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Available at: https://digitalcommons.law.uw.edu/wlr/vol69/iss3/10
SOMEWHERE FARTHER DOWN THE LINE: MACCRATE ON MULTICULTURALISM AND THE INFORMATION AGE

Burnele V. Powell*

I. PROLOGUE

A couple of months ago, sometime after I was invited by Symposium Editor Ruth Kennedy to participate in today’s discussion, I got a telephone call from her. She wanted to know the title of my remarks.

I, of course, had no idea, what I would entitle these remarks because I was still freshly in the throes of trying to write these remarks. Only moments before the phone rang, I had been preoccupied with several CDs that I had recently purchased and was thinking about the task ahead of me.

It did occur to me, however, that there was something I wanted to say about the logical premise from which the MacCrate Report proceeds. The very idea of “identifying the fundamental skills and values that every lawyer should acquire before assuming responsibility for the handling of a legal matter” struck me as a kind of hubris. The idea was just too pat—too linear—for me. Then too, it struck me that, if successful, this approach would, ironically be more likely to limit, de-value, and even caricature the very learning environment that the drafters sought to advance.

It was not until I heard the muted trumpet-like voice of Willie Nelson still playing in the background that what was bothering me about the MacCrate Report began to become clear.

There was Willie, on his latest album, Across the Borderline, wailing in that nasal, Texas, country rhythm-and-blues twang, and it seemed that

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he too was preoccupied with thoughts of ambitious goals and linear analysis:

And when you reach the broken promised land.
Every dream slips through your hand
And you know it’s too late to change your mind
Cause you paid the price to come this far
Just to wind up where you are
And you’re just across the Borderline

And as the album cycled on, Willie was singing again:

Let’s have a hand for that young cowboy
And wish him better luck next time
And hope we see him up in Fargo
Or somewhere farther down the line

That’s when it clicked. But of course! I too wanted to say something about the uses of linear analysis, especially when attempting to predict the future. I wanted to say, just like Willie was saying, that there are pitfalls inherent in assuming that the world can best be viewed from only one perspective. I wanted to sing that there are other ways of viewing the world.

Other perspectives recognize the roles that randomness, the errors of exuberance, serendipity, curiosity and even luck play in achieving a gestalt. In short, I wanted to sing with Willie Nelson:

And it’s the classic contradiction
The unavoidable affliction
It don’t take much to predict son
The way it always goes

So, what Willie was saying, and what I told Ruth Kennedy I wanted to say about MacCrate, is there in the title: “Maybe Somewhere Farther Down the Line.”

It is a straightforward message, but its understanding begins with a recognition that we do not know (and cannot know) what is central to tomorrow. We can draw lines in the sand and declare that they are based

4. Id.
on immutable principles, but we must remember that, after all, what we have drawn is written in the sand. We draw the lines, therefore, for our comfort, not because we can demonstrate empirically the validity of our message.

We draw the lines because there are so many things that we can describe in relation to them. We can talk about things being out of reach because they are across the borderline, or not currently achievable because they are to be handled “somewhere farther down the line.” We can even get sophisticated and call our line something grander, perhaps a continuum. It’s all to the same effect.

What we really intend when we invoke linear imagery and analysis is justification for dividing the world into segments—segments of time, segments of responsibility, segments of accomplishment. What is on the line is concrete, relevant, and important; beyond the line lies that which is out-of-bounds, premature, and irrelevant.

The beauty of the line is that whoever draws the line also gets to frame discussion about it. That is why a discussion about the MacCrate Report, invariably defies the joinder of issue as every criticism is parried by a reference to the line. We are told, for instance:

Early in its deliberations this Task Force concluded that it was not possible to consider how to “bridge” or “narrow” the alleged “gap” ... without first identifying the fundamental skills and values that every lawyer should acquire before assuming responsibility for the handling of a legal matter. Surprisingly, throughout the course of extensive decades-long debates about what law schools should do to educate students for the practice of law, there has been no in-depth study of the full range of skills and values that are necessary in order for a lawyer to assume the professional responsibility of handling a legal matter.5

Thus, MacCrate contemplates a set of “fundamental skills and values” which are to be learned along a continuum—there’s the line!—that “starts before law school, reaches its most formative and intensive stage during the law school experience, and continues throughout the lawyer’s professional career.”6

But what about the non-linear aspects of the lawyer’s learning? What about those aspects of education that inform the lawyer, but cannot be said in any meaningful sense to be part of the skills and values that are

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6. Id. at 3 (emphasis added).
the presumed requisites of a legal education?\textsuperscript{7} Asked another way: Is the task of defining the place in legal education of such factors as the country's increasingly racial, cultural and gender diversity on or off the MacCrate line? And how is the fact of this growing diversity influenced, if at all, by the simultaneous phenomenon of faster, more diverse, and pervasive means of communication? It is clear that MacCrate does not address these issues, but is that because they are across the borderline or because they are to be addressed somewhere farther down the line?

II. THE NEW REALITY: SOMEWHERE IS "RIGHT HERE"—A PLACE WITHOUT BORDERLINES

To understand what MacCrate misses, consider first where it draws the line with respect to the broader world in which the report supposes we will educate lawyers. Rather than begin with a description of the profession in which lawyers seek to practice, however, a simple headline captures some key issues that MacCrate ignored. The headline proclaims, "More Than Half Workers Non-White by 2010."

The reference is, of course, to U.S. workers. The headline summarizes census projections that, if demographic trends hold, retirements, morbidity, and the entry of new workers due to two-wage-earner families, maturation and immigration will combine by the end of the first decade of the twenty-first century to yield a national workforce that is more diverse by race, ethnicity and gender. Behind such headlines, however, is a chronochroming of the American workforce. Construction crews, production line workers, sales and service clerks, bureaucrats and professionals are adding to the workplace the bright colors and distinctive accents of kinte cloths, PLO scarves, Sikh turbans, DKNY dresses, and Hindu religious marks. Nor is the transformation merely cosmetic; even when the fashions are by mass culture—Nike, Armani, and Disney—the torsos are increasingly Nicaraguan, Armenian, or Dahomey.

