underpinnings for a program of assessment in American law schools." MUNRO, *supra* note 4, at 28.

12. For a summary of the activity during this period, see Engler, *supra* note 5, at 113-24.

13. These questions focus on the law schools because law schools are in the business of legal education and must remain in the forefront of assessment efforts. The questions may be a useful starting point, with appropriate tailoring, for others

Any effort to assess change in law schools, however, will be hampered by our profession's historical inability or refusal to settle upon objective standards to measure the effectiveness of our teaching.¹⁴ As Professor Gregory Munro has recently observed, "[t]here is little evidence that legal educators in this century have thought seriously about outcomes."¹⁵ The failure of the profession to settle on standards, or develop reliable methods of assessment, has persisted despite repeated demands for accountability in legal education.¹⁶ The absence of standards deprives us of both a means to assess our current teaching and a baseline from which to measure any changes that have occurred.

The calls for accountability in legal education have increased in recent years, as part of a broader movement in higher education.¹⁷ Professor Munro's recent volume, *Outcomes Assessment for Law Schools*, is an important resource replete not only with explanations as to why assessment is important, but also tools as to how to do assessment.¹⁸ In a similar vein, the Clinical Legal Education Association (CLEA) is in the midst of a "Best Practices Project," the overall objective of which "is to identify best practices for preparing new lawyers for law practice."¹⁹ Both projects share the goal of pushing those in legal

in the education continuum, such as bar leaders, directors of continuing legal education programs and bar examiners.

14. "Assessment, as defined for purposes of improving student learning and enhancing institutional effectiveness, is woefully inadequate in law schools." MUNRO, *supra* note 4, at 33.

15. *Id.* at 50. For a discussion of the lack of outcomes assessment in American law schools and a discussion of the need for assessment programs, see *id.* at 33-64.

16. For a discussion of the call for accountability in legal education, and past efforts to demand accountability, see *id.* at 25-29.

17. *Id.* at 21.

18. See MUNRO, *supra* note 4. The 246-page volume is divided into five parts: 1) What is Assessment? *Id.* at 1-29; 2) Why Do Assessment in Law School? *Id.* at 31-64; 3) How to Do Assessment, *id.* at 65-127; 4) The Assessment-Centered Course, *id.* at 129-51; and 5) Making Assessment a Reality in Legal Education, MUNRO, *supra* note 4, at 153-71, along with roughly seventy pages of Appendices. The final appendix provides "Resources for an Assessment Library," *id.* app. H at 245-46. For a different version of Professor Munro's ideas, see Gregory S. Munro, *How Do We Know If We Are Achieving Our Goals?: Strategies for Assessing the Outcome of Curricular Innovation*, J. ASS'N LEGAL WRITING DIRECTORS, Oct. 2002, at 229 [hereinafter *How Do We Know?*].

19. CLINICAL LEGAL EDUCATORS ASSOCIATION, BEST PRACTICES OF LAW SCHOOLS FOR PREPARING STUDENTS TO PRACTICE LAW, at <http://professional->

education to decide and articulate their mission and intended outcomes, while developing techniques for measuring the results to insure that the programs are effective.²⁰

At this juncture, however, we remain without widely accepted standards, hindering not only our ability to assess our current effectiveness but to assess change caused by the MacCrate Report. That reality makes it more important that we try to assess the impact of the Report at our law schools. The process will be an important step in the effort to identify gaps in our teaching of skills and values and also in the broader assessment effort at our law schools. Professor Munro, and the authors of the *Best Practices Project*, rely in critical points on the MacCrate Report as a potential source of standards, and as an important tool in assessment.²¹ Rather than wait for agreement on the appropriate standards to use, a questionable strategy given the historical inability of legal educators to agree on such standards, we should instead use the tenth anniversary of the MacCrate Report as an important moment to assess as best we can.

In my earlier article, I proposed five standards which remain a starting point for those attempting to assess the impact of the MacCrate Report at their schools:²²

1. *The MacCrate Report*.²³ The MacCrate Report itself provides an initial tool for assessment. The Report included twenty-five recommendations for “enhancing professional development during the law schools years, fifteen of which were di-

ism.law.sc.edu (last updated Dec. 15, 2002) [hereinafter BEST PRACTICES PROJECT]. As of this writing, the Project is still in its early stages: “This document . . . should be viewed at this stage as an initial assemblage of ideas put forward for discussion. It will continue evolving as the process moves forward.” *Id.* at 6.

20. See, e.g., MUNRO, *supra* note 4, at 45-63; BEST PRACTICES PROJECT, *supra* note 19, at 1-5.

21. See, e.g., MUNRO, *supra* note 4, at 27-29, app. B at 191-196; BEST PRACTICES PROJECT, *supra* note 19, at A18-A21.

22. I developed the standards after describing a series of changes in the area of skills and values that occurred at New England. My efforts to assess the impact of the Report at my school were hampered by the absence of standards, requiring me to begin the discussion of the impact of the Report at my school with a discussion of possible standards for assessment. Engler, *supra* note 5, at 138-43. Not surprisingly, I ultimately concluded that the “success” or “failure” of our efforts likely turned on the choice of standards by which to measure the change. *Id.* at 111.

23. *Id.*

rected solely at the law schools.²⁴ As a starting point for assessment, schools could simply go through the list of recommendations and ask whether their schools implemented each one.

2. *The Standard of Incremental Change*.²⁵ In the wake of the publication of the MacCrate Report, a number of observers suggested that sweeping change was unlikely, and articulated relatively modest goals for those attempting to implement the Report. These observers argued that the Report could successfully be used to foster "incremental" changes, designed to integrate the teaching of skills and values into the curriculum and modestly shift the balance in the curriculum toward skills and values training.²⁶ It would be disturbing if some law schools could not even point to incremental changes that enhanced the teaching of skills and values over the past decade. These schools, perhaps more than others, might be most in need of asking the question and discussing why the school was so resistant to change.

3. *Dramatic Change*.²⁷ Other observers urged that the Report be used to foster dramatic change at their law school.²⁸ Al-

24. MacCrate Report, *supra* note 1, at 330-34.

25. Engler, *supra* note 5, at 139-40.

26. See, e.g., Mark Heyrman, *Regulating Law Schools: Should the ABA Accreditation Process be Used to Speed the Implementation of the MacCrate Report Recommendations?*, 1 CLINICAL L. REV. 389 (1994); Ann Juergens, *Using the MacCrate Report to Strengthen Live-Client Clinics*, 1 CLINICAL L. REV. 411 (1994); Peter A. Joy, *The MacCrate Report: Moving Toward Integrated Learning Experiences*, 1 CLINICAL L. REV. 401 (1994). As Peter Joy observed, in most law schools, the positive changes in legal curricula that might result from the MacCrate Report "are likely to be incremental changes. Over time, even incremental changes will help transform law schools into integrated learning experiences closer in spirit to competence-oriented skills and values training found in clinical courses." *Id.* at 401.

27. Engler, *supra* note 5, at 140-41.

28. Among the most ambitious proposals were the six "Implementation Goals" articulated by a "Working Group on MacCrate Implementation." The Working Group began as a joint task force on implementation of the MacCrate Report, appointed by the American Association of Law Schools (AALS) Section on Clinical Legal Education and the Clinical Legal Education Association (CLEA), before the AALS backed off from using its name to formalize the collaboration. See, e.g., Engler, *supra* note 5, at 121 n.61. The "Implementation Goals" were:

1. Law schools shall provide every student with appropriate instruction in the values and skills reflected in the SSV through a combination of direct client representation clinical programs, simulation courses and classroom instruction.

though a few law schools report having made significant changes in their curricula after the MacCrate Report's publication, the process at those schools was under way before the publication.²⁹ It would be important to identify whether any school in the country claims that the Report's publication yielded dramatic change.

4. *A Comparison of the School in 1992 to 2002.*³⁰ A fourth tool for assessment is the extent to which the picture of a particular law school in 2002 reveals a change from 1992, particularly in the areas of skills and values. The MacCrate Report used a similar approach, comparing a "snapshot" from the early 1990s with data from the previous decade, to present a picture of growth and change.³¹ The snapshot of New England in 2002 seemed remarkably similar at its core to the picture of a decade before. The comparison left the impression that the changes

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2. Law schools shall provide every student with a faculty supervised, direct client representation clinical experience designed to provide instruction in those values and skills reflected in the SSV which are best taught through such an experience.
 3. Law schools shall make available to those students who want this experience an in-house, faculty supervised, direct client representation clinical program designed to provide instruction in the values and skills reflected in the SSV which are best taught through such an experience.
 4. Law schools shall provide applicants with a copy of the SSV and advise them of the nature and availability of clinical programs and other programs for instructing students in the values and skills reflected in the SSV.
 5. Law schools shall devote adequate resources toward ensuring that students fulfill their obligation to work towards enhancing the capacity of law and legal institutions to do justice.
 6. Law schools shall provide every student with instruction in the skills and values necessary for the student to fulfill her obligation to provide legal services to those who cannot afford to pay for them.

See Proposals to Implement MacCrate Commission Report, AALS NEWSL. (Section on Clinical Legal Education, Washington, D.C.), Apr. 1995, at 18-19 [hereinafter *Implementation Goals*].

29. *See, e.g.*, Margaret Martin Barry et al., *Clinical Education for this Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 41-49 (2000) (describing a series of law schools exemplifying various trends in clinical legal education). The Report nonetheless served as one of a series of factors at the law schools that yielded the dramatic change. *Id.*; *see also*, Engler, *supra* note 5, at 144-49.

30. Engler, *supra* note 5, at 141-42.

31. MacCrate Report, *supra* note 1, at 236-42.

were incremental and marginal,³² not a surprising result given the historical resistance to change in legal education.³³ This tool provides an additional perspective for assessing whether change that occurred was incremental or dramatic, the focus of the second and third tools.

5. *A Comparison to Other Schools*.³⁴ The fifth tool I proposed is a comparison of the changes that occurred at our school to those that occurred at other, similar law schools. If the publication of the Report did not lead to dramatic change at a single law school, then relatively modest efforts at any given school might be the most that could reasonably have been expected under the circumstances. Comparing impacts at similar schools might be the most valid basis for determining which schools were more or less successful in utilizing the MacCrate Report.³⁵

B. *Refining the Tools with Objective Measures*

The five standards discussed above are important starting points for schools grappling with assessment. Additional tools can provide objective measures in support of the more general conclusions.³⁶ The more ways in which we can attempt to measure the teaching of skills and values at a given institution at a given time, the more valid the ultimate conclusions will be, either regarding change at a given school or a comparison between different schools. The next section offers questions designed to elicit a more complete picture of skills and values instruction.³⁷ Many of the tools flow from the MacCrate Report

32. For a description of the changes, see Engler, *supra* note 5, at 124-38. For an analysis of New England in 1992 as compared to New England in 2002, see *id.* at 141-42.

33. *Id.* at 142. For a sampling of this sentiment, see Juergens, *supra* note 26, at 424 ("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.") (citations omitted).

34. Engler, *supra* note 5, at 142-43.

35. For example, schools with fewer resources or lower status should not be compared to those with more resources and higher status, at least without recognition of the differences.

36. "Quantitative assessment has important uses in assessing student and institutional outcomes in a law school." MUNRO, *supra* note 4, at 115.

37. As Professor Munro has illustrated, a variety of methods are available for obtaining answers to the questions, depending on the approach that a particular faculty chooses to utilize. He suggests, for example, the use of Interviews, Ques-

itself, serving as a powerful reminder that the Report's methodologies remain as valuable for our assessment as they did a decade ago.

1. *Courses*

A series of inquiries focus on course offerings, including their subject matter, teaching methodologies and placement in the curriculum.

- What is the skills and values portion of the curriculum?
- Are the MacCrate Skills and Values taught primarily in clinical courses, whether in-house or externship, or in simulation courses?
- If not, where else do students learn the skills?
- How are the opportunities spread throughout the different years of law school?
- Are they confined to the last two years and even concentrated in the final year?
- Which skills and values, if any, beyond Legal Reasoning and Analysis, Problem Solving and Legal Writing, are incorporated in the first year of law school?
- To what extent is skills and values training incorporated in graduation requirements, and to what extent is it limited to electives?
- If in-house clinics and externships are the main source of the training, are they required? Are they recommended?
- What about simulation courses—which ones are required and which are recommended?
- To the extent the skills and values training has permeated other aspects of the curriculum, is it in the required or recommended portion?
- Which courses comprise the “core” curriculum?
- Which core courses address the MacCrate Skills and Values?³⁸

The MacCrate Report assessed “Current Instruction in Skills and Values” in part by collecting data from various

tionnaires and Surveys, Statistical Indicators, Examinations and Papers, Performance Appraisals, Student Portfolios, Faculty Teaching Portfolios, Alumni Follow-Up Reports, Employer Reports, Student Self-Assessment and External Examiners. *Id.* at 117-25.

