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Legal Skills for a Transforming Profession

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I. Introduction

The legal profession is undergoing dramatic changes that will drive a reformation in legal education. Legal educators must anticipate these changes to effectively prepare students for the practice of law in the twenty-first century. In order to be proficient practitioners, these students will require an expanded set of professional skills. Although the current legal skills paradigm was articulated by the American Bar Association (hereinafter "ABA") MacCrate Task Force in 1991,[1] it is time to reexamine legal skills with an eye toward preparing students to practice law in the new millennium.

In Section II, this article examines trends in modern society and the delivery of legal services to consumers.[2] Section III explores the phenomenon of change in legal education.[3] Section IV addresses the question of professional skills as described in the

1. American Bar Association, *Legal Education and Professional Development – An Educational Continuum, Report on the Task Force on Law Schools and the Profession: Narrowing the Gap* (1992) [hereinafter MACCRATE REPORT].

2. *See infra* text accompanying notes 6-105.

3. *See infra* text accompanying notes 106-140.

MacCrate Task Force Report.[4] Section V articulates an updated list of critical skills and values, consistent with the earlier work of the MacCrate Task Force, but reflective of the larger changes that are transforming the practice of law.[5] The article concludes with an admonition: lawyers will need this new skill set to practice competently in the twenty-first century and legal educators will need to fundamentally restructure the law school curriculum in order to prepare lawyers for the emerging practice of law.

II. The Future of Law Practice

The Futurist Committee of the ABA Law Practice Management Section sponsored American Bar Association conferences on the future of the legal profession in 1997 and 1999.[6] The conferences attracted prominent speakers from around the United States, including author Tom Peters,[7] Harvard Business School Professor Gary Hamel,[8] IBM Vice President for Development John Landry,[9] and others.[10] Invitees also included bar leaders, prominent practitioners, academics and judges from throughout the United States and abroad.[11]

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4. *See infra* text accompanying notes 141-169.

5. *See infra* text accompanying notes 170-224.

6. GARY A. MUNNEKE, SEIZE THE FUTURE: FORECASTING AND INFLUENCING THE FUTURE OF THE LEGAL PROFESSION (2000) [hereinafter SEIZE THE FUTURE]. The 1997 Seize the Future Conference Materials are available at 83-94. The 1999 Seize the Future Conference is discussed in the book. These are by no means the first conferences to examine the future of the legal profession. In 1980, the American Bar Association sponsored a national conference entitled "National Conference on the Role of the Lawyer in the 1980s," and in 1976 a conference called "Law and the American Future," also known as the Pound Conference. *See* LAW AND THE AMERICAN FUTURE, (Murray L. Schwartz ed., 1976); *see, e.g.*, Gary A. Munneke, Remarks presented at the Dallas Bas Association Meeting (April 2001) (materials in possession of the author); Gary A. Munneke, Remarks presented at the Wisconsin State Bar Association meeting (December 2000) (materials in possession of the author); *see also* Hon. William H. Erickson, *The Pound Conference Recommendations: A Blueprint for the Justice System in the Twenty First Century*, 76 F.R.D. 277, 279 (1978).

7. SEIZE THE FUTURE, *supra* note 6, at 18-19.

8. *Id.* at 14-15.

9. *Id.* 16.

10. *Id.* at 13-19.

11. SEIZE THE FUTURE, *supra* note 6, at 69-72.

The ABA has also created a special Committee on Research into the Future of the Legal Profession.[12] The Futures Committee issued a draft report to ABA leadership at the Association's annual meeting in Chicago, in July, 2001. Discussion about the Futures Committee report will continue into 2002, but the initial findings are consistent with the report of the *Seize the Future* conference. Bar leaders exposed to information about trends in the profession have concluded that lawyers cannot simply sit back and wait for the future to happen to them.[13]

Among the trends that will impact the practice of law are: demographic shifts of the population in terms of geography, age, ethnicity, living arrangements and economic status;[14] changing attitudes toward personal autonomy and decision-making;[15] distrust of government and other similar institutions;[16] aversion to adversarial forms of dispute resolution;[17] transformation of communication and information technology;[18] globalization and interdependence;[19] and the pervasiveness of change itself.[20]

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12. *See, e.g.,* ABA Comm. on Research About the Future of the Legal Profession, Committee Report (July 2001) http://www.abanet.org/lawfutures (last visited Nov. 4, 2001).

13. *See. e.g.,* James M. Thompson, *Seize the Future*, L. PRAC. Q. (Winter 2000); *see also* Thomas E. Lynch, III & Bethamy N. Beam, *Is There Room for Ethics in Today's Multi-Disciplinary, Technology Age Law Practice* 33 MD. BAR J. 17, 17-18 (2000); Gary L. Bakke, *". . .and Bakke's trying to ignite a blaze"*, WIS. L.J. (Feb 7, 2001), *available at* http://www.wisbar.org/wisop/stories/stfletter2.html (last visited Nov. 29, 2001).

14. Maps outlining the patterns and changes of the U.S. population from 1990 to 2000 are available online *at* http://www.census.gov/population/www/cen200/atlas.html; demographic profiles containing information relating to race, age, sex, and information on housing, households and families are available online *at* http://www.census.gov/prod/cen2000/index.html; selected economic characteristic profiles, including data on labor force status, commuting, occupations, income and benefits are available online *at* http://www.factfinder.census.gov/home/en/c2ss.html (last visited Oct. 4, 2001).

15. *See, e.g.*, Gary A. Munneke, *Déjà vu All Over Again*, 12 PROF. LAW. 2 (2001) [hereinafter *Déjà vu*].

16. *See, e.g.,* Tom L. Tyler, *Public Mistrust of the Law: A Political Perspective,* 66 U. CIN. L. REV. 847 (1998).

17. *See, e.g.,* Ann L. MacNaughton & Gary A. Munneke, *Practicing Law Across Geographic and Professional Borders: What Does the Future Hold?*, 47 LOY. L. REV. 665, 698-699 (2001) [hereinafter MacNaughton].

18. *See, e.g.,* RICHARD SUSSKIND, THE FUTURE OF LAW: FACING THE CHALLENGES OF INFORMATION TECHNOLOGY (1996).

19. *See, e.g.,* MacNaughton, *supra* note 17, at 673; *Déjà vu*, *supra* note 15.

20. *See, e.g.,* SEIZE THE FUTURE, *supra* note 6, at 45-47; GARY HAMEL & C.K. PRAHALAD, COMPETING FOR THE FUTURE (1994).

These trends will have an effect on how lawyers serve clients, the problems clients will bring to lawyers, the services lawyers will offer to resolve the problems and the way lawyers practice law and interact. Although pundits might argue about the specifics of these trends, there is little room to dispute that the profession has experienced transformational changes over the last half of the twentieth century or that it will continue to evolve into the twenty-first century.[21]

A. *Twenty-First Century Trends*

Before looking critically at legal skills, it is necessary to note how societal and professional trends have impacted the general delivery of legal services and the practice of law in particular. Quite simply, if the marketplace for legal services changes, the legal skills needed to prosper in the new environment are also likely to change. "If we do not attempt to understand the future and take steps to forge the future we want, we will inherit a future that others choose for us. Society and the legal profession are changing, and lawyers are not immune from the effects of these changes."[22] Because the legal profession is influenced by societal changes, legal education must be reengineered to accommodate these changes and to prepare students for the contemporary professional world they will enter.

1. *The Phenomenon of Change*

As a group, lawyers are resistant to change.[23] Although fear of change is basic to the human condition, lawyers have some particular issues.[24] They are trained to look to the past for answers in the form of precedent.[25] Legal reasoning does not always help lawyers to think innovatively, although arguably it should. Lawyers also have difficulty accepting the need for

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21. Some commentators predict a cataclysmic future for lawyers and the practice of law. *See, e.g.*, Charles F. Robinson, *Stampede to Extinction*, *in* SEIZE THE FUTURE, *supra* note 6, at 133; Charles F. Robinson, *What in the World Is the Future of the Legal Profession?*, *in* SEIZE THE FUTURE, *supra* note 6, at 128.

22. *Déjà vu*, *supra* note 15.

23. *See* Gary A. Munneke, *Why Lawyers Hate Change: If We Examine Our Attitudes, We Can Understand Ourselves*, L. TECH. PRODUCT NEWS, Oct. 2000, at 42.

24. *See* Mark P. Robinson Jr., *Beating Back Your Fears*, 34 TRIAL 72 (1998).

25. *Déjà vu*, *supra* note 15, at 2.

change, in part because their position in society makes it difficult to appreciate the value of change.[26]

> You may recall the scene in the movie *Dr. Zhivago* where Omar Shariff and Julie Christie are sitting in a fine restaurant, while outside the distant sound of an approaching mob grows louder. In the street outside the restaurant, the Czar's mounted troops attack the mob, and in the ensuing mêlée the glass window is shattered, illustrating that no one can ignore the coming revolution.[27]

Of the three groups in this tableau, the mob, the troopers and the diners, lawyers are like the diners, whose complacency is shattered by events beyond their control.

In a practical sense, the short-term benefits of implementing change seldom appear to outweigh the costs since the cost of capitalizing change is burdensome and the investment of human energy is demanding. When either institutions or individuals do not plan for and invest in change, they are consigned to react to it, sometimes in maladaptive ways.

In order to survive in a period of transformational change, it is important to study and interpret current events. It is critical to understand how some trends fuel change. In complex systems, a multitude of variables bring about results, rather than simple straightforward causes. In complex interdependent systems, the failure of one part can cause breakdown in others.[28]

The future is not a single pre-destined reality but rather a series of alternative futures.[29] It may not be possible to predict the future, but it is possible to influence it. Although humans cannot control all the variables in the complex world in which they live, they can control some.

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26. *See id.* ("The price of legacy is complacency.").

27. *Id.*

28. *See id.*; *see also* SEIZE THE FUTURE, *supra* note 6, at 45-47.

29. Those who study the future, and refer to themselves as futurists, tend to view the future not as a predestined, linear path, but rather as an outcome of myriad interdependent causes. In this view, there is not a single future, but an infinite number of alternative futures. Although many variables are beyond the control of individuals, governments and other human institutions, many other variables can be actively impacted by those who desire to affect the future. To this extent, it may be possible to influence which alternative future comes to pass. *See* American Bar Association, *A Look At Where Lawyers and the Legal Profession Are Going In this Decade and Beyond. . ., Report of the Task Force on the Role of the Lawyer in the 1980s*, at 17-19 (1981).

Individuals can prepare for the future if they take time to analyze data about their environment and act on their conclusions. In order to succeed in a rapidly changing environment, however, they must be innovative, adaptable, and analytical. Those who resist or ignore change are more likely to suffer adverse impacts than those who take steps to influence their futures and prepare for change.

2. *Societal Change*

The report of the ABA Seize the Future Conference described a number of twenty-first century trends. These trends were summarized in an article in *The Professional Lawyer,*[30] as follows:

> First, **change is pervasive:** Author Tom Peters commented that we are in the midst of a ten-thousand year change in human existence, the most fundamental shift in the way we live since our ancestors came off the plains to build houses and grow crops. He asked the participants: "If what I say is true, should you be sitting here in your chairs?" Even if Peters is only partially right, change is a significant element of our lives.[31]
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> Second, the **dominance of technology:** The Internet now connects providers and consumers around the globe in a vast commercial web. In the world of e-commerce, where comparable products and services are easily accessible, both can become commodities. Value creation becomes a challenge to infomediaries, who help consumers navigate the sea of information. Legacy and heritage give way to innovation and solutions. Disintermediation occurs as consumers go directly to products and services without agents and middlemen. The line between information and service is increasingly blurred. Providers bundle their services in order to enhance value and hold customers.[32]
>
> Third, **shifting demographics:** The United States is experiencing geographic migration of populations within its borders, in the form of the so-called sunbelt shift, urbanization and periodic movement of families. The United States has also experienced an influx of immigrants from other countries and cultures; more peo-

30. *Déjà vu*, *supra* note 15.

31. *Id.* at 2 (quoting Tom Peters's keynote presentation in SEIZE THE FUTURE, *supra* note 6, at 21-23).

32. SEIZE THE FUTURE, *supra* note 6, at 26-28.

ple moved to the United States during the 1990s than during any other decade in its history. These phenomena are creating what has been called a mosaic (as opposed to melting pot) society.

Fourth, **globalization and interconnected economies:** As international commerce becomes more common, local and national economies become interconnected. Products and services will extend beyond geographic political boundaries. In such an environment, legal relationships become intertwined and law practice inevitably becomes cross-jurisdictional. This applies to small and large firms from urban and rural settings.