The suggestion is not that substantive changes in the boardrooms (or even in the hiring halls or the secretarial pools) will be as dramatic as the visual metamorphosis we are witnessing. Diversification of the workforce is a necessary but hardly sufficient precursor of power-sharing. At best, the increasing variety in the workforce sets the stage

\textsuperscript{7} It could certainly be argued that everything a law student brings to the classroom is part of his or her legal education. Such a view, however, defies any notion of a category of peculiarly legal skills and values.
for a paradigm shift; it provides us an alternative vision with which to compare assumptions about how and why things are organized as they are. Further still, diversification of the workforce reminds us on a number of different counts that what might be called the complexities of complexion do not confront us wholly by accident. We face an increasingly diverse workforce because we are an increasingly diverse people.

This new reality, with its kaleidoscopically changing variables, is, however, more a result of the diverse world in which we must interact than a product of design. As technology makes the world an increasingly smaller place, there is more opportunity for people and things to collide. There is, thus, more opportunity for new ideas, relations, and structures to emerge. Continuing advances in communications technology have provided the means to link people psychologically the world over, and such links inevitably draw people to our shores. The new technologies—telephone, television, video-recording, facsimile transmission, audio recording and electronic computing—provide new incentives to use the old technologies such as trains, boats, automobiles, and planes.

But, of course, the impact of this new reality—the explosions and reverberations brought on by new ideas, relations, and structures—is not limited to the United States. Our’s is only the enviable position of being psychologically in the ascendancy. What we experience is that values the world-over are increasingly the values of urban centers and that those urban centers are linked in ever more sophisticated ways to our own urban centers. Thus, the links that are the means by which American values are most influential worldwide are also the ties that bind us together as a nation and link the destinies of millions throughout the world to us.

What we are witnessing is a growing diversification of the workforce. But happily the transformation is at a time of increased need for the nation to compete economically, politically, and culturally. The requirements for success in this new era are increasingly influenced by an understanding of how diverse, yet, ever more interdependent the world has become. Taken together, therefore, the duality of diversity (the interaction of diverse peoples and advance technology under varying time constraints) represents both America’s—and the legal profession’s—foremost opportunity and its foremost challenge. Furthermore, because the legal profession is, first and foremost, a service provider, its destiny as a profession and the nation’s destiny as a world economic leader are inextricably linked to how well the present
generation of law teachers (academics as well as practitioners) deals with the convergence.

The view here is that given the response required for success in the Twenty-first Century, the MacCrate Report's recent description of "the breadth and complexities of the legal profession,"\(^8\) falls dramatically short of describing "the full range of skills and values necessary for a lawyer to assume professional responsibility for handling a legal matter."\(^9\) Still, the MacCrate Report remains a noteworthy document; its weakness does not so much reflect its lack of ambition as its inability to orient itself toward the future. It is the 1990s well-articulated response to the challenges of the 1960s. Thus, it is not that it is a discussion unworthy of the undertaking, but that its prescription is so time-bound that the remedy it suggests—law schools' attention to lawyering skills and professional values—was long ago undertaken by the 170, or so, quality law schools in the country. Accordingly, the challenge posed by the new interactions of people and technology over time is already rapidly underway, and the MacCrate Report must be appreciated for what is: an important footnote, but a footnote nonetheless.

Part III of this article contends, therefore, that the unexpected in any headline accompanying the MacCrate Report must be that it provide no answers to the kinds of questions with which we begin: "Whose continuum?", "Whose values?", and "Whose skills?"

Hence, as discussed in Part IV, both a new paradigm for understanding the duality of diversity and some recommendations for the response of legal education to it are needed. I suggest, therefore, that if we are ever seriously to address the new reality, we must begin by articulating a vision of legal education that embraces and celebrates diversity as simply another component of the communications age. As Part V makes clear, only such a strategy offers the skills and values requisite for the world that newly confronts legal education and the legal profession. Only such a strategy offers hope of meeting the major challenge of finding new ways to link our people to one another and to the world. Rather than wax nostalgically, we must either embrace skills and values that are specifically honed to the new reality or content ourselves with an intellectual Maginot line that, at day's end, will be seen to have stood through the battle only because it proved irrelevant to it.

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8. MacCrate Report, supra note 1, at xi.
9. Id.
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III. AN OVERVIEW OF THE PROFESSION—GAPS AND ALL. WHOSE CONTINUUM? WHOSE VALUES? WHOSE SKILLS?

MacCrate is certain that the increasing variety in practice settings presents "the greatest challenge to law schools and the profession in maintaining the unitary concept of being a lawyer." Unstated, however, is that such certainty is the certainty of the club, the guild, the union, no less than "the profession." It is a certainty born of the survival needs of insiders—needs which are based on vested interests in ordered change, a desire for efficient expenditures, and above all the need to maximize returns on investments.

Insider groups (viz., the professional hierarchies of the corporate financial sector, omni-service law firms, and university-based law schools) have always had more in common—despite their different structures and ostensibly different constituencies—than either the individual academics who educate lawyers or the clients who must further train the graduates the academics produce. At the core, insiders share a certainty which stems from an incapacity (or unwillingness) to see the future as embodying anything more than the most minimal and incremental changes in the status quo. They share conservative visions of the future not out of fear of the future, but out of fear of their place in it. They accept that the future holds new challenges and opportunities, but they assume that the most radical tomorrow should, after all, hold a place for them in its hierarchy. The difficulty is not that their hopes are likely to prove totally unfounded, but that what is correct about them will be of only marginal significance given the magnitude of the change that the future will bring.

10. Id. at 29.
11. Thomas Peters and Robert Waterman have noted that the discussions of both Warren Bennis and Alvin Toffler recognize the positive ways in which institutional mechanisms evolve for dealing with the kind of uncertainty that generates insider fears. As Toffler has described it: "Future Shock is no longer a distant potential danger, but a real sickness from which increasingly large numbers already suffer. It is the disease of change." Alvin Toffler, Future Shock 4 (1971); See also, infra note 32 and accompanying text; Warren G. Bennis & Philip E. Slater, The Temporary Society (1968).

