

April 2003

## The MacCrate Report: Its Impact on Education in Law Firm Management

Thomas M. Steele

Follow this and additional works at: <https://digitalcommons.pace.edu/plr>

---

### Recommended Citation

Thomas M. Steele, *The MacCrate Report: Its Impact on Education in Law Firm Management*, 23 Pace L. Rev. 613 (2003)

DOI: <https://doi.org/10.58948/2331-3528.1235>

Available at: <https://digitalcommons.pace.edu/plr/vol23/iss2/8>

This Article is brought to you for free and open access by the School of Law at DigitalCommons@Pace. It has been accepted for inclusion in Pace Law Review by an authorized administrator of DigitalCommons@Pace. For more information, please contact [dheller2@law.pace.edu](mailto:dheller2@law.pace.edu).

# The MacCrate Report: Its Impact on Education In Law Firm Management

by Thomas M. Steele\*

The education of professionals, like much else in American society, is dynamic. Lawyers and legal journalists are fond of suggesting that the legal profession is “hidebound,” “conservative,” “traditional,” and “resistant to change.”<sup>1</sup> Each of these characterizations carries with it a nugget of truth, and evidence of each is readily available.<sup>2</sup> While legal education has been attacked for staying true to an educational model developed in the latter half of the Nineteenth Century,<sup>3</sup> evidence to the contrary is also available. For instance, by 1990—that is, long before personal computers were considered an essential tool in higher education—two-thirds of law students owned a personal computer during their law school years.<sup>4</sup> This is from a profession that, not ten years before, was supposed to be so tied to the aes-

---

\* Professor of Law, Wake Forest University School of Law. The author wishes to offer special thanks to Anne-Marie Buwalda and Arlene McClannon for their assistance in creating this article. The author also wishes to thank research assistants Jason R. Shoemaker, Sarah Elizabeth Kirby, and Lindsey Camp for their persistence and tenacity in research, and Dean Robert K. Walsh for his support and advice.

1. Margaret Wong captures this point well in *Diversity in the Legal Community: Perceptions of a Chinese Born Attorney*, 50 FED. LAW. 31, 31 (Feb. 2003), where she notes “[l]aw is an unobtrusive, discreet, and conservative profession. It does not aim to break any molds, but cautiously follows in the footsteps that have come before.”

2. Law school administrators, professors, students, and practicing attorneys have used these and other terms to describe the profession throughout the years. In addition to this anecdotal evidence, some authors have also recognized the static tendencies of the legal profession. See ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850'S TO THE 1980'S* (G. Edward White ed., University of North Carolina Press 1983); Roy T. Stuckey, *Education for the Practice of Law: The Times They are A-Changin'*, 75 NEB. L. REV. 648, 648-66 (1996).

3. See STEVENS, *supra* note 2, at 155-71; Stuckey, *supra* note 2, at 652-63.

4. Jack W. Simpson, *Symposium of Law Publishers: Mead Data Central, Inc.*, 11 LEGAL REF. SERV. Q. 101, 106 (1991). Mr. Simpson was the President of Mead Data Central, Inc. in 1991. A commonly told story during the late 1980's and early 1990's was that hidebound American lawyer/researchers actually did between one-third and forty percent of all online research worldwide.

thetics of hard-copy books that it would never adopt computers in finding answers to legal problems.<sup>5</sup> In fact, the legal profession and its primary engine of education, the law schools, have responded to both rapid technological change, and to the demands of society and the public in preparing lawyers to properly represent clients.

The purpose of this paper is to measure the impact of the MacCrate Report upon the legal profession, and especially legal education, by looking at contemporaneous statistical sources rather than anecdotal evidence or suppositions.

For the last half of the Twentieth Century legal educators and legal professionals have been engaged in a continuing debate over the academic preparation afforded prospective members of the legal profession.<sup>6</sup> At times the debate has been acrimonious. Beginning in the 1950's reformers made various attempts to update legal education by teaching law students the skills they would need to represent the public.<sup>7</sup> Proponents of practical skills instruction proposed law school courses and clinics that would teach those skills through individualized instruction, simulations, and clinical experiences.<sup>8</sup>

The "reformers" have had a considerable impact on law school curricula. Legal education has moved from the almost pure Langdellian academic model, that characterized virtually all formal education in law during the latter part of the Nineteenth Century and the first half of the Twentieth Century, to a mixture of classes based on the Langdellian model, and a relatively liberal mixture of clinical and practice courses.<sup>9</sup> That

---

5. See F. Allan Hanson, *From Key Numbers to Keywords: How Automation Has Transformed the Law*, 94 LAW LIBR. J. 563, ¶ 1 (2002) (noting the revolution from print-based to computer-based legal research in the last two decades of the Twentieth Century).

6. See *supra* note 2 and accompanying text; see also Patrick R. Hugg, *Comparative Models for Legal Education in the United State: Improved Admission Standards and Professional Training Centers*, 30 VAL. U. L. REV. 51 (1995); Graham C. Lilly, *Law Schools Without Lawyers? Wind of Change in Legal Education*, 81 VA. L. REV. 1421 (1995).

7. STEVENS, *supra* note 2, at 205-31; Stuckey, *supra* note 2, at 653. An early reformer was Howard Oleck. While at the New York Law School in the early 1950's, he designed a problem-oriented course. See Howard Oleck, *The 'Adversary Method' of Teaching Law*, 5 J. LEGAL EDUC. 104 (1952).

8. STEVENS, *supra* note 2, at 205-31.

9. The Langdell academic model was created by Dean Langdell at Harvard Law School around the turn of the century. This case method is different from the

“success” has been incremental and not revolutionary. The driving force behind such reform varied, but for the most part seemed to have gone beyond the simple objective of improving the quality of the education for law students.<sup>10</sup> For many, it contributed directly and indirectly to improvement in the delivery of legal services to the underserved.<sup>11</sup> Beginning in the 1950’s, and spurred on by Ford Foundation grants, new organizations like the Council on Legal Education for Professional Responsibility (CLEPR) provided intellectual support and guidance, and helped direct grant money to law school clinics.<sup>12</sup> Law schools began to offer students “hands-on” experience through the use of law school clinics and improved instruction in advocacy skills.<sup>13</sup>

The reformers were not only aided by those whose goal was to help the poor and underserved, but also by such unlikely crusaders as Chief Justice Warren Burger.<sup>14</sup> In the early 1970’s the newly confirmed Chief Justice criticized the advocacy skills of lawyers in well-publicized speeches and articles.<sup>15</sup> The legal

---

more analytical Socratic method, because it uses the casebook and texts of judicial decisions to determine the original meaning of the law itself. STEVENS, *supra* note 2, at 35-50, 53. For a synopsis of the critics and supporters of the Langdellian case book method, see Peter T. Wendel, *Using Property To Teach Students How To “Think Like A Lawyer.” Whetting Their Appetites And Aptitudes*, 46 ST. LOUIS U. L.J. 733, 740 n.39 (Summer 2002).

10. STEVENS, *supra* note 2, at 212-16, 232-47.

11. *Id.* See also William Pincus, *Concepts of Justice and of Legal Education Today*, in CLINICAL EDUCATION FOR LAW STUDENTS: ESSAYS (Meilin Press, Inc. 1980) for a series of speeches and essays on practical legal education. The impetus for such instruction was not more than just a concern over the preparation of new lawyers for the effective practice of law. One concern was the delivery of legal services to those who could not afford them, according to Stuckey. Stuckey, *supra* note 2, at 649. Narrowing the gap between practitioners and academicians was a concern. For example, see William Pincus’ speech to the Villanova Law School’s Order of the Coif dinner, January 15, 1971, entitled *Concepts of Justice and of Legal Education Today*. Pincus, *supra* at 125.

12. Stuckey, *supra* note 2, at 649.

13. *Id.* at 652-55.

14. See Warren Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?*, 42 FORDHAM L. REV. 227 (1973).

15. *Id.* Burger’s sentiments were echoed by President Carter who declared that legal services were “wastefully and unfairly distributed” in his infamous speech at the One Hundredth Anniversary of the Los Angeles Bar Association. See Marc Galanter, *The Robert S. Marx Lecture: The Faces of Mistrust: The Image of Lawyers in Public Opinion, Jokes, and Political Discourse*, 66 U. CIN. L. REV. 805, 813 n.44 (1998) (citing President James E. Carter, Address at the 100th Anniver-

profession responded to the initial demand for skills training by increasing educational programs available to practicing lawyers. The National Institute for Trial Advocacy was created in 1971 to address the problems noted by Chief Justice Burger.<sup>16</sup> Though many law schools had created clinics as early as the 1920's,<sup>17</sup> most of them were based on an older internship model, and were unlike modern law school clinics or clinics associated with legal aid offices.<sup>18</sup>

While the reformers were able to persuade both practitioners and legal educators to respond in supporting clinical education and in improving advocacy skills, progress was not cataclysmic; it tended to be slow, incremental, and controversy abounded.<sup>19</sup> Over time, battles were fought over accreditation standards for law schools,<sup>20</sup> funding,<sup>21</sup> and curricular reforms.<sup>22</sup>

This initial reform effort was reinforced by a series of task force studies and reports from various committees of the American Bar Association. The Cramton Report, for example, was published in 1979.<sup>23</sup> In 1990, these efforts culminated in the creation of a task force chaired by a former president of the American Bar Association, Robert MacCrate.<sup>24</sup> This task force—"The Task Force on Law Schools and the Profession: Narrowing the Gap"—held a series of hearings, investigations, and solicited opinions. In 1992, the Task Force issued a report.<sup>25</sup> After considerable reflection, the Task Force decided to emphasize "the common enterprise" of educating members of

---

sary Dinner of the Los Angeles Bar Association (May 4, 1978), reprinted in *President Carter's Attack on Lawyers, President Spann's Response, and the Chief Justice Burger's Remarks*, 64 A.B.A. J. 840, 842 (1978)).

16. Burger, *supra* note 14, at 233.

17. Stuckey, *supra* note 2, at 652.

18. William Pincus, *The President's Report*, reprinted in *CLINICAL EDUCATION FOR LAW STUDENTS: ESSAYS*, *supra* note 11, at 25-26; Stuckey, *supra* note 2, at 652-55.

19. See Stuckey, *supra* note 2, at 652-55. Professor Stuckey traces the history of such efforts through the mid-1990's. *Id.*

20. *Id.* at 660-61.

21. *Id.* at 652-53.

22. *Id.* at 655-81.

