

1994

Conferring on the MacCrate Report: A Clinical Gaze

Beverly Balos

University of Minnesota Law School, balos001@umn.edu

Follow this and additional works at: https://scholarship.law.umn.edu/faculty_articles



Part of the [Law Commons](#)

Recommended Citation

Beverly Balos, *Conferring on the MacCrate Report: A Clinical Gaze*, 1 CLINICAL L. REV. 349 (1994), available at https://scholarship.law.umn.edu/faculty_articles/135.

This Article is brought to you for free and open access by the University of Minnesota Law School. It has been accepted for inclusion in the Faculty Scholarship collection by an authorized administrator of the Scholarship Repository. For more information, please contact lenzx009@umn.edu.

CONFERRING ON THE MACCRATE REPORT: A CLINICAL GAZE

BEVERLY BALOS*

I. INTRODUCTION

The MacCrate Report¹ provides a strong statement about the need for legal education to take seriously its responsibility for training students in the values of the profession and skills of legal practice. It is this central focus of the Report that makes it of interest to those of us who recognize the particular contribution clinical education makes to legal training. The Task Force, appointed and supported by the American Bar Association's influential Section on Legal Education and Admissions to the Bar, affirmed in its Report the importance of clinical education and the vital role it can play in the training of future attorneys. It recognized the last twenty-five years of work by many clinical and nonclinical teachers to improve and make available clinical opportunities for law students. Perhaps even more importantly, the Report's publication promised to serve as a catalyst for re-examination of legal education in which the benefits of teaching professional values and practice skills would be the starting point for discussions about curriculum reform.

This essay is neither a critique of the entire Report nor a critique of all of the discussions within legal education generated by the Report. Instead, the purpose of this essay is to consider how some of the commentary on the Report serves to maintain legal education in its present form. I will focus almost exclusively on the predominant reactions to the Report at a conference on the Report that took place from September 30 through October 2, 1993, in Minneapolis. This conference was sponsored by the American Bar Association Section on Legal Education and Admissions to the Bar, the University of Minnesota Law School, and West Publishing Company.² At the con-

* Clinical Professor of Law, University of Minnesota. This essay grew out of a panel presentation at the Midwest Clinical Teachers' Conference held at Illinois Institute of Technology, Chicago-Kent College of Law in October, 1993.

¹ AMERICAN BAR ASSOCIATION, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT — AN EDUCATIONAL CONTINUUM (1992) (hereafter cited as MACCRATE REPORT).

² THE MACCRATE REPORT: BUILDING THE EDUCATIONAL CONTINUUM, CONFERENCE PROCEEDINGS 2 (Joan S. Howland & William H. Lindberg eds., 1994) (hereafter cited as CONFERENCE PROCEEDINGS). The conference was by invitation only, and it is my under-

ference a number of speakers expressed concern about the cost of implementing the recommendations of the Report and resisted any suggestion that those recommendations be viewed as mandatory. Much was made of the need for flexibility. Frequently expressed was the view that legal education is improved by allowing the schools the freedom to experiment. In contrast to the expressed concerns about costs and law school autonomy, conference speakers largely ignored the Report's statements about multicultural diversity in the profession. I want to explore the implications for legal education if the themes emphasized at the conference dominate future discourse about curriculum reform.

Before doing so, however, I should place myself within the context of the legal profession and legal academia. I practiced law for approximately seven years before becoming a clinical teacher, in various public interest, legal aid, and small firm settings. I have been a clinical teacher since 1984 in a law school that has a separate "clinical track" offering job security for clinicians, but a school that, in my view, still suffers from an institutionalized diminution of the value of clinical education and thus of clinical teachers. I also believe that legal education should include a critique of the law that is directed at destabilizing its claim of neutrality and at finding ways to use the law to disrupt subordination based on class, disabilities, gender, race/ethnicity, and sexual orientation. From this background, I view the MacCrate Report as representing an opportunity for legal educators to question the current configuration of the curriculum, to discuss curriculum reform seriously, and to re-examine the appropriate allocation of resources. I believe it is important that this opportunity not be lost.