In the emergence of the "adhocracy," however, Bennis and Toffler see an institutional dynamic for embracing whirlwind-like change. In such circumstances, bureaucracy is not enough; the adhocracy serves as a means of institutional adaptation when the formal structure established to deal with the routine, day-in, day-out items of business—sales, manufacturing, and so on—cannot adequately respond. Thus, the adhocracy emerges to "deal with all the new issues that either fall between the bureaucratic cracks or span so many levels in the bureaucracy, that it is not clear who should do what; consequently, nobody does anything." Thomas J. Peters & Robert H. Waterman, Jr., In Search of Excellence: Lessons from America's Best-Run Companies 121 (1982).
MacCrate's overview of law practice reflects this insider critique. The report views the current legal practice setting as an historical extension of an era of individualistic lawyers working independently of other lawyers or professions through the early years of the 20th century. In this formative era, "businesses and other organizations employed increasing numbers of lawyers to be in-house counsel," and there were increasing numbers of lawyers entering government service. By the 1950s, the profession had come of age. The pattern of lawyer employment shifted dramatically "with more lawyers moving into law firms and a substantial drop in the percentage of lawyers who were sole practitioners." And since 1970, MacCrate reports, "a steady movement of law firms of all sizes from smaller practice units into larger.

Thus, modern legal practice has three striking characteristics. First, as a demographic matter, the manner in which firms are organized is tied to financial reward, type of clientele (business or individual), and demand for legal services. The result is that there is a "steady movement toward larger and larger law firms in which a greater percentage of lawyers' time is devoted to business law and less to the representation of individuals." Second, there are major departures from the traditional setting of private practice delivered legal services; and third, both the corporate and the government sectors are continuing the trend since the 19th century of using in-house counsel.

For MacCrate, then, the practice setting is captured as a grid work of lawyers operating in organizational structures that reflect choices among sets of opposites or counterpoints: private versus public; in-house counsel versus outside counsel; small firm versus medium or large firm; and corporate and financial practices versus individual and small...
The lawyers who comprise this world are predominantly white and male, but increasingly female. Minorities, especially African-American, Mexican-American, and Asian American, are growing in number but have yet to make the significant gains that would reflect real power in the system’s hierarchy. Lawyers who concentrate in particular areas of practice are a growing reality, but as a practical matter the numbers seeking formal certification as specialists have not proved as great as many had hoped. Although large corporate firms continue to generate the highest financial rewards, medium and small firms predominate and continue to provide the most consistent route to very substantial incomes, psychic rewards, and flexible social power.

Educating lawyers—preparing them for their place on the grid—is explicitly recognized by MacCrate as a shared responsibility, but equally important is what MacCrate does not recognize: When educational values are articulated primarily in relation to historical and demographic developments, the result risks reflecting a static view of who, why and how law schools educate. Simply to organize a discussion for our metaphorical grid, requires a common aesthetic, common views of dimension, and common assumptions about the boundaries of the field upon which the individual’s character is to be shaped and expressed. To accept other variables as premises would be to risk outcomes that are, unpredictable at best, and incompatible, at worst.

The inherent limits of a legal profession that is premised on MacCrate’s diorama of the profession are best illustrated by the Report’s treatment of the professional emergence of two groups: women and minorities. MacCrate notes, for example, that the most significant change during the 1970s and 1980s was, perhaps, the growth in the number of women choosing the law as a career. This change came first

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18. This summary ignores sectors of the grid which lie at the margins. It also does not exhaust all possible combinations on the grid or attempt to weigh every nuance reflected in judgments about the desirability of various combinations. MacCrate, for example, recognized that the setting of the modern law firm also includes growing efforts on the part of small firms to form networks with their counterparts in other firms throughout the region. Further, MacCrate characterized the absence of an established structure for bringing small firm and solo practitioners into the profession as a significant drawback. Id. at 46-7. Moreover, there are other types of structures that have developed, including expanded public legal services to the poor, varied programs to deliver criminal and civil legal assistance to the indigent and clients of moderate economic means; the use of advertising to expand the client pool; the emergence of national legal services firms; the rise of legal referral services; and the increasing availability of privately retained counsel representing group legal rights. Id. at 57, 59, 62, 70.

19. See supra note 5 and accompanying text.
in the law schools and then throughout the legal profession. Women students in ABA-approved law schools, for example, increased from approximately 4 percent in the mid-1960s to more than 40 percent in the 1990s. This change apart, the pace at which women have entered the profession is dramatically at odds with the rate at which women have assumed power positions. Considerations such as age and tenure have continued to limit access by women to positions of power.

Although MacCrate correctly noted that the legal profession is moving in the direction of gender equality, its discussion of the emergence of women in the profession does not profess to go beyond demographic concerns. In an overview that is remarkable only for its almost militant insistence on simply running the numbers, MacCrate's concerns are with asking whether women are present, rather than why; how many, rather than to what effect; and under what conditions, rather than with what potential. Because these concerns are essentially queries about status, the profession that MacCrate models is, not surprisingly, one in which the concerns of women lawyers are personal and intra-professional (e.g., pregnancy, rape, sexual harassment in the workplace, judicial treatment of domestic violence, sexual relations between attorneys and clients, gender stereotyping and biases within the practice, courts, and the profession).

Missing from MacCrate is the wider discussion of the diversity duality: what the gender diversification of the profession in combination with enhanced communications (and the access to ideas that it


21. Id. at 20; see also the summarized findings of the Gender and Law Project of Stanford Law School quoted in the report. Id. at 21.