23. See Stuckey, *supra* note 2, at 654.

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

25. *Id.*

the legal profession, rather than addressing the gap between law school faculty and practitioners.<sup>26</sup> The Task Force identified ten fundamental lawyering skills and four professional values essential to lawyers.<sup>27</sup> The ninth “fundamental skill” was entitled “Organization and Management of Legal Work.”<sup>28</sup> This paper will deal with how well law schools, and the legal profession, have responded to the challenge set forth by the Task Force report in its introduction, entitled the long and “arduous road of professional development,”<sup>29</sup> as it pertains to teaching law students and lawyers how to organize and manage their law practices effectively and efficiently.<sup>30</sup> One development not covered specifically by the MacCrate Report, the use of technology in the practice of law, has become an essential part of the effective operation of any modern law firm—and will also be a focus of this article.

### The MacCrate Report

In August 1992, the American Bar Association’s “Task Force on Law Schools and the Profession: Narrowing the Gap” presented to the annual meeting a publication entitled *Statement of Fundamental Lawyering Skills and Professional Values* popularly known as the “MacCrate Report” after the chair of the Task Force, New York lawyer Robert MacCrate<sup>31</sup> (hereinafter “MacCrate Report” or “the Report”). Not since 1973, when the newly-confirmed Chief Justice Warren Burger bemoaned the inability of lawyers to write, communicate, and effectively act as trial advocates,<sup>32</sup> did any event have such an impact upon the subject matter of debate at law schools, between and among lawyers and law faculty, and among members of the legal profession. The MacCrate Report occasioned a reexamination of law school curricula and identified ten fundamental lawyering skills and four fundamental values of the legal profession.<sup>33</sup> The Ninth Skill, quaintly entitled “Organization and Manage-

---

26. *Id.* at 3.

27. *Id.* at 135-07.

28. *Id.* at 135, 140, 199-203.

29. MacCrate Report, *supra* note 24, at 8.

30. *Id.* at 199-203.

31. *Id.*

32. See Burger, *supra* note 14, at 234-35.

33. MacCrate Report, *supra* note 24, at 135.

ment of Legal Work,” was one of those fundamental skills.<sup>34</sup> The Ninth Skill covers business planning, efficient business operations, managing and delegating employees and lawyers in a firm, financial management, and systems management.<sup>35</sup> The

34. *Id.*

35. See *Statement of Fundamental Lawyering Skills and Professional Values*, MacCrate Report, *supra* note 24, at 199-207:

9. Organization and Management of Legal Work

In order to organize and manage legal work effectively, a lawyer should be familiar with the skills, concepts, and processes required for efficient management, including appropriate allocation of time, effort and resources; timely performance and completion of work; cooperation among co-workers; and orderly administration of the office:

9.1 *Formulating Goals and Principles for Effective Practice Management.*

In order to develop effective systems and procedures of practice management, a lawyer should first formulate the goals to be achieved by the systems and procedures. These should include:

- (a) Efficient allocation of time, effort and resources (*see* § 9.2 *infra*);
- (b) Ensuring that work is performed and completed at the appropriate time (*see* § 9.3 *infra*);
- (c) Effectively working with other people (*see* § 9.4 *infra*);
- (d) Efficient office administration (*see* § 9.5 *infra*);

9.2 *Developing Systems and Procedures to Ensure that Time, Effort, and Resources Are Allocated Efficiently*, including systems and procedures for ensuring that time, efforts, and resources are properly allocated to the various tasks required for:

- (a) Daily practice;
- (b) Any long-term objectives of expanding or modifying the practice;
- (c) Other aspects of the lawyer's professional life (such as *pro bono* service (*see* Value § 2.2 *infra*); membership in professional organizations (*see* Value § 3 *infra*); and assisting in the training and preparation of new lawyers (*see ibid.*));
- (d) Continuing professional education and development of professional skills (*see* Value §§ 1.2(a)-(b), 4 *infra*);

9.3 *Developing Systems and Procedures to Ensure that Work is Performed and Completed at the Appropriate Time*, including systems and procedures for:

- (a) Setting and meeting deadlines, including procedures for:
  - (i) Calendaring and docket control; and
  - (ii) Seeking an extension in a timely fashion when it becomes apparent that a deadline cannot be met;
- (b) Regularly communicating with clients, so as to inform the client of:
  - (i) New developments or the acquisition of new information;
  - (ii) Extensions of deadlines, changes of dates, and factors that may affect the timing of events;
- (c) Attending to, and completing, all work as promptly as possible;
- (d) Monitoring the status of all ongoing work and doing appropriate follow-up where necessary;

- 
- (e) Monitoring the status of present commitments, and avoiding the undertaking of additional commitments when this is improvident;
- 9.4 *Developing Systems and Procedures for Effectively Working with Other People*, including systems and procedures for:
- (a) Collaborating with other attorneys in the same office or other offices;
  - (b) Training, organizing, directing, supervising, and working with paralegals, investigators, law librarians, law clerks, secretaries, and other support personnel;
  - (c) Delegating work to others when appropriate, including:
    - (i) Providing the other person with enough information at the outset to enable him or her to handle the assignment, such as:
      - (A) The precise task(s) to be performed;
      - (B) The time that may be spent on the assignment and any specific deadlines that must be met;
      - (C) To the extent it may prove helpful in performing the task, background information about the reasons why the task needs to be performed;
    - (ii) Establishing procedures for the other person to obtain additional guidance or answers to questions that arise in the course of handling the assignment;
    - (iii) Monitoring the other person's work to ensure that the work is being performed properly and at an appropriate pace;
    - (iv) At the conclusion of the assignment, providing the other person with an evaluation of his or her work and constructive suggestions for performing future assignments;
- 9.5 *Developing Systems and Procedures for Efficiently Administering a Law Office*, including systems and procedures for:
- (a) Handling cases;
  - (b) Maintaining files (including client files, billing files, and subject matter files);
  - (c) Identifying conflicts of interest between current clients or between a current client and a previously represented client;
  - (d) Monitoring office operations, including the work of paralegals, secretaries, and other support personnel;
  - (e) Attending to the financial aspects of maintaining a law office, including:
    - (i) Setting fees and obtaining retainers from clients;
    - (ii) Billing and collection of payments from clients;
    - (iii) Paying office bills;
    - (iv) Managing cash flow;
    - (v) Maintaining appropriate trust accounts and guarding against commingling of funds;
  - (f) Maintaining and upgrading equipment;
  - (g) Regularly reviewing and evaluating the efficacy of the systems and procedures that have been developed for administering the office, so as to identify problems, correct deficiencies, and continually improve procedures and routines.



text devoted to this Ninth Skill has been criticized for not being sufficiently specific about the skills necessary for a law firm owner to operate a law firm effectively and efficiently.<sup>36</sup>

The Report devotes less attention and specificity to the ninth fundamental skill than to the other nine; it spent less than one page in explaining its meaning in a "Commentary."<sup>37</sup> The perspective of the drafters was clearly that of lawyers, and not managers. The drafters properly focused upon the legal work of a firm done by lawyers for clients, concentrating on developing and operating systems that guaranteed quality legal

---

As studies have recognized, efficient organization and management of legal work is an essential precondition for competent practice. See, e.g., A.B.A., FINAL REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON PROFESSIONAL COMPETENCE 17-18, 22, 31 (1983); A.L.I.—A.B.A. COMM. ON CONTINUING PROF'L EDUC., A PRACTICAL GUIDE TO ACHIEVING EXCELLENCE IN THE PRACTICE OF LAW: STANDARDS, METHODS, AND SELF-EVALUATION 241 (1992) ("[a]ll too often, a lawyer's incompetence can be traced to poor management skills and practices"). Lawyering ability and experience are of little avail if a lawyer misses a deadline or fails to detect a conflict of interest as a result of inadequate office procedures.

This Statement's formulation of the skill focuses on central aspects of practice management—efficient allocation of time, compliance with deadlines, and effective collaboration with others which are applicable regardless of whether a lawyer is a solo practitioner, a partner or associate in a firm, or a lawyer in public service practice. The Statement also calls for some understanding of systems for administering a law office because even though new lawyers will rarely serve in the role of administrator, a certain degree of familiarity with such procedures is useful for effective functioning within a law office.

As with other skills analyzed in this Statement, this section's analysis of practice management rests upon a certain vision of professional values. It assumes a lawyer who is committed not only to competent representation (see Value § 1 *infra*) but also to *pro bono* work (§ 9.2(c) *supra*; see Value § 2.2 *infra*); improving the profession (§ 9.2(c) *supra*; see Value § 3 *infra*); and professional self-development (§ 9.2(d) *supra*; see Value §§ 1.2 (a)-(b), 4 *infra*).

36. In fact, the least amount of space was devoted to this skill. Subsequent conferences rarely specifically focused upon it. See THE MACCRATE REPORT: BUILDING THE EDUCATIONAL CONTINUUM: CONFERENCE PROCEEDINGS iii-v (Joan S. Howland & William H. Lindberg eds., West Publ'g Co. 1994).

37. *Id.* Four pages are devoted to the Fundamental Skill Nine, the "Organization and Management of Legal Work," compared with a high of seven pages for Fundamental Skill Three, "Legal Research" and eight pages for Fundamental Skill Six, "Counseling," and less than four pages of commentary for Fundamental Skill One, "Problem-Solving." See MacCrate Report, *supra* note 24, at 148-51, 157-63, 176-84, 199-203. An average of five and three quarters pages was given over to the other nine fundamental skills. What does that matter? Probably little but for those who teach a semester long course and have difficulty giving more than cursory attention to subjects that warrant undergraduate degree and graduate degree programs at universities throughout the U.S., marketing and accounting, for instance, it does catch ones attention.

work product.<sup>38</sup> One could easily spend considerable time and effort quibbling over the specificity and thoroughness of the Ninth Skill, "Organization and Management of Legal Work." The specific skills covered include some of the most important aspects of operating a law firm, but addressed them with insufficient detail: more importantly, is what the Ninth Skill failed to address.<sup>39</sup>

The Ninth Skill neglected to cover essential topics that are necessary for a law firm to survive and thrive in the Twenty-First Century. The "Commentary" offers little insight into the meaning of what was covered and why some topics were left out of the text or only tangentially covered, such as marketing, purchasing, employee benefits, management theory, leadership, physical facilities, security, and safety.<sup>40</sup>

One aspect of managing a law firm that was ignored by the MacCrate Task Force but has become an integral component, if not a focal point, of any law firm manager's skill set is utilizing technology effectively. In fact, the response from law schools, continuing legal education suppliers, and publishers in the area of technology and the law has been dramatically greater than the response in the general area of law practice management.<sup>41</sup>

---

38. Evidence of this is found in the MacCrate Report, *supra* note 24, at 199-203.

39. Gary A. Munneke, *Legal Skills for a Transforming Profession*, 22 PACE L. REV. 105, 106 (2001). Munneke's list of skills includes: time management, financial management, organization of files and projects, entrepreneurial skills, marketing, technology and information management, human relations, team building and collaboration, delegation and supervision, sensitivity to different cultures, systems analysis, economic modeling and forecasting, adaptability and innovation, and career development. *Id.* at 105-06, 136-52. This author's list might include: management theory, planning and forecasting, organization and governance of the firm and choice of form, financial management (budgeting, financial controls and cash flow management), basic accounting knowledge (with an in-depth understanding of how to oversee not just the accounts of the firm, but just as importantly client trust fund accounts), marketing, client relations management, human resources management, purchasing (supply management), physical facilities and capital investment, workflow management, technology management, legal information services and resources.

