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A Response to Russell Engler

Gretchen M. Flint

Pace University School of Law, mflint@law.pace.edu

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A Response to Russell Engler by Gretchen Flint

by Gretchen M. Flint*

I am always happy to go back and look at the MacCrate report, and those of you who have been in my clinic know that that's where we start and that's where we end when we talk about the experience of learning. But, as I read Russell's paper, I think the piece that's missing is an acknowledgment of how hard it is for a small group of people who are on the margin to effect change and that institutions have very strong reasons to stay either the way they are or institute very small, incremental changes.

Greg Munro's book¹ has been on my bookshelf for a quite a while and no one has asked the library to get it from me. As I looked at that book last night, I thought about how revolutionary change would be required to implement his ideas about effective teaching. Legal education would look so different from how it does now. Every single person would have to make fundamental changes in how they worked. Unfortunately, that made me depressed and not optimistic.

Then I realized that it's not that we don't do assessment at all, it's that we ask different questions. We, in fact, spend a lot of time talking about how the school is doing, just not in educating future lawyers, and in not making sure that they have skills and values that we want them to have as they emerge as lawyers. But we define success in different ways. We spend an enormous amount of energy and talk figuring out how we can help people pass the bar exam, even though many acknowledge

* Visiting Association Professor of Law, Pace University School of Law. Prof. Flint is the Faculty Supervisor of the Equal Justice America Disability Rights Clinic, a live client clinic, and the Legal Services/Public Interest/Health Law Externship. She also teaches Elder Law.

1. GREGORY S. MUNRO, *OUTCOMES ASSESSMENT FOR LAW SCHOOLS* (Institute for Law School Teaching ed., 2000).

its irrelevance to the competent practice of law.² We spend a lot of energy worrying where we are going to end up in the U.S. News and World Report.³ But these assessments do not really help us accomplish what would be necessary to have our students ready to practice law.

The fact is that the kind of education that the MacCrate Report envisions is extraordinarily expensive, both in terms of actual dollars and in terms of energy and resources that are required. To the extent that the institutional priorities are around research, reputation, and attracting better students, all of those things are going to interfere with putting the resources into what Russell identifies as the appropriate mission of the law school—preparing people to become competent, ethical members of our profession.

Where our students are coming from and where they are going also has a big impact. Law school for most students is actually not a full-time occupation. Even our day students are working and have family obligations. If they are working in law firms, they are learning about lawyering, but not always what we would want them to learn. Unlike medical school, we don't have control over the learning experience and we don't try to integrate that learning with the rest of the law school experience.

Our students are extraordinarily diverse. They don't come here with the same skills and the same backgrounds, and, frankly, as they move through the three or four years of law school, they don't get the same experience.

I have to admit that like every other law professor I know, I have my own ideas on how to do things. I think we are being very optimistic when we think about putting together a coherent experience for every student without really changing the way we teach. Academic freedom is a very important core value

2. See, e.g., Andrea A. Curcio, *A Better Bar Exam: Why and How the Existing Bar Exam Should Change*, 81 N.E. L. REV. 363 (2002); Committee on Legal Education and Admission to the Bar, *Report on Admission to the Bar in New York in the Twenty First Century – A Blueprint for Reform*, 47 THE REC. OF THE B. OF THE CITY OF NEW YORK 464 (1992).

3. U.S. News and World Report ranks undergraduate and graduate schools using a variety of indicators. For a discussion of the pernicious impact of U.S. News and World Report rankings on law school policies, see Dale Whitman, *Doing the Right Thing*, AALS NEWSL., Apr. 2002, at 1.

in the profession of law professors. We will all need to find a way to get beyond the initial resistance of "I'm going to do it my way."

I'll tell one quick story that illustrates this. I taught in the orientation for first year students this fall. Although I was clear that one of the objectives was to give students a preview of what it was going to be like to be called on in a large class, I found that it was almost impossible for me to actually call on someone who hadn't raised his or her hand. That's just how I teach. Even though I understood the objective, and I understood the value for the students who were about to go into a typical first year class, it was very, very hard for me to modify my own style to meet the objective. That was an important realization that while we might all get on the same page and decide that we are going to change legal education to better accomplish our mission; we will have to do a lot more work on a personal and institutional level to bring those changes about.

I think the reason that we're at the place where we are and the reason that MacCrate has fallen off the non-clinical map is that it is just so hard to change. Law facilities suffer from what I call the DNA factor, which is to the extent that new people are brought in, generally, they are pretty much like the faculty that hired them. They might be younger, but the fact is, they don't look that much different. For those of us on the margins or on the outside, who are pushing for radical changes, we need to develop some strategies for engaging our colleagues in the discussion of how, as an institution, we are going to define success and how we take responsibility for the lack of success. I would like for the MacCrate's skills and values to be the focus of that discussion, but I don't think we are there yet.