Fifth, **changing values:** Attitudes and mores of any population will change over time. One of the major shifts in values is an increasing need for autonomy or self-determination. For lawyers and other professional service providers, this means that clients are less willing to accept paternalistic explanations, cede decisions to others, or tolerate poor service. In addition, skepticism has replaced blind acceptance as an approach to news and information.

Sixth, **re-inventing dispute resolution:** The high transaction costs of litigation and cultural aversion to litigation in many societies will fuel the development of alternative models.[33] These models will be inherently interdisciplinary, inherently non-jurisdictional, and often electronic.[34]

Finally, **deregulation of the professional marketplace:** In an increasingly deregulated marketplace for goods and services, inefficient systems fail. Whether it is the demise of the Soviet Bloc or the professional monopoly of lawyers, it is increasingly untenable to prop up aging state monopolies in the face of innovative and more efficient systems. Competition will weed out the non-performers through a process of economic natural selection.[35]

These changes are not limited to one city or region, or even one country. They have been driven by, but are in no way limited by, the technology revolution. They have altered the lives of virtually every human being on the planet. Pop author Marshall McLuhan has described these phenomena since the

33. *See* MacNaughton, *supra* note 17, at 675-677; *see also Déjà vu, supra* note 15.

34. SEIZE THE FUTURE, *supra* note 6, at 48-66; *see also Déjà vu, supra* note 15.

35. *Déjà vu, supra* note 15, at 17.

1960s.[36] In the popular press, Alvin Toffler[37] and John Naisbitt[38] also addressed the topic of transformational change. Serious scholarship reflected the same sense of impending metamorphosis from industrial to post-industrial society.[39] Although there seems to be a consensus among future-oriented writers and scholars concerning the idea that humankind is experiencing a period of rapid and significant change, the form and timing of the change, and more importantly the shape of the emerging society, elicits less agreement.[40]

3. *Professional Change*

The factors that compel change in society inevitably impact the delivery of legal services. Lawyers, no less than other service providers, should become students of change. They "need to recognize that this evolving marketplace is not some Orwellian fantasy, but an emerging reality."[41] Lawyers should not only investigate the implications of these trends, but should also take steps to influence an alternative future, compatible with their vision for the evolving practice of law.

a. *The Lawyer-Client Relationship*

One of the salient features of professional services in the new millennium will be the dominance of clients in the lawyer-client relationship. Clients who are not satisfied with professional services will seek other providers. The demise of client loyalty in the marketplace for legal services is already well-doc-

36. *See, e.g.*, MARSHALL MCLUHAN, The GUTENBERG GALAXY: THE MAKING OF TYPOGRAPHIC MAN (1969); MARSHALL MCLUHAN, UNDERSTANDING MEDIA: THE EXTENSION OF MAN (1966).

37. *See* ALVIN TOFFLER, FUTURE SHOCK (1971).

38. *See* JOHN NAISBITT, MEGATRENDS: TEN NEW DIRECTIONS TRANSFORMING OUR LIVES (1982).

39. *See, e.g.*, CHARLES B. HANDY, THE AGE OF PARADOX (1994); CHARLES B. HANDY, THE AGE OF UNREASON (1989).

40. *See* HAMEL & PRAHALAD, *supra* note 20.

41. *Déjà vu*, *supra* note 15, at 17.

umented.[42] Informed clients can find alternative counsel or represent themselves pro se.[43]

There have been dramatic changes in the way lawyers and clients deal with each other during the course of the representation. Particularly, clients have begun to recognize that they have a say in how lawyers represent them and have a right to make decisions about their cases.[44] In general, clients have asserted a new sense of autonomy about their own affairs, forcing lawyers to rethink the scope of representation and decision-making.[45]

Many people are willing to seek redress for their problems in court.[46] In one sense, this has produced more legal business. In 1978, the United States Department of Commerce reported that the gross national legal product was just over sixteen billion dollars.[47] In 1990, it had increased to over eighty billion dollars.[48] However, this litigation explosion has triggered a litigation backlash. In recent years, an increasing number of clients have expressed dissatisfaction with the formal justice system and have sought alternative forms of dispute resolution.[49] Litigants often view the adversarial judicial system as

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42. Donald S. Akins, *Income Determination & Distribution: Partner Compensation as a Planning Tool — Personal Goal Setting and Accountability*, ABA LAW PRAC. MGMT. SEC. (January/February 1992) (describing the decrease in client loyalty from 1980 through 1990 evidenced by the spreading of work and the hiring of specialists backed by success stories, rather than hiring a single firm to handle all legal matters); *see also* RICHARD C. REED, WIN-WIN BILLING STRATEGIES: ALTERNATIVES THAT SATISFY YOUR CLIENT AND YOU 12 (1992) ("Fee competition will intensify as sophisticated clients continue to treat an ever-increasing portion of legal business as a commodity for firms to bid on.").

43. In Florida, seventy percent of the domestic relations cases are *pro se* on at least one side. *See* Charles F. Robinson, *Stampede to Extinction*, *in* SEIZE THE FUTURE, *supra* note 6, at 133.

44. *See, e.g.*, DOUGLAS C. ROSENTHAL, LAWYER AND CLIENT: WHO'S IN CHARGE? (1977).

45. *Id.*

46. Litigiousness in society is an increasingly important issue, to the point where one presidential candidate lambasted lawyers in a national debate.

47. UNITED STATES CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 1979 829 (100th ed. 1979).

48. UNITED STATES CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: NATIONAL DATA BOOK 756 (120th ed. 2000) [hereinafter 2000 CENSUS]. Table 1270 reports that the gross national legal product for 1990 was 82.7 billion dollars. *Id.* Other such legal statistics are available *at* http://www.census.gov/statab/www/ (last visited Nov. 15, 2001).

49. *See, e.g.*, MacNaughton, *supra* note 17, at 675.

stressful, overly focused on procedural niceties and consumed by a win-lose approach to problem resolution.[50]

b. *Competition in the Marketplace*

Presently, lawyers are experiencing both internal and external competition. Innovative new delivery systems, including e-lawyering services, exert pressure on law firms.[51] Lawyers find themselves incapable of enforcing restrictions on the right to provide legal and law-related services.[52] As Professor Gary Hamel of the Harvard Business School said, for lawyers today, "the threat is not inefficiency, but irrelevancy . . . [i]t is dangerous to assume that the future will continue the same way as the past."[53]

Beginning in 1977 with *Bates v. State Bar of Arizona*,[54] the marketplace for legal services was effectively deregulated. The decision opened the door to free market competition among law firms.[55] During this period, the legal profession was growing dramatically, fueled by an influx of new lawyers.[56] However, the economy did not grow nearly as fast as the lawyer population.[57] The number of corporations that paid the largest legal fees is

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50. *See, e.g.*, *id.* at 667.

51. *See, e.g.*, Ralph Ranalli, *Clicking With a Lawyer Cyberspace Could Ease Hunt for Legal Help*, BOSTON GLOBE, Apr. 17, 2000, at B1.

52. *See, e.g.*, Unauthorized Practice of Law Comm. v. Parsons Tech., Inc., No. CIV.A. 3:97CV-2859H, 1999 WL 47235 (N.D. Tex. Jan. 22, 1999), *vacated and remanded*, 179 F.3d 956 (5th Cir. 1999) (finding that the "Quicken Family Lawyer" was engaged in the unauthorized practice of law and enjoining its sale in Texas).

53. SEIZE THE FUTURE, *supra* note 6, at 32 (summary of Gary Hammel's comments).

54. 433 U.S. 350 (1977); *see, e.g.*, LORI ANDREWS, BIRTH OF A SALESMAN: LAWYER ADVERTISING AND SOLICITATION (1980).

55. WILL HORNSBY, MARKETING AND LEGAL ETHICS: THE BOUNDARIES OF PROMOTING LEGAL SERVICES (1999).

56. BARBARA A. CURRAN ET AL., THE LAWYER STATISTICAL REPORT: A STATISTICAL PROFILE OF THE U.S. LEGAL PROFESSION IN THE 1980S 5 (1985) [hereinafter 1985 LAWYER STATISTICAL REPORT] ("In the 29-year period from the end of 1960 to the beginning of 1980, approximately 357,000 new lawyers entered the profession, and mortalities among lawyers totaled about 95,000, resulting in a net increase of 256,000 in the lawyer population by the end of the period.").

57. From 1960 to 1990, the gross national product grew from $2,935 to $23,331 per capita, or 795%, while the gross national legal product grew from $2.7 billion to $82.7 billion, or 3062%. UNITED STATES CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 1980 774 (101st ed. 1980); 2000 CENSUS, *supra* note 48.

finite, and so, as more and more lawyers targeted the most lucrative clients, competition increased for their business. At the same time, the number of new practitioners increased the competition for low-end commodity legal services.[58] In short, the law of supply and demand inevitably influenced the availability of legal work and the fees lawyers could charge, forcing firms to modify the way they operated in order to deal with financial exigencies. The fallout from professional deregulation continues today, as law firms attempt to hold on to clients and legal work in the face of non-lawyer professional service providers.

c. *Restructured Practice Settings*

A product of the two developments above will be a restructuring of many practice settings. The relationship of lawyers and staff to law firms will become less rigid and institutional. Lawyers will increasingly find themselves practicing in teams with other professionals. The concept of jurisdictional boundaries will continue to erode.[59] An increasing number of legal service providers will incorporate some form of e-lawyering into their practice. With lawyers and clients connected electronically, and legal information, including client files, accessible from anywhere, lawyers will practice more in virtual offices and less in physical spaces.

Another change involves the basic economics of the practice of law. Law firms operate as economic entities; thus, business considerations affect the need for firms to find alternatives to traditional operating methods. As recently as 1960, conventional wisdom held that a law firm could anticipate that one-

58. In nearly every city and town in the country, where there were three or four lawyers fifteen years ago, there are twenty or twenty-five today. In every city, the ratio of population to lawyers has dropped from 500:1 to 250:1 or less. CLARA N. CARSON, THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN 1995 1 (1999) [hereinafter 1995 LAWYER STATISTICAL REPORT].

59. *See* Bruce Green, *Assisting Clients with Interstate Problems: The Need to Bring the Professional Regulation of Lawyers into the 21st Century*, (American Bar Association, 2000) http://www.abanet.org/cpr/mjp-bruce_green_report.html (last visited Nov. 29, 2001) (summarizing the Proceedings of the Symposium on the Multijurisdictional Practice of Law, March 10-11, 2000); *see also* American Bar Association, *Interim Report of the Commission on Multijurisdictional Practice* (Nov. 2001), http://www.abanet.org/cpr/mjp-home.html (last visited Jan. 16, 2002).

third of its gross revenues would be expended for overhead.[60] Today, management consultants report that many firms indicate that increased costs of doing business and increased competition for clients have combined to squeeze law firm profits.[61] The negative impact on practitioners is dramatic.[62] Four basic factors account for this change:

First, salaries have escalated dramatically. Starting with Cravath, Swaine & Moore in 1968, starting salaries in major New York firms grew from $9,600 to $65,000 in the mid-eighties, to as high as $140,000 in 2001.[63] Escalation is not limited to large firms; even small firm starting salaries have gone up dramatically.[64] Support staff salaries have increased as well.[65] Benefit costs for all staff members have increased.[66] In short, the cost of human resources has mushroomed. Given the fact that human resources represent the largest expense item for most law firms, the result has been a dramatic increase in the cost of conducting business.

Another expense that has increased significantly is the cost of office space. Nationally, rent costs have risen from an annual rate of less than $10 per square foot to over $30 per square foot.[67] Although it is not unique, the dissolution of the century-old law firm of Frank, Bernstein in Baltimore is exemplary of

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60. This means that if a solo practitioner earned $150,000 in fees, she could expect $50,000 overhead, and more importantly, $100,000 to take home.

61. *See, e.g.*, ROBERT J. ARNDT, MANAGING FOR PROFIT: IMPROVING OR MAINTAINING YOUR BOTTOM LINE 4 (1991); JOHN G. IEZZI, RESULTS-ORIENTED FINANCIAL MANAGEMENT: GUIDE TO SUCCESSFUL LAW FIRM FINANCIAL PERFORMANCE (1993); Howard L. Mudrick, *Financial Challenge for Partnerships, in* STRENGTHENING YOUR FIRM: STRATEGIES FOR SUCCESS (Arthur G. Greene ed., 1997).

62. Thus, the lawyer who grosses $150,000 per year spends around $100,000 to pay the bills, and takes home only $50,000.

63. For 1980s salaries see RICHARD L. ABEL, AMERICAN LAWYERS (1989) (noting that over 65% of lawyers earned between $25,000 and $75,000 in 1984). For current salaries see http://www.law.com/special/professionals/2001/chart _ nysalary.html (last visited Nov. 5, 2001) (noting that the starting salary at Skadden, Arps, Meagher & Flom in 2001 was $140,000).

