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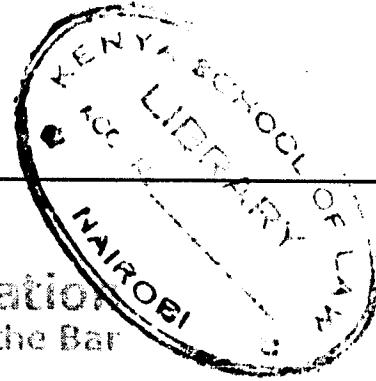
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## Section of Legal Education & Admissions to the Bar



### MacCrate Report

#### Legal Education and Professional Development

##### An Educational Continuum

Report of The Task Force on Law Schools and the Profession: Narrowing the Gap

American Bar Association

Section of Legal Education and Admissions to the Bar

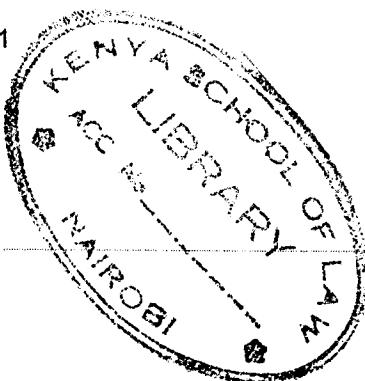
JULY 1992

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Dedication

Task Force



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## Introduction

The Common Enterprise

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### **The Common Enterprise**

At its birth this Task Force acquired a name that projects a distorted image of a legal education community separated from the "profession" by a "gap" that requires narrowing. As the Task Force proceeded to fulfill the mission suggested by its name and to narrow the "gap," it recognized that the image was false. Thus, the title of this Report attempts to correct the distortion, and suggests a different and more accurate vision of the relationship between legal education and the practicing bar. Both communities are part of one profession. The skills and values of the competent lawyer are developed along a continuum that starts before law school, reaches its most formative and intensive stage during the law school experience, and continues throughout a lawyer's professional career. Legal educators and practicing lawyers should stop viewing themselves as separated by a "gap" and recognize that they are engaged in a common enterprise --the education and professional development of the members of a great profession.

Law schools and the practicing bar have different missions to perform, and they function in different experiential worlds with different cultures. These differences are pronounced and result from a system of legal education that relies on university-based professional schools for the formal education of the country's lawyers. The transition during this century from a clerkship/mentoring system of educating lawyers to reliance on professional schools in a university setting has been traced by many observers to the acceptance of the Langdellian appellate case-method, which views the study of law as an academic science. Other observers have pointed to the dissatisfaction of the profession with the exploitative aspects of law-office training and the poor quality of the product. Other, more skeptical, observers have claimed that the requirement of a professional degree, and the additional requirement of an undergraduate degree before admission to law school, was devised by the profession as an unnecessary and artificial barrier to entry.

Whatever may have been the genesis, the in-house clerkship form of legal education was increasingly incompatible with the needs of the emerging corporate law firms created to meet the complex needs of institutional clients. This may account for the parallel development in this century of three interrelated entities -- the modern American industrial and financial corporation functioning within the complex administrative state, the multi-service corporate law firm structured to service its corporate clients, and the university-based law school that emphasizes analytical skills and the ability to deal with complex legal issues.

Thus, in contrast to virtually every other country, prospective lawyers in the United States commence their study of law in a professional school, after receiving an undergraduate degree. Students in other countries experience their first academic contact with the law as undergraduates, similar to students studying history, literature or philosophy. In other countries, the practicing bar assumes the major responsibility for accomplishing the transition of these students into practicing lawyers. Here, the bar's role is ill-defined.

### **The Gap Between Expectation and Reality**

It has long been apparent that American law schools cannot reasonably be expected to shoulder the task of converting even very able students into full-fledged lawyers licensed to handle legal matters. Thus, a gap develops between the expectation and the reality, resulting in complaints and recriminations from legal educators and practicing lawyers. The lament of the practicing bar is a steady refrain: "They can't draft a contract, they can't write, they've never seen a summons, the professors have never been inside a courtroom." Law schools offer the traditional responses: "We teach them how to think, we're not trade schools, we're centers of scholarship and learning, practice is best taught by practitioners."