38. To the extent the core courses do not address the Skills and Values beyond Legal Analysis and Reasoning, further inquiries would be appropriate as to how the core curriculum should be restructured to include instruction in a broader range of skills and values.

schools regarding the courses that offered instruction in professional skills. The authors collected materials on skills courses and obtained survey results from responding law schools. Individual law schools could create their own snapshots both from 1992 and 2002, relying on similar survey tools.³⁹ The MacCrate Report's tools also can be used to assess the placement of the instruction in the curriculum.⁴⁰

Simply leaving important skills and values training to electives, however, runs the risk that many students will graduate without instruction in those areas. Professor Munro has underscored the importance of requirements, either in terms of core courses that all students take or by requiring "students to select from categories of elective courses that are designed to address the outcomes."⁴¹ At New England, despite aggressive efforts to spread instruction in skills and values training throughout the elective portion of the curriculum, we concluded that there still was too great a risk that students would graduate without having received sufficient instruction in skills and values. As a result, we added a two-course skills requirement for graduation.⁴²

2. Credits

Beyond simply counting courses, a different or additional measure is to count credits. The data may be collected by asking:

39. For the analysis of the "Current Instruction in Skills and Values," in the MacCrate Report, see MacCrate Report, *supra* note 1, at 236-38. For the survey instrument, see *id.* app. D at 397-401. Professor Gary Munneke's conclusion that "[i]n the 1990s, many law schools developed a legal skills curriculum," could be verified through this methodology and the data could provide a telling picture of change. Gary Munneke, *Legal Skills for a Transforming Profession*, 22 PACE L. REV. 105, 125 (2001).

40. The survey results presented data regarding clinical courses, externships and simulations generally, and first-year lawyering courses, providing a picture as to where in the curriculum the instruction occurred. MacCrate Report, *supra* note 1, at 238-40, app. D at 397-401. For a critique of the growing tendency to rely on first-year simulation courses, see Engler, *supra* note 5, at 155-58.

41. MUNRO, *supra* note 4, at 98.

42. Engler, *supra* note 5, at 133-34. Each student is required to take at least two courses from an approved list of clinical, simulation and practice courses. The faculty strongly recommends that at least one of these courses be a clinical course. NEW ENGLAND SCHOOL OF LAW CATALOG 2002 at 15 [hereinafter NEW ENGLAND 2002 CATALOG].

- How many credits in courses that focus on skills and values training may, or must, students take?
- What percentage is that figure of the overall credit load?

A single course of a substantial number of credits should have a different impact than that of a single course of fewer credits. As we move from data collection to program design, a question that merits careful consideration is whether better learning occurs through multiple experiences of lower credits or hours, or a single experience of more hours.⁴³

3. *Enrollment*

Simply offering the courses will not provide the training if students do not elect to take the courses. The MacCrate Report added, in its effort to assess the status of skills and values instruction, data regarding the percentage of graduating students taking various numbers of skills courses.⁴⁴ Questions shedding light on this inquiry include:

- Where the skills and values courses are electives, how many students take them?
- What percentage of graduating students take at least one clinic course at your school? More than one?
- To the extent the definition of “clinics” at your school does not include externships, what percentage of the graduating students take externships?
- To the extent the definition of “clinics” at your school does not include simulation courses, what percentage of the graduating students take simulation courses?

The inquiry is less important for the skills and values experiences that are mandatory, although a separate inquiry as to the quality of the instruction and learning would remain. Where more students elect skills and values courses, there may be less need for graduation requirements. Where students do not choose such courses, requirements might be necessary to push the skills and values training from the margins of the curriculum.

43. For an exploration of this question, see Engler, *supra* note 5, at 151-53.

44. MacCrate Report, *supra* note 1, at 240-41.

4. *Faculty*

An alternative way to obtain a picture of instruction is to measure faculty, rather than students, courses or credits. The MacCrate Report examined types of faculty assigned to Professional Skills Education, reporting the data both in terms of types of courses and types of skills.⁴⁵ The inquiry should include not simply numbers, but status, salary and security as well.⁴⁶ As a starting point, the following questions would shed light on the inquiry:

- What is the composition of the faculty?
- How many full-time faculty teachers are clinical teachers, and what percentage is that figure?
- How many full-time faculty teachers are legal writing instructors, and what percentage is that figure?
- Are there other faculty members whose role is primarily to focus on skills and values training?
- For the nonclinical faculty, how many either came from clinical teaching, or incorporate clinical teaching into their nonclinical teaching?
- What percentage of the overall faculty falls into the latter category?

5. *Resources*

A fifth category for identifying objective data as part of the assessment process is the deployment of resources. Data may be obtained by asking:

- How are law school resources allocated for the professional development of students?

45. *Id.* at 245-48. The Report also included a specific recommendation with regard to the faculty teaching skills and values:

Law schools should assign primary responsibility for instruction in professional skills and values to permanent full-time faculty who can devote the time and expertise to teaching and developing new methods of teaching skills to law students. In addition, law schools should continue to make appropriate use of skilled and experienced practicing lawyers and judges in professional skills and values instruction with guidance, structure, supervision and evaluation of these adjunct faculty by full-time teachers.

Id. at 333-34 (Recommendation C.24).

46. One of the crucial trends identified by Margaret Martin Barry, Jon Dubin and Peter Joy was the increase in number and improvement in status of clinical teachers during the 1990s. Barry et al., *supra* note 29, at 41-49.

The MacCrate Report examined law school budgets, focusing on the dollar expenditures and the percentage of the overall budget allocated to clinics and skills courses more generally. The Report also examined numbers and percentages of faculty members and students teaching and taking skills-related courses.⁴⁷

6. *Extra-Curricular Programs; Part-time and Summer Employment*

Beyond the curriculum, instruction in skills and values occurs in extra-curricular activities and programs, including pro bono work. The MacCrate Report referred to the "employment experience" as a "complement to law school."⁴⁸ The Report discussed the role that learning might play in these settings, and included a specific recommendation designed to enhance the pedagogical value of employment outside the curriculum.⁴⁹ Critics of the MacCrate Report questioned whether its authors had given sufficient emphasis to the importance of learning outside the academy generally.⁵⁰ Regardless of one's position on the Report itself, the inquiry into learning that occurs outside the curriculum is crucial to our efforts to assess the overall training our students receive. Unless we include assessment of the full range of learning that occurs during the law school years, we will be assessing only a subset of the learning and developing programs that respond to only part of the picture. Relevant questions include:

- How do extra-curricular programs, including pro bono programs, enhance the overall skills and values training?
- How does part-time and summer work enhance the overall skills and values training?

47. MacCrate Report, *supra* note 1, at 248-54. The latter two inquiries overlap with the categories of enrollment and faculty. See *supra* Part II.B.3-4.

48. *Id.* at 268.

49. Law schools and employers of law students should work together to inject educational value into any work experience during the law school years, developing models for strengthening the educational content of part-time employment and developing workshops offered at the beginning of the summer clerkship season to support the educational aspects of summer employment.

Id. at 268-71, 333 (Recommendation C.21). See also Engler, *supra* note 5, at 154-55.

50. See, e.g., Brook K. Baker, *Beyond MacCrate: The Role of Context, Experience, Theory, and Reflection in Ecological Learning*, 36 ARIZ. L. REV. 287 (1994).

- To what extent do schools track the work of their students over the summer in a comprehensive or systematic manner?
- What, if any, efforts are made to connect the students' work over the summer to their studies, whether in clinics or in the more traditional classroom, during the school year or even in a contemporaneous classroom setting?
- To what extent may a particular law school claim these experiences as part of the overall skills and values training?

7. *Using the Questions*

The categories and questions offered above are neither an exhaustive list, nor a minimum set of questions that all law schools must ask. Each inquiry will yield information as to the skills and values training for law students at a given school at a given time. The more questions that are asked, the more complete the resulting picture will be. To the extent that schools have obtained answers to any of the questions from the past, or can recreate past data, those schools can paint a comparative picture, permitting conclusions regarding change.⁵¹ Schools able to answer even a few of the questions might be armed with important information from the assessment process to set the stage for the process of identifying gaps and developing programs.

C. *Identifying Gaps in Our Teaching*

As important as it may be to assess the impact of the Report and related initiatives, that effort serves as a backdrop for discussion about gaps in the curriculum. If we are to view the MacCrate Report as a living document, and the teaching of skills and values as a current issue, we must move from looking back to looking ahead. The following questions focus the inquiry:

51. If, for example, enrollment in clinical courses rose between 1992 and 2002, that might provide some basis for concluding that there was positive change in the area of skills and values training. The more the numbers of clinical faculty increased, more teachers utilized clinical methodology, more students took more skills courses, and schools adopted more graduation requirements, the more dramatic the extent of the change is likely to have been. The MacCrate Report used just such an approach in comparing "snapshots" from the 1980s with data from the early 1990s. See, e.g., MacCrate Report, *supra* note 1, at 236-42.

- What are the most important gaps to fill in the teaching of skills and values at your law school?
- What are the most important gaps to fill in the teaching of skills and values nationally?
- How are we going to fill those gaps?

The conversation surrounding these three questions flows from the earlier inquiries regarding assessment and change over the past decade. The five assessment tools discussed in the first section, refined by the lists of questions offered in the second section, will help reveal gaps both through assessment of efforts that were tried and fell short, and also in comparison to different approaches and initiatives implemented at other schools. Where enrollment, course offerings or faculty concentrate on certain skills and values, gaps may still remain with respect to other skills and values.

Again, the methodology of the MacCrate Report provides the critical starting point. One of the most important recommendations directed at the law schools provides:

Each law school should undertake a study to determine which of the skills and values described in the Task Force's Statement of Skills and Values are presently being taught in its curriculum and develop a coherent agenda of skills instruction not limited to the skills of "legal analysis and reasoning," "legal research," "writing" and "litigation."⁵²

The recommendation includes two components: the study—to identify gaps, and the development of a *coherent program*—to help fill the gaps. The reference to skills beyond "legal analysis and reasoning," "legal research," "writing" and "litigation" serves as a powerful reminder that the inquiry requires analysis not simply of a blurred concept of "skills-and-values," but a careful assessment of which skills, which values, and how they are being taught. Implicit in the recommendation is the question:

52. *Id.* at 331 (Recommendation 8). As Professor Munro has observed: "Legal education that addresses mission and outcomes cannot be accomplished in a curriculum consisting of a collection of disaggregated courses without any unifying structure. Each piece of the curriculum . . . should function as a component of a structured whole." MUNRO, *supra* note 4, at 96.

- Which skills and values are receiving less treatment in the curriculum, and in the overall law school experience?⁵³

Explicit is the focus on the skills and values “described in the Task Force’s Statement of Skills and Values [SSV].”⁵⁴

When our faculty undertook the curricular study recommended by the MacCrate Report, we used the methodology of a faculty survey of the curriculum.⁵⁵ Faculties using surveys might use the categories and questions discussed above.⁵⁶ Other faculties might choose different means of obtaining data, such as conducting interviews, bringing in outside observers, or measuring their efforts in comparison to those of other schools, to the extent relevant information is available.⁵⁷ Both William

53. Professor Torres’ bibliography for methods for teaching lawyering skills in the classroom illustrates the likelihood that some skills and values receive more attention than others. Arturo Lopez Torres, *MacCrate Goes to Law School: An Annotated Bibliography of Methods for Teaching Lawyering Skills in the Classroom*, 77 NEB. L. REV. 132 (1998). The bibliography “compiles those law review articles that explore the teaching of lawyering skills in the traditional, non-skills oriented law courses.” *Id.* at 133. The survey results “indicate that 76% of the articles in this bibliography were classified into five [of the ten MacCrate Report] skills: Communication, Problem Solving, Litigation and Alternative Dispute Resolution Procedures, Legal Analysis and Reasoning, and Legal Research.” *Id.* at 137. The skill of Negotiation comprises an additional 10% of the articles, while the four skills of Counseling, Factual Investigation, Recognizing and Resolving Ethical Dilemmas, and Organization and Management of Legal Work “combined constitute only 14% of the articles cited in this bibliography.” *Id.* Although the data covers all law review articles, rather than just those published since the MacCrate Report, it is likely that some disparity remains. It seems reasonable to assume a correlation between the content of law review articles and focus in the classroom.

54. MacCrate Report, *supra* note 1, at 331 (Recommendation 8).

55. We recognized that subjective reports from those attempting to teach the skills would render the report suspect due to the absence of outside observers, agreed-upon definitions, detailed inquiries as to methodologies or other efforts to move from impressions and intentions to data. Nonetheless, we anticipated that we would be better served by moving the discussion ahead with its flaws than getting bogged down into questions of process. Engler, *supra* note 5, at 128-29 n.100. For the survey results at New England, see *id.* at 127-30 nn.101 & 103.