64. *See* http://www.law.com/special/professionals/2001/chart _ nysalary.html (last visited Nov. 5, 2001).

65. *See* THE 1996 SURVEY OF LAW FIRM ECONOMICS at IV-54 (1996) (noting 1996 average support staff salaries ran from $17,137 to $96,280).

66. *Id.* at IV-37 (noting the average benefits paid by firms increased from $18,304 in 1985 to $20,925 in 1990).

67. *See* THE 1996 SURVEY OF LAW FIRM ECONOMICS, *supra* note 65, at I-3 (noting that the cost of occupancy requires 8% of the average firm's gross profits).

how leasehold expenses can break an otherwise successful firm due to excessive fixed costs allocated to office space.[68]

Perhaps the most radical cost increase for law firm operations is related to technology. Although law firms always had to pay for space and people, technology expenses represent a relatively new cost of doing business. Before 1980, the only equipment necessary for a law office were an old Underwood typewriter and a telephone. Now, law firms must have computers, networks, Internet access, websites, scanners, fax machines, copiers, palm technology and digital telephone systems. Firms must invest in software, staff training, technology support and consulting. To avoid obsolescence, technology requires system upgrades on at least a biennial basis. It simply costs more to practice law now compared to before the technology revolution.

Finally, the increasing specter of malpractice[69] has caused the cost of professional liability insurance to rise dramatically.[70] Not only has the risk of liability affected premiums, it has forced law firms to practice more defensively, operate more carefully, and choose cases more narrowly.[71] All of these considerations impose additional direct and indirect costs on law firms.

These higher costs increase start up capital and reduce profit margins. Competitive forces limit revenues, and law firms find themselves in an economic vise, resulting in many law firm failures during the last two decades of the twentieth

68. Jane Bowling, *W&G Veterans Leery of Rent Bill Questions about Liability Spur Examination of Who May be on Hook,* THE DAILY RECORD (Baltimore, Md.), June 19, 1996, at 1.

69. An unwelcome by-product of the litigiousness of society has been an increase in the willingness of disgruntled clients to sue their lawyers. *See* 1 RONALD E. MALLEN & JEFFREY M. SMITH, LEGAL MALPRACTICE § 1.6 (5th ed. 2000) ("The increase of legal malpractice litigation does not mean that the modern attorney is more error prone. The change in frequency of actions against attorneys must be viewed in the context of similar increases in litigation, such as product liability and medical malpractice.").

70. Gary E. Munneke & Anthony E. Davis, *The Standard of Care in Legal Malpractice: Do the Model Rules of Professional Conduct Define It?*, 22 J. LEGAL PROF. 33 (1997).

71. *See id.*; Jennifer J. Johnson, *Limited Liability for Lawyers: General Partners Need Not Apply*, 51 BUS. LAW. 85, 145 (1995).

century.[72] Many firms experienced defections, mergers and other forms of restructuring.[73] A slow consolidation of the practice of law in larger law firms pervades the beginning of the twenty-first century.[74]

d. *Specialization*

As the general practice model becomes less viable in this complex modern society, lawyers will need to practice in specialized fields of law, and competent practice will require new skills for all but basic commodity services.[75] Legal services will become unbundled as lawyers elect to perform discrete segments of legal transactions.[76] Legal fees will be driven by perceived value to consumers and market forces rather than by the going hourly rate.[77]

e. *Demographics of the Legal Profession*

One of the most dramatic societal changes during the last half of the twentieth century has been the transformation of the legal profession itself. In 1950, there were 221,000 lawyers in the United States and in 2000, there were approximately 1,000,000.[78] While only 4.8% of all law degrees earned in 1971 were conferred upon women, the number of women receiving law degrees is nearly ten times that today.[79] Over 70% of the lawyers in the United States in 1960, and closer to 80% in 1950, were solo practitioners.[80] Most of the remaining lawyers prac-

72. *See, e.g.*, ROBERT W. HILLMAN, LAW FIRM BREAKUPS: THE LAW AND ETHICS OF GRABBING AND LEAVING (1990).

73. Andrew J. Drucker, *Explanations, Suggestions and Solutions to Conflict Tracking and Prevention in Response to the Growth and Expansion of the Larger Law Firm*, 24 DEL. J. CORP. L. 529, 534-35 (1999).

74. *See* SEIZE THE FUTURE, *supra* note 6, at 53.

75. *See id.*

76. *See, e.g.*, FORREST MOSTEN, LEGAL SERVICES A LA CARTE (2000).

77. *See* REED, *supra* note 42, at 97-102.

78. *See* 1995 LAWYER STATISTICAL REPORT, *supra* note 58, at 4; *see also* SEIZE THE FUTURE, *supra* note 6, at 53.

79. *See* UNITED STATES CENSUS BUREAU, *supra* note 47, at 195. The contribution of women to the legal profession is perhaps the most significant change in the last fifty years. For a thorough treatment on women in the legal profession, see generally VIRGINIA G. DRACHMAN, SISTERS-IN-LAW – WOMEN LAWYERS IN MODERN AMERICAN HISTORY (1998); THE WOMAN ADVOCATE: EXCELLING IN THE 90'S (Jean Maclean Snyder & Andra Barmash Greene eds., 1995).

80. *See* SEIZE THE FUTURE, *supra* note 6, at 53.

ticed in very small firms.[81] The number of law firms with more than one hundred lawyers was only ninety in 1979;[82] presently, there are over 300 firms of that size.[83]

In 1950, over half of the lawyers in the United States practiced in small towns and rural areas.[84] Today, 70% of lawyers work in large cities.[85] While these changes track broader demographic shifts in the United States,[86] it is undeniable that they have implications on the practice of law.

f. *Leverage*

Professional service providers, such as lawyers, can increase fee income in a limited number of ways: work harder, charge more, reduce costs, or leverage subordinates. Since 1980, most lawyers have increased the number of billable hours that they work to the point where, in many firms, the working conditions have become oppressive.[87] As for charging more, deregulation of the marketplace and increased competition have combined to limit how much lawyers can charge for services.[88] As for reducing costs, this article has already demonstrated the futility of this approach.[89] This leaves leverage as the only tool to increase profits.

Leverage entails earning money from the work of employees. If an associate can generate more revenue than the firm's expenses to employ her, the partners benefit from the net

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81. *See id.*

82. ABEL, *supra* note 63, at 182.

83. 1995 LAWYER STATISTICAL REPORT, *supra* note 58, at 26.

84. *See* 1985 LAWYER STATISTICAL REPORT, *supra* note 56.

85. *See id.*

86. *See, e.g.,* 2000 CENSUS, *supra* note 48, *available at www.census.gov* (last visited Nov. 15, 2001).

87. A former student of the author reported billing 2,700 hours each year for the last three years; since lawyers typically bill about two-thirds of the hours they spend in the office this person probably worked 4,000 hours per year, or an average eighty hour work week. Something is wrong with a system that asks people to do that. But that is exactly what lawyers have done.

88. ARNDT, *supra* note 61, at 5; Bryant Garth, *From Civil Litigation to Private Justice: Legal Practice at War with the Profession and its Value,* 59 BROOK. L. REV. 931, 940-41 (1993).

89. *See supra* text accompanying notes 61-74. Although law firms may find ways to reduce some costs, budget cutting seldom produces increased profitability, and may adversely affect the quality of services.

profit.[90] Traditionally, law firms were leveraged at a ratio of approximately 1:1 associates to partners, except in New York.[91] Today, that ratio is 2:1, and in some large firms it is as high as 4:1.[92] As the bottom of the pyramid spreads, fewer associates can become partners,[93] and turnover accelerates.[94]

During the 1970s, many law firms assumed that they would continue to grow forever.[95] The market for legal services was increasing and firms were profitable. When the boom went bust, partnership opportunities dissipated.[96] Unless potential partners brought in new business, there was no room at the top.[97] In response to this situation, many firms asked themselves about the propriety of an "up or out" policy for associates.[98] Today, firms are recasting the old law firm pyramid to include lawyers who either are not considered for partnership

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90. The associate as an employee does not share in the profit generated by the firm. Thus, if the firm pays the associate $50,000 and spends another $50,000 for the associate's share of overhead, and the firm collects $200,000 from the associate's billings, the partners earn $100,000 profit for themselves.

91. *See* Elizabeth Chambliss, *Organizational Determinants of Law Firm Integration*, 46 AM. U. L. REV. 669, 716-17 (1997) (comparing the national average [as of 1985] of 1.18 associates to every partner to New York City's average [as of 1985] of 1.82 associates to every partner).

92. *See, e.g.*, Carl T. Bogus, *Death of an Honorable Profession*, 71 IND. L.J. 911, 923 n.110 (1996) (discussing the profit implications of the 3:1 associate to partner ratio).

93. If a firm with a 3:1 leverage ratio offers partnership to one associate, the firm must hire four new associates in order to maintain its leverage. If the associates billing 2,000 hours a year at a rate of $200 per hour, the firm will need $1,600,000 in new legal business in order to elevate one associate to the partner level.

94. The National Association for Law Placement and certain law schools have tracked law firm attrition. These studies demonstrate the fact of attrition, but are less clear about the causes.

95. Marc Galanter & Thomas M. Palay, *Why the Big Get Bigger: The Promotion to Partner Tournament and the Growth of Large Firms*, 76 VA. L. REV. 747, 757 (1990).

96. *Id.* at 755.

97. *Id.*

98. The term "up or out" refers to a policy that says associates who are not offered partnership cannot stay at the firm. The perniciousness of this approach is obvious. If a firm spends six years training an associate, it loses the benefit of the associate's work at a time when the associate is both competent and profitable. An increasing number of firms are creating classes of permanent salaried lawyers, labeled staff attorneys, permanent associate or non-equity partners.

or are not offered partnership but who possess skills the firm can use and who continue to generate profit.[99]

g. *Associate Training*

Law firms traditionally have struggled with the problem of associate training.[100] Firms may recognize that law school graduates are not competent practitioners when they are hired, but many legal employers lack the resources to provide in-house skills training. Large firms may be able to provide a degree of training for associates and to develop professional skills over time. In contrast, small firm lawyers have always had to learn by personal experience.[101] More recently, however, even large firms, struggling to maintain profitability, have experienced pressures to cut back on training.[102] Over the next twenty years, it remains likely that law firms of all sizes will experience continued and greater challenges to provide the skills training for their legal and support staffs.[103]

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99. The implication for law graduates is that if firms are not letting twenty people at the top go they are not hiring twenty people at the bottom. If the firm creates a permanent staff it does not need to add new partners. The firm will only hire a new lawyer when another lawyer leaves. If there are fewer openings because people have become stationary, the opportunities in entry level jobs for law students will diminish. If law firms translate a growing demand for jobs in a market of limited supply into an attitude that new lawyers are a commodity, there will be very little incentive to improve the working conditions of lawyers at all.

100. Richard N. Feferman, *Associate Training: Raising Lawyers for Fun and Profit*, 19 LAW PRAC. MGMT. 28 (1993); Joel F. Henning & Minay A. Friedler, *Training Senior Lawyers to Be Better Trainers*, 19 LAW PRAC. MGMT. 60, 61 (1993).

101. The so-called sink or swim approach to associate training is easier for the senior lawyers in the firm, who are not required to supervise the new lawyers carefully. This approach, however, is less cost effective in the long run, and exposes the firm to an unnecessary degree of risk when an inexperienced lawyer works directly for a client.

102. It is not even a small coincidence that this dilemma confronted a large firm like Sullivan & Cromwell and drew the interest of former ABA president Bob MacCrate. When it hurts Sullivan & Cromwell, then it hurts the entire legal profession.

103. *See, e.g.*, *The Law Isn't Enough: Training Lawyers to Manage Their Practices and Their Deals*, sponsored by the American Bar Association Section of Business Law at the ABA Annual Meeting, Chicago, IL, August 5, 2000 (materials on file with the author).

4. *Implications of the Trends*

If lawyers and the bar fail to address changes in the practice of law and the skill set necessary to succeed in the future, they will find themselves marginalized, or worse, obsolete, in the emerging professional services landscape.[104] If individual lawyers do not deal with the realities of the current and future marketplace for legal services in their own practices, they will be out of business.

Lawyers face a quandary regarding the time they spend servicing clients more effectively compared to the time they spend contemplating the future.[105] The complex, interconnected, diverse society that is emerging in the twenty-first century will generate human conflict in a variety of ways. Lawyers, armed with legal knowledge and professional skills, are well-positioned to help people resolve their disputes. In order to take advantage of these opportunities, lawyers must be able to look past legacy and tradition. They will need not only to deliver their services innovatively, but to expand their skills to meet the demands of future practice.

