

and scholarship within the university. The common concern for both educators and members of the bar is whether law schools and the profession are properly discharging their shared responsibility for the lifelong education of lawyers.

The MacCrate Report represents the most comprehensive effort to date to bridge the gap between the law schools and the bar. It defined who the modern lawyer is and then determined the education needed to produce that lawyer. The Task Force formulated a list of ten lawyering skills and four professional values. The fundamental lawyering skills are: problem solving; legal analysis and reasoning; legal research; factual investigation; communication; counselling; negotiation; litigation and alternative dispute resolution; organisation and management of legal work; and recognition and resolution of ethical dilemmas. The professional values are: provision of competent representation; strive to promote justice, fairness and morality; improve the profession; and undertake professional skills development. The Task Force argued that the development of these skills and values neither begins nor ends with three years at law school.

The enormous amount of data collected by the Task Force on gender and ethnic diversity and practice areas and settings makes the Report a valuable resource in the study of the sociology of the profession. However, the Report relies on a narrow definition of the profession and its recommendations represent an equally limited view of legal education.

At best the MacCrate Report stands as a continuing discourse on the profession between the academy, the

bench and the bar regarding the purpose and means of legal education. The concern with the SSV is that it will be seen as a single set of skills and values without the acknowledgment of competing visions based on different social priorities, pedagogies and images of the profession. There is also concern that the SSV will be misused in curricular reform and law school accreditation and form part of the regulations governing admission. The challenge therefore to the academy and the bar is to find ways of making the MacCrate Report a useful and meaningful document. The Report should provide an opportunity for the re-examination of legal education along the entire continuum from the law school application to practice as an experienced attorney, rather than a potential source of intrusive and stifling regulation.

#### **The 21st century lawyer: is there a gap to be narrowed?**

R MacCrate

69 *Wash L Rev* 3, Summer 1994, pp 517-526

Law schools, whilst holding firmly to their scholarly mission, are giving increased attention to the world of lawyer performance and the need to prepare students to participate effectively in legal practice. The author gives a brief history of legal education in America.

Of interest is the comment of Karl Llewellyn of Columbia Law School, who in the 1930s wrote that "no faculty, and, I believe, not one percent of instructors, knows what it or they are trying to educate for". In 1955 Dean Griswold observed that it is no longer possible for a student to know all the law and called for the development of new materials and approaches to teach more and more

about less and less. The focus should be on the human relations element in lawyering with results being accomplished in a client-centred manner.

In the 1960s the focus in legal education was on the adequacy of the profession's performance in delivering legal services and the establishment of the Council on Legal Education for Professional Responsibility (CLEPR). The 1970s saw the growth of the skills and values curriculum, which is unquestionably the most significant development in legal education in the post-World War II era. Despite the continual improvement in lawyer education, disjunctions between legal education and the needs of lawyers and judges persisted. The principal focus within the law school community remained upon law in the abstract and only slowly did the academy turn toward the reality of law in society and in the daily work of lawyers.

In 1987 Justice Wahl asked legal educators at a national conference on Professional Skills and Legal Education to recommit themselves to certain basic principles, including teaching students how to learn systematically from experience and simultaneously to educate them in a broader range of legal analysis and skills than had traditionally been taught. She suggested that they ask themselves if they have really tried to determine what skills, what attitudes, what character traits and qualities of mind are required to be a lawyer.

The following year Justice Wahl commissioned the Task Force that produced the MacCrate Report to address these questions. However, the approach adopted, which was different from prior studies of legal

education, was to start by looking, not at law schools, but at lawyers, that is the total profession for which law graduates must prepare.

The Report sought to provide a comprehensive review of the legal profession today. From the data collected ten generic skills were isolated which are considered fundamental to competent performance by lawyers. Also from the data, four cardinal professional values were extracted.

Following upon the Task Force Report the ABA Coordinating Committee on Legal Education is encouraging State Bars to bring law schools, the bar and judicial regulators together to explore the roles each can play in the legal education continuum of professional development. Planning must take into account the available educational resources, the different educational missions of the individual law schools, the professional needs of law students and new lawyers, the educational value of work experience and the availability of continuing legal education.

**The MacCrate Report's restatement of legal education: the need for reflection and horse sense**

J Rose

44 *J Legal Educ* 4, December 1994, pp 548-565

Legal education has evolved to meet changing needs and visions and hence its objectives have been multiple and even ambiguous. There is general agreement on the substantive and problem-solving aspects of legal education, yet the lawyering skills debate continues to rage.

The ABA's MacCrate Report found that greater emphasis should be placed on skills training. This stems from the Report's general theme that graduate lawyers are inadequately prepared to handle lawyering tasks and that they need more instruction in fundamental lawyering skills and professional values. The Report envisages a law school with a strong focus on skills. Implementing the recommendations of the Report would be costly and require critical educational tradeoffs.

The heart of the Report is the Statement of Fundamental Lawyering Skills and Professional Values (SSV) which sets out ten fundamental lawyering skills and four fundamental professional values. Whilst the Report often refers to "skills instruction", it does not really discuss what effective skills instruction means. Skills instruction should involve the traditional analytical instruction offered by law schools, as well as additional skills used by lawyers in the representation of clients.

The Report's most significant contribution is to publicise the common enterprise of legal education and the professional development of lawyers. Other significant contributions are the fact that it was the impetus for the collation of a lot of up-to-date information and statistical data and that it dispelled the conventional notion of a gap between law school and development thereafter by emphasising the continuum of professional development.

However, the Report never actually answers the fundamental question of what can reasonably and appropriately be expected of new graduates by way of lawyering skills and professional values. Nor does

the Report attempt to rank the ten nominated skills in order of importance and specify when each of them should separately be acquired. Furthermore, the Report is concerned with the maintenance of the "unitary profession", on the assumption that it is a realistic and appropriate objective when there are many varieties of practice settings and highly differentiated legal work for beginning lawyers. The Report does not address the question of whether there is a core of skills that all lawyers need for practice and should largely have when they graduate from law school.

In its discussion of the fundamental skills the Report overlooked several vital problems: (1) Can the existing model of legal education accomplish the desired result? The Report fails to realise that law schools cannot produce mastery without some help from the bar. (2) Is the law school the place for skills instruction or should it also take place in the post-law school transition period? (3) What will be the cost and what education tradeoffs will have to be made? The Report regards the resources debates as non-problematic when skills instruction is labour-intensive and expensive, requiring more materials than for most law classes.

Although the Report focuses on an important issue, it provides the wrong answers, or at least ones that require much more evaluation and reflection. It does a better job at raising issues than offering solutions.

## LEGAL ETHICS

[no material in this edition]