40. MacCrate Report, *supra* note 24, at 202-03.

41. This can easily be seen in the technological advances at law schools, LEXIS, etc. Wake Forest School of Law will be requiring laptop computers for each student beginning in 2003-2004. A number of other law schools have already implemented such a policy, and many others will certainly follow. In contrast, the legal profession has continued to rely heavily on hard copy. While most law firms now have computers, most small to mid-sized law firms lack full time computer

The use of technology has become one of the most important issues that occupy the waking hours of law firm owners and managers.<sup>42</sup> The glaring absence of discussion regarding effective utilization of technology from the MacCrate Report indicates either that the drafters were not technologically savvy or that they did not consult lawyers or legal administrators who were competent in this area.

This paper will focus on actions taken since the publication of the MacCrate Report towards its fulfillment, and actions taken to achieve more universal knowledge of law practice management. While the focus will be upon the activities of legal educators, it will also examine what the legal profession in general has done to help lawyers' achieve competency in managing their practices. Before delving into the background and substantive issues of this article, a brief qualifier is in order. To the extent that quantitative information is available upon which to base an analysis of the Report's impact, as well as law schools' and the legal profession's response to the Report, such information has been used. Unfortunately, as will be explained in greater depth, less attention has been given to this area of the legal education, and subsequently less information is available. Thus, rather than relying greatly upon secondary sources and anecdotal evidence, the author has conducted a number of empirical and statistical surveys<sup>43</sup> upon which some conclusions may be drawn.

---

support staff, and often a computer is used for nothing more than word processing and keeping time.

42. See Tracey Baetzel & Carl W. Herstein, *Law Practice Technology: Virtual Memory: Looking Back at the Changing Relationship Among Lawyers, Law Firms and Technology*, 77 MICH. B. J. 422 (1998).

43. The methodology that follows is based on some very simple empirical measurements from contemporaneous records. While this methodology is not at all sophisticated, nevertheless, the author believes that it offers a relatively accurate view, especially if one looks at the totality of the information presented rather than focusing upon any single, specific piece of information. Contemporaneous sources are used primarily by historians. The author, as an undergraduate student at Oklahoma State University, was a research assistant for Charles M. Dollar, who with Richard Jensen, wrote the first published, comprehensive manual on using quantitative information in historical analysis. The advantage of contemporaneous sources is that they were created at a specific time usually for a purpose other than their current purpose. Therefore, they are not tainted with the suspicion that they were developed or manufactured to prove the point the current researcher's point. Of course, the records still could be manipulated. The primary disadvantage of

The Impact of the MacCrate Report Upon Law Schools and  
the Legal Profession: Some Measurements<sup>44</sup>

*The Academic Backgrounds of Lawyers*

Perhaps one could postulate there is no need for law schools or the legal profession to do anything to strengthen the ability of lawyers to be able to organize and manage their firms. Perhaps lawyers already have the ability to do so. Perhaps gaining business knowledge is easy to do without special academic preparation. Perhaps most lawyers acquire academic business preparation prior to law school. Perhaps business knowledge is easily gained through on-the-job-training. Perhaps the literature available for lawyers to read is sufficiently abundant and well written, and is so readily available that a lawyer learning to practice law in her early practice years can easily pick up business acumen. Perhaps in-house training and continuing legal education programs are broad enough, good enough, and readily available enough so that the MacCrate Report's ninth skill is readily attainable. Sadly, none of these premises appear to be true.

What sorts of backgrounds do lawyers bring to the practice of law? Since there are no requirements detailing special anatomy, chemistry, foreign language or requirements other than a college degree from an accredited undergraduate institution, the academic backgrounds of lawyers vary widely.<sup>45</sup> After a decade of irrational exuberance, globalization, and the consolidation of the capitalist defeat of communism, what else could we expect about the backgrounds of lawyers? Have more under-

---

using these records is that since these records were not necessarily requested, collected or reported for the purposes of the researcher, and, therefore, may be incomplete or of limited use for the researcher.

44. The author asks for the sufferance of the reader. As author Peter Schuck observes, we need to show some humility when we present such evidence, but that should not prevent us from analyzing such evidence. See Peter Schuck, *Why Don't Law Professors Do More Empirical Research?*, 39 J. LEGAL EDUC. 323, 327 (1989).

45. *Standards for the Accreditation of Law Schools*, 2002 A.B.A. SEC. LEGAL EDUC. ADMIS. B. COUNCIL LEGAL EDUC., available at <http://www.abanet.org/legaled/standards/chapter 2.html> (last visited May 9, 2003). According to Melanie Nutt, the longtime admissions director at Wake Forest, other than some programs that allow early enrollment in law school before graduation, law schools do not deviate from that general rule that an undergraduate degree plus LSAT scores determines admission.

graduates been lured to business subjects? Without looking at hard statistical evidence, one might be hard-pressed to predict that the enticement of business opportunities would draw more business students away from a legal education and toward advanced business education or employment. Conversely, the vast majority of undergraduate students could obtain undergraduate business degrees, and, therefore, produce more law students and practicing lawyers with stronger academic backgrounds in business.

According to the Law School Admission Council, the percentage of entering first-year law students with degrees in business subjects such as economics and accounting increased from seven percent to more than eighteen percent before leveling off in the early Twenty-First Century.<sup>46</sup> A vivid illustration is provided in Table One below. Although statistical evidence is skimpy and comparisons over time virtually impossible, there was no surge in law school enrollment in the 1990's by students with academic business backgrounds.<sup>47</sup>

<b>Table One. Percentage of Law School Applicants Having Business Backgrounds<sup>48</sup></b>							
<b>Academic Year</b>	1993–1994	1994–1995	1995–1996	1997–1998	1998–1999	1999–2000	2001–2002
<b>Percentage</b>	7.24%	15.7%	16.96%	18.1%	15.9%	15.6%	16.07%
<b>Number with Business Degrees</b>	6,492	13,236	13,013	13,118	11,531	11,642	12,414
<b>Total Law School Applicants</b>	89,633	84,305	76,715	72,340	74,380	74,550	77,235

Relatively few law students hold academic degrees in business.<sup>49</sup> Anecdotal evidence derived from informal surveys at Wake Forest University shows few students have had more than a few basic economics courses.<sup>50</sup> While some students un-

46. See L.S.A.C., LAW SCHOOL ADMISSIONS COUNCIL STATISTICS (1993-01) [hereinafter L.S.A.C.].

47. *Id.*

48. *Id.*

49. *Id.*

50. A recent poll in the author's Spring 2003 Law Practice Management class showed that no more than six of out fifty students, or 12% of the class, had a business background.

doubtedly come from families that own businesses or have some practical experience in business at some level, the business background of most law students appears to be very limited. Is this conclusion different from what we might expect concerning law students from five, ten, fifteen, or twenty years ago? As early as the mid-1970's, Professor Robert Hamilton at the University of Texas School of Law addressed law students' deficiency in business education by developing a course for non-business students to teach them fundamental business concepts.<sup>51</sup> Law School Admission Council statistics confirm that most law students majored in history, social science or English.<sup>52</sup>

Surely, most law students and lawyers are more prepared to use computers than they are to encourage a business. Given the ever-increasing popularity and availability of personal computers, it is commonly accepted that modern students are technologically more sophisticated than their predecessors. Yet, law firms find that young lawyers lack skills in doing computer-assisted legal research and cannot use even the most common software applications such as word processing.<sup>53</sup> Perhaps, the

---

51. Robert Hamilton published two editions of a basic text in addition to teaching the class. The author enrolled in the class because of his deficient academic preparation, which included bachelors and masters degrees in history and library science and nothing more than a generalized introductory management course in library science. The classes were standing room only even though the course offered only two hours of credit.

52. L.S.A.C., *supra* note 46.

53. The American Association of Law Libraries has had a number of programs dedicated to exploring the computer-assisted legal research deficiencies of new law graduates. See Audio Tape: THE EFFECTIVENESS OF LAW SCHOOL LEGAL RESEARCH TRAINING PROGRAMS, presented by American Ass'n of Law Libraries, at 81st Annual Meeting (Atlanta, Ga., June 26, 1988) (Valencia, Cal.: Mobiltape, 1988); Audio Tape: THE TENSION BETWEEN LIBRARIANS AND LEGAL WRITING INSTRUCTORS, presented by American Ass'n of Law Libraries, at 92nd Annual Meeting (Pittsburgh, Pa., July 18, 1995) (Valencia, Cal.: Mobiltape, 1995). The Center for Computer-Assisted Legal Instruction's (CALI) 2001 and 2000 Conferences for Law School Computing discussed the preparation of law students for practices utilizing sophisticated software. CTR. FOR COMPUTER LEGAL INSTRUCTION, Conference for Law School Computing, *Post-Conference Materials* (June 21-23, 2001), available at <http://www.cali.org/conference/2001/postconf> (listing links to handouts, HTML presentations, PowerPoint presentations in HTML, and RealVideo 8 files) (last visited July 23, 2003); CTR. FOR COMPUTER LEGAL INSTRUCTION, Conference 2000: Going the Distance, 10th Annual Conference for Law School Computing, *Post-Conference Materials* (2000), available at <http://www.cali.org/conference/2000/postconf.html> (listing links to handouts, HTML presentations, PowerPoint presenta-

technological skills of law students are deficient because they spent too much time indulging in video games and may have been required to write too few papers during high school and college? Whatever the reason for the technological gap, solutions must be sought by law schools and law firms. The inevitable consequence of this technological deficiency is that the MacCrate Task Force's ninth objective can likely be met only by increasing students' knowledge about business management either through formal coursework in law schools, continuing legal education programs, reading professional literature, or in-house instruction. The next few sections will explore the state of law school courses and programs, CLE programs, and literature available to lawyers and law students to help them achieve proficiency in the necessary fundamental skills to manage a law firm and to function as a professional in the early Twenty-First Century.