56. See *supra* Part II.B.

57. As noted above, Professor Munro offers a series of assessment methods for qualitative and quantitative measurements. He suggests the use of Interviews, Questionnaires and Surveys, Statistical Indicators, Examinations and Papers, Performance Appraisals, Student Portfolios, Faculty Teaching Portfolios, Alumni Follow-Up Reports, Employer Reports, Student Self-Assessment and External Examiners. MUNRO, *supra* note 4, at 117-25. That a range of tools is available does not imply that the tools are easily used or without problems of their own. For example, absent standards to be used by the external examiners, the resulting assessment may be as subjective as that of the internal examiners. Moreover, in-

Mitchell College of Law (William Mitchell) and the City University of New York (CUNY) School of Law conducted lawyer surveys to assess the importance of particular skills and the extent to which law schools adequately prepared the lawyers with respect to those skills.⁵⁸ Bar exam results, while rife with problems, are likely to creep into the methodological mix as more states adopt the Multistate Performance Test (MPT).⁵⁹ Regardless of the approach, some mechanism is necessary to move from a general look at “skills-and-values” to a more specific analysis of *which* skills and values are being taught, as well as where in the curriculum and with which methodologies the instruction is occurring.

The issue of whether to use the MacCrate Report’s SSV or some other list of competencies, while potentially an explosive issue, did not impede the assessment efforts at New England. We used the SSV as a starting point and then made minor mod-

novation and creativity might be stifled as “safer” programs are pursued to satisfy potential examiners. Nonetheless, for the same reason that a range of questions increases the chance of obtaining a fuller picture than a single inquiry might, the use of a range of tools decreases the likelihood that a few “tools”—such as student evaluations and bar results—are given disproportionate weight as measures of outcomes.

58. Authors of the William Mitchell attorney survey analyzed the results in a variety of ways. They compared the results of the survey to earlier students and also compared different categories of respondents, such as graduates of William Mitchell to graduates of other law schools, and William Mitchell students who took the school’s Legal Practicum course in comparison to those who did not. John Sonsteng & David Camarotto, *Minnesota Lawyers Evaluate Law Schools, Training and Job Satisfaction*, 26 WM. MITCHELL L. REV. 327 (2000). CUNY carried out a graduate and employer survey focused on recent CUNY law graduates, and compared the results to those produced by the William Mitchell survey. Sam Sue, *Assessing the MacCrate Skills: Developing a Good Survey*, 23 PACE L. REV. 657 (2002).

59. “One of the most obvious measures of student and institutional outcomes in law schools is bar exam results and trends that may be reflected in such results over time. They are limited in their usefulness and valid only on particular questions . . .” *How Do We Know?*, *supra* note 18, at 246. According to the National Conference of Bar Examiners, twenty-nine states have adopted the MPT. See N.C.B.E., MULTISTATE EXAMINATION USE, at <http://www.ncbex.org/tests/jurtxt.htm> (last visited Apr. 24, 2003). For an exploration of the connection between the MPT and preparing students for the practice of law, see Stella L. Smetanka, *The Multi-State Performance Test: A Measure of Law Schools’ Competence to Prepare Lawyers*, 62 U. PITT. L. REV. 747 (2001). Smetanka provides a summary of articles criticizing the Bar Exam in general. See *id.* at 750 n.11; see also Andrea C. Curcio, *A Better Bar: Why and How the Existing Bar Exam Should Change*, 81 NEB. L. REV. 363 (2002). Curcio also provides a critique of the MPT. See *id.* at 378-79.

ifications. In the area of skills, we tailored the MacCrate list by separating litigation from ADR (skill #8), and written expression from oral expression (skill #5).⁶⁰ In the area of values, we used some of the subsections on the MacCrate list, sensing that some components were receiving greater treatment than others.⁶¹ While the process had its flaws, the Survey and Re-

60. We used the following survey form:

NEW ENGLAND SCHOOL OF LAW
SURVEY OF SKILLS AND VALUES IN THE CURRICULUM

NAME _____

COURSE _____

FALL SPRING (circle one)

INSTRUCTIONS: Please indicate which of the skills and values you cover in this course, and the extent to which you cover them. Circle a number only if you cover the particular skill or value.

KEY: 1 = Teaching this skill is a primary goal of the course

2 = I teach this skill, but not as a primary goal of the course

3 = Other (please describe below)

SKILLS:

(Circle One, if applicable)

- | | | | |
|--|---|---|---|
| 1. Problem Solving | 1 | 2 | 3 |
| 2. Legal Analysis and Reasoning | 1 | 2 | 3 |
| 3. Legal Research | 1 | 2 | 3 |
| 4. Factual Investigation | 1 | 2 | 3 |
| 5. Communication | | | |
| a. oral | 1 | 2 | 3 |
| b. written | 1 | 2 | 3 |
| 6. Counseling | 1 | 2 | 3 |
| 7. Negotiation | 1 | 2 | 3 |
| 8. a) Litigation | 1 | 2 | 3 |
| b) Alternative Dispute Resolution | 1 | 2 | 3 |
| 9. Organization and Management of Legal Work | 1 | 2 | 3 |
| 10. Recognizing and Resolving Ethical Dilemmas | 1 | 2 | 3 |
| 11. Other (Describe) | 1 | 2 | 3 |

61. We used the following form for the values portion of the survey:

NEW ENGLAND SCHOOL OF LAW
SURVEY OF SKILLS AND VALUES IN THE CURRICULUM

Page 2

KEY: 1 = Teaching this value is a primary goal of the course

2 = I teach this value, but not as a primary goal of the course

3 = Other (please describe below)

VALUES:

(Circle One, if applicable)

- | | | | |
|---|---|---|---|
| 1. Provision of Competent Representation | 1 | 2 | 3 |
| 2.1 Promoting Justice, Fairness & Morality in one's own daily practice | 1 | 2 | 3 |
| 2.2 Assisting the Profession in Providing Counsel to Those Who Cannot Afford To Pay | 1 | 2 | 3 |
| 2.3 Enhancing the Capacity of Law and Legal Institutions to Do Justice | 1 | 2 | 3 |
| 3. Striving to Improve the Profession | 1 | 2 | 3 |
| 3.3 Striving to Rid the Profession of Bias & Rectify the Effects of Bias | 1 | 2 | 3 |
| 4. Professional Self-Development | 1 | 2 | 3 |
| 5. Other (describe) | 1 | 2 | 3 |

port provided a foundation and structure for the curricular changes implemented in the years after the survey was conducted.⁶²

Other faculties similarly will need to decide whether to use the MacCrate list, with or without modification, or a different list entirely. Professor Munro, for example, lists the MacCrate Report's fundamental skills and values as only one set of competencies for analyzing student outcomes.⁶³ He also includes Bayless Manning's "proposed list of characteristics that legal education seeks to imprint on its students," the competencies of the former Antioch School of Law, identified by H. Russell Cort and Jack L. Sammons, and the set of ten transactional competencies adopted by the University of Montana School of Law.⁶⁴ CLEA's Best Practices Project draws on many of the same sources in its "various descriptions of specific competencies."⁶⁵ Professor Gary Munneke has recently revisited the MacCrate Report's list of fundamental skills and values in light of changes over the past decade and twenty-first century trends, offering a modified set of skills and values in light of those changes and trends.⁶⁶

My own preference for the MacCrate Report's list of fundamental skills and values as a starting point or "default" list flows from a combination of practical and pedagogical concerns. At a minimum, it would seem odd to abandon the MacCrate list as part of an inquiry as to how best to utilize the MacCrate Report over the next decade. The list has already served as a benchmark for surveys conducted by William Mitchell and

62. Engler, *supra* note 5, at 130-38.

63. MUNRO, *supra* note 4, at 91-95

64. *Id.* Both the University of Montana Law School and Gonzaga Law School followed such approaches, discussing not only goals and competencies, but strategies for implementing reforms. *Id.* at 83.

65. BEST PRACTICES PROJECT, *supra* note 19, at A14-A29 app. D. The Appendix includes: benchmark standards for law degrees in England, Wales and Northern Ireland; the Cort and Sammons competencies from the former Antioch School of Law; The MacCrate Report's SSV; and the University of Montana School of Law's survey of competencies. *Id.*

66. Munneke, *supra* note 39. The modified set of skills includes Dispute Resolution Skills, Organization and Management Skills, System Analysis, Economic Modeling and Forecasting, Adaptability and Innovation and Career Development. *Id.* at 135-52.

CUNY.⁶⁷ I am also cognizant of my own school's experience, where we found the list to be a manageable and effective tool for examining the content of our curriculum.

With regard to the question of assessment in legal education generally, as opposed to a measure of the MacCrate Report's impact, the MacCrate list has the advantage of being the product of a process that built on previous efforts to articulate lawyer competencies and incorporated input from outside the academy. The authors of the MacCrate Report developed a detailed picture of the profession for which lawyers must prepare.⁶⁸ The Task Force drew from an extensive bibliography on the literature on skills and values, which included earlier lists of competencies and studies of practicing lawyers.⁶⁹ The Report drew from "[o]bservations and ideas . . . from practicing lawyers, judges, law teachers, bar examiners, and representatives of bar associations . . .," both as part of the information gathering that produced the early drafts of the SSV and in response to the Tentative Draft that was circulated widely for comment.⁷⁰ A "competing" list should either be the product of a similar process or at least include a persuasive justification as to why such a process is not essential.

The experience of the University of Montana Law School (Montana) provides a further basis for relying on the MacCrate Report as a starting point. Over twenty years ago, Montana reviewed its academic program. In an inspiring example of a thoughtful approach to the task, the faculty first focused on outcomes, selecting the desirable outcome as that of producing a competent beginning lawyer. Montana then designed and administered a study of practicing lawyers to identify the neces-

67. See Sonsteng & Camarotto, *supra* note 58; Sue, *supra* note 58. Authors of articles in this Symposium issue, while critiquing aspects of the original MacCrate list and its implementation, nonetheless propose modifications or additions to the list, rather than its wholesale abandonment. See Munneke, *supra* note 39 (Professor Munneke was faculty advisor to, and commentator at, the Pace Symposium); see also Thomas M. Steele, *The MacCrate Report: It's Impact on Education In Law Firm Management*, 23 PACE L. REV. 613 (2002). Even Professor Pearce offers the hopeful conclusion that the MacCrate Report's goal of beginning a conversation has succeeded. See Russell G. Pearce, *MacCrate's Missed Opportunity: The MacCrate Report's Failure to Advance Professional Values*, 23 PACE L. REV. 575 (2002).

68. MacCrate Report, *supra* note 1, at 9-120.

69. *Id.* at 125-26, app. A 341-77.

70. MacCrate Report, *supra* note 1, at 126.

sary lawyer competencies. The competencies adopted by Montana were the result of this process and were the guiding force for the curricular changes.⁷¹

While the extent of the Montana effort is impressive, the next chapter in the Montana story is striking as well. The faculty of the University of Montana recently abandoned its own competencies in order to develop a set built around the MacCrate Report's list of fundamental skills and values.⁷² Such a move should not be viewed as an admission of failure in the earlier endeavor, but rather a foreseeable evolution of a thoughtful approach to curricular change. As Dean Mudd and John LaTrielle observed in their description of Montana's original efforts:

The process of academic review and planning is not linear in the sense that there is a single end point to be seen in the distance and then overtaken. Rather, the process resembles a spiral progression with new insights and practices leading to further questions, some of which have been raised before, that are in turn examined with the benefit of added experience and understanding.⁷³

Because I agree that the process should be understood as a spiral progression without an endpoint, I believe we should both be utilizing the MacCrate Report as a starting point for assessment but at the same time welcoming efforts such as the Best Practices Project to help us progress along the spiral. Holding off on assessment until the perfect endpoint is reached is a course more likely to ensure that meaningful assessment does not occur. Ignoring the MacCrate list today entails the risk of regressing, rather than progressing, unless the replacement similarly builds on what has come before it and results from

71. For a description and analysis of the origins of Montana's efforts, see John O. Mudd & John W. LaTrielle, *Professional Competence: A Study of New Lawyers*, 49 MONT. L. REV. 11 (1988). For Dean Mudd's discussion of lawyer competencies more generally, see John O. Mudd, *Beyond Rationalism: Performance-Referenced Legal Education*, 36 J. LEGAL EDUC. 189 (1986). A copy of the University of Montana School of Law Competencies, with a compilation date of April 8, 1992, is on file with the author.