22. It is acknowledged that passing reference is made to other concerns, such as women's psychological and social perspectives (e.g., women's different voice); and how legal education and the legal profession will adapt to the gender change. Id. at 22; But these are by no means central to the overview. More important, the potential impact of women on the substantive views of the profession is not a concern, central or otherwise, of the MacCrate Report. The report is silent, for example, about whether the experience of being a woman, in and of itself, has informative value with respect to how we think about our society and the laws through which we organize it. Yet, second only to distributive justice concerns, it is this issue that is central to any argument that gender diversity matters (i.e., as providing other perspectives for defining legal rights). See Sue Davis, Do Women Judges Speak "In a Different Voice?": Carol Gilligan, Feminist Legal Theory, and the Ninth Circuit, 8 Wis. Women's L.J. 143, 143–73 (1993); Andrea Dworkin, Men Possessing Women (1979); Andrea Dworkin, Pornography Is a Civil Rights Issue for Women, 21 U. Mich. J.L. Ref. 55 (1987); Andrea Dworkin, Against the Male Flood: Censorship, Pornography, and Equality, 8 Harv. Women's L.J. 1 (1985); Lisa Lerman, Mediation of Wife Abuse Cases: The Adverse Impact of Informal Dispute Resolution on Cases, Harv. Women's L.J. 57 (1984) (discussing the limits of ADR in domestic situations ); and Susan R. Estrich, Rape, 95 Yale J.J. 1087 (1986) (discussing rape and laws).
represents) is likely to mean to the profession’s ability to deliver services to clients. It is essential that there be a historical record of the status of women within the profession, but the reality remains that most women are not members of the profession. Furthermore, of those who are, any optimistic view must assume that few entered the profession to focus on their own status. The drive to make gender irrelevant in its invidious applications to the practice of law is first, and foremost, a drive to transform the lives and vindicate the interests of clients, no matter the client’s gender.

Similarly, in discussing the formal opening of the legal profession to lawyers from racial, ethnic, religious and cultural minorities, MacCrate’s approach is chronological, demographic, and descriptive. It takes note, for example, that black lawyers were formally excluded from the legal profession until 1943, and that it was not until 1950 that the first African-American lawyer was knowingly admitted to the ABA. Relying on an analysis by the National Bar Association Magazine of the status of African-American lawyers, MacCrate noted that 80 percent of all black lawyers were in 10 states, and have a practice profile which is “at marked variance with the distribution of majority lawyers.”

MacCrate’s focus, however, is again on status concerns such as the statistics of minorities within the profession as it looks to “the advances of the past two decades and . . . [the] promise for the future.” The report concludes that a “promising beginning” has been made, but “[T]he goal of equal opportunity within the profession is still a long way from realization.” As with its treatment of the significance of gender diversification, however, MacCrate’s overview presents the issue of racial diversification from the least interesting perspective. Rather than discuss how, if at all, the entry of African-Americans into the profession is likely to affect the delivery of legal services, the application of legal principles, or public acceptance of the rule of law, MacCrate is satisfied simply to note the presence of African-American lawyers.

23. See supra Part II.
24. MacCrate Report, supra note 1, at 23. “It was not until 1964 that the Association of American Law Schools’ Committee on Racial Discrimination could state for the first time that no member school reported denying admission to any applicant on grounds of race or color.” Id. (citing Association of American Law Schools Proceedings, Part One: Report of Committees, 159 (1964)).
26. Id.
27. Id. at 27.
Thus, in laying the foundation for its discussion of the important skills and values requisite for the education of lawyers, MacCrate’s concern with the legal profession’s demographic changes reflects its desire to establish the diversity of the profession only as a predicate for its argument that the unitary concept of being a lawyer is in jeopardy. The need to view skills and values as a part of a professional crusade to overcome differences, however, rests on an assumption that is unstated and unexamined: that we can know in any meaningful sense whose values and what skills the future will demand.

IV. VALUES AND SKILLS FOR A DIVERSE FUTURE:
THE CONTEXTS IN WHICH IT MATTERS

MacCrate is comfortable in its assumption that the unitary concept of being a lawyer is in jeopardy largely because it has not examined its primary supposition: that what it means to be educated as a lawyer can be reduced sumnum bonum. On this belief rests MacCrate’s certainty that it can meaningfully define how the absence or presence of elemental components marks lawyers as professionals. Resting on that certainty, too, is yet another assumption—in fact, an extrapolation from the first—that in the absence of efforts by legal educators to reinforce particular skills and values during the legal educational process, the legal profession risks loss of any meaningful definition of who (or what) it is. MacCrate is bound, therefore, to a view of the legal profession and its educational requirements that defines who and what the profession is in the limited terms of what and where the legal profession has historically been. This strategy is convenient but ultimately unsatisfactory. It invites consensus only because it avoids examination of legal education from perspectives which necessarily suggest only untidy answers about the relationship between the legal profession, law professors, and legal education.

It is important, however, that the likely untidiness of our answers not deter inquiry. Indeed, the more untidy we anticipate the answer to be, the more often we ought to ask the question. Undoubtedly continual examination of a question may over time produce a variety of different (and perhaps contradictory) answers, but such examination will lay the foundation for a more meaningful analysis. What was thought to be a full and well-reasoned response at one stage will, at a later stage, be

28. Id. at 121.
29. See supra note 10 and accompanying text.
revealed to be less ambitious and insufficiently sensitive to the nuances. Furthermore, even if we were to display extraordinary prescience and discover, for example, that a list of skills and values we developed was a complete list, there is nothing to suggest that any particular value that we might today list will prove responsive to the yet unanticipated challenges of tomorrow.

We do not have to go far to remind ourselves of education’s dinosaurs. There was a time when women and virtually all minorities were thought to be irrelevant to both the skills and values of the legal profession. And in the modern era, we need only recall the pre-1960s requirements for dignified (and sometimes business-like) student classroom attire. The values of the day once held it necessary to prepare mostly young white males for the business attire of the courtroom. Recall, too, that it was once quite common to have law students stand to recite in the classroom to provide the necessary training in oral advocacy. And do not forget that at one time or another, a seer proclaimed that the special skills and values requisite for later success as a lawyer were embodied in student externship programs, special types of law school clinical programs, or specific course offerings (e.g., professional responsibility, accounting, economics, foreign language, mandatory pro bono). The point is not to question the inherent value of these approaches. The concern, rather, is that we not mistake what is good for what is necessary or—what is the easier pitfall—mistake what is desirable today for what may be necessary tomorrow.

Moreover, as we consider the skills and values being advocated today, we must take care to assure that even those which are most sincerely proposed do not divert scarce educational resources from currently existing and valued programs. The evolution of the law school curriculums to include clinical education programs, courses designed to provide perspective (e.g., philosophy, jurisprudence, literature), and courses to provide interdisciplinary perspectives (e.g., economics, sociology, medicine) have been a long and arduous undertaking. By imposing new tasks and costs on law schools, the skills and values approach may really undermine the capacity and values of the very enterprise we seek to promote. Rather than attempt to reshape legal education from without and risk making it less responsive, we would be wise to urge each law school to identify and expend their resources in light of broadly stated and regularly reviewed goals and timetables of their own making.