II. PREDOMINANT REACTIONS TO THE MACCRATE REPORT

A. *Cost Concerns*

The presentations at the conference seemed to be dominated by the viewpoints of deans and former deans. This predominance had a considerable impact on the framing of the discussion and the terms of the dialogue. Because of the selection of speakers, a context was created in which the recommendations of the MacCrate Report could be seen as posing primarily a financial issue rather than a curricular and educational one.

standing that the conference was financially supported by West Publishing. *Id.* at 1. The participants included ABA officials, some members of the executive committee of the Association of American Law Schools (AALS), professors, deans, some practitioners, librarians, legal writing instructors, and some clinicians.

There was no real questioning at the conference of traditional measures of quality for law schools. For example, there was no questioning of the tremendous resources that are devoted to maintaining large libraries that primarily serve the research interests of some faculty. The size of a law school's library is viewed as a measure of the quality of the school. There is no comparable measure of quality that would send a message to law schools that the school will not be viewed as a high quality institution if it does not have a comprehensive and high quality clinical and skills education program.

Rather than focusing on what is truly needed to provide an effective legal education, the conference returned repeatedly to the theme of the cost of implementing skills training. For example, John Costonis, Dean at Vanderbilt University School of Law, suggested that the current allocation of resources impedes implementation of the report and that the economies of legal education will make it difficult to increase skills training.³ According to Costonis, the cost would be enormous, there is no money, and if the goals of the MacCrate Report are to be achieved, law schools must restructure — a prospect he views without enthusiasm.⁴

John Kramer, Dean of Tulane University School of Law, acknowledged both the value of clinical education and the limited funding presently directed toward it. He made clear just how limited these funds are by reporting on the relative expenditures of resources in legal education. Analyzing the 1987-88 budgets of 156 law schools, Dean Kramer found that the instructional budgets were \$389 million, of which \$150 million was allocated for library costs, and \$31.7 million for clinical education.⁵ Given these figures, there was approximately a five-to-one ratio of expenditures between the library and the clinic and a twelve-to-one ratio between the nonclinical curriculum and the clinic.⁶

While Dean Kramer maintained that "clinical education . . . is responsible for most of what is good in law schools,"⁷ he also asserted that live client clinic is expensive and expansion would require "a head-on assault of the curriculum."⁸ Like Dean Costonis, moreover, he took as a given that there would not be dramatic increases in the

³ For an extensive criticism of the cost of implementing the MacCrate Report recommendations see John Costonis, *The MacCrate Report: Of Loaves, Fishes, and the Future of American Legal Education*, 43 J. LEGAL EDUC. 157 (1993).

⁴ *Id.* at 194.

⁵ John R. Kramer, *Extra-Curricular Programs*, in CONFERENCE PROCEEDINGS, *supra* note 2, at 74.

⁶ *Id.*

⁷ *Id.* at 75.

⁸ *Id.* at 76.

resources available to expand clinical offerings.⁹ He then went on to suggest far less expensive extracurricular means to instill values and skills. He noted that one program to give students an opportunity to gain experience "on the cheap" was the pro bono program at his school, in which students participated in pro bono work for a minimum of twenty hours, at a cost of \$100,000 for the participation of 300 students.¹⁰ He went on to suggest that skills were being taught to students through their participation in student-edited journals, in moot court programs, and in student groups that had to negotiate for funding.¹¹

Curtis Berger, a professor at Columbia University School of Law and at the time President of the Association of American Law Schools, made similar comments about using existing programs to implement values and skills training. He suggested examining the training that already takes place on law reviews, in moot courts, and through planned student recitation in classes.¹² He observed that perhaps moot court programs should be refocused from appellate advocacy to trial court motions.¹³ He also suggested bringing simulated problems into the classroom, and using adjunct faculty to teach drafting and negotiation skills.¹⁴ These suggestions were motivated, as Berger acknowledged, by the assumption that there will be "little growth" in the "share of resources [that] live client clinics now receive."¹⁵

While I do not suggest we should ignore the issue of resources, the terms of the debate with regard to cost should be shifted and broadened so that we are looking at the entire curriculum and the ways that resources are presently allocated. We can then address the question of the possible re-allocation of resources in order to implement curriculum reform. I have not yet heard, for example, a discussion of the costs involved in having professors teach small seminars that primarily further their individual research interests; nor have I heard a discussion of the cost of non-clinical classes that attract few students but are the areas of interest of the professors teaching the classes.