72. E-mails from Mary Helen McNeal, Clinic Director and Associate Professor, University of Montana School of Law, to author (Oct. 4, 2002) & (Nov. 4, 2002) (on file with author). Professor McNeal also made this point at the meeting of the Best Practices Project on August 10, 2002, in Washington, D.C.

73. Mudd & LaTrielle, *supra* note 71, at 11-12.

input well beyond those within the academy. As we begin the second decade following the MacCrate Report's publication, the need to attempt assessment and the value of the assessment process itself far outweigh the risk that the MacCrate list is a flawed starting point.⁷⁴

Beyond examining our individual curriculum with whichever list we use, we can supplement those efforts by utilizing initiatives outside the law school to identify gaps. For example, the AALS has increased its focus on the related areas of Public Service and Equal Justice over the past five years, identifying an important gap at most of our schools.⁷⁵ In the area of Alternative Dispute Resolution, the MacCrate Report's Recommendation to focus on skills beyond litigation,⁷⁶ the critique of the Report by proponents of ADR,⁷⁷ and the explosion of attention nationally focused on ADR⁷⁸ suggest this area as a potential gap

74. This is not to suggest that the critics of the MacCrate list fail to make valid points. It is instead to give deference to the process that produced the Report and underscore the importance of the process of inquiring. See discussion *infra* Part II.E.3.

75. Both the AALS focus on Equal Justice during the 2000-2001 academic year and the creation of a new AALS Section on Public Service and Pro Bono are discussed below. See discussion *infra* Part III. Similarly, a Massachusetts Commission studying unmet legal needs urged all law schools in the state to adopt a public service graduation requirement. MASSACHUSETTS COMMISSION ON EQUAL JUSTICE, EQUAL ACCESS TO JUSTICE: RENEWING THE COMMITMENT 56 (1996). The Commission recommended that all law schools "Consider Requiring That Students Perform Public Service as a Condition of Graduation." *Id.* Explaining the recommendation, the report stated:

The commission believes that law schools should inculcate in all law students an understanding that public service is an ethical and moral requirement of all attorneys. Many leading law schools in the country, including Northeastern University School of Law, require public service as a condition of graduation. By doing so, these law schools instruct students in the value of public service and teach them how it may be performed. All law schools in Massachusetts could increase access to justice and help ensure the continuation of high professional standards by requiring their students to provide civil legal assistance to low-income people.

Id.

76. See MacCrate Report, *supra* note 1, at 331 (Recommendation 8).

77. See, e.g., John S. Elson, *The Regulation of Legal Education; The Potential for Implementing the MacCrate Report's Recommendations for Curricular Reform*, 1 CLINICAL L. REV. 363, 364 (1994).

78. The website of the American Bar Association's Section of Dispute Resolution captures the flavor: "The Section of Dispute Resolution, established in 1993, is one of the ABA's newest and fastest growing Sections with over 7,500 members already." ABA SECTION OF DISPUTE RESOLUTION, ABOUT THE SECTION OF DISPUTE

at many of our schools. While most schools have probably increased their offerings in the ADR area over the past decade, the question of whether the offerings are sufficient in light of the growth of the area is a component of the “gap” question.⁷⁹

Gaps likely remain in the area of Legal Writing as well. “In view of the widely held perception that new lawyers today are deficient in writing skills,” the MacCrate Report called for “further concerted effort . . . to teach writing at a better level than is now generally done.”⁸⁰ Even at the time of the Report’s publication critics questioned whether the Report had given sufficient attention to legal writing.⁸¹ In an attempt to respond to the gaps in Legal Writing, the ABA revised the Accreditation Standards to require an upper-level writing experience in addition to the first-year writing experience.⁸²

Companion articles to this Symposium issue suggest other gaps. The article from Professor Thomas Steele⁸³ focuses on the skill set growing out of the ninth skill discussed in the MacCrate Report, Organization and Management of Legal Work. Professor Steele, after surveying educational offerings in the area of law practice management, similarly concludes that “[t]he MacCrate Report’s ninth practical skill has not, however, received or achieved the goal of having every attorney be a com-

RESOLUTION, at <http://www.abanet.org/dispute/aboutsec.html> (last visited July 30, 2002).

79. Professor Munneke argues that a separate skill called “Dispute Resolution Skills” should be added to the original set of skills listed in the MacCrate Report. The added skill is designed to cover a broader range of lawyering roles, recognizing that lawyers act both in advocacy and non-advocacy capacities, serving not simply as litigators, but as intermediaries, advisors, negotiators or evaluators. See Munneke, *supra* note 39, at 137-38.

80. See MacCrate Report, *supra* note 1, at 332 (Recommendation C.14).

81. See, e.g., Elson, *supra* note 77, at 364. The Report itself called for a focus on “skills instruction not limited to the skills of ‘legal analysis and reasoning,’ ‘legal research,’ ‘writing’ and ‘litigation.’” MacCrate Report, *supra* note 1, at 331 (Recommendation 8). The writing skills of students at many of our schools may actually be poorer than a decade ago, rendering more urgent the need to address this gap to the extent schools have not already done so. New England School of Law added a third semester of required legal writing to address this reality. See Engler, *supra* note 5, at 134.

82. See ABA STANDARDS, *supra* note 3, Standard 302(a)(2). As with any aspect of the ABA Standards, and changes to those standards, whether the rules are having the intended impact is very difficult to assess absent data or information as to how the standards are being interpreted and enforced.

83. See generally Steele, *supra* note 67.

petent office manager.”⁸⁴ The survey of Minnesota lawyers, conducted by William Mitchell, supports the conclusions of Steele in its finding that “the majority of respondents did not perceive themselves to be well prepared in any of the management skills.”⁸⁵ The bulk of the new set of skills proposed by Professor Munneke for a “transforming profession” relates to “Organizational and Management” skills.⁸⁶ As discussed in the next section, while the question of whether all identified gaps should be filled at all schools for all skills is a separate inquiry, there is ample evidence to suggest that a gap exists in the area of “Organizational and Management Skills,” including “Law Practice Management.”⁸⁷

Finally, Professor Russell Pearce’s article in this issue raises the disturbing questions of whether gaps remain in the critical area of ethics and values generally, and, in particular, with the values related to justice, fairness and morality.⁸⁸ Professor Pearce’s conclusions were anticipated by some critics of the MacCrate Report who feared that implementation of the Report would lead to the elevation of skills training at the expense of the values portion of the Report.⁸⁹ With regard to skills training, Professor Munneke has concluded that “In the 1990’s, many law schools developed a legal skills curriculum and experimented with a variety of new pedagogical approaches to the

84. *Id.* at 647.

85. Sonsteng & Camarotto, *supra* note 58, at 391.

86. Munneke, *supra* note 39, at 136-50. Although “Organizational and Management Skills” is only one of the six sets of new skills proposed by Professor Munneke, his section on all six skills covers roughly twelve pages; the discussion of the Organizational and Management Skills, with twelve parts and subparts of its own, occupies ten of those twelve pages. *Id.*

87. Professor Torres’ bibliography is revealing here as well. Only one article is listed under the ninth MacCrate Skill. Torres, *supra* note 53, at 188-89. The skills of Counseling, Factual Investigation, Recognizing and Resolving Ethical Dilemmas, and Organization and Management of Legal Work combined constituted only 14% of the bibliography. *Id.* at 137. Professor Torres adds that the low rating of “Organization and Management of Legal Work” is validated by an American Bar Association, Commission on Advertising report. *Id.* at 137 n.15.

88. *See generally* Pearce, *supra* note 67.

89. The presence of those values in the Report itself did persuade readers of the Report that the teaching of fundamental values would receive equal treatment in efforts to implement the Report. These critics specifically identified the need to use the Report to strengthen the teaching of the values relating to the teaching of equal justice. *See, e.g.,* Engler, *supra* note 5, at 120.

teaching of practice skills. Skills education today has assumed a life of its own."⁹⁰

Identifying a stark contrast, Professor Pearce concludes that the Report's "major influence has been in the area of lawyering skills. The Report has contributed little to promoting professional values."⁹¹ Professor Pearce identifies the differential treatment in part by contrasting the array of conferences and articles relating to skills training, with the fact that the "Report has received little attention in the voluminous literature on professional values."⁹² Professor Pearce attributes the limits on the report's influence partly to the presentation and structure of the values section of the MacCrate Report. He also points to the more fundamental rift between the assumed ideology underlying the MacCrate values and the reality of the values with which the legal profession generally operates in the early twenty-first century.⁹³

Regardless of the reasons for the gap, Professor Pearce's critique serves as a powerful reminder that the inquiry into gaps must not be one simply into the blurred concept of "skills-and-values," but rather a careful assessment as to which skills, which values, and how they are being taught. The discussion in this section suggests that likely areas of potential gaps include ADR, legal writing, organization and management skills, ethics and values generally, and the values related to promoting justice specifically. As the next section demonstrates, the identification of gaps is not the end of the inquiry.

D. *Filling the Gaps*

Schools must not simply identify gaps, however, but must then decide which gaps are important to fill at their law schools and develop coherent programs to fill the gaps. The MacCrate Report was explicit that one of the "Abuses of the Statement [SSV] to be Avoided" was that: "The Statement is not, and

90. Munneke, *supra* note 39, at 125 (citation omitted).

91. Pearce, *supra* note 67, at 575-76 (citation omitted).

92. *Id.* at 585.

93. *Id.* at 587. Professor Pearce explains that the MacCrate Report "ignore[d] the overwhelming sense among commentators that lawyers have betrayed their obligation to serve the public. In the face of this consensus, the Report made the incredible declaration that promoting justice, fairness and morality represented a consensus value of the bar." *Id.* at 591 (citations omitted).

should not be taken to be, a standard for a law school curriculum.”⁹⁴ “Excellence cannot be promoted by the kind of standardization involved in formulating any particular list of prescriptions and prerequisites. It is best supported by encouraging pluralism and innovativeness in legal education and practice.”⁹⁵

At a minimum, schools should consider not only their available resources and the characteristics of effective skills instruction, but also both the characteristics of the students they admit and the likely employment to which they will go.⁹⁶ To the extent students at particular schools are more likely to become solo practitioners or join small firms, it may be more incumbent on these law schools to provide greater emphasis on a wider range of skills and values instruction.⁹⁷ Schools admitting students with weaker analytical or writing skills may have no choice but to dedicate greater resources to those skills than other schools.⁹⁸

94. MacCrate Report, *supra* note 1, at 131.

95. *Id.* at 132.

96. As the MacCrate Report counseled: “[E]ach faculty should determine how its school can best improve the process of helping students acquire the skills and values that are important in the practice of law, keeping in mind not only the resources presently available at the school, but the characteristics of effective skills instruction” *Id.* at 260. The University of Montana provides an example of a school that redesigned its academic program in light of the results of its survey of practicing lawyers from Montana and Idaho. The school conducted the survey in an attempt to learn what was necessary to produce the desired outcome of a competent beginning lawyer. Only then did the faculty move to the question of what should be the academic program of the University of Montana. See Mudd & LaTrielle, *supra* note 71. Professor Munro similarly urges law faculties to ask “Who is our constituency?” and “What do our students need to learn to enter the profession and serve society?” MUNRO, *supra* note 4, at 81.

97. One of the MacCrate Report’s proposed recommendations was to the ABA’s Interpretations of its Accreditation Standards to “[r]ecognize the special needs for students who expect to go into a relatively unsupervised practice to have opportunities for education in the skills needed in such a practice setting.” MacCrate Report, *supra* note 1, at 267. Thus, for example, graduates heading to these areas of employment may be thrown into the fire sooner than graduates at other schools, and may also have a greater need for instruction in areas such as “Organization and Management of Legal Work” than graduates at other schools headed to large firms. See *id.* at 199-203. On the other hand, absent data as to the effectiveness of the training programs at large law firms, extensive skills and values training must be presumed to be essential for students headed to these settings as well if law schools are to claim that they are producing competent and ethical lawyers.

98. That is not to suggest, however, that the traditional law school curriculum and methodology is more appropriate at lower-tiered schools than others. To the

Factors other than the characteristics of their students and likely needs after graduation are also relevant to the determination as to which gaps to fill. Law school missions may vary, and certain gaps may be deemed more or less important to fill in light of the mission.⁹⁹ Even a school's "marketing" may become relevant. To the extent schools are claiming a strength in various areas, gaps in the supposedly strong areas may be the most important to fill. Schools promoting themselves as "niche" schools may be more compelled to fill, or refrain from filling, particular gaps depending on the relationship of the gaps to the niche.¹⁰⁰

The final piece of the MacCrate Report's methodology is to develop a "coherent program" for filling the gaps. Law school curricula, and particularly the upper-level years, have long been criticized as lacking coherence, providing only a dizzying array of courses from which students may choose.¹⁰¹ While the explosion may be impressive and driven both by student demands and faculty interests, the increase in courses nonetheless is likely to exacerbate, rather than diminish, the

contrary, and in light of the variation in learning styles, students at these schools may learn best from alternative methodologies, and may particularly thrive with clinical legal education rooted in context. For a discussion of differences in learning related to differences in adult development, see Linda Morton et al., *Not Quite Grown Up: The Difficulty of Applying an Adult Education Model to Legal Externs*, 5 CLINICAL L. REV. 469, 491-515 (1999).