### Formal Law School Course Work

#### *Law Practice Management Courses*

Although law practice management courses have been taught in law school for a number of years, the content has changed as business conditions and the practice of law have changed.<sup>54</sup> At Wake Forest University, the faculty taught "a practical course in the management of a law practice" as early as the 1946-47 academic year.<sup>55</sup> However, until the 1990's, relatively few law schools had taught the course as a regular part of the curriculum. While law school catalogs rarely contain a complete listing of approved classes, according to a 1995 catalog

---

tions in HTML, and RealVideo 7 files) (last visited July 23, 2003). Amazingly, law firms find that even the most basic computer skills, such as word processing, need improvement.

54. Conference, *Recommendations of the Conference on the Delivery of Legal Services to Low-Income Persons*, 67 *FORDHAM L. REV.* 1751, 1771 (1999).

55. The course was called "Office Practice" and was taught as a two-hour upper class elective in 1946-47 and as a one hour elective in 1947 through the 1950's. By 1969 it was a two-hour elective and was taught by the sitting dean and thus had a great deal of visibility. The grade was based upon submitting a list of all the furniture, fixtures, equipment, books and stationery to start a practice in North Carolina according to several alumni/ae.

survey, only about twenty school catalogs offered the course.<sup>56</sup> That number grew to forty-nine schools in 1999-00 and fifty-seven by the 2000-01 school year.<sup>57</sup> Unfortunately, course catalogs are not an accurate representation of courses the school actually offers. Course catalogs do not offer any information about course content and the number of students who have actually taken the course. Therefore, these statistics reveal nothing more than the fact that someone sought to list them in a catalog. They do not reveal whether or not a particular course was taught every year, how many students took the course, and the content of the course.

When one probes deeper and tries to ascertain how many such courses are offered each year, one finds that it is considerably fewer than the fifty or so schools that have the course listed in a current law school catalog or bulletin.<sup>58</sup> Individual faculty biographies in the "List of Teachers by Subject" section of the *Directory of Law Teachers* under "Law Office Management" provide more accurate information.<sup>59</sup> In 1990-91, only thirty-nine faculty members were actively teaching an "Office

---

56. Searching law school catalogs/websites for such courses is tedious work. I am beholden to the Wake Forest University Professional Center Library staff and to Ryan Thomas Steele for searching for these courses. For one thing, they go under a number of titles including "Law Practice Management," "Law Office Management," "Office Practice," "Office Management," and "Law Firm Management"; for another, content is sometimes found in courses on the introduction to business concepts, lawyering courses, courses titled "The Law Firm," "Law Practice," or even "Legal Ethics."

57. A manual search of 174 of the law school catalogs for 2001 revealed only forty-nine courses. A study was done under the auspices of the American Bar Association's Commission on Advertising in 1996. See A.B.A. COMM'N ON ADVER., LAW PRACTICE MANAGEMENT AND LEGAL SERVICES MARKETING IN THE LAW SCHOOL CURRICULUM (1996) [hereinafter A.B.A. COMM'N ON ADVERTISING]. The study, conducted by William E. Hornsby Jr. and other staff for the Commission, utilized a survey of law school deans to collect data unlike the ABA marketing study. The response rate was 79.3%. *Id.* at 6. The study found that fewer than fifty percent of the schools offered a course where law practice management was a major component. *Id.* at 29. Only thirty-nine schools offered a course where law practice management was the primary subject matter. *Id.* at 15.

58. *Id.*

59. A.A.L.S., THE A.A.L.S. DIRECTORY OF LAW TEACHERS: 1991-92 at 1084-85 (1992) (an alphabetical listing); A.A.L.S., THE A.A.L.S. DIRECTORY OF LAW TEACHERS: 2001-02 at 1308-09 (2002) (an alphabetical listing) [hereinafter A.A.L.S. DIRECTORY OF LAW TEACHERS]. One must cross-check the list by subjects with individual biographies taught because "Law Office Management" includes legal counseling as well as office practice and law office management.



Practice” or “Law Practice Management” course.<sup>60</sup> By 2001-02, thirty-five faculty members were teaching the course.<sup>61</sup> A follow-up e-mail survey of registrars placed on the National Network of Law School Officers (hereinafter NNLSO) listserv resulted in thirty-one responses.<sup>62</sup> Of these responses, only nineteen registrars reported teaching a course in law practice management (or a similar subject) was taught in their schools in the 2002-03 school year.<sup>63</sup>

Although it would be impossible to gather exact statistics in this situation, available information indicates that a majority of law schools accredited by the Bar do not offer courses in law practice management. Restricted enrollment also limits available spaces for students. Law school enrollments in 2001-02 were 135,091; of these, 127,610 were full-time students.<sup>64</sup> How many of these students truly had access to such a course?

### Technology Instruction—Formal Courses

In addition to law practice management courses, most law schools offer at least one course in cyberspace law, technology of law (or law and technology), computer law, e-commerce law, or information technology courses.<sup>65</sup>

Occasionally, schools offer instruction in topics related to the use of technology in law firms and the practice of law as parts of these courses. However, the course focus is usually on the law of cyberspace or as it relates to specific subjects, such as contracts, intellectual property, and First Amendment issues.<sup>66</sup> The chart below depicts most commonly taught courses:

---

60. See sources cited *supra* note 59.

61. See sources cited *supra* note 59.

62. NATIONAL NETWORK OF LAW SCHOOLS OFFICERS, E-MAIL SURVEY OF LAW PRACTICE MGT. & COMPUTER LAW COURSES LISTSERV SURVEY (Sept.-Oct. 2002) (surveying law school registrars) (on file with author) [hereinafter N.N.L.S.O. E-MAIL SURVEY]. The author found that this sort of exciting research is best conducted in a comfortable position while watching a baseball or football game on television (accuracy is improved if one has no vested interest in the outcome of the game and no access to certain forms of liquid refreshment).

63. *Id.*

64. A.B.A., CONSULTANT ON LEGAL EDUC., 2001-2002 ANNUAL REPORT 11 (2002).

65. Bernard Hibbits, *Innovative Instruction*, NAT'L L. J., Sept. 16, 2002, at C4.

66. *Id.*

Course	Number of Schools of 31 Responding Offering the course in 2002-2003 <sup>67</sup>
Internet Law	10
Information Technology and the Law	4
Cyberspace Law	14
E-commerce	11
Computer Law	13
Law Practice Technology	10

Most of these courses are not designed to familiarize students with how to use legal software for the “benefit of their clients, their profession and the communities.”<sup>68</sup>

### Why Has Technology and the Law Been More Acceptable to Law Schools than Law Practice Management or Technology?

It is more common for law schools to teach “technology and the law” courses than law office technology courses or even the general law practice management courses.<sup>69</sup> But why, in the Twenty-First Century, do law schools prefer courses in e-commerce, cyberspace law, computers and the law, or Internet law? Do they truly believe that teaching such skills is just as futile as teaching “DoThis 2.0” as Professor Hibbitts infers?<sup>70</sup>

Although academics tend to dismiss law office management technology courses as useless, this mindset does not comport with the treatment of practical skills in other analogous law school courses.<sup>71</sup> Most law schools require that first-year stu-

67. N.N.L.S.O. E-MAIL SURVEY, *supra* note 62. In addition, the American Bar Association’s Section on Legal Education Committee and Admission to the Bar is conducting a “Survey of Technology Use By Law Faculty.” Thomas Galligan, *ABA Survey of Technology Use by Law Faculty*, A.B.A. SEC. LEGAL EDUC. COMM. ADMIS. B., available at <http://www.teknoids.net/teksurvey/public/survey.php?name=ABAFacultySurvey5> (last visited May 14, 2003).

68. Hibbitts, *supra* note 65, at C4. “These courses are not ‘Law Office Management’ offerings; most academics (and even the majority of lawyers) would likely agree that teaching law students how to use the latest version of the computer program ‘DoThis 2.0’ to organize their calendars or calculate their billable hours would be a waste of time. Rather than teach the details of proprietary software, these professors are training their students how to work online and use computer technology creatively to advance the law, help their clients and enhance their own understanding of legal concepts.” *Id.*

69. N.N.L.S.O. E-MAIL SURVEY, *supra* note 62.

70. Hibbitts, *supra* note 65, at C4.

71. Legal Research and Writing programs provide an excellent illustration of the increased importance and use of technology in the curriculum. The 2002 Asso-

dents take a course in legal research as part of a legal research and writing requirement.<sup>72</sup> In addition, many law schools offer "advanced legal research courses."<sup>73</sup> Typically, these courses teach the use of proprietary software, particularly computer-assisted legal research utilities such as LEXIS and Westlaw.<sup>74</sup> They also explore research methodology using hard copy publications and other search software.<sup>75</sup> Usually the instruction is

---

ciation of Legal Writing Directors (A.L.W.D.)/Legal Writing Institute (L.W.I.) Survey, which received responses from 154 schools, found that the use of technology in Legal Research and Writing programs has increased from the previous year's results. A.L.W.D./L.W.I., 2002 SURVEY RESULTS 16-18, available at <http://www.alwd.org/alwdResources/surveys/2002survey/2002survey.pdf> (last visited July 23, 2003) (on file with the Pace Law Review) [hereinafter A.L.W.D./L.W.I. SURVEY]. The survey found that 122 programs used e-mail listserves for students (with a satisfaction rate of 4.13 out of a possible 5.00 points), fifteen programs always used electronic smart classrooms, two always used programs for on-line edits, and seventy-one programs made use of course web pages. *Id.* at 17.

72. The American Bar Association Accreditation Standard 302 requires:

- (a) All students in a J.D. program shall receive:
  - (1) instruction in the substantive law, values and skills (including legal analysis and reasoning, legal research, problem solving and oral and written communication) generally regarded as necessary to effective and responsible participation in the legal profession; and
  - (2) substantial legal writing instruction, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year.

A.B.A, STANDARD FOR APPROVAL OF LAW SCHOOLS AND INTERPRETATIONS: STANDARD 302. CURRICULUM (1996), available at <http://www.abanet.org/legaled/standards/chapter3.html> (last visited July 23, 2003) (on file with the Pace Law Review).

73. In 1985-86 there were at least twenty-seven schools with advanced legal research courses with forty more schools considering the course according to S. Blair Kaufman, *Advanced Legal Research Courses: A New Trend in American Legal Education*, 6 LEGAL REF. SERV. Q. 123, 123 (1986). As early as 1973, at least four law schools gave instruction beyond the first year in legal research. Sandra Sadow & Benjamin R. Beede, *Library Instruction in American Law Schools*, 68 LAW LIBR. J. 27, 30 (1975).