Still, it is insufficient simply to note that MacCrate is weakened by its limited vision of legal education, its parochial historical view, and the
burden of its unaccounted for opportunity costs. Yet, to fully list the ways in which MacCrate is too limited poses an impossible task given the nature of the instant criticism: that its codification is either too general to be meaningful or too specific to avoid the trap of anachronism. Instead of a list, the alternative offered is to postulate a different backdrop, against which the future can be considered. Rather than MacCrate’s attempt at a statement of consensus based on a static view of the educational and professional environments, this vision is intentionally tentative and fluid. It proceeds from the assumption that the future for which we will educate law students and utilize legal learning is constantly evolving and thus, our responses to it must be pragmatic, adaptable, and, above all, allowed to vary from school to school.

Consider, then, the implications of the following four vignettes:

A student drops by the office of her professor to report that she made the Dean’s List last semester. She is a thirty-something single-parent of two teenagers, on her second career, and she’s not at all sure whether law school is a hostile or friendly environment.

A second student enters the professor’s office just as the first is leaving. This one is an African-American male. His request is that the school look into the coincidence that, although all conceded that he had done an excellent job as oralist in the moot court competition he—like every African-American competitor before him—had failed to make the national moot court team.

The third student provides faint echoes of the first two. She questions why the law school does not have an externship program, like the one her friend was participating in at another law school.

And finally, while attending the ABA Meeting, a lawyer wants to know about “the sad state of law school teaching when it comes to legal ethics.” Why is it that students are prepared for problems like conflicts-of-interest, which they will never face, instead of real problems, like how to keep adequate trust account records?

The scope of the playing field, too, is worth mentioning. Over a couple of weeks, the law professor in question is in communication across the country and around the world: Chicago, San Antonio, Eugene, Dallas, Madison, Charleston, Baltimore, Philadelphia, Lagos, Lyon, and Paris.

Initially, these individuals and places appear disparate and episodic. It is only in light of considerations such as those voiced by the futurist
Alvin Toffler that one begins to see their interrelatedness. In their revealed relationships, furthermore, the vignettes provide insights into the larger issue of the future of legal education and practice in the twenty-first century. Consider, then, Toffler’s now two decades old observations about the phenomenon of “future shock” brought on by change and the pace of life:

It is . . . not only our relationships with people that seem increasingly fragile or impermanent. If we divide up man’s experience of the world outside himself, we can identify certain classes of relationships. Thus, in addition to his links with other people, we may speak of the individual’s relationship with things. We can single out for examination his relationships with places. We can analyze his ties to the institutional or organizational environment around him. We can even study his relationship to certain ideas or to the information flow in society.30

Toffler went on to assert that these relationships plus time, form the fabric of social experiences. Thus, people, organizations and environments, ideas, places, and time are the components of all situations.

Looked at in this way, the reasons for concern about what MacCrate leaves out in its attempt to codify professional skills and values for the future should be apparent. If to discuss the future one is obliged to discuss the very fabric of future social experiences, any approach which fails to consider what I have characterized as the duality of diversity must to that extent be viewed with skepticism. The increased complexity of our daily lives, spurred by the simultaneous growth in diversity and increase in interdependence, threatens to make all lists anachronistic. To assume today the capacity to identify immutable principles which will underlie the institutions of a constantly evolving future is not simply to risk being wrong; it is to risk resource allocations that preclude even a readjustment. As with the Maginot Line, sometimes you get only one chance to guess whether the future can be set in concrete. Attempting to predict the future, as opposed to working to manage it, is simply too daunting an undertaking.

In 1970 (or for that matter in 1980), who could have predicted, for example, the reunification of Germany, the peaceful dissolution of the Soviet Union into the Commonwealth of Independent States, face-to-face

30. Toffler, supra note 12, at 45.
31. Id.
negotiations between Yassar Arafat and Yitzhak Rabin, a joint Nobel Peace Prize for Nelson Mandela and F. W. de Klerk, the scourge of AIDS, the S&L collapse, or the emergence and, more surprisingly, the ubiquitousness of rap music.

No, the future rests in the hands of those who can best adapt to it. It demands vigilance and variation as opposed to standardization and specialization. Just as it is improbable that anyone could have predicted the above developments, it is equally doubtful that the skills and values needed for lawyering in the next century can be identified beyond the most innocuous pronouncements that "the general consensus is." Rather than standardization, the future requires a readiness for varied and flexible responses. Thus, we ignore social psychologist Warren Bennis' description of the future at our peril, for it is truer today than ever that the throttle on the pace of our lives has been pushed so far forward that, "no exaggeration, no hyperbole, no outrage can realistically describe the extent and pace of change. . . . In fact, only the exaggerations appear to be true."

In context, then, the concerns of the people in our vignettes do not simply reflect momentary crises or the concerns of isolated members of the legal community. They reflect the convergence of diverse people, in a variety of organizations, exchanging serious ideas which have been informed by an infinite variety of perspectives. The challenges posed by the diversity of concerns existing in this environment are daunting, but more than that time—its ebb, flow, and simultaneous effects on all surrounding phenomenon—is an additionally complicating factor. Still, in order fully to consider the ramifications of operating in environments of increased diversity and the interdependence generated by enhanced communications—what we have called the duality of diversity—we must consider how the elements comprising the reality of the future are likely to influence the problems confronted there. Consideration of just such interaction is made possible in regards to Dean Robert Steins' list of some twenty-three predictions about challenges likely to face legal education in the twenty-first century. Suppose, for example, that Stein's topics were considered in relation to several of Toffler's situation components: people, organization/environments, ideas, places and time.

32. Id. at 22; see also supra note 11.
34. Yes, Toffler also included things. This variable, however, is so tied to an individual's psychological and physical interaction with the environment that any attempt to measure its impact is likely to reflect only what is idiosyncratic. What is recognized, however, are two points: No analysis
A. People

Consider, first, the people component—those concerns which grow directly out of who we are and the roles we define for ourselves. Under this heading, for example, must be included the impact of demographics. Here, however, we must not only include consideration of the annual arrival of twenty-one and twenty-two year-olds at law schools, but also the fact that both our faculties and our students will be aging. Demographics include, too, the fact that the rapid expansion in the size of law school faculties will not continue in the face of what will, at best, be a leveling-off of student demand for a legal education. Rather than continued expansion, in the twenty-first century we will see some law schools close. All law schools, however, will see less turnover in faculty positions and experience a general aging of their faculties because of the elimination of mandatory retirement.

