

principles of a liberal law school education is likely to remain an ideal rather than to become an actuality.

Editor

### **Skills and values education: debate about the continuum continues**

### **SKILLS**

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Graduating from law school and passing the bar examination does not make a student a lawyer. Even if they have taken the best professional responsibility course and have had a 'live client' clinic, a student's professional values have not yet been challenged by the extraordinary pressures of serving actual clients, working for demanding bosses and needing to pay bills. Lawyers need well-developed skills as fact investigators, negotiators, and litigators, more than they can get in law school clinics, moot court and trial advocacy courses. Law school simply is not enough. Legal education critics call for more skills and less theory courses, better teachers, more drill work, more practical material, changed accreditation rules, and a demand for better use of adjuncts. Bridging the gap between law school and the legal profession requires law schools to accelerate the process of becoming a lawyer and then the profession must take over.

Unfortunately, the MacCrate's Report of 10 years ago has had a negligible impact on the profession. It set out to create a formula for bridging the gap between student and profession, hoping to create within lawyers a lifelong commitment to learning, a method for skills training and a legal profession that would embrace agreed-upon core values. For these goals, the MacCrate Report certainly gets low grades.

In addressing the question of how to improve the preparation of lawyers for practice, the MacCrate Task Force developed a statement of the skills and values (SSV) required by the profession, based on the following assumptions: that there would be an increasing specialisation and division of labour within law firms; that every lawyer should be required to remain a 'well-trained generalist'; that the list of skills and values be minimally concerned with what it takes to practise law; that a lawyer functioning as a member of a team need not be familiar with all of the skills and values so long as the team as a whole can mobilise and effectively apply the full range of skills and values in representing a client and making professional judgments; and that sometimes specific 'substantive' knowledge is necessary.

Ten fundamental skills were identified, being: problem solving, legal analysis and reasoning, legal research, factual investigation, communication, counselling, negotiation, litigation and alternative dispute-resolution procedures, organisation and management of legal work, and recognising and resolving ethical dilemmas. Certain fundamental values were also identified, being: provision of competent representation, striving to promote justice, fairness, and morality, striving to improve the profession, and professional self-development.

One effect of these findings in the MacCrate Report can be recognised in the manner in which curricular decisions are made with reference to broader institutional and professional goals, rather than the teaching capacity of teaching staff. Responding to student needs for guidance in developing a professional identity, solid skills and firmly held values, law schools provide programs, including legal research, writing and lawyering, which are supported by career planning assistance, continuing professional development programs, opportunities to do volunteer legal work and co-curricular student organisations. Law schools have made changes to their curricula, altered the ways that they govern themselves, and become more involved in professional service to respond to the needs of top, middle and poorly performing students as well as the professional requirements of the law firms they are to enter.

Even with the many significant changes to legal education since publication of the MacCrate Report, law schools must make significant improvements if they wish to give every student a complete preliminary education in each of the skills and values set out in the SSV. While any report card on the impact of the MacCrate Report is mixed, it does suggest that law schools are making a serious attempt at teaching these skills and values. Several of the skills are already taught at a high level and there are strong efforts to improve the teaching of others. Nonetheless, on balance, legal education only scratches the surface of teaching every skill well and has done even worse in the teaching of values.

The pursuit of the fundamental skills and values set out above requires a lifelong commitment. Trends in the legal profession that stand as impediments to a lifelong commitment to training and learning fundamental professional skills and values include the direction of development of the legal profession, the substantial growth in the number of lawyers, the increasing number of women lawyers,

growing diversity in the profession, the varied types of practice settings, the continued demand for higher salaries, the demand for higher billable hours to maintain law firm profitability, the advent of lawyer multi-millionaires, the legislative backlash against lawyers, the lack of loyalty of lawyers, the growth of law as popular culture, the advent of lawyers as media stars, and the continued growth of law as a business.

One consequence of the values dilemma is that the profession increasingly relies upon the law schools to build professionalism among its students. In the absence of a uniform regulatory structure that would mandate the SSV for every lawyer, it has been difficult to fulfil the promise of a continuum of training from law school through the profession. This is disturbing because it raises questions about the commitment of the profession to the core values of the SSV. Perhaps the biggest problem is that we treat skills as if they are separate from values. Skills are easier to convey and values too amorphous to expect that they will be taught and learned together.

What is required is a campaign by all interested parties, including law schools, the bar and the judiciary, to have these organisations make professionalism personal by adopting missions that explicitly embrace the skills and values of the SSV. Each should create a plan to (1) do training in the SSV; (2) define professionalism within the organisation; (3) create a mentor system linking young lawyers with experienced lawyer role models; (4) link the organisation to law schools, CLE programs etc.; (5) describe the organisation's internal training system; (6) describe how it will monitor progress and performance on its system; (7) create methods for fulfilling service obligations to the public; (8) describe the steps it will take to ensure justice, fairness and morality, as well as to eliminate bias in the profession; and (9) appoint a senior respected member of the organisation to monitor its progress on this plan.

The commitment to skills and values education advocated over the last ten years has impacted on legal education. We have made real improvements in skills education and even begun to address the fundamental values of the profession. However, the need for an educational continuum between law school and the profession has not lessened over this period.

New York Law School's plan is to build stronger skills and values in its students and asks its students to embrace innovation, contemplating that they must continue to learn. In essence, its commitment is to teach students to use the skills and knowledge they are gaining as lawyers to do something valuable for others, as well as to foster integrity and professionalism. These goals are the beginning steps to make the SSV a part of every student's education. What remains an imperative for every lawyer is to take good intentions and make them a way of life.

## SKILLS

### **Exam writing as legal writing: teaching and critiquing law school examination discourse**

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When first started teaching legal writing, the author did not include teaching law school exam writing or 'blue book exam' writing in the curriculum, because he did not believe the writing done in law school exams was sufficiently related to the work he had done as a practising attorney to merit teaching. He chose to focus on what he saw as 'real world' writing, believing that students were able to do what they could not in their other first-year classes, that is, learn about and be like practising lawyers, and that students reacted favorably to this 'real world' approach.

Based on experience, the author altered his approach, not by dropping the practical component and emphasis in the legal writing class, but by making room for teaching exam writing and addressing the immediate needs of student writing, analysis and discourse as it applied to the writing the students faced in the next three years of study. He found his students very receptive to this change in teaching and that they saw how the class directly connected to the skills needed in their other classes. This approach also better enabled him to engage students at the lower end of the class.

Exam writing is an area that legal writing professors should be teaching and discussing to a greater and more formal extent. Devoting valuable time in a legal writing class to the conventions of the limited and imperfect assessment tool of the traditional law school exam used in doctrinal courses and away from explicit lawyering skills arguably perpetuates this flawed component of the legal academy. Some argue that law school exams do not accurately assess the skills connected to law practice or legal analysis. Key skills such as the ability to counsel troubled clients, negotiate favorable settlements and be persuasive to a jury are not assessed.

Four intellectual functions are tested, on the surface, in an exam, those being: issue spotting; identification of relevant legal authority; application of legal authority to facts; and organisation of material. A blue book exam's emphasis is on speed, surprise, comprehensiveness of course material, and focus and privilege of a narrow form of discourse. The type of writing found on a typical law