99. As Professor Munro explains, a mission is central not only to assessment, but to achieving desired outcomes. "The lack of an express mission means that the law curriculum likely will not have a focus and will not function to achieve any specific purpose." MUNRO, *supra* note 4, at 50. For his discussion of the role of mission in the assessment process, see *id.* at 61, 86-89. For sample mission statements, see *id.* app. A at 177-87.

100. It hopefully goes without saying that schools will be striving for "truth-in-advertising" as they compete for students, and the promises will be backed up by programs. The ABA Standards require law schools to provide "basic consumer information . . . in a fair and accurate manner reflective of actual practice." ABA STANDARDS, *supra* note 3, Standard 509.

101. See, e.g., MUNRO, *supra* note 4, at 53 (noting that the development of elective curriculum "has been described as a 'mushrooming process of *ad hoc* responses to a variety of conditions' and is a major source of incoherence in the overall curriculum") (citations omitted). *Id.* at 77 ("The 'fragmentation of the curriculum' and the 'bewildering array of largely elective courses' reflect the lack of faculty community involved in law school learning.") (citing Barry B. Boyer & Roger C. Cramton, *American Legal Education: An Agenda for Research and Reform*, 59 CORNELL L. REV. 221, 230-31 (1974)); Gary Bellow, *On Talking Tough to Each Other: Comments on Condlin*, 33 J. LEGAL EDUC. 619, 622 (1983).

incoherence of the "program" of study selected by individual students. Even to the extent that the explosion has included an array of skills courses,¹⁰² it does not necessarily follow that the resulting package amounts to a coherent program.

As a result, the filling of gaps by means of a coherent program is likely to mean more than the offering of additional courses.¹⁰³ Absent data confirming that students are selecting the courses and themselves developing a coherent program, guidance from the school is crucial. Where students cannot be steered toward offerings that fill the gap, the incorporation of skills and values instruction into the existing core curriculum or the adoption of new graduation requirements, may be necessary.

E. *Sharing, Comparing and Inquiring*

1. *The Benefits of Sharing & Comparing*

Crucial to the process of understanding the impact of changes and the situation at our law schools, is information as to what has occurred at other schools and in legal education generally. At a minimum, the need to look to other schools is evident from the fifth general assessment tool proposed above, that of comparing the changes or current status at one's own school to the situation of other similarly situated ones. The effort to understand our individual law schools in reference to other schools not only sheds light on the assessment process, but also facilitates the enhanced teaching of skills and values

102. See Munneke, *supra* note 39, at 125.

103. Along the way, proponents of skills and values training may benefit from reflecting on the structural issues I raised in my earlier article. I explored the following areas:

1. Whether particular courses and experiences should be year-long or semester-long, and for relatively more or relatively fewer hours;
2. The extent to which careful sequencing of courses was advisable;
3. The extent to which change in the first-year curriculum was important and feasible in the development of coherent programs for our skills and values instruction; and
4. The relative advantages and disadvantages of in-house clinics and externships, and the need to consider both approaches in a coherent program. Engler, *supra* note 5, at 149-68.

through the process of sharing information and learning from the experiences of other schools.¹⁰⁴

Beyond allowing us to compare different schools, the sharing of information would facilitate efforts to monitor enforcement of the changes to the ABA Standards in the wake of the MacCrate Report. One of the clearest impacts of the MacCrate Report's publication, and the subsequent efforts to implement the Report, was that the ABA adopted significant changes to ABA accreditation standards to enhance the teaching of skills and values.¹⁰⁵ Clinical teachers and proponents of clinical legal education achieved impressive changes to the ABA standards after a struggle, and then were forced to expend additional energies fighting the ensuing backlash.¹⁰⁶

As important as the changes are, absent any data or information as to how the standards are being interpreted and enforced, the tremendous efforts may have resulted only in changes on paper. As Gary Bellow observed in a different context, "rule change, without a political base to support it, just doesn't produce any substantial result because rules are not self-executing: they require an enforcement mechanism."¹⁰⁷

104. In my efforts to assess the impact of the MacCrate Report at New England, I was left with the sense that there had been incremental changes, but not dramatic ones, and that whether the glass was more empty or full depended on which assessment tool I selected. The question that might have shed considerable light on the conclusion was how the efforts and changes at New England compared to those at other schools. Reactions to the initial article, which I presented at several conferences, suggest that we made good use of the MacCrate Report in comparison to other schools. Absent more information from other schools, I cannot move beyond those tentative conclusions.

105. ABA STANDARDS, *supra* note 3, Standards 301, 302 & 405. See also MUNRO, *supra* note 4, at 29 ("The extent to which the *MacCrate Report* recommendations find their way into accreditation standards of the ABA may ultimately determine their effectiveness."). See also Engler, *supra* note 5, at 145-46.

106. Engler, *supra* note 5, at 146 n.171.

107. Comment, *The New Public Interest Lawyers*, 79 YALE L.J. 1069, 1077 (1969) (quoting Bellow's comments about drawbacks to test case litigation as an approach for achieving social change, told to author of the Comment in a 1970 interview). Professor Galanter similarly commented, in his classic study explaining why the "haves" come out ahead of the "have nots:"

Rule change is in itself likely to have little effect because the system is so constructed that changes in the rules can be filtered out unless accompanied by changes at other levels The system has the capacity to change a great deal at the level of rules without corresponding changes in everyday patterns of practice or distribution of tangible advantages.

The sharing of information about what is happening at our various schools is a crucial tool for determining the impact of the changes.

Another benefit of sharing is that we might actually learn from one another. The more we understand about what programs are in place at other schools, what is working and what is not, the more ideas we will have as to what might work at our own schools. Learning about the process of achieving the changes or adopting the programs can be important as well. This is not to minimize the importance of context, because what works at one school may not be feasible at another. Nonetheless, many of the pressures at our various law schools are comparable. To the extent that proponents of enhanced teaching of skills and values have identified not simply successful programs, but successful means of maneuvering the programs from idea through to adoption, this information can be of assistance to others whose schools are at an earlier stage in the process.

2. *Mechanisms for Sharing*

Even assuming that we recognize the value of sharing the experiences at our different law schools, the hurdle as to how to do this remains. At times, the problem is one of isolation: it seems serendipitous when we connect with someone at another school at a level that lets us understand the details of what actually is happening. At other times, the problem is one of workload and information overload: there is so much information "out there," and there is so little time to wade through the information, that it is hard to know where to begin. As a result, we might be tempted to avoid the inquiry entirely. The problem may also be one of secrecy. Some of the most valuable information is contained in the reports of site visits from the law school inspections; that information, however, is not available to the public at large.¹⁰⁸

Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC'Y REV. 95, 149 (1974).

108. For example, Rule 25 of the ABA's Rules of Procedure governing site inspections, titled Confidentiality of Accreditation Information and Documents provides in part:

- (b) Neither the site evaluation report, nor any portion thereof may be disclosed by the Association, including the Council, the Committee, the Consultant's office, or any site evaluator, unless first disclosed by the

We not only need to commit ourselves to sharing the information from our various law schools, but to developing and utilizing mechanisms for sharing that are practical in light of the daily pressures that face us. The list that follows, comprised of items that are hardly surprising, serves as a reminder both of the availability of a variety of mechanisms, but also of the need to develop shortcuts to enhance their utility.

a. *Listservs and e-mail.* In theory, e-mail and listservs should be the easiest and quickest way to share information. Readers, however, are typically inundated with hundreds of e-mails, which they may be more likely to delete than to read carefully. Alerting readers through a predetermined "subject" description, or designating a contact person at each school are possible solutions to the problem.¹⁰⁹

b. *Newsletters.* CLEA, the AALS Clinical Section and the recently-formed AALS Section on Pro Bono and Public Service have served as vehicles for sharing information about skills and values in general, and individual law schools in particular. The CLEA Newsletter and the Clinical Newsletters served as initial sources of information and news regarding the MacCrate Re-

law school or the University. The law school or the University may release the whole report or portions of it as it sees fit. If the law school makes public the site evaluation report or any portion thereof, notification must be given to the Consultant at the time of the disclosure, and disclosure of the report may be made by the Consultant, upon approval of the chairperson of the Section. The Consultant may release to the public the status of the school, with an explanation of the Association procedure for consideration of an application.

ABA RULES OF PROCEDURE, Rule 25, available at <http://www.abanet.org/legaled/accreditation/rulesofprocedure/chapteri.html> (last visited July 30, 2002).

109. For example, if the subject were labeled "MacCrate Revisited" or "MacCrate Reactivated," busy readers could sift through their e-mails and delete, read or save based on their interests. Margaret Martin Barry, Randy Hertz and I used this approach after our session at the AALS Clinical Conference in Pittsburgh, PA. With regard to contact people at each school, perhaps the Clinical Director, if one exists, by default, could be designated to join a smaller list. The contact person would then be responsible for circulating the information at his or her school, as appropriate. I use this approach for the listserv for New England Clinicians' Conferences attended by clinical teachers from law schools in the New England area. I start each e-mail by asking the recipients to circulate it to anyone at their school who might be interested. I also add others to the list as they request that I do so. The final challenge is in the writing itself: writers need to err on the side of brevity, relying on those who are interested to follow up in search of more information.

port in the early and mid-1990s.¹¹⁰ The newsletters, at times, have placed various schools and programs in the "spotlight."¹¹¹ Again, with concern for brevity, each of the newsletters could make space over the next year for spotlights on skills and values programs, assessment and change, publishing the information along with the names of contact people.

c. *Law Review Articles.* A range of articles, describing an impressive array of programs, appeared in the law reviews in the years following the publication of the MacCrate Report.¹¹² Although the emphasis on the Report itself has faded, articles continue to appear describing various programs and approaches. An invaluable resource for locating appropriate articles is *Clinical Legal Education: An Annotated Bibliography*, compiled by Sandy Oglivy and Karen Czapanskiy.¹¹³ The "List of Articles, Essays, Books, and Book Chapters" includes sections on Lawyering Skills, the MacCrate Report, Professional Responsibility, Poverty Law and Pro Bono Publico.¹¹⁴ Many of

110. See, e.g., Engler, *supra* note 5, at 120-21 nn.58-61.

111. See, e.g., *Program Focus: University of Pennsylvania Public Service Program*, AALS NEWSL. (Ass'n Am. Law Sch./Section on Pro Bono and Public Service, Washington, D.C.), Dec. 2002, at 3; *Pace Law School Receives The PS Law Net Pro Bono Publico Award for its Contribution to The World Trade Center Relief Effort*, AALS NEWSL. (Ass'n Am. Law Sch./Section on Pro Bono and Public Service, Washington, D.C.), Apr. 2002, at 36-39; *Law School Responses to The World Trade Attacks: An Update*, AALS NEWSL. (Ass'n Am. Law Sch./Section on Pro Bono and Public Service, Washington, D.C.), Nov. 2001, at 29-37; *Innocence Project Commences at Cooley*, AALS NEWSL. (Ass'n Am. Law Sch./Section on Pro Bono and Public Service, Washington, D.C.), Apr. 2001, at 29-30; *The Clinical Programs at New England School of Law*, AALS NEWSL. (Ass'n Am. Law Sch./Section on Pro Bono and Public Service, Washington, D.C.), Nov. 1997, at 12-13.

112. In 1993 and 1994 alone, for example, the following articles and symposia issues appeared in print: John J. Costonis, *The MacCrate Report: Of Loaves, Fishes and the Future of American Legal Education*, 43 J. LEGAL EDUC. 157 (1993); Gerald J. Clark, *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*, 27 SUFFOLK U. L. REV. 1153 (1993) (book review); Jack Stark, *Dean Costonis and the MacCrate Report*, 44 J. LEGAL EDUC. 126 (1994); Robert MacCrate, *Preparing Lawyers to Participate Effectively in the Legal Profession*, 44 J. LEGAL EDUC. 89 (1994); Jonathan Rose, *The MacCrate Report's Restatement of Legal Education: The Need for Reflection and Horse Sense*, 44 J. LEGAL EDUC. 548 (1994); Baker, *supra* note 50. For symposia from 1994, see Symposium, *Symposium on the 21st-Century Lawyer*, 69 WASH. L. REV. 505 (1994); Symposium, *Symposium on the MacCrate Report*, 1 CLINICAL L. REV. 349 (1994).