74. Ogloff et al., have suggested that "difficulties have arisen because the technology has not been so quickly or thoroughly embraced by faculty." James R. P. Ogloff et al., *More Than "Learning To Think Like a Lawyer:" The Empirical Research on Legal Education*, 34 CREIGHTON L. REV. 73, 165 (2000). The result is that computerized research instruction "has been assumed by the representatives of the computerized legal research database companies. Although some law school instructors were relieved by not having to take on the additional task of becoming familiar with the technology, so as to be able to instruct students in it, the result as been an abdication of the responsibility to instruct students in how to conduct legal research." *Id.*

75. The author is relying on his experience teaching legal research and writing at Southern Methodist University, Franklin Pierce Law Center, The University of Mississippi, and Wake Forest School of Law and directed the program at the

not just lecture but requires the students to utilize the research sources in solving problems or in writing various sorts of legal products—briefs, memoranda, etc.<sup>76</sup> Occasionally, students are even required to pass an exam in which they must explain the proper use of the research tool.<sup>77</sup> These courses teach legal research strategies as well as the use of specific sources. Their place in the law school curriculum has been secured since Hicks developed a legal bibliography book in the 1920's.<sup>78</sup> Deficiencies in the legal research arena were the subject of the Graylyn Conference that brought together legal scholars, law school deans, judges, and others.<sup>79</sup>

Although the issue of whether such practical courses should receive credit at the various laws schools has been discussed,<sup>80</sup> in the author's opinion it has not been thoroughly de-

---

last three. He has also taught advanced legal research after developing the course at Wake Forest.

76. The 2002 A.L.W.D./L.W.I. Survey reported that the majority of Legal Research and Writing assignments are office memoranda (150 of 154 schools), Appellate briefs (126 of 154 schools), pretrial briefs (76 of 154 schools), client letters (70 of 154 schools). A.L.W.D./L.W.I. SURVEY, *supra* note 71, at 7. Furthermore, the Survey noted the increased use of Westlaw/LEXIS training in the first year, with seventy-four schools reporting limited Westlaw/LEXIS training in the first semester and eighty-eight schools reporting unlimited Westlaw/LEXIS training in the second semester. *Id.*

77. John Lindsay at Temple University used a written examination for several years. Such an exam was in use for several years at Franklin Pierce Law Center, The University of Mississippi School of Law, and Wake Forest University School of Law. Many classes of law students at Wake Forest considered it a rite of passage.

78. Morris L. Cohen, *Harry Bitner: A Memorial*, 94 LAW LIBR. J. 193, 194 (2002) (referring to FREDERICK C. HICKS, *MATERIALS AND METHODS OF RESEARCH* (Lawyers Cooperative Publishing Co., 1946)). Cohen notes that Hicks' book started "the scholarly approach of the teaching of legal research." *Id.* at 194.

79. GRAYLYN CONFERENCE REPORT (1990) 24, 37 (Remarks of Joan S. Howland) (Donald Dunn ed., 1991).

80. For some literature discussing credits for legal research, see Lydia M. V. Brandt, *The MacCrate Report and the Teaching of Legal Research: A Justified Scenario for Educational Malpractice*, 2 TEX. WESLEYAN L. REV. 123 (Summer 1995), noting:

The apparent problems with the basic course have been frequently stated. The first problem is one of status: generally, the course does not have any. It is the "neglected orphan" of the curriculum, usually taught by low-status or no-status instructors—other students, adjuncts, and librarians. "Real" law professors, as has been said, generally want no part of it. A second problem is one of credit. Not merely is the course usually undercredited, often it is pass/fail as well. In the law school environment, where competition for grades is intense, ungraded low-credit courses will always get the shortest

bated by legal educators and scholars, and the American Bar Association or the Association of American Law School conventions.

### Other Law School Courses and Input

Many other courses in the law school curriculum contain information of use to a potential law firm owner.<sup>81</sup> In addition, faculty with business backgrounds often provide a perspective that is useful to students.<sup>82</sup> Courses on other subjects, if they are taught using computers or if they involve exercises using technology, are valuable to students because they encourage familiarity with technology and demonstrate its uses. Simply put, the use of computers in the instructional setting reinforces their utility in professional life.

Courses on securities regulation or corporations rarely focus on the mundane subject matter of how to draft incorporation papers or limited liability company papers for law firms.

---

shrift. Students quickly realize that the immediate rewards of long hours spent on legal research are minimal. Most of them understandably concentrate their efforts on the substantive courses.

*Id.* at 124; James R.P. Ogloff et al., *supra* note 74.

In order to motivate students and cover this material adequately, advanced legal research courses should be graded courses and carry two to three credit hours. They should be taught by someone with a sound and comprehensive knowledge of legal research courses and methods, likely a law librarian. Finally, students should be offered advanced legal research courses on an elective, not a required basis, so that students can choose to perfect their research skills in accord with their individual career objectives.

*Id.* at 184; Peter C. Schanck, *Mandatory Advanced Legal Research: A Viable Program for Law Schools?*, 92 LAW LIBR. J. 295 (Summer 2000). Stating:

Many of the nation's law schools are striving to improve or expand their advanced legal research course offerings. There are a number of reasons for these efforts, among the most important being the inherent limitations in the capacity of first-year students to absorb legal research instruction, higher law firm expectations of entry-level attorney research skills, expressions of dissatisfaction with the skills they do possess, and the continued increase in the number and complexity of legal research systems.

*Id.* at 295.

81. Some examples include business drafting, income taxation, business organizations, advanced legal research, and employment law courses.

82. Often, these faculty members can, among other things, use hypotheticals more closely related to real world experiences. Such faculty members are also more adept at explaining the practical implications of certain principles and theories that are learned in the classroom.

This is not necessarily true of courses in business drafting.<sup>83</sup> Courses such as trial practice, legal writing, and legislation increasingly emphasize using computers in the drafting process.<sup>84</sup> Clinics also frequently focus on software uses in drafting and litigation support.<sup>85</sup> Students increasingly use computers for trial preparation, interviewing, and negotiation. As clinics become more technologically sophisticated, computers are used in the office setting to fulfill the mundane, routine tasks of representation, such as scheduling clients, interviews, and court dates.

### Programs Cutting Across Institutional Lines

Beyond formal or informal law school instruction there are a number of current programs that either cut across institutional lines or blur the dividing line between enrollment, graduation, and practice. Many of these programs are centered around or include law practice management components.

One of the oldest programs is the Law School Consortium Project, which started in 1998 at four law schools, and has now grown to involve ten law schools.<sup>86</sup> Through the use of seed money from the Open Society Institute, the Consortium developed several models to teach law students how to provide legal services to those who are underserved by operating their law firms efficiently and effectively.<sup>87</sup> This Project goes beyond pro bono and government legal services programs, emphasizing those skills that will enable lawyers to effectively provide qual-

---

83. After all business drafting courses are designed to teach students an explicit skill that will be used in a specialty in law practice.

84. See A.L.W.D./L.W.I. SURVEY, *supra* note 71, at 16-20.

85. Pearl Goldman, *Legal Education and Technology: An Annotated Bibliography*, 93 LAW LIBR. J. 423, 442-43 nn.93-99 (listing articles describing how software is applied in the law school clinical setting); Ronald Staudt, *In Search of the Origins of the Electronic Casebook*, TECHNOLOGY: JOURNAL OF LAW SCHOOL COMPUTING, (discussing how "[u]sing software engineered on a mainframe computer . . . , the clinical faculty at Chicago-Kent built five automated practice systems to draft documents for simple wills, uncontested divorces, guardianships, etc. Clinical students used these practice systems to prepare first drafts of client documents"), available at <http://www.cali.org/jlsc/staudt.html> (last visited July 23, 2003) (on file with the Pace Law Review).

86. Greg Winter, *Law Schools Urge Graduates to Start Small and Think Local*, N.Y. TIMES, Dec. 17, 2002, at B1.

87. See The Law School Consortium's website, at <http://www.lawschoolconsortium.net> (last visited July 23, 2003) (on file with the Pace Law Review).

ity legal services.<sup>88</sup> The Consortium encourages lawyers committed to these goals to network and share information on efficiently managing their practices.<sup>89</sup> The Consortium also provides information to law schools to help them develop their own programs.<sup>90</sup> The graduates are provided with support and a Palm organizer to assist and encourage them.<sup>91</sup> Finally, the Clinical Legal Educators Association (CLEA) developed a draft statement of "Best Practices of Law Schools for Preparing Students to Practice Law."<sup>92</sup>

### Faculty and Deans Role Models for Change?

Faculty with business backgrounds can provide perspectives on management in many courses. Something as simple as using business scenarios in hypotheticals can help increase student awareness and sophistication. However, a simple survey of the *Directory of Law Teachers* database shows that less than three percent of law faculty has formal academic business preparation.<sup>93</sup> Few law professors have had experiences in business enterprises other than in law firms.<sup>94</sup> The biographies in the *Directory* provide scant additional information, but few law faculty appear to have any experience as law firm managers.<sup>95</sup> One might presume that deans of law schools, as administrators, would have more extensive managerial backgrounds, but

---

88. *Id.*

89. *Id.*

90. See Deborah Howard, *How to Extend Legal Education to Support Solo and Small Firm Practitioners and Increase Access to Justice to Low and Moderate-Income Individuals and Communities*, (Dec. 18, 2001), available at <http://www.lawschoolconsortium.net/PDF/finalguide.pdf> (last visited July 23, 2003) (on file with the Pace Law Review).

91. Winter, *supra* note 86, at B1.

92. Clinical Legal Educators Ass'n, *Best Practices of Law Schools for Preparing Students to Practice Law* (Dec. 15, 2002) (unpublished manuscript, on file with the author).

93. Surveying the entire database shows that fewer than three percent of the faculty hold an easily identifiable academic degree in business at either the undergraduate or graduate levels. This data was secured by my research assistant, Jason R. Shoemaker, who carefully surveyed and compiled statistics from the 1990-91 and 2000-01 *Directory of Law Teachers* database.

94. *Id.*

95. *Id.*

that does not appear to be the case.<sup>96</sup> The path to the deanship is rarely one requiring an extensive background in business or management.<sup>97</sup> The American Bar Association's Council of Legal Education and Admission to the Bar (hereinafter Council) has provided deans with more extensive administrative instruction through regular deans' workshops at American Bar Association meetings.<sup>98</sup> In addition, the Council began offering a multi-day workshop for new law school deans in 1993.<sup>99</sup> The Council also offers a workshop for associate deans.<sup>100</sup> The Council did not create the New Deans' Workshop, however, to improve the quality of management of law schools or to provide decanal role models for students. It was instead designed to address the frequent turnover of deans that plagued the law schools in the early 1990's and was patterned after a similar workshop for academic presidents.<sup>101</sup> Whatever the reasons for its inception, the New Deans' Workshop may have had some impact upon deans. Unfortunately, no precise empirical data is available to determine the efficacy of the workshop.<sup>102</sup>

---

96. Ogloff et al., *supra* note 74, at 156. The author, explaining the survey results of Abramson and Moss and a later survey by Phillips, describes that the three most important qualities for Deans, in their own words, are a legal education (89%), teaching experience (88%), and managerial ability (81%), but highlights that, prior to becoming a Dean, over half of Dean's worked in private practice or government (although less than half of those did so for five years or more) and only a small minority of Deans (15%) had previous experience in the administrative position prior to their present appointment. See also Leslie W. Abrahamson & George Moss, *Law School Deans: A Self Portrait*, 29 J. LEGAL EDUC. 6, 11 (1977); Ronald F. Philips, *The Origins and Destinations of Law School Deans*, 38 J. LEGAL EDUC. 331, 336 (1988).