From this sample of speeches one can see that the discussion of costs proceeded without any real examination of current resource al-

⁹ *Id.* at 78.

¹⁰ *Id.* at 76.

¹¹ *Id.* at 77.

¹² Curtis J. Berger, *Teaching "S&V" Beyond the Live Client Clinic: We Can Do Far More Without Spending Far More*, in CONFERENCE PROCEEDINGS, *supra* note 2, at 69, 70.

¹³ *Id.*

¹⁴ *Id.* at 72.

¹⁵ *Id.* at 69.

location. It was just accepted, perhaps because it was so often repeated, that cost was an impenetrable obstacle. There was no serious consideration or discussion of the fact that the cost of clinical education actually dropped as a percentage of law school budgets from 4.5% in 1977-78 to 3.1% in 1987-88.¹⁶ Nor was there an acknowledgment that data from the American Bar Association for 1990-91 suggest that professional skills training occupies only nine percent of the total instructional time available to law schools.¹⁷ Instead, there was a sense that any reallocation of resources was a grave course of action that would damage the current curriculum—a curriculum which in the eyes of some observers is fundamentally sound in its educational and pedagogical components.

Early in the conference, a discussion occurred that made it clear that one danger of this unreflective focus on costs is that it allows marginalized parts of the law school curriculum, such as clinics and legal writing programs, to be placed in competition with each other while the dominant part of the curriculum and the resources devoted to it continue essentially unchanged and unreviewed. Susan Brody of John Marshall Law School spoke to propose a comprehensive legal research and legal writing curriculum as a method of incorporating skills training into the curriculum at less cost than clinical programs.¹⁸

Her presentation was paired with one by Gary Bellow of Harvard Law School.¹⁹ He spoke to express concern that the MacCrate Report, while noting that only three percent of law school budgets are devoted to clinics, nonetheless incorporates a mood of resignation due to the cost of curriculum change. He observed that the Report turns to simulation as the answer—an answer that, in Professor Bellow's view, is deficient because live-client clinic experience teaches students to think about law and about learning through structured guidance, responsibility, and reflection, a pedagogical method that cannot be replicated in any other setting with equal educational results. He presented a proposal for a clinical program modeled on the teaching hospital, a program that would require increased funding and a reallocation of resources, perhaps somewhat offset by clinics beginning to charge fees. This clinical model would include differentiated staffing, that is, not all teaching practitioners would need faculty status. People would come in from practice to teach and then return to practice.

¹⁶ MACCRATE REPORT, *supra* note 1, at 249-50.

¹⁷ *Id.* at 241.

¹⁸ Susan L. Brody, *Teaching Skills and Values During the Law School Years*, in CONFERENCE PROCEEDINGS, *supra* note 2, at 22.

¹⁹ Professor Bellow's presentation was not included in the published conference proceedings. This description of his presentation is based on my notes taken during the conference.

Part of this proposal also included development of a joint enterprise with academics and practitioners.

Given current law school programs that treat legal writing and clinics as supplementing the core curriculum, the pairing of these presentations at the conference reinforced the perception that legal writing and clinical programs were in competition only with each other for limited resources rather than being evaluated together with all units comprising legal education. Moreover there is a particular danger that law schools will turn to simulation and externships in order to present a program of skills training, while forgoing live-client clinics. Whatever the strength of the pedagogical arguments for simulation and externship programs, for law schools the motivation for this policy would not necessarily be to develop a well structured educational program but simply to reduce costs.

Given that the cost of clinical programs is only 3.1% of budgets and skills education occupies only 9% of total instructional time available to law schools, we should perhaps be asking why the cost issue has so dominated the discussion of the MacCrate Report. This focus on cost distorts the basic purpose and goal of the Report. Rather than promoting a thoughtful examination and self-analysis by legal educators of the training we are providing our students, the focus on costs places teachers concerned with professional skills in a defensive posture. It permits the issue to be framed around a construct that inherently marginalizes the skills and values that the MacCrate Task Force concluded were vital to becoming a responsible, caring, and competent lawyer.