Too often these responses are thoughtless reactions to unfair criticism, and reflect an unwillingness of the academy and the practicing bar fully to understand the cultures, needs, aspirations, value systems, and accomplishments of each community. The community of over 6,000 full-time law professors does not consist of ivory-tower scholars removed from the problems of the profession and concerned only with their academic pursuits. Conversely, lawyers are not oblivious to the contributions of law schools to the quality of the profession or to a broad-based legal education system that extends beyond technical skills and the knowledge of certain substantive areas of law.

Nevertheless, the criticisms that the law schools and the practicing bar level at each other have a strong base in reality. From the perspective of law schools, the practicing bar may not fully appreciate the benefits, and the limitations, that flow from a system of academically strong university-based law schools. Law teachers are university professors with academic responsibilities and aspirations that extend both to teaching and to scholarship. While law schools vary in the emphasis placed on scholarship, there are few, if any, ABA-approved law schools that do not incorporate a scholarship component into the requirement for tenure. A strong academic cultural commitment to research and scholarship arises from the university's academic requirements, the law school's self-imposed academic standards, ABA accreditation standards and AALS membership requirements, and the intellectual aspirations of individual professors. Law schools achieve national status in large part because of the scholarly reputations of their faculties. Such reputations help attract the best students who, in return, have the best job opportunities upon graduation. Inevitably, law schools tend to seek out, as new faculty members, those who show promise of high-level scholarship.

While practicing lawyers undoubtedly appreciate the value of the law school experience to their own careers, surveys understandably indicate that practicing lawyers believe that their law school training left them deficient in skills that they were forced to acquire after graduation. Practitioners tend to view much academic scholarship as increasingly irrelevant to their day-to-day concerns, particularly when compared with the great treatises of an earlier era. It is not surprising that many practicing lawyers believe law professors are more interested in pursuing their own intellectual interests than in helping the legal profession address matters of important current concern.

The gap between the teaching and practice segments of the profession is further accentuated by the apparent lack of participation by law professors in the activities of the organized bar. Whether this results from a lack of interest on the part of law teachers, or the cost of such participation which must, in most cases, be borne by the individual faculty member, or whether law professors perceive (probably incorrectly) that their involvement in the work of the organized bar is not particularly welcomed, both the organized bar and the law schools suffer from this apparent failure of the two cultures to work in the areas of common interests.

Actually, law teachers are more actively involved in the work of the profession than is commonly recognized. They serve as members of bar association committees, are frequent participants on continuing legal education panels, and are actively involved as reporters for the various projects of the American Law Institute. The recent group membership program of the American Bar Association enables full-time faculty members of law schools that joined the program to become members of the American Bar Association without paying the membership dues.

### **Development of the Skills Training Curriculum**

It is, of course, in the area of curriculum that the practicing bar has traditionally been most critical of law schools. Paradoxically, it is precisely in the area of curriculum development where law schools have made changes that are most responsive to criticism from the bar. For that reason there is often widespread resentment at the failure of the practicing bar to appreciate and recognize legal education's response to the concerns of the bar.

Unquestionably, the most significant development in legal education in the post-World War II era has been the growth of the skills training curriculum. As recently as twenty years ago, the typical skills training component of a law school curriculum consisted of a first-year moot court program, and perhaps a trial advocacy course. Today, clinical courses, both in a simulated and live-client setting, occupy an important place in the curriculum of virtually all ABA-approved law schools. Many are taught by full-time faculty members who, pursuant to an ABA accreditation standard, are eligible for tenure or some form of equivalent job security. A clinician is present on virtually every ABA site inspection team to help the team

evaluate the quality of the law school's skills-training program, with particular emphasis placed on the commitment of resources and the availability of full-time faculty supervision when students are involved in externship forms of clinical programs.

A major aspect of the work of the Task Force has been to conduct an in-depth survey to document the full extent of curriculum development in the skills training area, and the availability of such programs to students. The survey demonstrates the major commitment of resources that law schools have made to the development of skills training programs. Despite this commitment there is a wide-spread belief in the legal education community that the practicing bar has taken little notice of these important developments in legal education while decrying, at the same time, the "gap" between legal education and the needs of the profession. Most importantly, few employers appear interested in whether students have enrolled in such courses or how they perform in them.that this selection of particular courses has little or no impact on hiring decisions. To legal educators, this reaction reveals an inexcusable indifference to legal education's commitment to skills training and calls into question the legitimacy of the practicing bar's incessant criticisms and constant demands that law schools should do more.