97. Ogloff et al., *supra* note 74, at 158 (concluding that "law school deans arrive at their positions primarily from law school faculties").

98. Each year the deans meet at the Association of American Law Schools' Annual Meeting, at the American Bar Association Annual Meeting, and at the Mid-Winter American Bar Association Meeting.

99. The ABA Seminar for New Law Deans workshop has been held at Graylyn Conference Center of Wake Forest University since its inception. Robert K. Walsh, *Leadership in Legal Education Symposium III: Advice From the New Dean's Boot Camp*, 34 U. Tol. L. Rev. 185, 185 (2002). Robert K. Walsh, Dean of Wake Forest University School of Law, Winston-Salem, North Carolina, has directed the workshop; along with a Section of Legal Education and Admissions to the Bar program committee. *Id.*

100. Interview with Robert K. Walsh, Dean, Wake Forest University Law School, in Winston-Salem, N.C. (July 2, 2002).

101. *Id.*

102. Measurement of what we do and who we are is frequently difficult because of the sparseness of information. The author has had extensive experience



## The Teaching of Law Office Management and Technology

As many as fifty-seven schools currently teach a course in law office management.<sup>103</sup> Most law schools have at least one course on the use of computers in law practice.<sup>104</sup> The availability of such courses is extremely limited, and the chances of any law student obtaining instruction in either law practice management or using technology in the practice of law is still restricted due to enrollment limits. The average law school offers more than two hundred courses and sections per year.<sup>105</sup> Courses in technology and the law represent fewer than 5% of the courses offered, and law practice management courses represent less than 1%.<sup>106</sup>

Many of the law practice management courses have enrollment limits. Hypothetically, even if one were to project the number of seats available in law practice management courses at a highly optimistic number of one thousand, with roughly seventy to eighty thousand 2L and 3L law students in the country, enrollment is available for no more than 1-1.5% of the students able to take the courses.<sup>107</sup> Nowhere are they "required" courses for graduation.<sup>108</sup> Rarely are they taught more than

---

with surveys and was sorely tempted to do several surveys for this paper. Beyond the problems of effective survey design, the problem of rate of return seems to be insurmountable. The author does not believe that he could have come close to the 79.3% rate of return of the ABA study in 1996. A.B.A. COMM'N ON ADVERT., *supra* note 57, at 6. Few enjoy surveys and return them at disappointing rates. There also seems to be an unfortunate result caused by what insurers would term adverse selection—where the only people who return them are those who have an axe to grind.

103. *Id.*

104. *Id.*

105. A.B.A. Take-Off Statistics offer little help here, though that seems to be the consensus amongst law school deans and academic associate deans.

106. The American Bar Association website at [www.abanet.org/legaled/statistics/miscstats.html](http://www.abanet.org/legaled/statistics/miscstats.html) reports a total of 106,580 full-time law students for 1997-98 and 21,030 part-time students or a total of 125,527 students enrolled. A.B.A., LAW SCHOOL ATTENDANCE FIGURES, FALL 2001 in MISCELLANEOUS STATISTICS, 2001, available at <http://www.abanet.org/legaled/statistics/miscstats.html> (last visited July 23, 2003) (on file with the Pace Law Review). Of that total, third-year law students, or "3L's," constituted 38,483 (33,967 full-time plus 4,516 part-time). *Id.* That is the latest year available on the website. *Id.*

107. *Id.*

108. Campbell University School of Law required a law office management course for 3L's, but that requirement has been dropped for all classes after the class of 2003. See The Norman Adrian Wiggins School of Law Required Curricu-

once a year.<sup>109</sup> Thus, they probably represent less than one half of one percent of the total credit hours of instruction available to the average law student. Based on these informal statistics, it is difficult to see how legal education is providing much more than a superficial effort to achieve the objectives of the MacCrate Report.

Obviously the picture is somewhat better for law and technology courses. The N.N.L.S.O.'s registrars' e-mail survey polled that American law schools offer fifty-two law and technology classes, which is more than two times the number of law practice management courses.<sup>110</sup> That still represents available seats for a relatively small percentage of 2L and 3L law students.<sup>111</sup>

### Informal/Ad Hoc Instruction

Most law schools do offer instruction in such common software applications as word processing, legal research, and spreadsheets as well as other computer courses.<sup>112</sup> Students learn to use software either in response to a library reference question or as an educational technology operations offering. Software instruction can be a major force in a law student's education. Even though this type of class does not carry the benefit of law school credit, it frequently has a greater impact on students because they have an immediate need to learn how to use the software.<sup>113</sup>

---

lum, available at <http://law.campbell.edu/Academics/reqcur.html> (last visited July 23, 2003) (on file with the Pace Law Review). The A.B.A. COMMISSION ON ADVERTISING does not list any law practice management courses as required for graduation. A.B.A. COMM'N ADVERT., *supra* note 57, at iii-iv, 11, 29-32.

109. The author had 108 students enrolled in 2001-02, in two sections taught in separate semesters at Wake Forest representing roughly one-third of the total number of 2L's and 3L's. Over the past five years, enrollment in that course averaged fifty-five students for each section of the course taught. See N.N.L.S.O. E-MAIL SURVEY, *supra* note 62.

110. *Id.*

111. *Id.*

112. A.L.W.D./L.W.I. SURVEY, *supra* note 71, at 16.

113. An obvious example of an immediate student need involves the writing of legal memoranda, an exercise required by every law school. A greater familiarity with a word processing program will allow a student to focus on the content of his or her memorandum, rather than the procedure for producing it. Software can also assist students with legal research, either through LEXIS, Westlaw, or the World Wide Web. Perhaps more importantly, familiarity in law school with billing

No study has ever been done to ascertain how many, if any, law schools offer instruction relating to the use of software in law practice management.<sup>114</sup> One might assume that it is a relatively small number but that is only conjecture. Occasionally, students gain computer skills as a by-product of a class, but given the theoretical/ivory tower/Socratic approach of most law school classes; this seems to be relatively rare.<sup>115</sup>

### The Literature of Law Practice Management and of the Technology and the Law

An alternative source of education for law students and practitioners is legal publications. Whether they are treatises, practitioner's books, monographs, legal newspapers, bar journals, law reviews, or web sites, published sources are widely available for law students and lawyers to use in order to increase their knowledge of a particular subject. Whereas law courses generally prepare students for the future, both students and practitioners can turn to publications for their immediate needs. For this reason, a publication's impact on students can often be greater than that of the classes they attend. While not all lawyers and law students have equal access to every title published in the United States, the libraries of law firms, law schools, states, counties and judicial law libraries are so numerous and geographically diverse that lawyers have access to a large collection of materials. Availability of full-text materials on the Internet is extremely widespread, and many articles on a wide variety of law practice management topics are available full-text on websites.<sup>116</sup> In the case of law practice manage-

---

software or organizational programs eases the transition into practice and ultimately increases productivity.

114. THE JURIST' website, for example, links to over 400 course websites, but there is no category for law practice management. See Univ. of Pittsburgh Sch. of Law, THE JURIST: LEGAL INTELLIGENCE FOR AN EDUCATED DEMOCRACY, available at [http://www.jurist.law.pitt.edu/cour\\_pgs.htm](http://www.jurist.law.pitt.edu/cour_pgs.htm) (last visited July 23, 2003) (on file with the Pace Law Review) [hereinafter Jurist].

115. Hibbits, *supra* note 65, at C4.

116. For an example of a website that contains significant, freely available information, see <http://www.altmanweil.com/about/articles.cfm> (last visited July 23, 2003).

ment, there seems to have been little change over the past decade, at least in the quantity of published information.<sup>117</sup>

Law practice management literature has not grown as a result of any increased attention that the MacCrate Report may have caused. When compared to the general increase in publication during the 1990's, the number of publications on law practice management has stagnated.<sup>118</sup> One might have expected a dramatic increase in the publishing of law practice management articles. The empirical material that follows shows that that apparently has not happened.

### *Legal Periodical Literature*

The tables in the *Current Law Index* (hereinafter CPI) and the *Index to Legal Periodicals* (hereinafter ILP) show a modest increase in articles about law practice management. This increase trails the general trend in legal article publications from in 1990-91 and 2000-01:

Table 2: Increase in Entries in ILP and CLI <sup>119</sup>					
CURRENT LAW INDEX				INDEX TO LEGAL PERIODICALS	
Number of Entries Indexed under Headings "Law Office(s)" And "Law Firm(s)" from U.S.				Number of Entries Indexed under Headings "Law Firms" and "Law Office Management" from U.S.	
1991	1993	1994	2001	9/1990-8/1991	9/2000-8/2001
468	456	509	495	41	51
5.77% increase				24.3% increase	
Increase in total subject indexing pages: 1991 - 959 pages 2001 - 1,144 pages 19.2% increase				Increase in total subject indexing pages: 1990-91 — 896 pages 2000-01 — 1,341 pages 49.6% increase	

117. See Table 2 *infra* and note 119.

118. *Id.*

119. Table 2 is based upon a simple counting of the number of entries in the covered years under each heading. The headings varied somewhat. Note that the number of entries is not the same thing as the number of articles published. There seems to have been little change in indexing philosophy over the years in question. Most of such major policy changes had been made for both indexes during the late 1970's and early 1980's when they began to compete head to head. The statistics are taken from the CLI and the ILP.