III. Langdell's Legacy

It is not a big stretch of the imagination to anticipate that changes in society and the practice of law will have an impact on legal education. In an interconnected world, events in one sphere cannot escape producing change in another. Legal educators, like practitioners, ignore these trends at their peril. This section will explore the question of the need for change in legal education.

A. *Contemporary Legal Education*

While society and the practice of law have undergone radical changes, legal education has changed little in the past one hundred years. The basic structure of legal education as it exists today, an exercise in evaluating appellate cases and analyzing legal opinions through a core curriculum was popularized at Harvard Law School beginning in 1870. By the turn of the cen-

104. *See generally* SEIZE THE FUTURE, *supra* note 6.

105. *See* comments of Gary Hamel, *in* SEIZE THE FUTURE, *supra* note 6.

tury, this method had become the dominant model for legal education throughout the United States.[106] Although legal education has experienced periods of reformation, the core curriculum at most schools, especially during the first year, has remained essentially as Dean Langdell envisioned it in the nineteenth century.[107] Although there have been other periods of criticism and introspection, the format of legal education in America has shown amazing resilience.[108]

During the last three decades of the twentieth century, however, a number of critical movements challenged the orthodoxy of legal education. As the permissive attitudes of the Vietnam War era pervaded academia, many law schools opted to reduce the number of required courses. These same institutions also permitted students to experiment with a wider variety of electives, often in cutting-edge areas of the law.[109] In the aftermath of the Watergate scandal, which implicated numerous lawyers among the Nixon White House staff and cabinet, the ABA voted to require all law schools to provide training in professional responsibility.[110]

During this same period, clinical legal education programs at most law schools expanded.[111] Law school clinics and clinical teachers have achieved professional respectability after years of fighting over the role of clinical education, tenure for clinical teachers, and the cost-benefit of clinical education *vis-à-vis*

106. *See* ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S 52 (1983).

107. *Id.* at 38-39. I think that it is different in very many ways. Many of the professors I had in law school have retired or passed away, but I remember my share of Kingsfields who really made students feel that getting through law school was an accomplishment. When I was in school, nobody took clinics because there were not any. At many law schools Professional Responsibility was not even taught, and hardly taken seriously by serious students. The experience tended to be three years of very traditional cookie cutter courses.

108. *See* STEVENS, *supra* note 106, at 40-42.

109. John C. Weistart, *The Law School Curriculum: The Process of Reform*, 1987 DUKE L.J. 317 (1987).

110. STANDARDS FOR THE APPROVAL OF LAW SCHOOLS (2001), Standard 302(b), *available at* http://www.abanet.org/legaled/standards/chapter3.html (last visited Nov. 29, 2001).

111. *See Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508, 520 (1992); *see also* MACCRATE REPORT, *supra* note 1; PHILIP G. SCHRAG & MICHAEL MELTSNER, REFLECTIONS ON CLINICAL LEGAL EDUCATION 7 (1998).

traditional teaching methods.[112] Today, clinical education is widely accepted and almost all schools have embraced the clinical pedagogy.[113] This evolution alone has altered the focus of legal education in general by incorporating experience with real cases into the theoretical web of traditional classroom teaching.[114] Such hybridization adds value to the entire educational process by supplying a bridge between theoretical concepts acquired in traditional classes and the application of such knowledge in practice settings.

In the 1990s, many law schools developed a legal skills curriculum and experimented with a variety of new pedagogical approaches to the teaching of practice skills.[115] Skills education today has assumed a life of its own. Not only are practice skills courses marginally more economical than clinical courses, which makes them appealing to administrators, many skills can arguably be better taught, or at least introduced, in isolation.[116] In addition, skills courses lend themselves to a variety of innovative teaching methods including simulations, role-playing, group problem solving, team teaching, computer and video applications, and extended complex hypothetical cases.[117]

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112. At New York University, Harvard and a number of other schools, these battles were protracted and bitter. *See* David Lauter, *A Clinical Tenure Track? AALS-ABA Showdown Possible*, NAT'L L.J., Jan. 23, 1984 at 4.

113. *See, e.g.*, Wallace J. Mlyniec, *The Intersection of Three Visions- Ken Pye, Bill Pincus, and Bill Greenhalgh- and the Development of Clinical Teaching Fellowships*, 64 TENN. L. REV. 963 (1997).

114. *Report of the Committee on the Future of the In-House Clinic*, *supra* note 111, at 516-17.

115. A skills curriculum is the teaching of courses like negotiation, alternative dispute resolution, interviewing and counseling, law practice management, and many other courses that are not purely substantive. Significantly, these courses apply substantive law in a setting in which students use legal skills, knowledge and analysis in tandem.

116. PETER DEL. SWORDS & FRANK K. WALWER, THE COSTS AND RESOURCES OF LEGAL EDUCATION, A STUDY IN THE MANAGEMENT OF EDUCATIONAL RESOURCES (1974). *See also* REPORT OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS – AMERICAN BAR ASSOCIATION COMMITTEE ON GUIDELINES FOR CLINICAL LEGAL EDUCATION 133 (1980). This report states that a law school supervised clinic was, on average, approximately 13 times more expensive than a field placement program, 2.4 times more expensive than a traditional law school seminar and 7 times more expensive than a traditional class.

117. As is true of practicing law generally, the press of client needs, docket demands and pressure from adversaries often precludes clinicians from the kind of experimentation that skills teachers enjoy. Certainly, there are innovative clinical programs, and clinicians are constantly driven to provide their services more com-

Contemporary legal education may also be characterized by the development of interdisciplinary studies.[118] Taken together, these varied fields of inquiry suggest that lawyers and legal educators dwell in a world where law is an integral aspect of the human condition. In our complex, modern society, there is hardly any aspect of business or human interaction that lacks legal implications. Legal professionals in this world find that they must not only possess highly specialized knowledge about the clients they represent and the subject matter they handle, but that they must also work with professionals from non-legal disciplines on a regular basis in order to provide competent services.[119]

Although there have been other movements over the past hundred years that have had an impact on the foundations of legal education, two schools of legal thought have profoundly influenced the way many legal educators approach problems.[120] The critical legal studies movement and law and economics theorists have forced all legal educators to reflect on basic assumptions about the legal system and to recognize alternative approaches to legal problem solving.

Critical legal studies thinkers called for deconstruction of legal opinions by examining the underlying contexts to explain judges' reasoning.[121] This approach tended to question the validity of much traditional legal doctrine.[122] Law and economics theorists weighed economic considerations heavily in analyzing problems.[123] These scholars frequently offered alternative eco-

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petently and efficiently, just like law firms. But the focus of the clinic must inevitably be directed first at client service, and second at pedagogy.

118. For example, law and sociology, law and psychiatry, law and literature, law and economics.

119. The subject of multidisciplinary practice is beyond the scope of this article, but the emergence of interdisciplinary studies in law schools suggests that the phenomenon is having an impact on legal education, just as it is on the practice of law. *See generally* GARY A. MUNNEKE & ANN L. MACNAUGHTON, MULTIDISCIPLINARY PRACTICE: STAYING COMPETITIVE AND ADAPTING TO CHANGE (2001).

120. *See* STEVENS, *supra* note 106.

121. *See* Gregory C. Sisk, Michael Heise, & Andrew P. Morriss, *Charting the Influences on the Judicial Mind: An Empirical Study of Judicial Reasoning*, 73 N.Y.U. L. REV. 1377 (1998).

122. *See* Gary Minda, *Neil Gotanda and The Critical Legal Studies Movement*, 4 ASIAN L.J. 7 (1997).

123. The Law and Economics movement purported to assess judicial decision making in terms of economic cost-benefit analysis. *See, e.g.,* Thomas F. Cotter,

nomic models as a rationale for problem solving and legal decision-making.[124] These movements caused legal educators to take a fresh look at old assumptions about legal theory, doctrine and educational methodologies.[125]

Beginning in the 1980s, technology began to have an impact on legal education.[126] The widespread availability and use of personal computers, the rise of the Internet and the emergence of a generation of law students raised on video games and technology inevitably invaded the monastic sanctity of legal education.[127] Not only were professors experimenting with a vari-

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Legal Pragmatism and the Law and Economics Movement, 84 GEO. L.J. 2071 (1996). The formula B > PL articulated by Judge Learned Hand in *United States v. Carroll Towing*, 159 F.2d 169 (2d Cir. 1947) elides into the sophisticated analyses of Judge Richard Posner in *Greycas, Inc. v. Proud*, 826 F.2d 1560 (7th Cir. 1987):

> Many producers of information have difficulty appropriating its benefits to society. The property-rights system in information is incomplete; someone who comes up with a new idea that the law of intellectual property does not protect cannot prevent others from using the idea without reimbursing his costs of invention or discovery. So the law must be careful not to weigh these producers down too heavily with tort liabilities. For example, information produced by securities analysts, the news media, academicians, and so forth is socially valuable, but as its producers can't capture the full value of the information in their fees and other remuneration the information may be under produced. Maybe it is right, therefore — or at least efficient — that none of these producers should have to bear the full costs. (Similar reasoning may explain the tort immunity, now largely abrogated, of charitable enterprises, and the tort immunities of public officers.)

Id. at 1564 (internal citations omitted).

124. *See generally* Arturo Lopez Torres & Mary Kay Lundwall, *MacCrate Goes to Law School: An Annotated Bibliography of Methods for Teaching Lawyers in the Classroom*, 77 NEB. L. REV. 132 (1998) (listing numerous articles advocating ways to incorporate skills into legal education).

125. Whether or not they accept the broad objectives of either group, professors today are freer to question fundamental assumptions about the law as the atmosphere of orthodoxy in legal education has lifted. This spirit of questioning arguably has spilled over into curricular reform.

126. The IBM Personal Computer was introduced in 1981, and although it was not the original personal computer, and although most educational institutions were supported by large mainframe computers, the widespread availability of technology transformed the business landscape the way the introduction of the Model T transformed the nation's highways in the early part of the twentieth century. Law schools have been slow to adopt new technologies, but they are slowly changing the way they work and teach. *See, e.g.*, American Bar Association, Section of Legal Education and Admissions to the Bar, *Statement on Distance Learning* (2000), http://www.abanet.org/legaled/distanceeducation/distance.html (last visited Nov. 29, 2001).

127. *See, e.g.*, Daniel E. Harmon, *The Whiz Kids of 2001, Just how Computer-Savvy are Law School Grads?*, 18 LAW. P.C. 1 (2001).

ety of pedagogical approaches that took advantage of technology,[128] they increasingly realized that the practice of law was undergoing changes that would impact the content of legal education itself.[129]

These developments did not emerge in a vacuum. They are consistent with the changes taking place elsewhere in society in the social, moral, technological, political and economic arenas.[130] It comes as no surprise that law teachers would begin to think differently about legal education. What should be surprising is the fact that the traditional model for legal education has shown such resiliency in the face of extrinsic events.

B. *The Cost of Survival*

Legal educators sometimes argue that the role of law school is not to train people to practice law; such preparation should be the responsibility of the practicing bar.[131] Members of the bar, on the other hand, insist that the law schools should be doing the training.[132] Across this intellectual Maginot Line, academics and practitioners lob artillery while students, new lawyers and the consumers of legal services pay the price.

The status quo is bolstered by considerable pressure to resist change, with money being a primary source of concern.[133] Innovative curricular programs, such as clinics, skills courses and technology-based programs, cost money; at a time when legal education is increasingly costly and student debt from educational loans is at an all-time high, innovation is particularly *cher*.[134]

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128. For example, legal writing professors were forced to decide whether and to what extent they would teach students the methods for conducting legal research online versus following generations of lawyers in book research in the library.

129. For example, trial advocacy teachers were still teaching their students how to use demonstrative evidence by producing pictures on poster board, while practitioners were increasingly turning to computer animations to illustrate their points. Students were still being told to organize their trial strategy on note cards, whereas practitioners were increasingly turning to databases on laptop computers.

130. *See* MACCRATE REPORT, *supra* note 1, at 11.

131. *See* Torres & Lundwall, *supra* note 124, at 132 n.2.

132. *See id.*; *see also* STEVENS, *supra* note 106.

133. STEVENS, *supra* note 106, at 63.

134. *See* SWORDS & WALWER, *supra* note 116, at 124.

