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KEYNOTE ADDRESS

PROFESSIONAL VALUES IN THE CLASSROOM

ROBERT MACCRATE*

I am honored to participate in this program and delighted to be a part in this way of the Centennial Celebration of The John Marshall Law School. The thoughtful translation of race, feminism, anthropology and philosophy for law students can further open those gates of opportunity that Patricia Williams in her incomparable parable has taught us are “secured by word-combination locks.”¹ In keeping with the 100-year mission of this institution, opening those word-combination locks are a fitting metaphoric theme for this Centennial Writing Conference.

I am the personal beneficiary of those who in the first decade of this century offered the opportunity to become a lawyer to my father, a young immigrant from Scotland who with a high school diploma and a night-law-school education, opened in 1906 his storefront law office in Brooklyn, New York. Twelve years later he was elected to the United States Congress and two years after that to the New York State Supreme Court where he served for the next 35 years. I have never known anyone who more than he revered the institution of justice striving always to make the law and the community one; or more than he saw the law as a public calling in which to serve the entire community.

Although poor and without the educational benefits of the more privileged young men of his time, he was not constrained by exclusionary barriers because law teachers helped him to open the word-combination locks, taught him the aspirational values of the legal profession and imbued him with the insight to work for reform of the law.

Those are my roots from which I speak in urging you—engaged in what Beth Mertz characterizes as the “dynamic process of socialization into the legal profession”²—not to forget a place in the classroom for the abiding professional values when translating

* Partner, Sullivan & Cromwell, N.Y. © Robert MacCrate, 2000.

1. PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* Forward (1991).

2. Elizabeth Mertz, *Teaching Lawyers the Language of Law: Legal and Anthropological Translation*, (Nov. 4-5, 1999), at 1.

from the other disciplines and the diverse perspectives that can teach us all so much.

A woman of my generation, while in her mid-30s and with four young children, found a law school in Minnesota that would help her open the word-combination locks, surmount the exclusionary barriers of a more recent time, teach her the aspirational values of the profession and imbue her with the insight to work for reform of the law, before she became the first woman member of the Minnesota Supreme Court. A decade later she chaired the ABA Section of Legal Education and Admissions to the Bar, in which section resides the responsibility for the accreditation of law schools throughout America. Her name is Rosalie Wahl.

The two decades of the 1970s and '80s, prior to Justice Wahl assuming the chair of the Legal Education Section, were a period of ferment in legal academia. Karl Llewellyn's taunt of law professors in the 1930s took on new meaning, that "no faculty, and . . . not one percent of instructors, know what it or they are really trying to educate for."³ Critical theory deconstructed the law; movements of "law and something else" preoccupied doctrinal theorists; clinical and skills teaching, spurred by the Council of Legal Education for Professional Responsibility (CLEPR), became a part—albeit a minor one—of virtually every law school curriculum. Race and feminism, long ignored, were thrust to new prominence, while a nascent law and literature movement gave narrative expression to neglected social problems. Law faculties become a prime theater of debate.

A few visionary scholars, mindful of the fact that the legal profession had given to law schools and law faculties their reason for being, began to construct a lawyering curriculum and even to offer a 21st Century Perspective on what legal education could be.⁴ Tony Amsterdam called for a methodology of instruction that could provide law students with the real "intellectual tools of the profession" and the opportunity to experience in law school how lawyers really think in practice with its variety and difficulties.⁵ The American Bar Association established a faculty group membership program to woo law teachers back into the ABA and close "the gap" between the teaching of law and the practice of law.

Amid this cacophony of voices, at the National Conference on Professional Skills and Legal Education in November 1987, Justice Wahl inquired: "Have we really tried to determine . . .

3. KARL LLEWELYN, *THE BRAMBLE BUSH* 1930.

4. See Anthony G. Amsterdam, *Clinical Legal Education - 21st Century Perspective*, 34 *J. LEGAL EDUC.* 612 (1994).

5. Anthony G. Amsterdam, *The Lawyering Revolution and Legal Education*, Cambridge Lecture at the Canadian Institute for Advanced Legal Studies (July 15, 1985).

what skills, what attitudes, what character traits, what qualities of mind are required of lawyers?" In the course of the ensuing year, Justice Wahl created a Task Force on Law Schools and the Profession, which I had the privilege to chair. She charged us with finding answers to the questions she had posed.

We approached our task from a quite different direction than prior studies of legal education. We started by looking, not at law schools, but at lawyers: all lawyers, the total profession in all its dimensions.