B. Law School Autonomy

A second theme that was raised at the conference dealt with law school autonomy. A number of speakers expressed concern about, and resistance to, any notion that the recommendations in the MacCrate Report should be viewed as mandatory. Dean Kramer bluntly described the Report as "a political compromise," while noting that he and a number of others on the MacCrate Task Force had hoped it would adopt more demanding recommendations.²⁰ He referred to it as *Brown v. Board of Education II*,²¹ or, in other words, as an "all deliberate speed" document.²² He suggested that it was not a mandate to proceed full speed ahead; indeed, that it was not a mandate.²³

²⁰ Kramer, *supra* note 5, at 75.

²¹ *Brown v. Board of Educ.*, 349 U.S. 294 (1955) (*Brown II*).

²² Kramer, *supra* note 5, at 75.

²³ *Id.*

It was a political compromise, "broad and ambiguous enough to satisfy everyone."²⁴

Other speakers also emphasized the nonmandatory character of the Report. Professor Berger expressed the opinion that the MacCrate Report should not be viewed as a mandatory standard of legal education and that it should not be used "as a cudgel with which to beat up law schools."²⁵ Michael Traynor, a member of the MacCrate Task Force and a partner in the firm of Cooley, Godward, Castro, Huddleston and Tatum in San Francisco, said that among the Report's central ideas was its explicit disclaimer of "any intent to use the SSV [Statement of Skills and Values] to regulate accreditation, curriculum, bar examination, or malpractice."²⁶ Much was also made of the need for flexibility and of the argument that legal education is improved by allowing schools the freedom to experiment. For example, Professor Berger emphasized that "the Report expects no unitary response from law schools. Every law school has its distinctive culture, student body, educational mission, professional setting, and resource options."²⁷

One response to the speakers' concerns is simply to concur that nothing in the MacCrate Report precludes experimentation. The recommendations are written broadly enough to allow for a great deal of innovation. Another response is to distinguish between the need for experimentation and the desire to resist change, and in this regard to consider what legal education has and has not accomplished over the last hundred years. Although deregulation and experimentation are popular notions that are hard to argue against in the abstract, I would ask for evidence that serious innovation has occurred in even a substantial minority of the 176 accredited law schools.²⁸ Before the anti-regulators prevail, the burden should be on them to show that the law schools have a record of meeting their responsibilities of providing adequate education in skills and values.

It appears that the institutional responses of some of the law schools to the MacCrate Report have been designed to reassert their autonomy over the education of law students and to resist any notion of imposing standards to assess skills training.²⁹ I would suggest that

²⁴ *Id.*

²⁵ Berger, *supra* note 12, at 69.

²⁶ Michael Traynor, *Where Do We Go From Here?*, in CONFERENCE PROCEEDINGS, *supra* note 2, at 125.

²⁷ Berger, *supra* note 12, at 73.

²⁸ There are 176 A.B.A.-approved law schools granting the J.D. degree. *Introduction*, in A REVIEW OF LEGAL EDUCATION IN THE UNITED STATES, FALL 1993, at 1 (Julia D. Hanrahan ed., 1993).

²⁹ I see signs of such sentiments in the *Statement of the Association of American Law Schools on the MacCrate Report*, ASSOCIATION OF AMERICAN LAW SCHOOLS MEMORANDUM 93-32 (Association of American Law Schools, Washington, D.C., May 18, 1993).

this resistance flows, in part, from what Judge Harry T. Edwards has described as "the growing disjunction between legal education and the legal profession."³⁰ Judge Edwards criticizes law schools for abandoning their mission of professional scholarship and training for a focus on abstract theory.³¹ He does not wholly reject theory, for he agrees that a legal scholar should always integrate theory with doctrine, but he decries the imbalance in the academy between those whose scholarship and teaching meaningfully instruct the legal profession on how to resolve legal issues and those who, in his judgment, have over-emphasized "abstract" theory divorced from legal doctrine.³² He goes on to note that too many legal academics seem to forget that law schools are professional schools, not graduate schools.³³