### **For What Must Lawyers Prepare?**

At its first meeting the Task Force considered a threshold question: For what kind of a profession are we trying to educate lawyers? The law teaching profession has advanced considerably beyond the point where, fifty years ago, Karl Llewellyn could confidently state: "No faculty, and, I believe, not one percent of instructors, knows what it or they are really trying to educate for." Nevertheless, the Task Force was aware that even law teachers with a strong interest in developments in the profession have been unable to keep pace with the rapid changes. It was important, therefore, to gather an all-inclusive overview of the profession today, its great growth, change, diversity in practice settings and differentiation in lawyers' work, as well as its organization and regulation. Information was gathered from a wide array of sources both within and outside the ABA. Part I of this Report: "The Profession for Which Lawyers Must Prepare" is the result of that project.

### **The Skills and Values to Be Acquired**

Early in its deliberations this Task Force concluded that it was not possible to consider how to "bridge" or "narrow" the alleged "gap" between law schools and the practicing bar without first identifying the fundamental skills and values that every lawyer should acquire before assuming responsibility for the handling of a legal matter. Surprisingly, throughout the course of extensive decades-long debates about what law schools should do to educate students for the practice of law, there has been no in-depth study of the full range of skills and values that are necessary in order for a lawyer to assume the professional responsibility of handling a legal matter. Recognizing that such a study is the necessary predicate for determining the extent to which law schools and the practicing bar should assume responsibility for the development of these skills and values, the Task Force prepared a Statement of Fundamental Lawyering Skills and Professional Values. In Part II of the Report, the Task Force sets forth its view of the skills and values new lawyers should seek to acquire.

### **The Continuing Process of Professional Development**

The Task Force's collective effort has resulted in the recognition that the task of educating students to assume the full responsibilities of a lawyer is a continuing process that neither begins nor ends with three years of law school study. Having reached this conclusion, the Task Force, in Part III of the Report, has identified the roles of law schools and the practicing bar in assisting prospective lawyers as they move along the continuum from applicant to student to qualified lawyer.

Thus, we have concluded that there is no "gap." There is only an arduous road of professional development along which all prospective lawyers should travel. It is the responsibility of law schools and the practicing bar to assist students and lawyers to develop the skills and values required to complete the journey. To identify those skills and values, to describe what law schools and the practicing bar are now doing to advance the professional development of lawyers, and to recommend how the legal education

community and the practicing bar can join together to fulfill their respective responsibilities to the profession and the consuming public has been the central mission of this Task Force.

## **Part II.**

### **A Vision of the Skills and Values Which New Lawyers Should Seek to Acquire**

#### **Chapter Four Formulating a Statement of Skills and Values**

##### **A. Reasons for a Statement**

##### **B. Focus of the Statement**

##### **C. Formulation of the Statement**

##### **D. Uses of the Statement**

Range of Possible Uses

Uses by law students

Uses by law schools

Uses by developers of programs for continuing legal education

Uses by law offices in designing in-house training for new lawyers

Uses by practicing lawyers in self-evaluation and self-development

Facilitating the Proposed Uses of the Statement

The creation of a national institute

The use of the Statement as a vehicle for organizing resources

Refinement of the Statement of Skills and Values through discussion within the profession

##### **E. Abuses of the Statement to Be Avoided**

##### **A. Reasons for a Statement**

When the Task Force began to consider how the preparation of lawyers for practice could be improved, it felt the need to develop a conception of the object of this preparation, in the form of a compendium of the skills and values that are desirable for practitioners to have. Such an inventory was useful to provide a focus for the thinking of the Task Force itself, but the Task Force believed that it might be even more useful as a jump-off point and stimulus for thinking within the profession as a whole. After the Task Force had reviewed prior writings on the subject and examined the range and complexity of lawyers' work (described in Part I of this Report), two points became quite apparent:

*First*, the Task Force itself could not hope to write a comprehensive statement of skills and values that all members of the profession would-or could reasonably be expected to-accept as definitive. Whether or not such a project would ever be feasible, it was certainly not feasible in the current state of the art or for any single group of individuals.