113. See J.P. Oglivy & Karen Czapanskiy, *Clinical Education: An Annotated Bibliography*, CLINICAL L. REV. 36-37 (Special Issue No. 1, Spring 2001).

114. *Id.* at 31-43, 44-47.

the articles discuss programs from individual law schools.¹¹⁵ A different annotated bibliography identifies 204 articles that explore the teaching of lawyering skills in the traditional, non-skills oriented law courses; the articles are grouped according to the MacCrate Report's ten fundamental lawyering skills.¹¹⁶ This Symposium issue is an additional resource.

d. *Conferences.* The MacCrate Report itself was a frequent topic at national and regional conferences in the early to mid-1990s.¹¹⁷ In 2002, a series of conferences marked the tenth anniversary of the MacCrate Report.¹¹⁸ At a minimum, the conferences serve a role in the exchange of information about initiatives at some schools, in addition to allowing attendees to look back at, and celebrate, the efforts of the Report's authors, proponents, and those who attempted to implement it.¹¹⁹ Whether it will be possible to translate the exchange of information into an ongoing discussion is by no means clear.¹²⁰

115. See, e.g., Engler, *supra* note 5 (New England); Barry et al., *supra* note 29, at 41-49 (Maryland, N.Y.U., New Mexico, Chicago-Kent, Seattle, William & Mary and CUNY); Gary Laser, *Significant Curricular Developments: The MacCrate Report and Beyond*, 1 CLINICAL L. REV. 425, 425-26 (1994) (Chicago-Kent); 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) (Seattle). For articles in other law reviews discussing particular schools see John Sonsteng et al., *Learning by Doing: Preparing Law Students for the Practice of Law – The Legal Practicum*, 21 WM. MITCHELL L. REV. 111 (1995); Sonsteng & Camarotto, *supra* note 58 (discussing William Mitchell); Daniel J. Givelber et al., *Learning Through Work: An Empirical Study of Legal Internship*, 45 J. LEGAL EDUC. 1 (1995) (discussing Northeastern); Graham C. Lilly, *Skills, Values, and Education: The MacCrate Report Finds a Home in Wisconsin*, 80 MARQ. L. REV. 753 (1997) (discussing law schools in Wisconsin).

116. See Torres, *supra* note 53.

117. For a listing of conferences held in 1993-94, see Engler, *supra* note 5, at 120 n.58.

118. Conferences or sessions of conferences dedicated to the tenth anniversary of the MacCrate Report were held at the AALS Annual Meeting in New Orleans, LA (Jan. 5, 2002), the New York Law School Clinical Theory Workshop (Feb. 22, 2002), the AALS Conference on Clinical Legal Education (May 19, 2002), the program of the American Bar Association's Section on Legal Education and Admissions to the Bar at the ABA's Annual meeting in Washington, D.C. (Aug. 2002), as well as the Conference at Pace University School of Law for which this article was written (Nov. 15, 2002).

119. At the February 22, 2002 Conference Robert MacCrate was in attendance, and presented with a birthday cake marking the anniversary of the Report.

120. At the 2002 AALS Clinical Conference, we asked those in attendance to identify for the group a specific initiative that was feasible for implementation at their school that would enhance the teaching of skills and values. A lively discus-

e. *Websites.* A wealth of information is available on the web, starting with the websites of the organizations involved in the various initiatives described in this article. For example, the ABA,¹²¹ AALS,¹²² CLEA¹²³ and the Institute of Law Teaching¹²⁴ all have their own websites. CLEA is posting drafts of its Best Practices Project online, while information relating to relevant initiatives and programs at various schools appear on the websites of the AALS Pro Bono Project¹²⁵ and Equal Justice Project.¹²⁶ Many of the sites also include links to other websites beyond those of the organizations listed here.¹²⁷

f. *The Tools in Combination.* As with the need to develop a constant interchange between those at different law schools, an effective effort to push an agenda of skills and values teaching should use many of the tools at once, preferably in combination. For example, to reach a larger group of people, brief descriptions of programs and initiatives can be posted on listservs and published in section newsletters. Local and national conferences can continue to organize sessions dedicated to sharing and brainstorming around the issues of skills and values, the results of which again can be shared via e-mail or posted on the web. Authors of draft, or published, law review articles can continue to present the articles at conferences, and law reviews can continue to solicit articles about, and dedicate symposia issues to, skills and values teaching. Each of the vehicles can be used

sion ensued, with many creative ideas shared in a short amount of time. Whether the ideas will be implemented and shared beyond the smaller group, and whether other conferences can continue the conversation remains to be seen.

121. <http://www.abanet.org> (n.d.). A special task force of the Section on Legal Education and Admission to the Bar produced the MacCrate Report in the first place, and information from the section is available through the ABA's homepage.

122. <http://www.aals.org> (n.d.).

123. <http://clinic.law.cuny.edu/clea/clea.html> (last updated Jan. 1, 2003).

124. <http://law.gonzaga.edu/> (last modified Jan. 9, 2003). The Institute published Professor Munro's volume *Outcome Assessment for Law Schools*, *supra* note 4, the Table of Contents of which is available online through the website. <http://law.gonzaga.edu/ILST/PubsResources/outtoc.htm> (last modified Nov. 16, 2001).

125. See <http://www.aals.org/probono/index.html> (n.d.).

126. <http://www.aals.org/equaljustice/index.html> (n.d.).

127. For example, the ABA's website includes a link to the American Law Institute and its related programs. <http://ali.org> (n.d.). The website for New England School of Law's Center for Law and Social Responsibility is located at: <http://www.nesl.edu/csr/> (n.d.). The MacCrate Report proposed the creation of an American Institute for the Practice of Law, a proposal not implemented to date. See MacCrate Report, *supra* note 1, at 337-38 (Recommendations F1-F5).

both to offer assessment tools and to receive information and reports from individual schools.¹²⁸

As busy faculty members can attest, that mechanisms for sharing exist does not mean that schools will utilize those mechanisms. To the contrary, absent a commitment to do so, the likelihood remains that schools will continue to operate in relative isolation, learning from others more by happenstance than by design. While the details of how to design such a strategy will vary from school to school, it seems inevitable that the success depends on the identification of a faculty member, or small group of faculty members, committed to undertaking the task. At many schools, the players best positioned may be in the clinical programs; at other schools, Curriculum Committees and visionary Deans may be better positioned to identify the appropriate player. As with other law school initiatives, absent energy and initiative from inside, or pressure from the outside, the accomplishment of something of value is unlikely.

3. *The Importance of Inquiring*

While we may rightly question whether the effort of gathering the information will be worth the benefits that will result, we should keep in mind the value of simply inquiring, as part of the sharing, comparing and assessment process. The survey of the curriculum at New England, discussed previously,¹²⁹ was one of the most important tools that focused attention at New England on the teaching of skills and values. Not only did the results of the survey help guide the programmatic changes over the next few years,¹³⁰ but the process of conducting the survey and producing the final report focused attention on the teaching of skills and values in a manner that had not occurred before.

128. A recent edition of the AALS Section on Clinical Legal Education newsletter illustrates the effectiveness of using the tools in combination. Professor Jane Murphy, working on the issue of developing a strategy to establish a right to appointed counsel in certain civil cases, posted a query on the clinic listserv to find out who was working on the issue around the country. She then organized the responses into the categories of "Teaching," "Scholarship," "Litigation," "Statutes" and "Related Advocacy" and published the information, with the names of the contact people, in the newsletter. *Civil Gideon Work*, AALS NEWSL. (Ass'n Am. Law Sch./Section on Pro Bono and Public Service, Washington, D.C.), Nov. 2002, at 11-12.

129. See *supra* text accompanying notes 60-61.

130. Engler, *supra* note 5, at 127-30 nn.101 & 103.

The tenth anniversary of the MacCrate Report presents a similar opportunity to focus efforts at our various schools on our teaching of skills and values. The question need not be framed the same way at every school. For some schools, the MacCrate Report might have been viewed as a negative pressure. At others, it may have been viewed positively, and continues to be viewed so today. At still others, such as mine, the Report initially was viewed very positively by some, but now has faded from being an important document.

Regardless of how the question is framed, the process of periodically focusing attention on the teaching of skills and values is a crucial endeavor. Simply asking the question will require faculties to examine what occurred over the past ten years, what the current status is of our teaching of skills and values, and what steps we should take to fill the gaps that remain. Newer teachers, who started teaching after the MacCrate Report faded from the headlines, might be introduced to the document and benefit from its teachings as many of us did a decade ago.

Finally, the process of sharing and comparing can increase the odds that the questions are asked in the first place. Those who teach at schools where faculty are ready to ask the questions can look to the lessons of other schools as to what is reasonable to achieve, and how the current teaching can be enhanced. Those who teach at schools that resist asking the questions might be able to utilize the fact that “everyone else” is asking the questions. In the quest at many of our schools to market the strength of our various programs, the prospect of “falling behind” can be parlayed into a powerful tool, particularly when the remedy can be started with talk. As Part Three illustrates, simply starting the inquiry in the first place can yield benefits.

III. Building a Public Service Community at New England

A. *Using the Tools to Identify Gaps*

Using Pursuing Equal Justice as an example, this Part illustrates the utility of using the tools and strategies discussed in Part Two to develop a coherent program to fill one gap identified at an individual law school. The MacCrate Report identi-

fied a series of fundamental lawyering values that relate to the broader topic of Pursuing Equal Justice. The values include "Promoting Justice, Fairness, and Morality," "that Adequate Legal Services Are Provided to Those Who Cannot Afford To Pay . . ." and enhancing the "Capacity of Law and Legal Institutions to Do Justice."¹³¹ At New England both the five general assessment tools and the various objective measures confirmed the existence of a gap in this area that remained a decade after the MacCrate Report's publication.

Throughout the 1990s, the school moved steadily forward in the area of skills training, using the MacCrate Report itself as a roadmap. The school added clinical,¹³² simulation and practice courses, integrated clinical methodology into the curriculum and reinvigorated its policy of teaching ethics pervasively throughout the curriculum. New England worked toward integration of the clinical courses and clinical methodology into the mainstream of the school's operation. The status of clinical faculty became more secure, and clinical faculty began teaching nonclinical courses and participating in governance of the law school.

When the expansion of skills training through these mechanisms seemed to reach its limits, the faculty adopted a two-course "skills" requirement for graduation,¹³³ and added a third semester of legal writing. When the faculty made changes to the first-year and second-year required courses, it required the three remaining full-year courses to include skills and ethics exercises in each semester.¹³⁴

Yet, the energy and creativity dedicated to the skills area did not carry over into the values portion of the MacCrate Report, at least with respect to the values related to Pursuing Equal Justice.¹³⁵ There was some discussion of the related topics of public service, equal justice, and pro bono work in the lat-

131. MacCrate Report, *supra* note 1, at 213-15 (Values 2.1-2.3).

132. At New England, clinical courses are defined to include both in-house clinical placements and externships.

133. *See supra* text accompanying note 42.

134. Engler, *supra* note 5, at 124-34.

135. The school did attempt to reinvigorate its policy of teaching ethics pervasively throughout the curriculum. Engler, *supra* note 5, at 132.

ter half of the 1990s.¹³⁶ Overall, however, the school focused on skills training, but with little movement on the values portion of the report, and in particular on the values that related to Pursuing Equal Justice. New England's experience seemed to validate the initial concerns of some critics of the MacCrate Report that implementation of the Report would lead to the elevation of skills training at the expense of the values portion of the Report.¹³⁷

The five assessment tools discussed in Part Two suggested the MacCrate Report had minimal impact at New England in this area. Using the standard of the MacCrate Report's recommendations, there was little evidence that "[l]aw school deans, professors, administrators and staff" were conveying "to students that the professional value of the need to 'promote justice, fairness and morality' is an essential ingredient of the legal profession"¹³⁸ With regard to the next three standards, there was some indication of incremental change, but no evidence of dramatic change; a comparison of public service at New England in 1992 and the end of the decade revealed slight increases in some areas, but decreases in others, yielding an overall picture of minimal change. Reports from the newly-formed AALS Pro Bono and Public Service Section suggested that New England's pro bono programs lagged behind those of other schools.¹³⁹

Data from the objective measures confirmed the tentative conclusions yielded by the primary assessment tools. The curricular survey from the mid-1990s revealed that the values receiving the least attention in the curriculum were those related to Pursuing Equal Justice.¹⁴⁰ Inside the curriculum, public interest and service work was confined primarily to core clinical placements. The clinical courses are electives, open to students

136. At one point, a Task Force on Co-Curricular issues studied pro bono work at the law school as one of a number of issues. The Task Force's resulting report, however, was tabled, and its recommendations never came to the faculty for a vote. Engler, *supra* note 5, at 136.