The inertia of legacy sustains the status quo. Law schools that are generally considered "elite" experience the least incentive to invest in practice skills education.[135] The graduates of these schools are traditionally hired by firms that provide practice training in-house.[136] Other schools aspiring to "elite" status resist enhancing practice education partially because they feel compelled to model their educational programs after the leaders.[137] Less prestigious institutions have often felt a need to prepare the students more directly for the practice of law,[138] and often have been more amenable to clinical and skills education.[139] As the first decade of the twenty-first century gets underway, clinical and skills education is firmly entrenched in legal education, despite the fact that some schools accepted this change willingly, others grudgingly.

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135. It is interesting to note that a comparison of the founding members of the Association of American Law Schools, as described in the AALS Directory, published annually by West Group, to the top 25 law schools according to the U.S. NEWS & WORLD REPORT, *Annual Rating of Law Schools*, April 9, 2001, http://www.usnews.com/usnews/edu/beyond/apps/gdlaw1.htm (last visited Nov. 3, 2001) shows very little change in the makeup of the top schools over the past century.

136. *But see* Alex M. Johnson, Jr., *Think Like Lawyer, Work Like a Machine: The Dissonance Between Law School and Law Practice*, 64 S. CAL. L. REV. 1231, 1244 (1991).

> Practicing Attorneys have mentioned to me their increasing dissatisfaction with the graduates of some elite law schools. These incredibly bright graduates may have tremendous ability to assimilate both legal education and legal practice but have no idea what practice entails and have no desire to discover its intricacies when forced to confront it. Faced with the pressure and demands placed on young associates at large law firms, they express their dissatisfaction by leaving the firms.

Id.

137. In the 1990s, Nike produced an advertising campaign urging viewers to "be like Mike"— referring to Michael Jordan of the Chicago Bulls basketball team, who naturally wore Nike® shoes. Legal educators may operate under a similar slogan, "be like Harvard." This phenomenon has been fueled by annual rankings produced by *U.S. News & World Report* magazine.

138. *See* ABA COMMISSION ON ADVERTISING, LAW PRACTICE MANAGEMENT AND LEGAL SERVICES MARKETING IN THE LAW SCHOOL CURRICULUM at 26 (1996).

139. This may also be due to the fact that professors at traditionally lower-ranked law schools are more likely to have practical legal experience than colleagues at the elite law schools. *See* Robert J. Borthwick & Jordan R. Schua, *Gatekeepers of the Profession: an Empirical Profile of the Nation's Law Professors*, 25 U. MICH. J.L. REFORM 191, 219 (1991) (showing that 63% of professors at the top seven law schools had practical experience compared to 82.2% of professors in the bottom fifty-four law schools).

In a larger sense, the changes in legal education represented by the clinical and skills movement may be the tip of the iceberg. The upcoming changes may dwarf those that have thus far transpired. In fact, we may have to rethink legal education from the ground up; what was good enough for Langdell in the 1870s may not be good enough for the twenty-first century.[140]

Legal educators must ask themselves whether, if the legal profession and society at large are undergoing fundamental change, can legal education remain unchanged? If legal education must change, then how should it change? Lawyers and educators alike will have to examine the evolving professional skills and values closely to determine the fundamental skills and core values that will serve them in the emerging professional services environment.

IV. A Realistic Look at MacCrate

The American Bar Association Task Force on Law Schools and the Profession: Narrowing the Gap produced a report in 1992 that provided an important impetus for the clinical and skills movement.[141] While the MacCrate Task Force included a number of respected practitioners, the bulk of the Task Force was comprised of legal educators.[142] A number of deans and professors contributed significantly to the MacCrate Report.[143] Many other educators led the charge to incorporate skills into the mainstream of legal education.[144] Far from attempting to exclude opponents of clinical and skills curricula, the Report reflected a bipartisan effort to address a real need to reform the Langdellian curriculum.[145]

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140. One state bar association went so far as to say that legal education will become irrelevant. *See* State Bar of Texas, *Final Report of the Futures Committee to the Board of Directors of the State Bar of Texas* (Sept. 9, 1999), *available at* http://www.abanet.org/lpm/SBOT99.pdf (last visited Nov. 1, 2001); *see also* Simon Chester & Merrilyn Astin Tarlton, *The Territory Ahead: 25 Trends To Watch in the Business of Practicing Law*, 61 OR. ST. B. BULL. 21 (2000).

141. *See, e.g.*, MACCRATE REPORT, *supra* note 1.

142. *Id.* at xi-xiv.

143. *Id.*

144. *See, e.g.*, Torres & Lundwall, *supra* note 124.

145. *See* MACCRATE REPORT, *supra* note 1, at 3-8; *see also* Randall T. Shepard, *From Students to Lawyers: Joint Ventures in Legal Learning for Academy, Bench, & Bar*, 31 IND. L. REV. 445 (1998).

The Report, which was released in 1992 and widely discussed by legal educators in the ensuing years, represented cutting-edge thinking about the needs of legal education. Ten years after its release, the Report still retains vitality, as evidenced by its continued citation in the professional literature.[146] The principal tenets of the report include the existence of an educational continuum, the centrality of a fundamental set of skills and values, and the need for a structured system of continuing legal education are discussed below.

A. *An Educational Continuum*

The Report postulated an educational continuum: lawyers began learning how to be lawyers long before they matriculated in law school and continued this process long after graduation.[147] The Report argued that the skills lawyers require were attained during the earliest years of pre-legal education and continue to be acquired throughout their professional lives.[148] Legal education is an important step in the process of building the skills lawyers need to practice competently, but is by no means the only step.[149] On the other hand, the Report squarely placed a responsibility on law schools to address fundamental lawyering skills in a meaningful way.[150]

The educational continuum contemplated in the Report recognized that many lawyering skills are acquired, or at least perfected, after law school.[151] To this end, the Report called for a rigorous program of mandatory continuing legal education, not only in fields of substantive legal information, but also in areas involving advanced skills.[152] Legal educators, as reflected by

146. *See, e.g.*, Maureen E. Laflin, *Toward the Making of Good Lawyers: How the Appellate Clinic Satisfies the Professional Objectives of the MacCrate Report*, 33 GONZ. L. REV. 1, 6 n.28 (1997).

147. MACCRATE REPORT, *supra* note 1, at 227.

148. *Id.* at 225-323.

149. *Id.* at 234-235.

150. *Id.* at 234.

151. *Id.* at 235.

152. MACCRATE REPORT, *supra* note 1, at 336. Interestingly, the one aspect of the *MacCrate Report* that met with resistance was the concept of mandatory continuing legal education ("CLE"). The Report proposed a national post-graduate educational system administered by the American Bar Association, the American Law Institute and the Practicing Law Institute. Resistance to a national CLE conglomerate came from state and local bar associations, specialty bar associations

the dearth of criticism, have at least implicitly accepted the educational continuum of pre-legal training, law school and post-graduate CLE.

B. *Professional Skills*

The Report also called for a skills approach to legal education.[153] The traditional model of legal education involves teaching the skill of legal analysis. Most law schools also incorporate skills such as advocacy and writing into their core curriculum. On the other hand, skills like negotiation, management and counseling tend to be offered in some specific course, rather than pervasively throughout the curriculum.[154] In this sense, skills courses have always differed from the "real" curriculum because they were almost always offered as electives and infrequently incorporated into "core" courses.

The Report refused to marginalize skills, articulating the concept of professional skills from a different perspective. In a part of the larger report, the MacCrate Task Force described a Statement of Fundamental Skills and Professional Values ("SSV").[155] The SSV designated ten skill groups: problem solving, legal analysis and reasoning, legal research, factual investigation, counseling, negotiation, communication, litigation and ADR, organization and management of legal work, and recognizing and resolving ethical problems.[156]

It is significant that the SSV described all of legal education in terms of these skills.[157] The first three skills, problem solving, legal analysis and reasoning, and legal research, as well as the last, recognizing and resolving ethical problems, re-

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and commercial CLE providers. By 2001, 40 states had adopted some form of mandatory CLE, although no two states systems are identical, and the landscape of CLE providers has become more fragmented, rather than more consolidated as envisioned by the MacCrate Commission. *See* http://ali-aba.org/ (last visited Oct. 18, 2001).

153. *See* MACCRATE REPORT, *supra* note 1, at 6-7, 123.

154. Most law schools teach professional responsibility, which addresses the skill MacCrate calls "sensitivity to ethical issues," as a standalone course. Professor Deborah Rhode, however, has argued for teaching this material pervasively throughout the curriculum. *See* DEBORAH RHODE, PROFESSIONAL RESPONSIBILITY: ETHICS BY THE PERVASIVE METHOD (1994).

155. MACCRATE REPORT, *supra* note 1, at 135.

156. *Id.* at 138-40.

157. *Id.* at 236-60.

present the core of the traditional curriculum.[158] The remaining seven constitute, in the parlance of legal education, lawyering skills; however, the Report does not draw any such distinction.

The MacCrate Task Force urged legal educators to look at the curriculum and find ways to teach a broader range of skills in more areas.[159] One of the strengths of contemporary legal education is that experimentation is permissible, and with a diverse faculty, possible. Such experimentation has lead to new approaches for accomplishing common goals, evidenced by nationwide innovation.[160]

C. *Professional Values*

The MacCrate Task Force also described a set of core professional values.[161] The professional values aspect of the Report initially generated even less commentary than the section on fundamental skills, suggesting that the core values were so in-

158. We have all been teaching skills since Langdell. We have just been teaching a narrow band of skills. The middle group of skills, those we have tended to place into the category of lawyering skills, are no less important to the development of competent lawyers than the skills taught in the traditional curriculum. MACCRATE REPORT, *supra* note 1, at 163-203.

159. *See id.* at 259.

160. The University of Richmond has utilized a very interesting first year skills curriculum where they try to integrate skills into first year courses. The College of William and Mary has a program that extends over two years. First year students are divided into law firms for which the professors serve as the partners. Campbell Law School and Vermont Law School both have developed general practice programs in recognition of the fact most of their graduates go into small general practices. Chicago-Kent College of Law has specialized in computers and invested millions of dollars in learning how to utilize technology in the practice of law. These are all what you would call "off-Broadway" schools. Someone quipped that legal education will change when Harvard changes. And I note that Harvard Law School has been very innovative. They are working with computers and interactive video. The Harvard negotiation project has almost single-handedly revolutionized the way many lawyers approach negotiations. At recent AALS meetings everyone is talking about change in some way or other. Pace Law School has undertaken some really impressive experiments with legal education, including a program in environmental law with certification and LL.M. and a revolutionary legal writing program. Perhaps the days of the generic law school are over. In the future, law schools will have to achieve a unique identity in order to survive, and students will select schools because of their programs and not their pedigrees.

161. *See* MACCRATE REPORT, *supra* note 1, at 207.

grained in lawyers' psyches that they did not seem to merit question.[162]

In recent years, a number of writers have raised notable questions about professional values, although not in the context of the MacCrate Report.[163] The poor public image of lawyers, the rise of hardball litigation, and the demise of civility have given rise to a wave of professionalism articles.[164] In general, these articles call upon lawyers to resist allowing law to become a mere profit-driven trade and to return to values exhibiting professionalism.[165]

During ABA debates over multidisciplinary practice, opponents of the movement seeking to allow lawyers to engage in practice with other professions raised the banner of professional values in support of their cause.[166] If lawyers could form partnerships or share fees with nonlawyers, they argued, lawyers' professional values would be hopelessly compromised.[167]

The examination of professional values will be most important to the rise of e-lawyering.[168] Lawyers already engage in e-lawyering in a variety of ways. They utilize websites to provide information resources to clients, to market their practices, to create referral systems with other lawyers and service provid-

162. When the American Bar Association debated the controversial topic of multidisciplinary practice in 2000, those who opposed permitting lawyers to practice jointly with other professionals raised the specter of professional values in the debate, suggesting that core professional values could not be sustained when lawyers worked in organizations that were not controlled by lawyers. One of the leaders of this opposition was none other than Bob MacCrate.

163. *See, e.g.*, James E. Moliterno, *Legal Education, Experimental Education, and Professional Responsibility*, 38 WM. & MARY L. REV. 71 (1996).

164. *See, e.g.*, Michael Meltsner, *Pedagogy: Writing, Reflecting, and Professionalism*, 5 CLINICAL L. REV. 455 (1999); Mark R. Killenbeck, *Professionalism in the Balance?*, 49 ARK. L. REV. 671 (1997); Thomas D. Morgan, *Real World Pressures on Professionalism*, 23 U. ARK. LITTLE ROCK L. REV. 409 (2001); Robert E. Drechsel, *The Paradox of Professionalism: Journalism and Malpractice*, 23 U. ARK. LITTLE ROCK L. REV. 181 (2000).