Professional legal education allows students who have graduated the privilege of obtaining a license to practice law. Therefore, those providing legal education have the responsibility to assure that those seeking the license have attained some level of competence, understanding of ethical practice, and sense of responsibility in serving clients. This conception of professional education is not well-served by the academic scene Judge Edwards surveys, in which he finds an overabundance of law teachers who lack any practical legal experience, have little interest in legal doctrine, and hold practitioners in disdain.³⁴ Judge Edwards' criticism of the MacCrate Report does not take issue with its statement of goals but with its lack of comprehension that "there are many academics in legal education who would reject or ignore its goals because they do not really view legal education as a form of *professional training*."³⁵

Judge Edwards' views have generated much reaction and critique.³⁶ My concern with Judge Edwards' description of legal education is his assumption, by the categories he posits, of what I consider to be a false dichotomy between theory and practice. While admitting that certain interdisciplinary and critical legal theory can be valuable in legal education, Judge Edwards believes that law schools are too heavily focused on abstract theory.³⁷ I agree that balance in the cur-

³⁰ Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992).

³¹ *Id.* Judge Edwards also criticizes law firms for abandoning the goal of ethical practice by pursuing profit above all else. *Id.*

³² See Harry T. Edwards, *Another "Postscript" to "The Growing Disjunction Between Legal Education and the Legal Profession"*, 69 WASH. L. REV. 561, 564 (1994).

³³ See *id.* at 563-64.

³⁴ See *id.* at 565-66.

³⁵ *Id.* at 570 (emphasis in original).

³⁶ See Symposium, *Legal Education*, 91 MICH. L. REV. 1921 (1993).

³⁷ See Edwards, *supra* note 32, at 564.

riculum needs to be restored. However, we should not forget that theory does, in fact, inform practice and when integrated into practice can destabilize and thus advance the legal system's response to the needs of clients. One goal of clinical education is to provide students with a rich experience of the integration of theory and practice at a time when the students can engage in self-reflection with the guidance of faculty.³⁸

Despite this reservation regarding Judge Edwards' critique of legal education, I think we may fairly ask ourselves whether the resistance to the MacCrate Report by legal academe stems, at least in part, from the disdain for practice described by Judge Edwards and from a corresponding interest in maintaining the current configuration of many law school curricula. The repeated insistence that the standards for skills education set forth in the MacCrate Report not be used as a measure of performance in the accreditation process and the unreflective claims about resource allocation must be evaluated within the contested environment of what constitutes legal education today.

III. DIVERSITY AND THE MACCRATE REPORT

In addition to the absence of serious questioning of traditional measures of law school quality and the present allocation of resources devoted to those measures, the conference also did not include an examination of class, race/ethnicity, gender, sexual orientation or disabilities. No one explored the implications of those categories with regard to designing a skills and values education program or how those categories make a difference with regard to pedagogy, both in law school and in post-law school training. The lack of attention to this issue is perhaps a reflection of how it is raised in the MacCrate Report itself.

The question of diversity is raised in the first chapter when the Report describes the changing demographics of the profession.³⁹ The Report's discussion of demographics is problematic because it does not include any analysis of the *impact* of the entry of members of subordinated groups into the legal profession. To the extent that the Report addresses the changing demographics of the legal profession, moreover, it divides questions of gender from those of race.⁴⁰ Much has been written in the legal literature on the inadequacy of that kind

³⁸ For example, one of my aims in clinical teaching is to have students use the critiques of the law developed by feminists and critical race scholars as they analyze the problems presented by their clients and develop strategies to solve those problems with the clients.

³⁹ MACCRATE REPORT, *supra* note 1, at 13-27.