We traced the explosion in the number of lawyers and in the rendering of legal services since World War II; the striking change beginning in the late 1960s in the gender make-up of the profession and the gradual addition of a new gender perspective to the law; the belated opening of the profession to minorities and the continually elusive goal of equal opportunity; the enormous growth in the volume of law and the proliferation of legal theory; the elimination of restraints on the marketing of legal services and the accompanying growth in specialization and differentiation in the work lawyers were doing in evermore diverse practice settings; and, at the same time, the persistence of unmet legal needs.

Our task force took further note of how traditional private law practice serving individuals had been significantly supplemented by new organizations and methods for providing legal services to the poor and to persons of moderate means. The new structures and methods included not only publicly-funded civil and criminal legal assistance for the poor, but also legal clinics and prepaid and group legal services plans for persons of moderate means.

This picture of the world of lawyering was sketched along with the history of how the idea developed in America of a single public profession of law: lawyers organizing themselves into bar associations, local, state and national that promoted the professional ideal; law schools becoming the one common, unifying experience of lawyers; the judiciary assuming the role of the profession's gatekeeper; and at first individuals, then groups of lawyers, and finally the profession as a whole acknowledging certain central values to which all lawyers should aspire.

In direct response to Justice Wahl's charge to determine the skills, the attitudes, the character traits and the qualities of mind required of lawyers today, we offered a conceptual statement of ten lawyering skills and four fundamental values that we thought all lawyers should acquire, wherever a lawyer might work, and that we believed could sustain the craft of lawyering and continue to inspire a sense of public calling throughout the profession.

We concluded that lawyers acquire their skills and values along a continuum of professional development that neither begins nor ends in law school. Rather, the development starts before law school, reaches its most intense and formative stage during the

law school years and properly continues throughout the lawyer's professional life, striving always for excellence.

The statement that we proffered first analyzed ten generic skills that we concluded were fundamental to competent performance by any lawyer:

First, problem—solving;

Second, and directly connected, legal analysis and reasoning;

Third, legal research, going hand in hand with the

Fourth, factual investigation;

Fifth, communication, oral and written;

Sixth, counseling;

Seventh, negotiation;

Eighth, understanding the procedures of litigation and alternative dispute resolution;

Ninth, organization and management of legal work, and

Tenth, recognizing and resolving ethical dilemmas.

We recognized that by 1992 many law schools had developed a wide range of skills programs, including the program here at John Marshall that used to that end instruction in oral and written communication, what Professor Susan Brody described as the “umbrella vehicle” and “culmination” of all lawyering skills.⁶ Accordingly, the Task Force offered the conceptual analysis of the ten lawyering skills as a benchmark against which law faculties and others might consider the inclusiveness of programs of skills instruction, the adequacy of preparation to participate in the profession and when, by whom and in what manner a full range of skills instruction could best be provided to those who aspired to be lawyers. The task force expressed the view that it was unrealistic to expect even the most committed law schools, without help from the bar, to produce graduates fully prepared to represent clients without supervision.

On the other hand, the Task Force sought to discourage the notion that competence in the law is simply a matter of attaining proficiency in an array of particular skills. We recognized that lawyering skills alone will not sustain a true profession; nor, without ideals, promote cohesion and pride in a profession among its members. A profession, to endure, must be supported by a common body of values to which its members aspire. Thus, in the Statement of Skills and Values, analysis of the ten lawyering skills was linked to four central professional values that we found successive generations of lawyers had come to acknowledge while the profession developed an identity and a shared sense of what it means to be a lawyer.

Each of the four stated values begets a special responsibility

6. Susan Brody, Conference at the University of Minnesota Law School on Building the Educational Continuum (Oct. 1, 1993).

for the lawyer. Together they express what over the past 100 years became the expressed ideals of the legal profession:

First, the value of providing competent representation: the fiduciary responsibility to every client;

Second, the value of striving to promote justice, fairness, and morality: the lawyer's public responsibility for the legal system;

Third, the value of maintaining and striving to improve the legal profession: the responsibility to the profession of which each lawyer is a member; and

Finally, the value of professional self-development: the responsibility that each law student and each member of the Bar assumes in becoming a member of a learned profession.

Although successive generations of lawyers came to acknowledge these four values as central to a sense of profession, a great many law schools for many years shunned any part in training students to be sensitive to the broader issues of justice or to address the reality that value judgments are a significant part of the lawyer's function.

The second stated value of striving to promote justice, fairness and morality—in daily practice, in *pro bono* service and through improving the legal system—is seen by many as the essence of professionalism and central to the lawyer's role.