The needs of students will also change. Law schools are already beginning to see the emergence of affinity groups such as Second Careers in Law (SCIL) and Parents Attending Law School (PALS). The secret intentions of these organizations not only reflect the re-nesting phenomenon that has become the fluff piece of the popular press, but they are spurred by a real social and economic upheaval. Just as our manufacturing sector is having to retool, there is a growing need to upgrade the skills and retrain the white, pink, and blue-collar employees previously mentioned.

But to recognize that the study of law will be sought after by increasingly diverse groups is also to say that educationally we must respond with increasing flexibility. That mother of two in our vignette of a situation is likely to be complete without consideration of this factor; and that reaction is more often than not likely to be a complicating, as opposed to simplifying, factor. Consistent, then, with the larger theme stated here, attempts to capture the skills and values necessary for the future lawyer will prove less rather than more accurate, because of the need to consider the impact of things in a situation.

35. See supra Part II. That legal education is increasingly being turned to as a postponed career should come as no surprise. Former HUD Secretary Patricia Roberts Harris, a late entrant to law school herself, said it best when she observed: “Law is the last bastion of the generalists.” But the need for a program that addresses the country’s systemic needs for retraining remains:

Creating such a work force, in turn, requires enormous investments in building the skills of front-line production workers, whose blue collars are turning white as they perform tasks that previously required several workers, including managers.

will require a support system that was unnecessary when law schools where essentially white, young and male. Daycare facilities in law schools, more varied scheduling of classes to accommodate family needs, and an emphasis in law school on quality of life issues in the practice of law are inevitably issues that law schools must face. Nor will changes in the substance of legal education lag far behind the willingness of law schools to be more accommodating to students. Just as concerns for civil rights, feminism, gay rights, and the environment have spurred expansion of law school curriculums, the aging of our country’s population, the internationalization of trade and social intercourse, and issues related to global warming or international space exploration may provide the next influence.

Similarly, no law school which defines itself as a leader in education will be able to wear that mantle without a base of faculty and students who mirror the diversity of races, sexes and perspectives that enrich us as a nation. There must never be a question but that a citadel for legal learning is a friendly place for all races, sexes, creeds, and orientations. The need for such diversity does not grow out of a need for penance or reparations, but is grounded in a rational introspection that tells us that the richness of the intellectual bazaar is diminished when the marketplace of ideas is limited by invidious racial and social tariffs, quotas and discriminatory trade practices.36

B. Organization/Environment

Even if a law school confronting the twenty-first century is sensitive to its primary resource, its people, the challenge will be to organize an environment in which they can find fulfillment. Just as Peter M. Senge37 has written in another context that, “you cannot have a learning organization without shared vision, . . . pull[ing] toward some goal which people truly want to achieve,” the challenge of the twenty-first century will be to fashion a compelling vision at a time when there will be increasing pressures on faculties and students to see themselves as in competition with their peers. When the very ideal of the research university is itself under economic and political strains, it will be difficult to find the rewards—financial and otherwise—which are necessary to

keep the spark of faculty commitment alive. Even assuming the willingness to sacrifice for the cause of intellectualism, an inadequate resource base exposes a faculty to having its members wooed away. Moreover, when a law school’s resource-base is decreasing, particular vigilance is required to assure that the usually hidden fissure lines of status, rank, and honors are not allowed to crack the cohesiveness of the institution.

Similarly, the environment for students requires special cultivation to keep it stimulating, nurturing and rewarding. Beyond economic survival itself, the greatest challenge facing most faculty and students in the twenty-first century will be to respond to what is already a major challenge—what might be called "the Jedi warrior syndrome" after Steven Spielberg’s Star Wars Trilogy parable. There, the hero, Luke Skywalker, forsook his mentor, Yoda, before his training was completed, because he viewed his mission—saving the alliance and settling old scores—as too important to put off in favor of more training.

The upper-division malaise that is so often spoken about in legal academe also involves a growing sense of student impatience and strategic planning. In an increasingly competitive job market, students ask: "how can I afford not to be employed as soon as possible in the real world of lawyering?" That is where I prove my bona fides to a potential employer. That is where I learn real lawyering. And there’s no C-curve!

The counter-vision that must be offered to students and faculty is an organization that views "the real world of lawyering" (quote unquote) as so much in flux that only those who are prepared to accept change and flexibility as the essence of stability will be able to cope with it. Regrettably, however, we cannot now say what the prescription (or any combination of prescriptions) will be for the organization of this learning environment. What we can say with some confidence, however, is that beyond continued attention to the core courses which make legal education the "last bastion of the generalists,"38 law schools will have ample opportunities to explore new ways of rewarding both their faculties and their students. Especially through creative responses to the newer parts of the curriculum, such as clinical education, interdisciplinary teaching and research, and continuing legal education, will law schools be able to forge new professor-student relationships and visions.

38. This was former Secretary of Housing and Urban Development, Patricia, Roberts Harriss’ apt description, see supra note 35.
Turn for example, to the vignette deploring the "sad state of teaching about legal ethics." Because I am a teacher of legal ethics, you might have correctly surmised that I began by rejecting the very premise of the question. However, I went on to challenge that skeptical audience with a reminder that the law school teaching of ethics over the last two decades has undergone a revolution that has not been matched by the practicing bar—those in the best position to teach legal ethics outside the classrooms.