⁴⁰ *Id.* at 18, 23.

of approach, which leaves invisible the category of women of color.⁴¹ The failure of the Report to address the relationship between race and sex discrimination in the legal profession provides further evidence that this issue needs more serious consideration.⁴²

When dealing with the category of gender, the MacCrate Report acknowledges the increasing number of women in the legal profession. It also reports that studies have shown that the career patterns of men and women in the legal profession are markedly different. Women are less likely to be in private practice and more likely than men to be employed by government, private associations, and legal aid and public defender offices.⁴³ Women are also more likely than men to express a desire to serve society, to remain a shorter time in their first jobs, to have interrupted career paths, and to work part-time at some point in their careers. On the other hand, men are more likely to practice corporate law and to enjoy the adversarial part of their legal work.⁴⁴

Given these career differences based on gender, is there some reason to believe that we are not serving our women students as well as we should be with the current configuration of the curriculum? Is the current allocation of resources in the law school designed to serve the needs of large firm practice, needs which in turn are shaped by the needs of corporate clients? If there is reason to believe that the demands felt from this sector of practice are having at least some effect on the content of the curriculum, does this have a disproportionate, and adverse, impact on women students?

We should also be asking how the increasing number of women in the profession may be changing the nature of the profession itself and the skills and values needed to engage in the practice of law. Will the presence of more women in the profession change the way we think about the legal system, its effect on clients, the responsibility of the profession toward those in a subordinated position in this society, and the role of lawyers as part of that system? At the conference Robert MacCrate reiterated the Report's goal of maintaining, in the face of a changing legal profession, "a single *public* profession of shared learn-

⁴¹ See, e.g., Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139.

⁴² Patricia Hill Collins analyzes the significance of seeing race, class, and gender as interlocking systems of oppression. She suggests moving from additive, separate-systems approaches to oppression toward the more fundamental issue of the social relations of domination. PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT* (1990).

⁴³ MACCRATE REPORT, *supra* note 1, at 20.

⁴⁴ *Id.* at 21.

ing, lawyering skills, and professional values.”⁴⁵ The simple assertion of the need to continue training for the purpose of maintaining a unitary profession inadequately addresses the potential impact of gender diversity in the profession, its implications for the law school curriculum, and our responsibility to respond to this potential for change.

When dealing with the category of “minority lawyers” and with “multicultural diversity,”⁴⁶ the Report provides considerable information on the dismal reality of discrimination in the legal profession. It notes that African-American lawyers were excluded from membership in the American Bar Association until 1943 and that the first African-American lawyer was not knowingly admitted to the Association until 1950.⁴⁷ Law schools were no less discriminatory. It was not until 1964 that the Association of American Law Schools’ Committee on Racial Discrimination could report for the first time that no member school reported denying admission to any applicant on grounds of race or color.⁴⁸ The number of African-American law students enrolled in accredited law schools has increased, but slowly, from approximately 1 % of all students in 1965 to 4.3% in 1972 and just 6.3% in 1991-92.⁴⁹ African-American lawyers made up only 3.3% of the total number of lawyers in the country as of 1990.⁵⁰ The Report goes on to cite an analysis of the distribution of African-American lawyers, geographically and by practice setting, reported by the *National Bar Association Magazine* in its April, 1991 issue. The tabulation showed 80% of all African-American lawyers to be in ten states, and a “distribution among practice settings at marked variance with the distribution of majority lawyers: 31% were in law firms (less than half the percentage of majority lawyers practicing in firms); 24% in solo practice; 22% were government employees (twice the percentage of majority lawyers); 11% were employees of corporations; 9% were judges; and 3% were law professors.”⁵¹

Unfortunately, rather than address the implications of both the exclusion of persons of color from the legal profession and law schools, as well the recent, even if modest, increase, the Report simply states the demographics without further analysis. Again we need to

⁴⁵ Robert MacCrate, *The Last Word on a New Beginning*, in CONFERENCE PROCEEDINGS, *supra* note 2, at 145, 146; see MACCRATE REPORT, *supra* note 1, at 11, 124.

⁴⁶ These are the terms used by the Report. MACCRATE REPORT, *supra* note 1, at 23.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 24.

⁵⁰ *Id.* at 25.

