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ESSAY: PROFESSIONAL VALUES IN THE PRACTICE OF LAW

Robert MacCrate[†]

Recent developments in the world of lawyering after fifty years as a lawyer convince me that the legal profession today is precariously held together by a common body of learning, acquired lawyering skills and, most significantly, by the professed values that over the years helped inspire a sense in lawyers of a public calling of service.

For me, it is a special pleasure to return once again to William Mitchell and to join in this history-conscious Centennial Public Square series. Over the past ten years, I have developed a bond to your College of Law wrought by sharing a profound professional experience with one of William Mitchell's most illustrious alumnae and coming to understand and appreciate the College's exemplary mission that has opened doors of opportunity to the legal profession that otherwise would have remained shut and has helped to instill in its students a vital sense of law as a public calling of service.

The result is a student body and a learning environment at William Mitchell not often found in America law schools.

Back in the early 1970s a seminal step was taken by the College of Law when it appointed an alumna from the State Public Defender's office to be a full-time clinical professor to direct and teach criminal law clinics. Over the ensuing five years, Professor Rosalie Wahl was an inspiring teacher and significant contributor to the development of an outstanding program of clinical legal education.

In 1978 Professor Wahl became Justice Wahl of the Minnesota Supreme Court, but her interest in and dedication to the education of lawyers in the learning, the skills and the values of the profession

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never waned.

A decade later in 1987, she was chosen to chair the American Bar Association's Section of Legal Education and Admissions to the Bar. In the Council of that section the responsibility for the accreditation of law schools throughout America is lodged. From that chair, Justice Wahl inquired:

Have we really tried to determine....what skills, what attitudes, what character traits, what qualities of mind are required of lawyers?

During the next year, Justice Wahl created a Task Force on Law Schools and the Profession, which I had the privilege to chair, and charged us with finding answers to the questions she had posed. After her term as Chairperson of the ABA Section expired, she enthusiastically joined in the work of her Task Force.

In keeping with the mission and orientation of legal education here at William Mitchell, the Task Force started its work by looking at what lawyers do and at the entire world of lawyer performance.

Despite the enormous growth in the number of lawyers and the great variety of work that lawyers had come to do, we found that the legal profession still held to a common, coherent experience and memory of what it means to be a lawyer. Core legal knowledge together with fundamental lawyering skills and professional values still identified a distinct public profession of law throughout the United States.

The Task Force offered a conceptual statement of ten lawyering skills and four fundamental professional values that we thought all lawyers should seek to acquire and that could sustain the craft of lawyering and continue to help inspire a sense of public calling throughout the profession.

A careful inspection of the 1999-2000 Catalog of William Mitchell makes apparent that today's students in the College of Law, in addition to an immersion in legal learning, have the opportunity through hands-on experience to become acquainted with each of the ten lawyering skills that we analyzed in the Statement of Skills and Values. Furthermore, while skills are essential to a lawyer's mastery of the craft, William Mitchell students today are introduced in a pervasive manner to the concept of service and professional responsibility that the task force articulated in the four stated professional values.

Each of the four stated values begets a special responsibility for the lawyer. Together they express what over the past 100 years be-

came the expressed ideals of the legal profession:

- the value of providing competent representation: the fiduciary responsibility to every client;
- the value of striving to promote justice, fairness, and morality: the lawyer's public responsibility for the legal system;
- 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 on joining the legal profession.

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

In the 1970s Martin Meyerson, the then-president of the University of Pennsylvania, lamented both the disjunction between the law schools and the profession and the lack in the law schools of any teaching of either the history of matters surrounding the law or any study of the philosophy underlying the law.

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. A decade ago, the late Robert B. McKay—highly respected law teacher and dean, bar leader, public servant and member of Justice Wahl's ABA 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 on earth be wisely understood and fully served.

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 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 are seductive to lawyers in many areas of practice;
- the entrepreneurial urge drives some lawyers to expand their services into fields outside the law, packaging and 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.”

The presence of economic values in the lawyer's practice of law is not new, but today in many quarters such values dominate the legal profession.

A professional paradox of doing well while doing good is inherent in the lawyer's vocation. 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 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.

During the middle years of this decade, Harry Haynsworth was a significant participant in a major project of the American Bar Association. His committee explored the teaching and learning of professionalism, concerned that the sharing by lawyers of a sense of profession was being eroded by lawyer entrepreneurship, segmentation of law practice and deficiencies in the regulation of the profession. The committee concluded its 1996 report declaring that fundamental changes were necessary in both the education and so-

cialization of lawyers as well as in the way law is practiced today.

Nonetheless, I am encouraged by the continuing vitality of professional values in the American legal community that exert a moderating influence upon lawyers' entrepreneurial urge. That vitality was evident at the recent meeting of the ABA House of Delegates where the House overwhelmingly rejected a proposal to permit what is referred to as "multi-disciplinary practice" and adopted a resolution that no change be made in the rules of professional conduct—to permit lawyers to offer legal services through a multi-disciplinary partnership—unless and until study demonstrated that fundamental professional values would not thereby be sacrificed or compromised.

The importance to the survival of a unitary legal profession of the acculturation of lawyers to professional values should not be ignored. Such acculturation remains an essential condition to the perpetuation in America of a professional ideal in a market-driven economy.

It appears to me that the William Mitchell faculty have responded creatively to this challenge: developing methodologies for acculturating students of this school to function as true professionals familiar not only with the learning and skills of lawyering but also the fundamental values of the profession.

Many aspects of the William Mitchell curriculum bring home to students the centrality of the public responsibilities of the bar as they serve at the school in client-representation clinics or work outside the school in externships of public service. The College of Law's pledge to entering students this year that it will offer supervised, law-related public service placements to every interested and willing student is an earnest of William Mitchell's dedication to instilling the professional values of a public calling of service.

Fortunately, 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—both of which are dependent upon lawyers acquiring the learning, the skills and the values of a competent and responsible legal profession.

Today, law schools are coming to the aid of the legal profession by more explicitly exploring the values and the human dimension underlying the law and its practice, and by assisting those about to enter the profession and thereafter to recognize and ac-

cept their responsibilities that both unify and justify the profession's continuation.

How have my 50 years as a lawyer, affected my view of professional values and the role that they can play in a lawyer's life?

Reflecting upon my personal experiences and observations in the law and with lawyers, I think of:

- counseling clients in a law office;
- advocacy in a courtroom;
- negotiating at a conference table;
- advising in a boardroom;
- providing pro bono legal service;
- framing legislation in a legislative hall;
- crafting executive orders for departments of government;
- investigating malfeasance in office, both public and private;
- prosecuting violations of law;
- advancing the cause of equal justice;
- helping to open doors of opportunity for those excluded;
- working as a member of the organized bar to improve the profession; and
- attempting in all professional activities to give attention to their effects upon the public.

I conclude, as does John Carey, William Mitchell Class of 69', that the values of the profession can indeed lend "meaning and purpose to [one's] life which leads to duty and responsibility not only to [oneself] and [one's] family but also to society."

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.

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 essen-

tial to effective and responsible lawyering.

Thus may we build a finer, client-serving, problem-solving, public profession of law.