Rather than give into the easy requests that are regularly made of me, to bring lawyers into law school classrooms to teach about "the real world of lawyering," I ask: "Shouldn’t we be thinking about ways to get the teaching of ethics out of the classroom and into the suites and the streets where such teaching also belongs?" Student (and faculty) interaction with practitioners as they work through and reflect on professional standards and the lawyer disciplinary process is what is needed. Students should be able to view, interrogate, debate, and critique judges and lawyers in the very venues where judges and lawyers are wrestling with the problems of the profession. 39

Conceding that I have not expanded on the opportunities that interdisciplinary initiatives and continuing legal education offer in helping to shape an environment that can learn from itself, my point is simply this: In life, as in architecture and art, form ought to follow function. In the twenty-first century we may or may not have the kinds of organizations and environments that we need, but it is absolutely clear that we cannot have such environments unless we are prepared to respect each other as individuals, to look for problems to which we can respond with innovation, and to start with the assumption that the future (and the change it represents) is an ally, not an enemy.

C. IDEAS

Of course, the assertion that the future is our ally, requires a qualification which is related to the third component of any situation,

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39. As I have argued elsewhere: "As a practical matter the task of delivering quality legal services to clients simply cannot be accomplished without finding ways to reinforce the expectation that the appropriate practice of law involves other-regarding and self-regarding behavior." Burne V. Powell, Lawyer Professionalism As Ordinary Morality, 35 S. Tex. L. Rev. 275 (1994). Accordingly four initiatives are warranted: 1) Law firms should invite students to spend time with them reviewing how the firm has handled its in-house ethics problems; 2) panels of lawyers who have been disciplined should make presentations to law students; 3) actual lawyer disciplinary proceedings should be conducted in law schools; and 4) lawyers should arrange to have students observe their daily operations. Id. at 413–14.
Multiculturalism and the Information Age

ideas. The qualification is that the future is our ally so long as we are prepared to meet it with ideas. Recently, I alluded to this connection between new ideas and the opportunity to grow in reference to jazz. As an African-American, I am particularly fond of jazz as a metaphor for the idea that we must be responsive to new situations even under circumstances of constraint. But I realize that improvisation (and even serendipity) is the style of all rational people, even while it is the favored characteristic of lawyers.

In *Logical Method and Law*, John Dewey might just as easily have been Miles Davis, Rahsaan Lateef, Roland Kirk, or Wynton Marsalis when he wrote:

> As a matter of fact, men do not begin thinking with premises. They begin with some complicated and confused case, apparently admitting of alternative modes of treatment and solution... As a matter of actual fact, we generally begin with some vague anticipation of a conclusion (or at least of alternative conclusions), and then we look around for principles and data which will substantiate it or which will enable us to choose intelligently between rival conclusions.

> Many complicated and confused problems which we are bound to see in even bolder relief in the twenty-first century are already before us. *Professionalism*, especially as a watchword among the bar, has now been with us for nearly a decade. The mass media’s interests in issues relating to the ethics of lawyers are of a similar piece. What professionalism has meant and can mean in a profession that is changing in response to both the courts and the economy will remain a point of interest. And as already noted, the challenge remains to explore ways of communicating and applying our professional standards.

> But it will not be the law schools alone which will be seeking innovations in legal education in the twenty-first century. It is all but certain that various state legislatures and the ABA, itself, will seek to imprint law schools with their own visions of what lawyers should be. Regrettably, some of these initiatives will be detrimental to legal education. In political environments where inaction opens one to charges of blindness to problems, the temptation will be to supplant law professors’ long-term vision of the role of education with a vision from


practitioners seeking short-term payoffs. It is suspiciously coincidental, for example, that MacCrate's call for increased emphasis by law schools on the teaching of skills that law firms have historically shouldered comes at a time when law firms have been aggressively seeking ways to cut costs and increase profits.

Interestingly enough, however, one antidote to the looming threat of over-regulation of law schools is a stronger embrace by law schools of other intellectual disciplines. This is not to say that law schools will have to distance themselves from the practicing bar, but to suggest that the sooner it is appreciated that legal education is about the process of learning and learning how to learn, the greater will be the opportunity for the academy and the profession to understand the unique contributions that each make toward the joint enterprise of preparing lawyers. Put another way, the more that it is understood that in the twenty-first century many students who are educated in law schools will never have (nor intend to have) law clients, the easier it ought to be for law schools and the bar to focus on standards and procedures for the post-law school training of practitioners.

Again, while space does not allow the presentation of a blueprint for post-law school study, some light can be shed on the process by a few words about the changes that will affect the law school's delivery of services. Already acceleration in four areas is becoming evident. There will be increased efforts by law schools to "boutique" themselves, especially by law schools which are not well known or which are tuition-driven. That is to say, increasingly some schools will sell legal education based on what are supposed to be "hot areas of the law." Fortunately, however, the stronger a law school's general curriculum, the less willing it will be to settle for a reputation as a school where students go to be prepared for a specific kind of legal work (e.g., environmental law, sports law, space law, or law and economics).

In contrast to "boutiquing," however, will be a general trend among law schools—especially those associated with major research universities—to promote interdisciplinary education. Increasingly the purpose will be to equip lawyers to see the world not only in the way that lawyers do, but also, as previously suggested with respect to John Dewey, in the way experienced by the entirety of the rational community (including lawyers). Through these cross-fertilizing efforts, will emerge stronger students and enhanced disciplines on both sides of the "law-and" movement. The areas of business, health, and public

42. See supra note 42 and accompanying text.
policy are the leading areas today, but there is no reason that they will not be joined by areas as seemingly distant as the fine arts or as seemingly compatible (viz., language based) as journalism.

Out of these new alliances will also come an appreciation by all disciplines of the synergies that arise from interaction. For thirty years now, economics has been refining its relationship to law; the next thirty years will surely serve as an opportunity for the psychologically based disciplines to work out the implications for their views on the thoughts and procedures of the legal profession. Already in that regard we have the increasing acceptance of alternative dispute resolution as a valuable tool in the total delivery of quality legal services. As additional intellectual relationships prove valuable, there can be little doubt that the law schools of the twenty-first century will respond favorably to what will be a growing demand by the profession for specialist certifications. In turn, as new specialties emerge, specialties which are still newer will be spawned.

The challenge of the twenty-first century, therefore, will not be for law schools to settle for doing less; it will be for them to stand ready to find imaginative ways to do more. The difficulty of that challenge, however, is that even at our most optimistic, we cannot today predict the ultimate glories that will be achieved halfway into the next century.