⁵¹ *Id.* at 25-26 (relying on William Cliff Hocker & Maurice Foster, *The African-American Lawyer: A Demographic Profile*, 5 NATIONAL BAR ASSOCIATION MAGAZINE 20 (April 1991)).

explore the question of the potential impact of an increasingly diverse profession on the function and structure of the law and law schools. How will the increasing number of lawyers and law students of color change the values of the profession and what different skills might be needed in this changing environment?

Aside from the discussion of the changing demographics of the profession, the Report addresses questions about diversity in some parts of the Statement of Skills and Values. For example, the Statement of Fundamental Lawyering Skills contains a section on the skill of communication. The accompanying discussion includes a statement that lawyers should develop skills that allow them to recognize that their ability to adopt the perspective of another person may be impeded by their "insufficient understanding of the other person's culture, personal values, or attitudes."⁵² The problem with this statement is that it is so indirect and vague that it permits legal educators to avoid engaging in any thoughtful discussion of curriculum reform that would address seriously the needs of members of subordinated groups within the law school or outside it.

The Report also raises issues of diversity in the Statement on Fundamental Values of the Profession. As part of the value of "Striving to Improve the Profession," the Report states that "a lawyer should be committed to the values of . . . Striving to Rid the Profession of Bias Based on Race, Religion, Ethnic Origin, Gender, Sexual Orientation, Age, or Disability, and to Rectify the Effects of These Biases."⁵³ However forthright this exhortation, it appears as part of a fifteen-page Statement of Fundamental Values of the Profession that follows a seventy-page Statement of Fundamental Lawyering Skills. Not surprisingly, the values statement has been largely neglected in the public commentary about the MacCrate Report.

Moreover, while the values statement directing the profession to eliminate discrimination is certainly a necessary step to providing high quality representation to members of subordinated groups, it is inadequate. What is still missing is a discussion of the profession's responsibility to engage in positive actions to assure members of subordinated groups high quality representation. Moreover, the Report does not address in any depth the nature of the reforms in legal education needed to help insure that the bar meets its responsibilities of preventing discrimination, opening entry to the profession, and meeting the legal needs of members of subordinated groups.

What needs exploration is how we can develop programs in lawyering skills and in professional values that will meet the law schools'

⁵² *Id.* at 173.

⁵³ *Id.* at 216.

responsibility to educate all of our students about how the law has been used to maintain dominant groups and institutions, and about how the law has been and can be used to disrupt that domination. Although the MacCrate Report does not do as much as it might have regarding these issues, these questions nevertheless should be part of any discussion about curriculum reform resulting from consideration of this Report.

Finally, it is important to mention that while the issues of class, race, and gender are dealt with only at the margins of the MacCrate Report,⁵⁴ issues of disabilities and sexual orientation and the impact these categories have and should have on legal education are largely invisible. As we look to a document to raise issues of the skills and values inherent in legal practice and the educational foundation that is needed to develop and maintain a vibrant, professional legal practice, it would seem critical that these issues be raised. If we are to improve the legal system and serve our clients, disabilities and sexual orientation must be part of any dialogue about the future needs of the legal profession and legal education.

IV. CONCLUSION

Although I have expressed some concerns about omissions in the Report and the construction of some of the debate at the Conference, I agree with those in the legal profession, both in the bar and in academia, who view the MacCrate Report as creating an opportunity to re-examine the nature of legal education. I am optimistic that self-study based on the Report could lead to substantial improvements in legal education if it is part of an inclusive and collaborative effort with all those who participate in the legal system.

Just as the MacCrate Report brought together people from practice, the judiciary, and legal academia, so each law school should also find ways to obtain the views of all its constituencies. The process should include not only judges and practitioners but also legislators, public policy makers, clients, students, and community activists. In seeking input from each of these constituencies, moreover, schools should insist on including groups traditionally underrepresented in the legal profession and excluded from access to the legal system. Although some might view a suggestion to have groups outside the law school examine curriculum reform as a radical and unworkable idea, only this type of inclusionary process can hope to meet the goal

⁵⁴ Class is discussed in the Report only in the context of the traditional issues of delivering legal services to the poor and the middle class. MACCRATE REPORT, *supra* note 1, at 47-70.

of transforming legal education and the legal profession so that both play a positive role in building a just society.