Regina Austin and Jane Baron in translating the language of race and of feminism for this conference while uncovering hidden preconceptions, speak to this overarching value and the need for sensitivity to context—from the perspectives both of “fast food” shopping⁷ and of Irish literature.⁸ Christopher Edley in his book, *Not All Black and White*, affirms that American values repose in the legal profession and asserts that the continuing controversy over affirmative action is about values and vision. “We have a history of division,” he says, “but for the most part it is division based on our perspectives, not our dreams.”⁹

A decade ago, the late Robert B. McKay—respected teacher and dean, bar leader, public servant and member of Justice Wahl's Task Force—stressed justice as central to the law, to the educational process, as well as to the profession's values. These were his words:

Law cannot long survive if cut away from justice. Even when law and justice are properly united, they require the illumination, leavening and warmth of the humanistic impulse. When law and justice and the humanities are truly one, then will the ends of man

7. Regina Austin, *Contextual Analysis, Race Discrimination, and Fast Food* (Nov. 4-5, 1999).

8. Jane B. Baron, *Language Matters* (Nov. 4-5, 1999). She notes that her students spotted an obscure ethics issue in *Counsel for Oedipus*.

9. CHRISTOPHER EDLEY, JR., *NOT ALL BLACK AND WHITE* 278 (1996).

on earth be wisely understood and fully served.¹⁰

Bob McKay's statement may be heard as the collective voice of the different languages that speak to us at this conference as we reflect upon the epistemology of legal knowledge.

However, as we approach the new millennium, the traditional values of the legal profession are challenged by the frequently conflicting values of an acquisitive society:

- commercial interests outside the profession covet lawyer's skills and learning and seek to extend their product lines to include legal services;
- the increasingly competitive contest by lawyers for clients is extended globally;
- professional autonomy is all too frequently lost as lawyers adopt clients' goals as their own;
- preoccupation with billable hours and the bottom-line seduce many lawyers;
- the entrepreneurial urge pushes lawyers to expand their services into fields outside the law, packaging and often dehumanizing legal services as just another consulting service offered for sale; and
- all of these developments implicitly transferring regulation of the profession by the courts to the marketplace—and to the Department of Commerce, to be reported upon as a value-rent "Industrial Classification 81 - Legal Services."

This too is a language in need of translation. The presence of economic values in the lawyer's practice of law is not new, but today in many quarters such values dominate the profession.

A professional paradox of doing well while doing good is inherent in the lawyer's vocation when the lawyer is sensitive to the value of striving to promote justice, fairness and morality. The incentive to profit always exists side by side with the aspiration to serve.

But, given the strength of the de-professionalizing forces today, both within and from without the profession, it is increasingly apparent that the aspirational values of professional responsibility can survive only if an equilibrium between the incentive to profit and the aspiration to serve is restored and the rush toward a market ethos is tempered.

Such an equilibrium I believe can be achieved but only if the entire legal profession—law teacher, practitioner and jurist—perceives the lawyers' role with a broader vision of law in society and the individual lawyer regards her or his personal and public obligations as something over and beyond the self-interest of individual clients.

10. Robert B. McKay, remarks as Director of the Aspen Institute's program on Justice, Society and the Individual.

The theme of the 1999 meeting of the Association of American Law Schools was the professional responsibility of professional schools. President Deborah Rhode warned:

Few schools make systematic efforts to integrate legal ethics into the core first-year or upper-level curriculum. . . . Most students get too little theory and too little practice; classroom discussions are too far removed from allied disciplines such as philosophy, sociology, and economics. This minimalist approach to legal ethics marginalizes its significance.¹¹

However, I sense today there is a growing willingness among law schools to address these matters. Increasingly law schools recognize that they are engaged with the bench and the bar in a common enterprise to ensure equal justice to all and to secure the rule of law. This conference on translating for the legal skills classroom can be such an endeavor. Law schools that come to the aid of the legal profession by more explicitly exploring the values and the human dimension underlying the law and its practice, and assist those about to enter the profession and thereafter to recognize and accept their responsibilities, will both unify and justify the profession's continuation.

Dean Joan Wexler of Brooklyn Law School has eloquently expressed what being a lawyer means to her. After cataloging the myriad ways in which individual lawyers in their daily work affect the lives of people and apply and shape public policies, she concluded

Because we are lawyers—and because the privilege of practicing law gives us immense power over private lives and public policy, we cannot escape being public citizens. It is this broader responsibility that makes us special, . . . that adds value to our profession and to our professional lives.¹²

I remain an optimist regarding the future of the legal profession. I believe that with the combined support of the law schools, the bench and the organized bar, an independent legal profession can survive and can continue to play its vital role in a society based upon law, passing from one generation of lawyers to the next, a body of ideals, together with the core learning and the skills essential to effective and responsible lawyering.

11. Deborah L. Rhode, *The Professional Responsibility of Professional Schools*, 49 J. LEGAL EDUC. 24, 27-28 (1999).

12. Joan A. Wexler, *Our Lives As Lawyers*, Charles Evans Hughes Memorial Lecture, New York County Lawyers Association (Apr. 27, 1995).