165. *See, e.g.*, William R. Trial & William Underwood, *The Decline of Professional Legal Training and a Proposal for its Revitalization in Professional Law Schools*, 48 BAYLOR L. REV. 201 (1996).

166. *See* Sheryl Stratton & Lee A. Sheppard, *American Bar Association Says No to Multidisciplinary Practice*, 80 TAX NOTES 311 (2000).

167. *See, e.g.*, Lawrence J. Fox, *Short Story: Free Enterprise Heaven; Ethics Hell*, 27 WM. MITCHELL L. REV. 1217 (2000).

168. *See* Gary A. Munneke, *The Rebirth of E-Lawyering?*, N.Y. L.J., Sept. 24, 2001, at T13.

ers, to take advantage of on-line practice support tools, and to create interactive delivery systems.[169] These applications create a challenge for the old ethics rules.

The current rules may be able to accommodate many of these developments, but not others. Regardless of the outcome, the ethical issues associated with practice on the Internet deserve exploration. The answers to these questions deal more with the core professional values of the bar than narrow interpretations of the ethical codes. As lawyers explore these and other issues, they will need to explore whether and when the values of the twentieth century will work for the legal profession of the twenty-first century.

V. Rethinking Professional Skills and Values

After a decade, it is time to revisit the question of fundamental lawyering skills and values.[170] This Section looks at skills and values and concludes that the new millennium deserves a fresh iteration of both skills and values.

Since the MacCrate Report was released in 1992, change in legal education has accelerated, not declined.[171] Clinics and skills courses in law schools have continued to proliferate.[172] Bar associations have increasingly offered skills-oriented continuing legal education and "bridge-the-gap" programs.[173] Some

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169. *See Déjà vu, supra* note 15, at 17; *see also, e.g.,* Catherine Lanctot, *Attorney-Client Relationships in Cyberspace: The Peril and the Promise*, 49 DUKE L.J. 147 (1999).

170. It may also be appropriate to examine the MacCrate Task Force conclusions concerning those parts of the legal education continuum dealing with pre-legal and continuing legal education. The Report stressed without exploring the acquisition of legal skills before law school, but never proposed a distinct pre-legal education program. As for CLE, the Report proposed an extensive national effort to impose a system of mandatory continuing legal education ("MCLE"). Although many states have adopted MCLE programs, these are far from uniform, and the MacCrate Task Force vision of an integrated system for career-long continuing education has not been realized. These topics deserve critical review, but are beyond the scope of this article.

171. *See* Robert MacCrate, *Educating a Changing Profession: From Clinic to Continuum*, 64 TENN. L. REV. 1099, 1132 (1997).

172. *See id.*; *see also* Robert MacCrate, *Introduction: Teaching Lawyering Skills*, 75 NEB. L. REV. 643 (1996).

173. *See, e.g.,* Lucy Isaki, *From Sink or Swim to Apprenticeship: Choices for Lawyer Training*, 69 WASH. L. REV. 587 (1994); *see also* O. Reginald Osenton,

states have added a skill component to the bar exam.[174] Educators at all levels continue to experiment.[175] Debates about the law school curriculum have continued to confound law faculties and professional associations.[176]

During the same period, there has been no serious reflection on the list of skills and values articulated by the MacCrate Task Force over a decade ago. If society and the profession have undergone transformational change in the past decade, it would seem that the fundamental skills and values should have evolved as well. At least someone should have asked the question. It is either a commentary on the sagacity of the original MacCrate Task Force or an indictment of the temerity of legal commentators that such criticism has not occurred. Perhaps now is the time to begin this dialogue.

A. *Fundamental Lawyering Skills Revisited*

The original list of ten lawyering skills described in the MacCrate Report have been remarkably resilient during the decade since the report was issued. Although commentators have argued about implementation of skills training, no one has attacked the skills directly by charging that a particular skill is not fundamental. An examination of the ten skills suggests they are all still important to lawyering, and they should form the foundation of any updated list of core skills. The better questions are whether some of the original skills deserve expansion or further division and whether other skills should be added to the original list.

B. *New Set of Skills*

In thinking about expanding a well-recognized list describing professional skills, it is necessary to examine the evolving

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Bridge the Gap, W. VA. LAW. YOUNG LAW. SEC. (Aug. 1998) (describing a mandatory professionalism course for newly admitted attorneys).

174. *See, e.g.*, Margaret Fuller Corneille, *Bar Admissions: New Opportunities to Enhance Professionalism*, 52 S.C. L. REV. 609 (2001).

175. *See, e.g.*, Torres & Lundwall, *supra* note 124.

176. The American Bar Association enacted a significant revision in its Standards of Approval for Law Schools in 1996, after considerable study, heated debate and several lawsuits. The revised standards permitted greater diversity in curricular offerings and made clear that clinical and skills education were core elements in the curriculum.

role of the lawyer in society, the relationship of lawyers to clients, societal institutions and other lawyers; and to take to heart some of the criticisms of lawyers in public dialogue. It is also important to think of the legal profession in its true global context.[177] With these considerations in mind, the following six skill groups should be added to the original ten to represent an expanded set of fundamental lawyering skills for the twenty-first century.

1. *Dispute Resolution Skills*

These skills focus primarily on the lawyer acting in a representational capacity or the lawyer as an advocate.[178] In fact, lawyers act as advocates in the majority of matters; the notion of the lawyer as agent for the client presumes that the lawyer will act on the client's behalf as an advocate for the client's position.[179] Advocacy includes both the litigation process and client representation to carry out the client's objectives through persuasion.

Lawyers serve in non-advocacy capacities as well, particularly in transactional practice and other dispute resolution situations. The concept of the lawyer as problem solver is implicit in many situations outside the advocacy arena. In fact, litigation may be viewed as a subset of problem resolution, and advocacy as one of the approaches lawyers may use to resolve problems. In one sense, litigation is a process utilized when all other attempts to resolve problems break down. To the extent that lawyers become involved in disputes before adversarial processes commence, lawyers may discover that their function in the transaction is broader than or different from that of an advocate.

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177. It may be problematic that the concept of what it means to be a lawyer is not the same in different societies, but the reality of global practice means that it is necessary to think globally about what it means to be a lawyer.

178. The 1980 draft of the *Model Rules Of Professional Conduct* postulated that lawyers acted in five capacities: as advocate, as advisor, as intermediary, as negotiator and as evaluator for the benefit of third parties. The 1980 Draft was organized along the lines of these professional roles. This structure was abandoned in the 1981 and subsequent drafts for the present *Model Rules* format. The original non-advocate roles were captured in Rule 2.1, Rule 2.2 and Rule 2.3.

179. *See* RESTATEMENT (SECOND) OF AGENCY § 376 (General Rule); §§ 377-386 (Duties of Service & Obediance); §§ 387-398 (Duties of Loyalty) (1958).

Although the fundamental lawyering skills described by the MacCrate Task Force are likely to be useful tools in handling matters as an intermediary, advisor, negotiator or evaluator, it may be the case that these alternative approaches to problem resolution will require other skills that are not as described in the original SSV.[180] These skills deserve appropriate expansion in the pantheon of lawyering skills.

2. *Organization and Management Skills*

A second area where further examination is appropriate is in the area of the skill described in the MacCrate Report as "organization and management of legal work."[181] The notion that lawyers are responsible for managing the legal work product is implicit in the Model Rules of Professional Conduct, in Rule 1.1 (Competence),[182] Rule 1.2 (Scope of Representation),[183] Rule 5.1 (Supervisory Lawyers)[184] and Rule 5.3 (Subordinate Lawyers).[185] If lawyers are required to practice competently and to exercise professional judgment about the means of their representation, then supervisors must communicate to their subordinates, and the subordinates must abide by their professional consciences.[186] This should be read to include management of the legal work.

As articulated in the SSV, organization and management fails to capture the breadth and depth of management skill required of practicing lawyers today. In order to describe the skill set for successful practice in the twenty-first century, it is necessary to drill down into the skill of organization and management of legal work.

In reality, management is an umbrella for a number of specific skills, discussed below.[187] The best lawyers are not neces-

180. *See* MacNaughton, *supra* note 17.

181. MACCRATE REPORT, *supra* note 1, at 199-203.

182. MODEL RULES OF PROF'L CONDUCT (1999) [hereinafter MODEL RULES].

183. *Id.*

184. *Id.*

185. *Id.*

186. *See id.* at R. 5.2(a) ("A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the discretion of another person.").

187. Portions of this section are adapted from GARY A. MUNNEKE, INTRODUCTION TO LAW PRACTICE: ORGANIZATION AND MANAGEMENT OF LEGAL WORK (the draft of a second edition to GARY A. MUNNEKE, MATERIALS AND CASES ON LAW PRACTICE MANAGEMENT (1991)).

sarily those with the greatest intellect or the most experience, but those who possess and utilize these critical skills to maximize their performance as lawyers.

a. *Time Management*

Time management is perhaps the most critical skill of practice management. Many, perhaps most, lawyers are highly competitive and thrive on pressure. This approach to work represents a behavior pattern that was acquired long before law school, inculcated during years in the educational system, and matured into a lifestyle after graduation. It is also a behavior pattern that can lead to thrill-seeking, addictive disorders and physical symptoms such as hypertension and heart disease. For these personalities, managing time may be the most difficult skill to learn.

In the professional practice setting, effective time management is not a luxury but a necessity. Lawyers who fail to control their schedules often discover that work overwhelms their lives. They find themselves regularly working twelve or more hours a day, seven days a week. They are unable to devote their best efforts to any one project because they have too many competing projects. They live from crisis to crisis, never getting complete control of their workload. They consistently run the risk of being sued for malpractice for missing a deadline, overlooking a critical point of law or simply failing to pursue problematic or distasteful cases they have agreed to handle. They rationalize all of this by claiming that this is the nature of law practice.

These lawyers are wrong. The practice of law does not have to be this way. In the case of time management, not only is it possible to increase efficiency, productivity, and profitability, it is also possible to increase satisfaction in both the professional and personal spheres, thereby reducing the risk of professional failure that hangs like a storm cloud over so many lawyers.

b. *Financial Management*

Financial management skills are critical to effective lawyering.[188] Not only do lawyers need to understand accounting, bookkeeping and financial planning in order to start and operate a practice, they are also charged with the fiduciary responsibility of client funds.[189] In addition to handling these funds, many areas of legal practice involve giving clients advice on matters that have financial implications. Although it may not occur to many lawyers, management of personal finances is also important professionally; lawyers in difficult financial straits are more likely to make errors in judgment with respect to client or firm money.

The level of financial acumen among law students may range from those students who are CPAs and financial planners to those who have trouble balancing their checkbooks. Without a basic understanding of financial concepts, practitioners are unlikely to help themselves or serve their clients' needs adequately.

The bookkeeping function is delegated in many law firms to support staff. Although the lawyer often delegates tasks such as data entry and report generation, financial understanding is necessary both for purposes of supervision and for interpreting financial reports. The advent of inexpensive user-friendly financial management software has made it easier for lawyers to utilize financial management tools. However, access to technology should not be a substitute for an understanding of the underlying principles.

c. *Organization*

Organizational skills are so basic to success in life that most people do not consider them skills at all. Unorganized and disorganized people are sometimes characterized as sloppy, cluttered, flighty and incompetent. In somewhat less critical

188. *See* ARNDT, *supra* note 61, at 1 ("Making a reasonable profit in a law firm or law office is one of the major challenges facing those responsible for profitability management."); IEZZI, *supra* note 61, at 1 ("No law firm can adequately plan for the future without an internal financial management system that allows it to examine the impact of its long-range decisions.").

189. *See* MODEL RULES, *supra* note 182, R. 1.15; JAY G. FOONBERG, THE ABA GUIDE TO LAWYER TRUST ACCOUNTS (1997).

terms, they are described as undisciplined, free-spirited, or less charitably as scatter-brained. Organizational skills are not innate; they can be learned, and they can be taught to people who lack them.

i. *Files*

Competent lawyering requires effective file management. A filing system may include not only client files, but firm and personal files as well. If the firm does not have such a system, the individual lawyer should develop one. Even if the firm utilizes a filing system, it is practical to maintain a separate system for personal files. The concept of a filing system implies having more than just papers stuffed into manila folders and stacked in the corners of offices. A filing system should also include a standard way to label files, a plan for storing files and a method for retrieving information that has been stored.