The CLI categorized articles from 700 legal periodicals in 1991 and 875 legal periodicals in 2001.<sup>120</sup> It covers law reviews, legal newspapers, bar association journals, subject oriented law newsletters, and legal magazines.<sup>121</sup> The ILP is more selective and covers mainly law reviews and bar association journals.<sup>122</sup>

Not surprisingly, practitioner-oriented publications outnumber more scholarly sources by a ratio of ten to one.<sup>123</sup> The publication of articles on law practice management was relatively insignificant prior to the 1980's. In 1940, the American Bar Association Journal published what is now recognized as the first major series of articles on how to run a law office.<sup>124</sup> In these articles, the legendary Reginald Heber Smith of Boston's Hale and Dorr, focused on the articles focused on financial practices, particularly the effective and fair division of firm profit.<sup>125</sup> Throughout the 1970's, few publications contained articles of law management. The *Index to Periodical Articles Related to Law* for two five-year cumulative volumes, 1969-1973 and 1974-1978, lists only three articles on "Law Office Management,"<sup>126</sup> an index term that first appeared in the 1974-78 volume.<sup>127</sup> This index handled most of the legal magazines, bar journals and legal newspapers up until 1980.<sup>128</sup>

In the 1991 IPL, articles on technology in the practice of law constituted a significant percentage of the articles on law offices under the heading "Law Offices"—122 of the 153 entries were about technology in law practice.<sup>129</sup> In the 1993 edition, articles on technology and law constituted 167 of the 179 entries. In the 1994 edition, the ratio was 169 of the 211 entries, respec-

---

120. See CURRENT LAW INDEX (Information Access Co. 1980-Present) [hereinafter CLI].

121. *Id.*

122. See INDEX TO LEGAL PERIODICALS (H.W. Wilson Co. 1994) [hereinafter ILP].

123. *Id.*

124. Reginald Heber Smith, *Law Office Organization IV*, 26 A.B.A. J. 648 (1940).

125. *Id.*

126. Roy Mersky & J. Myron Jacobstein, INDEX TO PERIODICAL ARTICLES RELATED TO LAW (Glanville 1969-73 and 1974-78).

127. *Id.*

128. The author indexed the INDEX TO PERIODICAL ARTICLES RELATED TO LAW in 1975 and 1976. See Thomas M. Steele, *Comparison of CLI and ILP*, 1 LEGAL REF. SERV. Q. 43 (1981).

129. ILP and CLI subject indexes for years indicated.

tively.<sup>130</sup> Most of these entries were under the subheading of "Automation."<sup>131</sup>

Apparently, the MacCrate Report has had little or no significant impact on either the numbers of articles written on law practice management or the mix of scholarly to practitioner publications. In fact, the publication rate of law practice management articles has slipped. The percentage increase in both the CLI and ILP indexed pages is significantly greater in general than in the increase in law practice management articles.<sup>132</sup> In fact, the literature that deals with the teaching of law practice management in law schools is sparse. Only a few authors have addressed the issues of teaching law practice management in law schools or in continuing legal education programs. There is a dearth of historiographic literature, either prior to the MacCrate Report or afterwards, that highlights the scarcity of articles on law practice management.<sup>133</sup>

---

130. *Id.* The number of articles published, either actually or as they relate to overall publishing rates, are not the same thing as the number of readers of each article. There is no way to tell how many readers read and understood an article about law practice management. One could do a number of studies with reasonably available statistical tools but this author is not so certain that they would tell us much more than the simple publication rate study. One could follow Olavi Maru and others and look at citation of articles, for example. See Olavi Maru, *Measuring the Impact of Legal Periodicals*, 1976 AM. B. FOUND. RES. J. 227 (1976); Richard A. Mann, *The Use of Legal Periodicals by Courts and Journals*, 26 JURIMETRICS J. 400 (1986); Robert A. Jarvis & Phyllis G. Coleman, Essay, *Ranking Law Reviews: An Empirical Analysis Based on Author Prominence*, 39 ARIZ. L. REV. 15 (1997); Janet M. Gumm, ed., *Chicago-Kent Law Review Faculty Scholarship Survey*, 66 CHI.-KENT L. REV. 509 (1990); Colleen M. Cullen & S. Randall Kalberg, *Chicago-Kent Law Review Faculty Scholarship Survey*, 70 CHI.-KENT L. REV. 1445 (1995); Russell Korobkin, Symposium, *Ranking Journals: Some Thoughts on Theory and Methodology*, 26 FLA. ST. U. L. REV. 851 (1999). Such citation frequency studies must often limit themselves to secondary sources and particularly to just the sort of publications that are eschewed by citators and even citation services like the SOCIAL SCIENCES CITATION INDEX. Rarely are law practice management articles cited by courts in published appellate opinions or in briefs submitted to such courts.

131. See sources cited *supra* note 130.

132. See sources cited *supra* note 130. The increases in both the CLI and ILP are insignificant: In CLI there was only a 5.77% increase in law practice management writings when the overall increase for all articles was 19.2%. Although the small number of articles indexed in ILP makes it more difficult to generalize, it is surprising that so few articles are written on the subject and that the situation has not appreciably improved over the past ten years. *Id.*

133. See Arturo Lopez Torres, *MacCrate Goes To Law School: An Annotated Bibliography of Methods for Teaching Lawyering Skills in the Classroom*, 77 NEB.

### Books

Surprisingly, there seems to have been little perceptible increase in the publication of law practice management materials during the decade of the nineteen-nineties, though the bibliographic sources are nowhere near as stable or accurate as those for articles.

<b>Table 3. Law Books in Print on Law Practice Management<sup>134</sup></b>		
<b>ENTRIES OF MATERIALS AVAILABLE 1991-1997, 2002 ON LAW PRACTICE MANAGEMENT TOPICS LAW BOOKS IN PRINT:</b>		
2002	165 titles available	(Indexing topics: "law firms," "law offices," and "law partnerships")
1997	115 titles available	(Indexing topic: "Law Office Management")
1991-1997	128 titles available	(Indexing topic: "Law Office Management")

### Continuing Legal Education Programs

Besides formal legal education courses and the professional literature, lawyers may acquire law firm management skills and knowledge through continuing legal education programs devoted to business of law topics. Many state and local bar as-

---

L. REV. 132, 137 (1998) listing only one article prior dealing with fundamental lawyering skill number nine: R. Lisle Baker, *Enhancing Professional Competence and Legal Excellence Through Teaching Law Practice Management*, 40 J. LEGAL EDUC. 375 (1990). See also F. Leary Davis, *Back to the Future: The Buyer's Market and the Need for Law Firm Leadership, Creativity and Innovation*, 16 CAMPBELL. L. REV. 147 (1994); Kenneth R. Margolos, *Responding to the Value Imperative: Learning to Create Value in the Attorney-Client Relationship*, 5 CLINICAL L. REV. 117 (1998); David G. Oedel, *Deming, TQM and the Emerging Managerial Critique of Law Practice*, 37 ARIZ. L. REV. 1209 (1995); Munneke, *supra* note 36.

134. LAW BOOKS IN PRINT has changed its format and used a wide variety of indexing terms over time. In 2002, using smaller type and dropping "law office management" as an index term, it had 1184 pages in the "SUBJECT" volume. In 1997 and 1991 it used a much larger print and the much more inclusive "law office management" topic and the subject volume(s) had 2241 and 3473 pages respectively. The author attempted to use other sources including BOOKS IN PRINT, 1989 LEGAL BIBLIOGRAPHY INDEX (Chiang and Dickson), and the LEGAL INFORMATION BUYER'S GUIDE 2001 (Svengalis) but to no avail. The reader should note that these entries are titles currently available (in print) rather than titles published during a given year. As such, perhaps one could argue that one really can make very little of this statistical information. The author believes that any large increase in publication would be noticeable even given the deficiencies of the statistical sources, but this obviously is not the case. In fact stability rather than enormous leaps seems to be the pattern of the literature of this field even given the information/cyber/internet revolution.

sociations, law schools and commercial CLE providers offer courses in law practice management.<sup>135</sup> Continuing legal education (CLE) courses can be a very effective means of acquiring specialized knowledge as it is needed, and is well accepted by lawyers since it has been mandatory in most jurisdictions for over ten years.<sup>136</sup>

The contemporaneous sources are not as thorough or complete for continuing legal education courses as they are for periodical articles. There are two sources for such studies. The first is the CLE Directory (hereinafter Directory), which is published several times per year, by *The National Law Journal*.<sup>137</sup> The second is Westlaw's Legal Education Center "West LegalEdcenter" (hereinafter Online CLE). *The National Law Journal's* index and directory does cover many of the years pre-MacCrate and post-MacCrate.<sup>138</sup> However, it does not appear to be comprehensive covering only a limited number of CLE providers.<sup>139</sup> Most state and local bar association offerings are not listed. A quick survey of the five sections devoted to the Directory in 1992 shows thirty-three listings under the heading "Law Office Management."<sup>140</sup> A similar count for the four issues in 2000 shows listings for eight courses under the heading of "Law Office Management."<sup>141</sup> This represents a decline of over seventy-five percent amongst the surveyed CLE providers.

A study of the listings in the Online CLE shows a completely different trend.<sup>142</sup> A quick boolean search for "Law Practice Management" CLE programs finds sixteen prior to the year

---

135. See *Continuing Legal Education*, NAT'L L.J., Apr. 13, 1992, at 34; see also *Continuing Legal Education*, NAT'L L.J., Aug. 17, 1992, at 29, 31; *Continuing Legal Education*, NAT'L L.J., June 8, 1992, at 32; *Continuing Legal Education*, NAT'L L.J., Oct. 19, 1992, at 36; *Continuing Legal Education*, NAT'L L.J., Dec. 7, 1992, at 28; *Continuing Legal Education*, NAT'L L.J., Feb. 21, 2000, at B18; *Continuing Legal Education*, NAT'L L.J., Apr. 3, 2000, at B29; *Continuing Legal Education*, NAT'L L.J., June 5, 2000, at A19; *Continuing Legal Education*, NAT'L L.J., Aug. 14, 2000, at 22.

136. *State-by-State Update: 39 Now Require CLE, 4 States Propose Rules*, NAT'L L.J., June 8, 1992, at 31 [hereinafter *State-by-State Update*].

137. See *id.*

138. See *id.*

139. See *id.*

140. See *id.*

141. *State-by-State Update*, *supra* note 136, at 31.

142. This Westlaw service is probably unfamiliar to most academics since it is not available under the law school package but requires a separate subscription.



2000 and eighty-five for 2000-2003.<sup>143</sup> There were forty-six listings for 2002 and 2003. However, the first such listing is for 1996.<sup>144</sup>

Obviously few conclusions can be drawn from such incomplete and conflicting data. At best one might note little impact from the MacCrate report. One disturbing note is that anecdotal and experiential evidence is that mandatory credit for law practice management courses is frequently limited by a seeming bias from state bar regulatory authorities against courses that enable lawyers to make more money.<sup>145</sup> Many CLE suppliers learn to “salt” their programs with ethics components;<sup>146</sup> or with case law like *Bates v. State Bar of Arizona* for marketing or advertising programs;<sup>147</sup> or *Goldfarb v. Virginia State Bar* for billing programs.<sup>148</sup>

### The Commitment of Resources to Law Practice Management and to Technology and the Law

Law schools have made considerable effort over the past decade to provide access to computer resources, the Internet, and intranets. They have also committed considerable faculty resources to teaching the various computer law courses cited above.<sup>149</sup> In 1991-92, only twenty-three faculty were listed as actively teaching a course in computers and the law; that number exploded to one hundred thirty in 2001-2002—an increase

---

143. *State-by-State Update*, *supra* note 136, at 31.