D. Place and Time

Finally, the overriding affects of the final two components of the social situation, place and time, should be noted. Together their impact suggests that, viewed in the light of what the future will reveal, today's optimistic predictions serve only to confirm how pessimistic we really are.43

As to the first of these, place, the reference is not merely to the physical location of the law school. Although there will still be an edifice called the law school in honor of some future female Chief Justice of the Supreme Court, by the end of the next century the actual use of most law school buildings will be substantially less intense than today.44

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44. In conversations with the author, Professor Claude Rohwer, McGeorge University School of Law, has contrasted the notion of the law school that is common in the United States, with the views
The future of law schools includes curriculums without walls relying on communications that are electronically driven. There will be increasing interdependence of law libraries, probably with most texts being available online with hard copies available for printout at a terminal for a nominal fee. There will also be greater use of audio and video equipment both in and outside law school classrooms. At the very least, the idea of attending class through a satellite feed will soon be routinely accepted. In addition, interactive electronic textbooks are not far off, as already presaged by today's computer-assisted learning programs.

The ability to link-up by satellite with any law school classroom, simply by picking up your viewphone or sitting your saucer-size satellite dish on your window sill, will radically transform the way in which we use law schools. If classroom presentations are available around the clock, just like C-Span, will we still expect students to attend classes? Will we want to require them to enroll in any particular law school, when the universe of law schools will be, as it were, right there in their dish?

And what can be said about law professors? Will they need to be at the law school, or will it suffice that they make presentations in Baltimore from their ranch in Arizona? Consider too, whether with so much electronic access to law teaching, we will consider a return to reading for the law? Or less provocatively, when electronic communication becomes even more widely available, will a professor's time between writing and seeing a published law review piece shrink to six hours from the current six months?

I cannot hope to answer these questions, but I do wish to suggest by them, that the significance of place in the future of legal education is rapidly declining. Simultaneously the significance of time is increasing. Just as the eleven places, from Baltimore to Lagos to Lyon, mentioned earlier reflect a shrinking of the world in which legal education takes place, time represents a simultaneous expansion of the opportunities for learning that can take place in that shrunken world.

Regrettably time represents something else, however. In the future, as in the present, time will represent money. Law faculties' ability to act as temporary trustees of the legacy of learning entrusted to them, depend heavily upon an ability to attract the people, to mold the organizations, to share the ideas, and to exploit the opportunities that time and space

of his European colleagues (Germany, Austria, Poland). They speak instead of law faculties. Law faculties exist wherever the faculty happen to be; law schools have fixed sites.
afford. These opportunities, however, are dependent upon the availability of adequate resources to get the job done. Ultimately, then, these opportunities are dependent upon the entire legal community.

The twenty-first century will also, no doubt, be a time of increased costs and, therefore, increased expenses for a legal education. Even while state law schools move aggressively to become state-assisted law schools (in contrast to their former status as fully state-supported institutions), the issue looms whether society, the university, or the legal profession can afford to see the opportunities afforded through legal education wither on the vine, just beyond the financial reach of large segments of succeeding generations.

One answer is surely that fundraising must be viewed as an integral aspect of the job of every law school dean. Another answer is that scholarships, grants, and loans must be available to assist students in defraying the cost of legal education. But the future will require that we go farther. Every leading law school must adopt a loan forgiveness program. More to the point, however, as a nation, we must commit ourselves to the creation of a service corps which will defray the cost of education for any student—undergraduate, graduate and professional alike—in exchange for a commitment of service upon completion of a student's study.

V. CONCLUSION

This view of legal education and the respective roles and visions of the legal professorate and the practicing bar, therefore, respects the effort represented by the MacCrate Committee to examine the overlapping interest of practitioners, educators and the public. It gratefully acknowledges the especially useful historical summary contained there. Ultimately, however, MacCrate has been more successful in looking back at a selected aspect of legal education than in looking forward to the twenty-first century.

To look forward requires first a willingness to embrace the future and to accept its uncertainties. At the very least that means that we must recognize that all future social enterprises will take place in a world of heightened communication that is increasingly more diverse, racially, culturally, ideologically and otherwise. In this environment, sensitivity to the need for diverse educational institutions will be as important as sensitivity to the need for cultural diversity. Complicating matters further will be the necessity imposed by rapid technological advancement. Mutual advancement will require that diverse perspectives
be harmonized. Our capacity to build consensus, however, will be severely taxed by the sheer size and speed of change itself. In such an environment, the shape and pace of change will give a new meaning to diversity, requiring not only a sensitivity to differences, but a capacity to appreciate that what daily confronts us as different, new, and novel is the very essence of the opportunities we are seeking.

What is required in such an environment is an appreciation that to embrace the dual aspects of diversity, combining as they do variety and technological change at an increasingly rapid pace, is to embrace progress. Accordingly we must reject nostalgic longings for the unifying themes of a past era. In legal education we must adopt a bold willingness to find new modes of expression and bases for interaction or content ourselves with less than our capacities. Although the end cannot be seen, this is the only strategy that marks us as aware that in approaching the future, as in approaching all other aspects of life, the things we see in the distance take on clarity and meaning in direct relation to our stance to them. The more rapidly we run from them, the less susceptible they are to our vision. Conversely, the faster that we move toward even the unknown, the clearer our vision and the greater our perception of the many choices arrayed before us. There may be danger in the short-term in moving forward, but for the human species experience has taught that the greater danger in the long-term is in not having the courage to accept the diverse challenges of the unknown.

And I can still hear Willie Nelson, there in the background, in his surprising rendition of Paul Simon's standard:

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\begin{align*}
\text{The Mississippi Delta was shining} \\
\text{Like a National guitar} \\
\text{I am following the river} \\
\text{Down the highway} \\
\text{Through the cradle of the Civil War} \\
\text{I'm going to Graceland} \\
\text{In Memphis Tennessee} \\
\text{I'm going to Graceland}^{45}
\end{align*}
\]

Nelson is singing again about notions that are equally central to MacCrate. His notions of faith in the future, forgiveness for the past, acceptance of the choices inherent in the variety of roads to any given destination, and most of all, encouragement of the ideal of discovery are

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all captured by the song. This is the future that Graceland holds out to us.

Rather than try to recapture the past or freeze the present, I'm going to Graceland.