In addition to these problems, the destruction of information in files may be necessary to protect both the confidentiality rights of clients and the privacy of employees and other individuals.[190] File security may also be required to assure that only individuals who have a right to view the contents of files actually see them. In today's professional environment, filing and retrieval apply to electronic files as well as paper. A surprising number of lawyers who are careful about the way they organize their paper files do little or nothing to protect or manage their computer files. They neither back-up their documents nor password protect sensitive documents.

ii. *Projects*

Another organizational skill is identifying and articulating specific tasks in problems. Sometimes projects seem so colossal that they overwhelm the attorney. They become so big that the lawyer cannot get her hands around them. Organizational skill involves breaking down projects into manageable components. Just as a book is divided into sections, chapters, and sub-divisions within chapters, projects can be divided into tasks and sub-tasks. Projects and tasks often require timelines and

190. *See* Demetrious Dimitriou, *File Retention Schedules*, 16 ABA LAW PRAC. MGMT. 24 (1990).

phases for implementation. Perhaps most importantly, all tasks in a project need to be assigned to an associate. It is almost axiomatic in the workplace that if the job is not assigned to somebody, then nobody will do it. If project management schemes have one great failing, it is that supervisors do not assign task responsibility for critical steps in a process.[191]

A related organizational skill is activity grouping. Grouping can involve placing all of a certain kind of activity in a group to handle at the same time. For example, rather than answering phone calls as they come in throughout the day, some lawyers take and return all their phone calls only at a certain time. Alternatively, a lawyer might have her secretary bring all correspondence she needs to sign at the same time every day. Grouping can also involve subdividing large projects into more manageable subroutines. For instance, partners might divide litigation into research, investigation, pretrial discovery, negotiation and settlement, trial, and appeals. While the specter of taking a case through all of these phases may seem formidable, taking one phase at a time is often much more manageable. The subdivisions of the project can sometimes be divided into further subsets just as an outline can be broken down into several layers of detail. By grouping activities, it is possible not only to make them seem less intimidating, but also to allow the assignment of project responsibilities.

d. *Entrepreneurial Skills*

For those lawyers who either own or operate law firms, it is important to possess a fairly specialized skill set sometimes referred to as entrepreneurial skills. The skills required to sustain an ongoing business operation are often very different from those required to get it started.

Entrepreneurial skill is multi-faceted; it includes the ability to articulate a vision in such a way as to inspire investors, partners, and potential employees to join the venture.[192] It requires a comfort level with risk-taking that not everyone can

191. Project management (*see, e.g.* Microsoft Project) and case management (*see, e.g.,* Time Matters) software can help lawyers to manage their cases or projects.

192. *See* HAMEL & PRAHALAD, *supra* note 20, at 223 ("A competence is a bundle of skills and technologies rather than a single discrete skill or technology.").

muster. It involves creative problem solving where solutions are not readily available because the business does not already exist. It involves stamina and perseverance that reflect a will to actualize a complex idea. It requires a strong sense of identity and self-worth because there will always be naysayers who doubt the entrepreneur's ability to get the job done.

People who grew up seeing family members start their own businesses are most likely to engage in entrepreneurial activities themselves.[193] The fact that so many lawyers start their own practices at some point in their career suggests that lawyers are highly entrepreneurial as a group. While this may be true as a generalization, it is also worth noting that entrepreneurial activities are not for everyone. Some lawyers may be happier working in well-established organizations than they would be assuming the risks of partnership. However, all lawyers should assess their entrepreneurial skills in making decisions concerning their career options.

e. *Marketing*

The concept of marketing legal services was thrust upon the legal profession in 1977 when the United States Supreme Court ruled that under the First Amendment, states could not prohibit lawyers from truthfully advertising their availability to potential clients.[194] For most of the twentieth century, lawyers were prohibited from taking actions aimed at attracting legal business.[195] Bar associations resisted efforts to facilitate legal advertising and sought to limit the scope of the Supreme Court's holding in *Bates* by challenging lawyers who elected to advertise in a number of cases.[196] At the same time, many law-

193. *See, e.g.*, Shannon Faris, *Seeking Entrepreneurial Origins: Are Entrepreneurs Born or Made?*, *at* http://www.celcee.edu/products/digest/99Dig-1.html (last visited Dec. 4, 2001).

194. *See* Bates v. Arizona Bar Ass'n, 433 U.S. 350 (1977).

195. *See* CANONS OF PROF'L ETHICS Canon 27 (1909); MODEL CODE OF PROF. RESPONSIBILITY DR 2-101 (1969).

196. *See, e.g.*, Florida Bar v. Went for It, Inc., 515 U.S. 618 (1995); Peel v. Attorney Registration and Disciplinary Comm'n of Ill., 496 U.S. 91 (1990); Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio, 471 U.S. 626 (1985); *In re* RMJ, 455 U.S. 191 (1979); Ohralik v. Ohio State Bar Ass'n, 436 U.S. 447 (1978); *In re* Primus, 436 U.S. 412 (1978). Collectively, these cases represent an endorsement of commercial speech for the purpose of engaging in advertising by lawyers, within a set of evolving boundaries. What may not be

yers remained uncomfortable with the idea that they can and should market themselves and their law firms to clients.[197] The implication that marketing is unprofessional erects a psychological barrier for many lawyers to developing marketing skills, even when they feel compelled to do so.

In truth, lawyers have always promoted themselves, their law firms and their services. The ethical rules may have prohibited certain forms of marketing, advertising and in-person solicitation, but, even before *Bates,* lawyers sought to build their clientele. The Supreme Court broadened the scope of permissible marketing activities, but still retained a regulatory web that restricts lawyers in a variety of ways.[198]

Inasmuch as most practicing lawyers earn their livelihood from client fees, it is difficult to argue that law practice is not a business; perhaps it is accurate to call it a professional service business or a regulated business, but it is a business just the same. That being the case, attracting and retaining clients is an important aspect of the modern professional service business. The term "marketing" applies to all those activities that produce legal work and ultimately compensation for lawyers. At its root, marketing represents a set of discrete skills fundamental to success in the practice of law. These include strategically assessing the market, advertising and promotion, networking and selling. Strategic market assessment involves collecting and analyzing data about the marketplace, competition and service definition. Networking refers to the process of building and utilizing a set of professional contacts. Advertising and promoting include a variety of activities designed to attract and retain targeted clients. Selling is nothing more than closing the un-

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apparent at first glance is the reluctance of bar associations and disciplinary counsel offices to accept the fundamental notion that it is appropriate for lawyers to actively seek clients. *See* HORNSBY, *supra* note 55; ANDREWS, *supra* note 54.

197. This discomfort has manifested itself in the mantra that law is a profession and not a business, suggesting that the if the practice of law is merely a money-getting trade, an ordinary business, then law as a profession is inevitably compromised. *See, e.g.,* L. Harold Levinson, *Making Society's Legal System Accessible to Society: The Lawyer's Role and Its Implications*, 41 VAND. L. REV. 789, 791-792 (1988).

198. *See generally* HORNSBY, *supra* note 55 (discussing not only the history of lawyer advertising, but the scope and limitations of restrictions on marketing legal services by lawyers).

derstanding with a prospective client to retain the lawyer's services.[199]

Lawyers must possess these skills in order to develop business. Law firms must build a loyal client base to establish and maintain economic viability. Individual lawyers must develop an expertise and a clientele in order to sustain a successful career in law. Appreciation for the interface between the demands of the marketplace and the requirements of the regulatory system represents a core competence. Marketing, when viewed in this light, involves more than generating profit; it is an integral part of the delivery of quality legal services to clients. Thus, marketing skills are critical to effective lawyering, and should be incorporated in an enhanced list of fundamental lawyering skills.

f. *Technology and Information Management*

In an era dominated by technology, it should come as no surprise that the practice of law has become increasingly dependent on computers, the Internet, phones, faxes, photocopiers, personal digital assistants and automated systems.[200] Information or knowledge management invokes the concept of leverage information, most often by incorporating technology into the lawyer or law firm management base. From computerized legal research to substantive practice tools to administrative support, lawyers must be able to use technology in order to practice competently. It follows that technology skills should be incorporated in any list of fundamental lawyering skills.[201]

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199. Many lawyers confuse permissible selling with impermissible solicitation. *Ohralik v. Ohio State Bar Ass'n* established that states could absolutely prohibit in-person solicitation of legal business for pecuniary gain, in contrast to truthful advertising, which could be regulated but not prohibited. Selling occurs whenever a prospect talks to a lawyer about representation, whether the initial contact was protected advertising or unprotected solicitation. Thus, if the client contacts the lawyer in response to lawful advertising, the lawyer can articulate why the client should use the lawyer's services, and close the deal by proposing a legal representation agreement.

200. *See, e.g.*, MARY ANN MASON & ROBERT HARRIS, USING COMPUTERS IN THE LAW: LAW OFFICE WITHOUT WALLS (3d ed. 1994).

201. Although most contemporary law students were weaned on computers and the Internet, many do not have any concept of technology applications in the law office. They may be light years ahead of their professors and supervising attorneys in terms of general knowledge, but they are often short on specific legal applications.

g. *Human Relations*

The practice of law involves contact with a variety of other people, including clients, opposing counsel, judges, witnesses, third parties, support staff and supervising lawyers. The Rules of Professional Conduct allude to human relations as a fundamental part of ethical practice.[202] Legal requirements and case law govern lawyers and law firms in employment situations, including hiring, firing, compensation, promoting and managing of staff.[203] Lawyers must not only appreciate the legal context of these rules and regulations; they also need to possess the skills necessary to work with others in all of these situations.

i. *Team Building and Collaboration*

Modern law practice often involves deploying a team, sometimes referred to as the legal services delivery team, to produce legal work and deliver services to clients. This team may include one or more lawyers, legal assistants, administrative and word processing secretaries, non-legal professionals and the client.[204] Law school sometimes gives law students the impression that they are solitary warriors, doing battle for their clients without reference to any support staff. If ever this was an accurate representation of the way law is practiced, it is certainly not the case today. Lawyers practice law as part of a team, frequently as the leader of the team, but always as a part of it. To the extent that team participation skills, such as team building,

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202. *See* MODEL RULES, *supra* note 182, R. 1.2 (allocating authority between lawyer and client), R. 3.3 (requiring candor to the tribunal), R. 4.1 (prescribing fairness to third parties), R. 4.3 (addressing dealings with unrepresented persons), R. 5.1 (governing lawyers in supervisory roles), R. 5.2 (describing the role of subordinate lawyers), and R. 5.3 (outlining duties of lawyers with respect to non-lawyer support staff). These and other Rules and Comments make it clear that practicing law is not an ascetic activity carried out without contact with other human beings.

203. *See* RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS (2000). A discussion of employment law applications for law firms is beyond the scope of this article. Suffice it to say that lawyers are covered by the same laws and regulations that govern other businesses that employ workers.

204. For much of the twentieth century, the legal services delivery team was essentially the lawyer and secretary. Task differentiation produced by automated processes and complex problems today means that the team might be much larger. For example, a real estate lawyer might use a legal assistant, a title abstractor, a surveyor, a receptionist and a typist, each with different responsibilities to assist in completing a real estate transaction.

cooperative problem solving, active listening, work flow modeling and motivation are integral to the competent delivery of legal services, these skills should be regarded as fundamental lawyering skills.

ii. *Delegation and Supervision*

Whether they are the partners who brought in the work or the associates assigned to complete it, lawyers are responsible for the legal work they handle. Lawyers act as leaders of a legal service delivery team that may include support staff, nonlawyer professionals and other lawyers.[205] Lawyers must know how to delegate tasks effectively, supervise the work of others carefully, and provide feedback and evaluation periodically.[206] Because the failure of a member of the team can be imputed to the lawyer in charge of the team, these management skills are critical to the delivery of quality legal services.

iii. *Sensitivity to Different Cultures*

In contemporary society, lawyers inevitably deal with individuals from a variety of nationalities, ethnic backgrounds, cultures, religions and value systems.[207] They may come from foreign countries or from within the United States. They may speak languages other than English. These individuals may include clients, opposing counsel, witnesses and organizations. Lawyers can no longer escape contact with diverse cultures simply because they come from a small town or practice in a rural area. The need for cultural sensitivity is likely to increase in the twenty-first century.

3. *System Analysis*

Legal delivery systems involve a series of steps or tasks leading to the creation of a legal product or service. The creation of the system concept, decision tree analysis, sequencing of

205. *See* MODEL RULES, *supra* note 182, R. 5.1, R. 5.3.

206. YOUR NEW LAWYER: THE LEGAL EMPLOYER'S COMPLETE GUIDE TO RECRUITMENT, DEVELOPMENT AND MANAGEMENT (Gary A. Munneke, ed., 1983).