144. *Id.*

145. The author's experiences, as a member of the General Curriculum Committee and as a program manager for the Law Practice Management Section of the North Carolina and in comparing other continuing legal education providers (including those of Wake Forest's CLE program), were indicative of such attitudes. We were told that the body that assigned mandatory CLE hours credit to programs was very concerned about programs that helped lawyers make money as opposed to programs that improved directly the quality of legal services provided.

146. See, e.g., A.B.A. STANDING COMM. LAWYERS' PROF'L AND THE CTR. FOR CONTINUING LEGAL EDUC., BY LAW, SELL HIGH: ETHICALLY SELLING, BUYING OR COMBINING A LAW PRACTICE, available at <https://www.abanet.org/cle/ecle/t01blsi/t01blsireg.html> (last visited July 23, 2003).

147. *Bates v. State Bar of Ariz.*, 433 U.S. 350 (1977).

148. *Goldfarb v. Va. State Bar*, 421 U.S. 773 (1975).

149. Though some faculty teach more than one course and some courses are undoubtedly taught by adjunct faculty the number of such courses offered indicates a commitment of real resources.

of five hundred sixty-five percent.<sup>150</sup> This number does not even include adjunct faculty resources.

Staff resources have also grown substantially. Although accurate statistical records of computer staff do not exist for 1991-92; they do exist for both 1996 and 2002.<sup>151</sup> In 2002, the average law school employed 5.6 full-time equivalent staff to supply computer services compared with 3.84 in 1996.<sup>152</sup>

The faculty resources for law practice management classes reported above demonstrate little growth in the number of full-time faculty teaching law practice management courses.<sup>153</sup> The increase in law school catalog course listings for the course, from twenty to fifty-seven, is understandable if one assumes that adjunct faculty are teaching the course in increasing numbers. One may assume, other than teaching or research assistants and library assistance, that there is little staff expenditures for such courses.

Law school resources for computer courses and for computer support, not surprisingly, have increased dramatically over the last decade since the MacCrate Report. However, it would be a real mistake to attribute that increase to the Report. Instead, the increasing dependence of law school faculty, staff and students upon computers, to do everything from schoolwork to taking exams, is well documented.<sup>154</sup>

---

150. THE A.A.L.S. DIRECTORY OF LAW TEACHERS 1991-92, *supra* note 59, at 1082-83; THE A.A.L.S. DIRECTORY OF LAW TEACHERS, 2001-2002, *supra* note 59, at 1186-87. This count is only of those faculty members who were actively teaching a course and listed under "Computers and the Law," and not under the additional heading of "Law and Science."

151. UNIVERSITY OF GEORGIA, STAFFING FOR LAW SCHOOL COMPUTING SERVICES (1996) (2002), *available at* <http://www.lawsch.uga.edu/library/stafcomp.html> (last visited July 23, 2003) (on file with the Pace Law Review). The University of Georgia Law School site included only sixty-three reporting schools in 1996; 182 schools on August 26, 2002. Professor E. Ann Puckett of the University of Georgia Law School, who also serves the law library director, began collecting these statistics in the mid-1990's.

152. *Id.*

153. *Id.*

154. *See* THE JURIST, *supra* note 114.

Practical Skills and Knowledge for a  
"Transforming Profession"<sup>155</sup>

The MacCrate Report is not the only source encouraging professionals to place increased emphasis on law firm management skills and knowledge, and use the of technology in practice. Increased reliance upon technology, in order to increase productivity, increase customer loyalty, support the effectiveness of professionals in their practices, and improve our work and personal lives during the nineteen-nineties and early Twenty-First Century has been amply documented.<sup>156</sup> This reliance on technology has worked transformational change in virtually every aspect of our lives. Law schools, the legal profession, continuing legal education providers, and publishers have responded more positively to the changes in the use of technology than to the need for the improvement of business skills amongst lawyers.<sup>157</sup>

The initiator of this response does not seem to be the MacCrate Report, as much as it has been a reaction to changes in society, and the practice of law. Competition, and not a report from an ABA task force, has driven firms to depend on computers to drive virtually every aspect of the operation of the law firm in the Twenty-First Century. Competition has also caused a more subtle change that has provoked a number of reactions from the profession and from law schools—an increased focus on the business of practicing law. As often deplored by quality of life committees and lawyers as it is promoted, an increasing number of lawyers and law schools have focused upon managing a law practice.<sup>158</sup>

---

155. Munneke, *supra* note 39, at 105; *see also* discussion *supra* pp. 621-22 and accompanying notes.

156. *See, e.g.,* Martha Neil, *Virtual Legal Ed: Proposed Changes to ABA Legal Education Standards Would Allow More Internet Learning*, ABA JOURNAL E-REPORT, June 14, 2002, at 5.

157. The vast increase in the number of law and technology courses and the relative stability noted in the number of courses in law practice management shows that the commitment to technology has certainly been greater than that to business skills. *See supra* notes 57, 59 and accompanying text.

158. N.C. BAR ASS'N, REPORT OF THE QUALITY OF LIFE TASK FORCE AND RECOMMENDATIONS (1991).

## Conclusion and the Beginning

The MacCrate Report was, and continues to be, a vital milestone and a directional sign for the legal profession. The MacCrate Report's ninth practical skill has not, however, received or achieved the goal of having every attorney be a competent office manager. Ten years later, fewer than one-fourth of law students leave their formal education and begin a profession with any experience, background, academic preparation, or practical experience in running or participating in a business as if their livelihoods depended upon it.<sup>159</sup> After law school, the profession frequently sets barriers against acquiring such business knowledge by not recognizing management training as important enough to receive mandatory continuing legal education credit unless it is disguised as a form of ethics training. This stance persists despite what we know to be true—that most lawyers lose their licenses to practice or are censured in some way for a violation of ethics rules by failing to manage their legal work properly.<sup>160</sup>

The current state of formal course work, whether in law school or through continuing legal education courses, is minimal and unlikely to provide the sort of direction to every law student or lawyer that they need to help them to avoid being charged with a major ethical violation, much less to bring down the cost of legal services to manageable levels for the average American. The number of seats available to give every law student and lawyer instruction in law practice management courses is far outstripped by the need for such instruction.

This is even truer when we turn to the use of technology in practice. Despite the efforts of the American Bar Association's Law Practice Management Section in putting on its "Tech Expos," the efforts of various analogous sections in state bar associations, and the Computer Law Association, the efforts of the Computer-Assisted Law Institute (CALI), and private continuing education suppliers, the relatively small number of courses

---

159. See LSAC, *supra* note 46; see also *infra* Table One.

160. In many states the majority of suspensions are for trust fund violations. See JAY G. FOONBERG, THE ABA GUIDE TO LAWYER TRUST ACCOUNTS 3 (A.B.A. 1996).

available to law students does not come close to meeting the need.

The MacCrate Report's Ninth Skill has been relatively neglected and is often looked down upon. The reasons include (only a handful of which are really developed here):

- 1) the lack of a constituency of fulltime faculty dedicated to teaching the courses as a major part of their teaching packages serving clinical legal education, trial advocacy, and legal writing parts of the curriculum so well;
- 2) the lack of support, and sometimes even the contempt, of academics for practical skills courses;
- 3) the dearth of backgrounds and interests amongst law school faculties in the business aspects of the profession;
- 4) the concerns of the state bar regulators that such courses do nothing more than glorify the money-grubbing aspects of the Bar;
- 5) the lack of support from the leadership in the legal community, especially from judges, and managing partners;
- 6) the dearth of communication from law partners in telling law school deans the needs of the profession in having lawyers who understand the business side of the profession;
- 7) literature that has not developed the connection between failures in the delivery of legal services and lapses in ethics from the lack of an understanding of business principles; and
- 8) easy answers and solutions that many thought would be provided by the availability (and not the proper use of) technology in the practice of law.

For someone who is concerned about the quality of legal services delivered to the public and about the impact of the legal profession's ability to deliver those quality services efficiently and effectively at an affordable price, the lack of knowledge amongst law firm owners about how to operate a law firm is a glaring problem. One frequently encounters practitioners who are deeply concerned about the best computer systems to buy, whether to lease or buy office space, and many other mundane business problems. In fact, many practitioners will tell you that practicing law is the easy part; it is running the business that causes real concern and uncertainty.<sup>161</sup> At one time, this was a major issue only for those lawyers in small firms, or who were

---

161. At every bar association meeting the author attends, at least one lawyer comments to that effect.

on the management committee of their large firm.<sup>162</sup> As more lawyers are recognizing that the practice of law is as much a business as it is a profession, it has become a concern for all lawyers in a firm, large or small.<sup>163</sup> In fact, it is often cited as the reason why quality of life programs for members of the bar have become more important.<sup>164</sup>

In addition, the legal profession, often cited as one of the most conservative in adopting new technologies,<sup>165</sup> has been faced with the increasing use of technology in the practice of law. As many more functions formerly performed in law offices manually can be performed by the use of appropriate automation software, knowledge of the types of packages available and the management decisions that must be made is critical. The recognition that the firm will need case management, document management, accounting or other systems and the factors that must be considered in making purchasing decisions becomes even more critical.

The opportunities to learn about law firm management and technology are infrequent, if not rare, in law schools and in legal practice. Neither law schools nor the profession heed the challenge posed by the MacCrate Report in its ninth practical skill. The result has been professionals who are at a competitive disadvantage when they are placed in the increasingly competitive environment of the Twenty-First Century. Other non-legal professions, such as accounting and business management, are more capable at surviving and thriving in a world where marketing, technological, and financial skills have become essential to success and even survival. After ten years of

---

162. The Winston-Salem, North Carolina-based law firm of Womble, Carlyle, Sandridge & Rice has told their incoming new associates that they must know the business of the firm as well as how to perform ethically and effectively as lawyers. For an example of the in-house training material available to associates at that firm, see Press M. Millen, *From Bates to Bulldogs: Client Development and the Legal Landscape*, Womble, Carlyle, Sandridge & Rice, PLLC, Raleigh, N.C. (2001) (unpublished manuscript, on file with Pace Law Review).

163. James E. Brill, *Managing Your Law Office: The Horrible Truth is, You're Running a Business: Organization of the Law Office*, 1981 N.Y. St. B.J. 71, 72.

164. Patrick J. Schlitz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 888 (1999).

165. See discussion *supra* notes 1-10 and accompanying text.

neglect, isn't it about time that we take even the smallest step toward providing members of the legal profession with the skills they need to do well so that they can truly do good?