137. See Engler, *supra* note 5, at 120.

138. MacCrate Report, *supra* note 1, at 333 (Recommendation C.19).

139. See generally THE AALS PRO BONO PROJECT, A HANDBOOK ON LAW SCHOOL PRO BONO PROGRAMS, (June 2001) [hereinafter A HANDBOOK ON LAW SCHOOL PRO BONO PROGRAMS].

140. Engler, *supra* note 5, at 129 n.103.

in their final two years of law school. Even within the clinics, many placements are in government, with some even in the private sector. The school's single in-house clinic, while dedicated to the representation of indigent litigants in civil cases, comprised only a small portion of the overall clinical program in terms of enrollment. There were no graduation requirements directed at public service, and no first-year programs inside the curriculum.¹⁴¹

Outside the curriculum, a few activities required service work, such as one of the student journals, which included a Prison Outreach Program. With respect to the purely volunteer work, student participation in pro bono programs dwindled to the extent that participation was negligible by the end of the 1990s. None of the student groups had pro bono coordinators or contacts, a reality that reflected how small a role pro bono work played in student life. While some students took public interest jobs over the summer, and even after graduation, information regarding this work was incomplete and hard to access, and there was no person in the Career Services Office whose primary focus was public interest jobs.¹⁴²

That the assessment tools reveal a gap at New England in our teaching of the values related to equal justice is not surprising in light of the events on the national level that attest to a similar gap at most law schools. A major initiative of the latter half of the 1990s involved efforts to strengthen pro bono and public service at the law schools. The efforts involved the creation of the AALS Commission on Pro Bono and Public Service Opportunities, the issuance of the Commission's Report *Learning to Serve*¹⁴³ and the subsequent creation of the AALS Pro Bono and Public Service Section.¹⁴⁴ In the 2000-2001 academic year, the AALS launched its Equal Justice Project. The Project included colloquia held around the country on the topic of "Pursuing Equal Justice: Law Schools and the Provision of Legal

141. *Id.* at 134-38.

142. *Id.*

143. LEARNING TO SERVE: THE FINDINGS AND PROPOSALS OF THE AALS COMMISSION ON PRO BONO AND PUBLIC SERVICE OPPORTUNITIES 32 (Oct. 1999) [hereinafter *LEARNING TO SERVE*].

144. For a general description of these initiatives, see Engler, *supra* note 5, at 163 nn.237-38. The AALS Pro Bono Project's Website is at <http://www.aals.org/probono> (n.d.).

Services.”¹⁴⁵ Since the Project and colloquia confirmed the existence of a gap at many law schools, they reinforced the assessment that a gap in the teaching of the values related to equal justice remained at New England.

B. *Developing a Coherent Program to Fill the Gap*

In an effort to fill the gap, faculty proponents of public service work at New England urged the creation of a new Center for Law and Social Responsibility. The idea was to create a place at the law school that would serve as a magnet for public service work in the various aspects of New England’s operation, thereby lending support to existing work and encouraging others in the New England community to undertake new endeavors. Among the initial projects of the new Center was the “Public Service Project,” created to identify, support and increase Public Service work among New England faculty, students and alumni.

145. See, e.g., Brochure, AALS Equal Justice Project, at <http://www.aals.org/equaljustice/goals.html> (n.d.) [hereinafter Equal Justice Project Brochure]. The articulated goals of the Equal Justice Project were:

1. To develop models that can be used in different law school settings with various levels of resources to encourage teaching, scholarship, and service activities that support the provision of legal services to under-represented groups.
2. To stimulate throughout the entire law school—in nonclinical courses, library programs, and pro bono projects, among others—cross-cutting interest in and commitment to the provision of legal services to underserved individuals, groups, and communities.
3. To establish formal relationships between law schools and equal justice communities aimed at promoting on-going support for the provision of legal services to underserved individuals, groups, and communities.
4. To evaluate the effectiveness of the variety of models and approaches that emerge from the Project with the goal of creating sustained commitments of equal justice education, scholarship, and work in law schools on both the national and local levels.
5. To encourage collaboration among law schools and their faculties in addressing the pressing issues and themes that will be considered in the Colloquia.

Id. The work of the project remains ongoing, as its proponents continue to develop and implement initiatives building on the ideas that grew out of the colloquia and are designed to further the goal of Pursuing Equal Justice at the Law Schools. See <http://www.aals.org/equaljustice/> (n.d.). The Project’s Report, released in the fall of 2002, is available online at <http://www.aals.org/equaljustice> (n.d.).

The Center was created with widespread faculty support.¹⁴⁶ The creation of the Center was a victory for faculty proponents of public interest, public service and pro bono legal work.¹⁴⁷ Yet, translating the goals of the Center into deeds was nothing short of a monumental exercise in organizing and mobilizing various communities at the law school. Despite the fact that there had been widespread support for the Center's creation, no new personnel, whether administrative or faculty, were hired. Nor was a separate budget allocated for the Center or its work.

The proponents of the Center rightfully could point to a variety of teaching, scholarship and pro bono initiatives undertaken by the Associated Faculty of the Center.¹⁴⁸ Yet, at the same time, these were the same faculty who had engaged in similar initiatives before the existence of the Center. Whether the Center would become a viable entity that increased and supported public service work at New England, or an empty initiative that claimed credit for work that a few individuals would have undertaken anyway, remained to be seen.

Since part of the problem was that public service work at New England was not organized in a single place, a threshold step involved analyzing every aspect of New England's operation and identifying both the public interest/public service work that was ongoing, as well as barriers to increasing the work. The two parts of the investigation proved to be intertwined, since the inquiries revealed information and barriers at the same time. For example, it was relatively easy to identify faculty members incorporating public service into their teaching, producing scholarship in fields related to public interest, and performing pro bono legal work.¹⁴⁹ At the same time, it was evident that most faculty members felt that they had very full plates and perceived that pro bono work received less recogni-

146. Over one-third of the faculty co-sponsored the proposal. Eleven faculty members signed on as Associated Faculty to the Center. The full faculty unanimously approved the proposal.

147. For most of the past decade, these topics had remained at the margins of the New England community. In one fell swoop, the issues had been placed front and center, and the commitment to the Center's work had been met with universal support.

148. See, e.g., New England School of Law, Center for Law and Social Responsibility, at <http://www.nesl.edu/csr/csrfac.cfm> (n.d.).

149. *Id.*

tion than teaching or scholarship, decreasing the odds that most faculty would choose to undertake service work in selecting new projects.

Identifying barriers to student participation required involving students in the conversation. Only a small number of New England students performed purely voluntary pro bono work,¹⁵⁰ and the public interest community seemed fragmented and small. We put together a discussion group in the Fall of 2001 to try to figure out whether the problem was that New England was not attracting students interested in public interest work, or that students interested in public interest work found inadequate institutional support and were left to fend for themselves.¹⁵¹

The students in the discussion group uniformly agreed that there were plenty of students at New England interested in public interest work. However, those same students felt they were left to fend for themselves, finding little in the curriculum, and nothing in the first year, to sustain their interest. They had no idea which faculty members supported public interest work, were unaware that any faculty performed pro bono work and had no idea to whom they could turn for guidance. A year after the creation of the Center for Law and Social Responsibility, not a single student in the discussion group had heard of the Center or was aware of its existence. At every turn, whether in the curriculum, with faculty or in the search for summer or full-time jobs, public interest students felt they were left to their own devices. This created a dynamic in which those students turned away from the school, fending for themselves

150. *See supra* text accompanying note 142.

151. Even this process was hindered initially by the problem of identifying an appropriate discussion group. I started with a core group of students I recognized from their choice of clinical placements and their participation in the few student groups committed to public interest work. The initial group turned out to be comprised exclusively of white women, virtually all from the Day Division. I worried, with justification, my identification of white women might reflect social patterns at the law school more than it did commitment to public interest work. We eventually succeeded in expanding the group, more easily identifying students of color and evening division students committed to public interest work than identifying men.

individually, rather than toward the school, joining and enhancing a thriving public interest community.¹⁵²

In response to the picture painted by the students, faculty members took two initial steps. The first was to establish a mentoring program, so that students interested in public interest work could be paired with a faculty mentor, hopefully solving the problem of the student facing choices at school without knowing where to turn for guidance. The second was to create a new course, called "Public Interest Law Seminar and Clinic" so that interested students could immediately identify a place in the curriculum to focus their energies.¹⁵³

Implementation of both programs became part of an aggressive campaign at New England to raise the profile (and attractiveness) of public interest work at New England.¹⁵⁴ We

152. A sampling of the students' words captures the picture. "I think there is a big interest in public interest, people just do not know how to get involved." E-mail from student #4 to author (Oct. 23, 2001) (on file with author). "[A]side from the clinical opportunities, there is no focus on public interest . . . I think that there are plenty of students who are interested in public interest at NESL . . . if there was some structure to initiate students more could be done." E-mail from student #3 to author (Oct. 11, 2001) (on file with author). "I have been frustrated over and over by the brevity with which [Public Interest] topics are covered." E-mail from student #1 to author (Sept. 20, 2001) (on file with author). "I had no idea that there was such a thing available." E-mail from student #2 to author (Oct. 11, 2001) (on file with author) (referring to a pro bono opportunity). In another telling comment, one student reacted to the letters CLSR, referring to New England's Center for Law and Social Responsibility, by commenting that "means nothing to me." E-mail from student #2 to author (Oct. 24, 2001) (on file with author).

153. The "Public Interest Law" portion of the name was designed to make clear a primary place in the curriculum for students interested in public interest law. The "seminar" portion reflected not only the structure of the classroom portion of the course, but also communicated the fact that enrollment would satisfy the graduation requirement that New England students take at least one seminar course. The "clinic" reference similarly described the fieldwork and communicated that the course also would satisfy one of the two "skills" requirements for graduation. The course would now alternate with the "Lawyering Process" course, the core clinical course that feeds students into the in-house clinic, but which retains a "skills"-based emphasis in the course description and classroom content.

154. The establishment of the mentoring program, in December 2001, was launched through announcements electronically and in the student newspaper. The approval of the new Public Interest Course was followed by an announcement in the school newspaper, changes in the registrations materials for students, and changes in the clinical materials to reflect the "Public Interest" bent of the course. Although the initial response to the mentoring program was minimal, a number of those students later enrolled in the new Public Interest course. It is unclear whether the minimal response to the mentoring initiative reflects the interest-

used the student newspaper to describe the increase in public interest activity at New England generally,¹⁵⁵ to report on faculty pro bono and public service legal work,¹⁵⁶ and to bring to the attention of the students an article published in *The Law Teacher* describing the integration of service work into seminars taught by three non-clinical faculty members at New England.¹⁵⁷

To reach a broader community, including faculty, alumni and law school applicants, we enhanced the Center's website. Each of the articles written for the student newspaper was added to the Center's webpage.¹⁵⁸ We developed and posted on the Center's website student profiles, to show other New England students and prospective students the various routes through which students could, and did, perform public interest work at New England.¹⁵⁹ Building on what was a successful approach, we developed profiles of alumni working in public interest.¹⁶⁰

level of the students, the publicity for the program or the timing of the announcements.

155. The article, titled *Public Interest Work on the Rise at New England*, described the Center's activities over the previous year, the activities of students both in clinics and in extra-curricular activities, and the advent of the new Public Interest course; the student editors chose to publish the article as their cover story, which we in turn placed on the Center's webpage. See Russell Engler, *Public Interest Work on The Rise at New England*, at http://www.nesl.edu/csr/articles/mar_due_process.cfm (fall 2001).

156. See Russell Engler, *NESL Faculty Active in Public Interest and Public Service Legal Work*, available at http://www.nesl.edu/csr/articles/apr_due_process.cfm (Mar. 2002).

157. See Russell Engler, *Integrating Public Service into Nonclinical Courses*, available at <http://law.gonzaga.edu/ilst/newsletters/fall01/engler.htm> (fall 2002).

158. See Center for Law and Social Policy, *About the Center*, at <http://www.nesl.edu/csr/> (n.d.).

159. See *Student Profiles*, at <http://www.nesl.edu/csr/service/studentprofiles.cfm> (n.d.). I returned to the members of the discussion group, who were now energized by the creation of the mentoring program, the new course, and the increased attention to Public Interest work. I asked each of the students to write Public Interest profiles, describing the various experiences at New England, whether through clinical courses, summer jobs, or student groups. Students enthusiastically responded, and the profiles on the web became an impressive collection of success stories of public interest students at New England, as well as an illustration of the many possibilities.