207. *See, e.g.,* THE ABA GUIDE TO INTERNATIONAL BUSINESS NEGOTIATIONS (James R. Silkenat & Jeffrey M. Aresty eds., 2000) (describing how lawyers need to be aware of cross-cultural differences when they handle matters outside the United States).

tasks, and communicating responsibilities involves an organizational process. Understanding the techniques of system analysis is essential to building efficiencies into the delivery system. All law offices employ systems in the sense that a system is an organized way of completing recurring activities; not all lawyers possess the skills associated with system analysis.[208] Accordingly, the skill of system analysis deserves to be included in an expanded list of fundamental lawyering skills.

4. *Economic Modeling and Forecasting*

In an era of global economies and interconnected business interests, legal representation of clients can no longer be considered adequate when it addresses only microeconomic considerations. Lawyers cannot offer sound advice on the financial condition of business clients if their advice derives solely from financial and other data drawn from internal business operations. Model Rule 2.1 contemplates that lawyers, in rendering independent professional judgment, "may refer . . . to . . . moral, economic, social, and political factors that may be relevant to the client's situation."[209] This admonition suggests that an element of independent judgment is necessary in the process of considering legal questions in the large context of what they mean to the client. As the world has grown more complex, the context of legal problems, even simple ones, implicates the macroeconomic context.

Despite the growing importance of economic, political and social considerations to the delivery of legal advice, many lawyers lack experience and training in areas such as economic modeling and forecasting. Although individual lawyers may be well-read on matters involving current events, they often lack knowledge about economic theory and analysis.[210] Arguably,

208. *See* ROBERTA RAMO, HOW TO CREATE A SYSTEM FOR THE LAW OFFICE (1975). In this classic book, the author sets out the basic steps for law firms to create substantive practice systems for the law office. Although the advent of computer technology has automated many of these processes, *see* MASON & HARRIS, *supra* note 200; the basic structure described by Ramo has not changed.

209. "Advice couched narrowly in legal terms may be of little value to a client, especially where practical considerations, such as costs and effects on other people, are predominant." MODEL RULES, *supra* note 182, R. 2.1 cmt. 2.

210. One comment to Rule 2.1 recognizes that lawyers may not always possess the necessary extralegal knowledge to render advice: "Matters that go beyond

lawyers should know enough about these matters to give competent advice to clients, and arguably, economic modeling and forecasting represent a professional skill that lawyers should possess in order to serve their clients' interests competently.

5. *Adaptability and Innovation*

Adaptability and innovation are both skills that have particular value in times of change.[211] We are living in such an era. Lawyers are not particularly well-equipped to deal with change, operating from a position of legacy.[212] Yet, if lawyers are to serve their clients as well as themselves, they must learn to embrace the reality of change in our modern world, seek innovative solutions to problems, avoid getting mired down in the Procrustean status quo when doing so would impede problem resolution, and learn to adapt to new circumstances as they arise. To the extent that these skills are intrinsic to the work of lawyers and the problems of clients, they deserve to be included in any list of the basic skills of lawyering.

6. *Career Development*

A final group of skills deserves mention in the list of fundamental lawyering skills. These are the skills related to personal career development.[213] It is easy to ignore career skills when thinking about lawyering because most lawyering skills typically are applied directly to the delivery of legal services to clients. However, if we accept the MacCrate Task Force paradigm of a continuum of professional education, we must also accept an underlying assumption that lawyers continue to develop as skilled professionals throughout the course of their careers. Professional growth means not only continued learning, but

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strictly legal questions may also be in the domain of another profession. . . . [w]here consultation with a professional in another field is something a competent lawyer would recommend, the lawyer should make such a recommendation." MODEL RULES, *supra* note 182, R. 2.1 cmt. 4.

211. *See, e.g.*, HAMEL & PRAHALAD, *supra* note 20; *see* TOM PETERS, CIRCLE OF INNOVATION (1999).

212. *See generally* SEIZE THE FUTURE, *supra* note 6.

213. *See* GARY A. MUNNEKE, THE LEGAL CAREER GUIDE: FROM LAW STUDENT TO LAWYER (2002) (describing career skills in a book for law students seeking employment). This book refers to ADELE SCHEELE, SKILLS FOR SUCCESS: A GUIDE TO THE TOP (1979) (describing a set of skills possessed by successful professionals, based on the Scheele's doctoral dissertation study of successful lawyers).

also maximization of accumulated skill and knowledge for the benefit of clients. In other words, a lawyer who has practiced for twenty years should be a better lawyer than one who has recently passed the bar exam. Career skills involve the decision making process of marshalling the forces of continued professional growth and enhanced competence. Thus, career skills represent tools for enhancing the effectiveness of lawyers in applying all the other skills of lawyering. For this reason, career development skills are as fundamental as any of the other lawyering skills described in the MacCrate Report or this article.

C. *The New Core Values*

In addition to skills, the MacCrate Report addressed the topic of professional values.[214] The core values listed there are: the provision of competent representation;[215] striving to promote justice, fairness, and morality;[216] striving to improve the profession;[217] and professional self-development.[218] In the period since the MacCrate Report was published, discussion within the context of the educational continuum of professional values has generated much less attention than the topic of skills. Legal educators have tended to accept uncritically the list of core values presented by the MacCrate Task Force. This may in part be due to the fact that the values of loyalty, independence, confidentiality and public service are, like motherhood and apple pie, so innocuous that they can be embraced by educators from both the traditionalist and skills camps.

Perhaps the MacCrate Task Force nailed the topic so squarely that there is nothing more to be said. Aside from the facially preposterous claim that the topic of values has been exhausted, there is evidence from the periphery that the legal profession is in the midst of a heated debate about the nature of lawyers' professional values. As the ABA and numerous state and local bar associations began to debate the contentious top-

214. MACCRATE REPORT, *supra* note 1, at 207.
215. *Id.*
216. *Id.* at 213.
217. *Id.* at 216.
218. *Id.* at 218.

ics of law firm ancillary business activities[219] and multidisciplinary practice (hereinafter "MDP") in the 1990s,[220] references to professional values became increasingly prominent.[221] Significantly, both proponents and opponents of MDP invoked professional values to support their positions.[222] The purpose of these comments is not to resurrect the MDP debate but rather to illustrate that, within the legal profession, reasonable minds can differ on the subject of professional values.

Notwithstanding the discussion of professional values in other contexts, the passing of a decade since the MacCrate Report was first published, particularly the fact that it was a decade of changing values in society at large,[223] suggests that it is time to re-examine the list of core professional values. Compared to its ten skills, was the MacCrate Task Force enumeration of only four "values" a complete or accurate picture of professional values? Were the enunciated values simply the common denominators to which everyone on the Task Force would subscribe? Have these values undergone change since 1992, or are they more like immutable laws? Do the MacCrate Task Force values represent common values that cut across all segments of the legal profession, or the values of particular groups? Do different groups of lawyers have different profes-

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219. *See* Gary A. Munneke, *Dances with Non-Lawyers: A New Perspective on Law Firm Diversification*, 61 FORDHAM L. REV. 559 (1992).

220. *See* MacNaughton, *supra* note 17, at 692.

221. *See* New York State Bar Association, *Preserving the Core Values of the Legal Profession: The Place of Multidisciplinary Practice in the Law Governing Lawyers*, Report of the Special Committee on the Law Governing Law Firm Structure and Operation (2000). This report, chaired by Robert MacCrate of the ABA's MacCrate Task Force, became the focal point of opposition to the ABA Commission on Multidisciplinary Practice recommendations to ease the restrictions on practice with nonlawyer professionals. The ABA House of Delegates eventually passed a resolution rejecting changes in the Model Rules of Professional Conduct to open the doors to MDPs and reaffirming "the core values of the legal profession." ABA ACTIONS OF THE HOUSE OF DELEGATES REP. 10I (JULY 2000).

222. *See supra* text accompanying note 166 for an example of how opponents of MDP articulated questions of professional values. For the proponents view, see American Bar Association Commission on Multidisciplinary Practice, *Report to the House of Delegates* (2000), http://www.abanet.org/cpr/mdpfinalrep2000.html (last visited Nov. 8, 2001); *see also* Gary A. Munneke, *Lawyers, Accountants and the Battle to Own Professional Services*, 20 PACE L. REV. 73, 78-79 (1999).

223. *See supra* text accompanying notes 30-35.

sional values?[224] Is it possible to identify a set of professional values common to these disparate groups of legally trained individuals? These questions beg to be addressed.

VI. Conclusion

Given future trends in society and the impact of change on the legal profession, what are the implications for legal education? What considerations will influence teaching law students from Generation X and beyond?[225] How will legal educators integrate technology into the classroom to teach both traditional legal subjects and professional skills? How will law teachers address the growing diversity of the population by integrating new voices, new values and new demands into the law school curriculum? Will law schools find ways to teach students both how to think like lawyers and to be lawyers?

While there is no clear voice answering these questions, there are clear alternatives. Several important considerations will affect the future of legal education, particularly in the area of professional skills. Interdisciplinary teams will be increasingly required to solve complex problems. Mediation, arbitration and other forms of non-judicial dispute resolution will be utilized as alternatives to litigation. Lawyers will have to appreciate cultural diversity, insistence on autonomy in decision

224. For example, litigators v. transactional lawyers, urban v. rural lawyers, plaintiffs' lawyers v. insurance defense lawyers, law firm lawyers v. corporation lawyers, legal services lawyers v. business lawyers, lawyers from ethnically diverse communities v. white majority cultures, female lawyers v. male lawyers, Christian lawyers v. Islamic lawyers. In their seminal work, Frances Zemans and Victor G. Rosenblum found significant differences in values among diverse cohorts within the practicing bar. *See* FRANCES ZEMANS & VICTOR G. ROSENBLUM, THE MAKING OF A PUBLIC PROFESSION (1981). This line of research has not been seriously pursued in recent years, but deserves greater attention. Perhaps lawyers should be asking whether they belong to a single unitary profession at all, or whether law is, in reality, several professions.

225. The experiences of each generation are reflected to some degree by their world view, which is molded in part by the salient events of their lives. The World War II generation grew up with a backdrop of depression, fought in a global conflict and struggled to build prosperity and peace for their children. The baby boomers cut their teeth on the Cold War, grew to adulthood with Vietnam and Watergate, then turned inward to build a better life for themselves. Members of Generation X grew up with the victory of capitalism over communism, the rise of technology and a future clouded by ambiguity, uncertainty and fractured value systems.

making, skepticism for paternalistic answers to questions and distrust for institutions including the law.

Law schools may need to develop multiple curricula for litigation, transactional and multidisciplinary practice. Educators will be forced to recognize training in legal specialties and to acknowledge that many graduates may be driven by economic forces into commodity legal services. The Harvard model of training generalists who enter large corporate law firms and thereafter acquire practice skills and substantive expertise will become increasingly meaningless for many law students and law schools.

Law schools will need to teach their students by utilizing in their own planning efforts, skills of adaptability and foresight.[226] They will need to teach students about the process of change, and to understand the process themselves. Both students and educators will need the skill of formulating a strategic vision for the future. Law schools and individual lawyers will be forced to create a unique identity for themselves, to develop a market niche and to reject pressures to simply follow tradition or the pack. Law schools and law students, as well as practitioners, will have to harness technology in order to assure their viability in the twenty-first century.

Ironically, law professors will need to impart to students skills that they do not understand well themselves. It is not clear whether legal educators will need to engage in personal retooling to be effective teachers in the coming decades, or whether law schools will have to recruit different types of professors than they have selected in the past. Law schools will need to explore the possibilities for partnering strategically with the private sector not only to bring skills training to the education table, but also to help underwrite the costs of research, development and education under the evolving paradigm.

Law schools must exercise leadership in the legal profession, intellectually, morally and strategically. Legal educators must be proactive in confronting the future; it will not be enough to sit in the ivory tower and hurl criticism of lawyers, judges and the legal system from the intellectual parapets. Ed-

226. *See supra* text accompanying notes 211-212.

ucators must roll up their sleeves and join the fray.[227] Practitioners and legal educators alike have a window of opportunity to make decisions about the future of practice and law schools, but if they do not act, many choices will be foreclosed to them.

A reexamination of the MacCrate Report provides a useful start for legal educators. Changes in society and the profession dictate that we recognize a new set of skills, the original fundamental lawyering skills articulated by the MacCrate Task Force, plus a variety of new skills necessary to manage the practice, clients and change. These skills need to be incorporated into the educational continuum in order to give lawyers the tools they will need to practice successfully in the evolving marketplace for legal and professional services.

227. Revolution is not a spectator sport. If the legal profession is indeed in the midst of a cultural revolution, it is inevitable that changes in practice will precipitate changes in legal education. If this revolution transforms legal education, then the practice of law will experience change as well. For educators, the question is not whether transformational change will occur, but whether they wait to respond to events or take the initiative and become change agents.