160. See *Alumni Profiles*, at <http://www.nesl.edu/csr/service/alumprofiles.cfm> (n.d.). I started by reaching out to the recent graduates whom I knew well, who were ecstatic to hear from me and to hear of the school's recent activity in the area of public interest. These alumni not only readily submitted their profiles, but also shared with me both details of their work and the names of others working in

Despite the flurry of activity, the core members of the Center faculty remained concerned about whether the Center was being perceived as an important addition to the school's operation, merely a name and a website, or something in between. As a result, we made a presentation at a faculty meeting, updating the faculty and the Deans as to the activities of the Center and its members over the past year. The oral report was supplemented by a written report, made available to faculty and placed on the website.¹⁶¹

The process of preparing and presenting the Report to the faculty and Deans revealed the first tangible evidence that the initiatives were affecting the fabric of the institution. First, the Director of Admissions reported that the applicant pool reflected an increase in applicants to New England both generally expressing interest in Public Interest Law and specifically mentioning the Center; the Director of Admissions attributed the change directly to the existence of the Center and its website. Second, the Dean reported that response among alumni to a letter from the Dean informing alumni of a range of initiatives at New England had yielded widespread, positive reaction, with particularly strong expressions of support for the creation of the new Center; indeed, the Center was the first of the many activities listed by the Dean's Office in the letter itself. Third, the faculty leaders of the school's Charles Hamilton Houston Enrichment Program, a program created a decade ago with the mission in part of helping to reduce the isolation often felt by minority students, proposed that the program become associated with the Center as a way of recapturing the vibrancy that

public interest jobs. A request to the entire faculty to help me identify our graduates in public interest jobs served the dual purpose of reminding faculty of the public interest push and identifying other alumni. An announcement in the alumni letter yielded another group of interested alumni happy to hear of the new initiatives, to submit profiles, to serve as mentors to New England students and to help in any way they could.

161. See New England School of Law—Center for Law and Social Responsibility Report of Activities for the 2001-2002 Academic Year, at http://www.nesl.edu/csr/2001-2002_report.cfm (Apr. 2002). The oral report included a sketch of the new activities of the original projects, the creation of additional Center projects, the initiatives to strengthen the public interest community involving both students and alumni, and the use of the website in organizing the various activities and having a public face to the outside world.

had waned over the past few years;¹⁶² that association with the Center was viewed as a vehicle for reviving a program that formerly had been a cornerstone of the school's operation seemed to validate the role of the Center as a magnet for the various public interest and public service initiatives that had been fragmented at the school. Fourth, in another small sign of the increasing prominence of public interest and public service on the school's radar screen, six of the eight members of the class of 2002 who were part of the public interest discussion group were chosen to receive awards at graduation.¹⁶³

Finally, early feedback from the initial offering of the new Public Interest Law Seminar and Clinic confirmed the sense both that the course filled a gap at the school and that it had the potential to contribute to the strengthening of a broader public interest community at New England. The course attracted twenty students, many of whom specifically articulated the importance of having such a course offering both for students dedicated to public interest law and for those for whom exposure to public interest law would enrich their education, training and practice regardless of the focus of their subsequent careers. Moreover, discussions in the classroom that touched on the specific context of New England itself led to formation of a student-faculty discussion group, including some students in the course and some outside the course, to develop strategies to increase pro bono work by New England students generally.

Despite the early signs of growth of the public interest and public service community at New England, it remains to be seen whether these initiatives will comprise part of a lasting institutional change, or rather burst of activity that will fade from view. The previous decade saw a host of initiatives, the lasting

162. For more information about the Charles Hamilton Houston Enrichment Program [hereinafter CHHEP], see <http://www.nesl.edu/students/chhep.cfm> (last modified Dec. 31, 1999). The CHHEP program was established in 1990 "to help reduce the isolation often felt by minority students, to address racial bias in the law school community, and promote the diversity of the student body." *Id.*

163. The six was out of a possible total of fourteen awards, in addition to the two determined solely by class rank. Five of the six were among the first students we profiled on the Center's webpage. See *supra* note 159. Having sat through faculty meetings for almost a decade at which students were selected for awards, I have little doubt that the prominence given to student public service work by the Center played a direct role in helping the faculty identify students deserving of the awards.

effect of which is unclear.¹⁶⁴ The need to develop institutional mechanisms to avoid slippage remains, a challenge underscored by the fact the initiatives currently depend on available energy from a few, without the prospect of new resources.¹⁶⁵

C. *Sharing, Comparing, Inquiring*

The process of sharing, comparing and inquiring, described in Part Two, is an important step as we struggle to move our public service initiatives from a nascent phase to a lasting feature at New England. The general approach flows from the goals of AALS Equal Justice Project: "To stimulate throughout the entire law school—in nonclinical courses, library programs, and pro bono projects, among others—a cross-cutting interest in and commitment to the provision of legal services to underserved individuals, groups and communities."¹⁶⁶ The involvement of various aspects of the law school's operation, while presenting a challenge in organizing and mobilizing, provides

164. For example, the efforts to implement the MacCrate Report more generally in the mid-1990s yielded a series of programs designed to enhance skills training. Some, like the adoption of a requirement that students take at least two designation skills courses as a condition of graduation, seem likely to insure that a general emphasis on skills training at New England will be maintained. Others, like the renewed emphasis on the pervasive approach throughout the curriculum to the teaching of ethics, the trend to increase the use of clinical methodology in the nonclinical courses and the requirement that first-year faculty include skills and ethics exercises in the full-year courses seem harder to measure and monitor. These new methodologies raise questions as to the lasting power of the initiatives. During the 1990s, initiatives of the New England faculty included increasing the quantity and quality of scholarship produced, internationalizing the curriculum, and enhancing the use of technology in the classroom. The scholarship initiatives, supported by summer stipends and constant inquiry and scrutiny from the faculty and administration, seem to have become firmly embedded in the culture at the school. A listing of faculty scholarship is available on the school's website. See Faculty Scholarly Writing, at <http://www.nesl.edu/faculty/facpubs.cfm>. (n.d.). The internationalization of the curriculum, and the increased use of technology, as with the pervasive approach to ethics, face the difficulties of monitoring and measuring, which in turn run the risk of fading once the spotlight has shifted.

165. The initiatives described above affect potentially all aspects of the school's operation: admissions and career services, faculty, students and alumni, the curriculum and co-curricular activities. Yet, none of the imminent plans involve hiring additional faculty or personnel with specific responsibility for any of the public interest initiatives. As a result, the "equal justice" initiatives run the risk of going only as far as the energy of the core of dedicated faculty will take them. When other projects cry for the attention of even these limited resources, there may be little available to fill the void.

166. See Equal Justice Project Brochure, *supra* note 145.

an opportunity to draw from the resources of a series of departments and operations without requiring the expenditure of new resources.¹⁶⁷

If new resources are needed, additional challenges remain. Even assuming that the school would be prepared to appropriate new resources, prioritizing the potential new positions reflects the way in which additional resources could cause as many problems as it solves. For example, within the existing structures at New England, Equal Justice work could be furthered by adding clinicians, strengthening student pro bono work, supporting faculty initiatives, or adding targeted resources to the career services, admissions or alumni operations. Alternatively, new positions could be created, whether a staff or administrative position at the Center, a new faculty position of some kind, an overall coordinator of public service or a Dean of Public Interest.¹⁶⁸ If the overall goal is to increase Equal Justice work, it is by no means clear which position is more important. Any route will advance some aspects, but might set back others. Trying for more than one at the same time may undercut the chances of success for any one route.

If the past twelve months are illustrative, our efforts to meet the challenges will be enhanced by the process of sharing. Each of my recent writing projects comprised part of the sharing, offering examples of the initiatives and struggles at New England to others; these projects provided feedback and exam-

167. The school already engages in various public relations endeavors, including the publication of catalogues and newsletters, development of a website and mailing of information to alumni and other communities. To the extent that appropriate information is provided to the "right" place at the "right" time, the public interest initiatives can be "marketed" without a separate marketing budget. Precisely this approach occurred with the inclusion of the creation of the Center and description of the Center's work in the recent alumni letter and newsletters. Similarly, the public interest profiles of alumni and students developed for the webpage are already being utilized in other public relations initiatives by the school. The admissions committee is eager to trumpet the Center's achievements in its efforts to make New England sound more attractive to prospective applicants. The school's newly revised Catalog includes an impressive, two-page spread featuring public interest law and the new Center. NEW ENGLAND SCHOOL OF LAW CATALOG 2003 at 16-17. Finding similar hooks to enhance the work of student groups, the career services office and faculty members through increased focus on public interest and public service may take less energy to sustain than it does to initiate.

168. See, e.g., A HANDBOOK ON LAW SCHOOL PRO BONO PROGRAMS, *supra* note 139, at 18-19.

ples from other schools. Through the writing of the article for the Clinical Law Review,¹⁶⁹ I examined more closely ideas from the AALS Equal Justice Project. This helped us attack the public service gap at New England, armed with the idea of stimulating through the entire law school a “cross-cutting” interest in Equal Justice initiatives.

Similarly, through attending conferences, such as the AALS Annual Meeting in 2002, I learned of other public interest courses, from which I developed the seminar portion of the new public interest course at New England. Through the AALS Public Service and Pro Bono Section Newsletters, various listservs, and conversations at conferences with colleagues at other schools, we learned of the structure of pro bono programs at other law schools. Those programs not only provided ideas for potential programs at New England, but also served as a reminder that other schools are moving aggressively in the area of public service, and that New England needs to move ahead simply to avoid being left behind.¹⁷⁰

As we benefit from the ideas of others, schools comparable to New England might be able to use our approaches. At the same time, however, we would be remiss if we ignored the importance of context. Initiatives at other schools may have developed through paths that are unique to those schools, or hard to replicate at schools like New England. The details of New England’s programs and struggles may be important only to those at New England. Yet, even where the differences outweigh the similarities, the fact that Equal Justice is receiving increased attention and resources at some schools can provide momentum to move forward at other schools. Where the process of sharing identifies even a few ideas that have worked at one school and

169. See Engler, *supra* note 5.

170. For example, A HANDBOOK ON LAW SCHOOL PRO BONO PROGRAMS, *supra* note 139, provides descriptions about programs at various law schools. Programs at DePaul, the University of Denver and the University of Colorado were featured recently in the AALS Pro Bono and Public Service Section Newsletter (Vol. 3, No. 1). Programs at Fordham, and the New York law schools generally, were featured in the previous issue (Vol. 2, No. 3). Both the University of Denver and the University of Cincinnati recently posted information about their programs on the AALS Pro Bono listserv. See Pro bono Programs, at <http://www.aals.org> (n.d.). See also e-mail from Jerry Borison to author (May 3, 2002) (on file with author); e-mail from Holly Eaton to author (July 18, 2002) (on file with author).

can be utilized at another, the efforts to build bridges will be worth the effort.

It remains to be seen how New England will proceed in the area of Pursuing Equal Justice. By utilizing the tools described in this article, New England at least is pursuing a strategy designed to produce a coherent program that would fill an important gap in the educational experience provided for New England students. While assessment questions remain regarding the effectiveness of the resulting program and the development of programs to fill other gaps at New England, to the extent the school has learned through its Equal Justice efforts to utilize a methodological approach in search of a coherent program, the efforts have served the school well.

IV. Conclusion

As we enter the second decade after the publication of the MacCrate Report, we might wish that the task of assessing the Report's impacts and identifying gaps that remain is an easy one. If we lived in a world in which the standards for assessment had been settled long ago, we could simply compare our data from today with data from 1992, and draw conclusions about the impact of the Report and the remaining gaps. We would know more about the effectiveness of our programs and could focus on implementing coherent programs to fill the gaps.

The absence of standards, and the profession's historical resistance to measuring the effectiveness of its teaching, make it more imperative that we struggle with the questions raised in this article. By asking the questions and striving to make sense of the answers, we not only gain insight into the challenges that lie ahead for our teaching of skills and values, but we also participate in the growing effort to demand that our institutions are choosing as their primary mission the education of our law students for the world that awaits them.

When legal educators choose to avoid assessment due to the difficulties of the task, we become part of the problem that has plagued legal education for too long. Legal educators will remain without coherent missions and valid standards for assessment. The resulting educational programs will be built on guesswork as to their effectiveness and marked by incoherence as to their structure. The failure to utilize the tenth anniver-

sary of the MacCrate Report as a moment to make a thoughtful attempt at assessment would amount to our continuing endorsement of that flawed methodology.

The process of assessment will be ongoing, as we assess, and later reassess, the quality of our programs. While the endpoint may be hard to discern, the tenth anniversary of the publication of the MacCrate Report provides a ready starting point. In whatever format, through whatever tools seem reasonable and feasible at our respective schools, we should not miss the opportunity to ask what the impact of the MacCrate Report has been, what gaps remain in our instruction of skills and values, and how we are going to fill the gaps. If we can do so, and share our successes, or even the results of our inquiries, the question of whether the MacCrate Report is a living document will be the easiest to answer.