*Second*, for precisely this reason, there was considerable value in putting together the best comprehensive statement which the Task Force itself could develop, so as to begin a process through which, in the years ahead, discussion in all sectors of the profession could be focused on questions about the nature of the skills and values that are central to the role and functioning of lawyers in practice. By hammering out this kind of a statement, the Task Force would refine and guide its own analysis of immediate steps that might be taken to enhance the quality of lawyers' preparation for practice; by disseminating the statement, the Task Force would encourage the profession to examine it critically and to improve upon the thinking that went into it.

##### **B. Focus of the Statement**

An analysis of skills and values necessarily must take account of the phenomena of specialization and of

division of labor within law firms, described in Part I. These developments are not inconsistent, however, with the traditional vision of law as a unitary profession whose members share a common calling. Regardless of their particular fields of practice or specialties, lawyers are united by their pursuit of certain values, which this Statement terms the "fundamental values of the profession." These values inform and shape the lawyer's use of professional skills. See, e.g., McKay, *What Law Schools Can and Should Do (and Sometimes Do)*, 30 N.Y.L. SCH. REV. 491, 509-10 (1985).

Moreover, notwithstanding the increasing demand for specialized knowledge and skills, competent representation of a client still requires a well-trained generalist-one who has a broad range of knowledge of legal institutions and who is proficient at a number of diverse tasks. This is so because any problem presented by a client (or other entity employing a lawyer's services) may be amenable to a variety of types of solutions of differing degrees of efficacy; a lawyer cannot competently represent or advise the client or other entity unless he or she has the breadth of knowledge and skill necessary to perceive, evaluate, and begin to pursue each of the options. Indeed, the lawyer is not even in a position to diagnose the client's problem adequately unless the lawyer has the range of knowledge and skill necessary to look beyond the client's definition of the problem and identify aspects of the problem and related problems which the client has not perceived.

The focus of this Statement is on the skills and values with which a well-trained generalist should be familiar before assuming ultimate responsibility for a client. Different lawyers will emphasize different skills, and practitioners will often be concerned with matters outside the scope of the Statement, such as attracting and retaining clients. The Statement is concerned with what it takes to practice law competently and professionally.

The Statement recognizes that a lawyer functioning as a member of a team need not be familiar with all of the skills and values analyzed in the Statement, so long as the team as a whole can mobilize and effectively apply the full range of skills and values in representing a client and making professional judgments. For similar reasons, the Statement recognizes that new members of the profession need not become acquainted with the full roster of skills and values while they are in law school or even before they are admitted to the bar. If, as frequently happens, an entry-level lawyer practices under the supervision of a more experienced attorney-and if the attorney who bears the ultimate responsibility for representing and advising the client is truly in a position to protect the client's interests and to ensure that the client receives competent representation-the entry -- level attorney may appropriately work on the matter without possessing all of the qualifications envisioned by this Statement.

Whether a lawyer is working alone or as a member of a team, substantive knowledge -- and often highly specialized substantive knowledge -- is necessary to complement the skills and values that are the subject of this Statement. In choosing to focus on skills and values, the Task Force did not ignore or underestimate the important role that substantive knowledge plays in the provision of competent representation and in the process of preparing for competent practice. The Task Force fully appreciated that attention has been, and surely will continue to be, given to the question of what aspects of substantive law should be included in a course of preparation for all new members of the profession. But, the Task Force concluded, this issue is sufficiently distinct from an analysis of skills and values that the Statement should not attempt to address both.

### **C. Formulation of the Statement**

The Task Force began its classification of lawyers' skills and values by reviewing an extensive bibliography on the subject compiled by its Reporter. The Task Force then formed a subcommittee to consider the utility and feasibility of preparing a systematic statement of skills and values and to explore the possible focus and content of such a statement. The subcommittee examined additional literature and proposed the format and a rough inventory of the topics to be covered in a Statement of Skills and Values. These were reviewed and approved by the Task Force, which also approved the subcommittee's recommendation that a special consultant be engaged to work with the subcommittee in preparing a first draft of the Statement.

Considerable information and a wide range of views pertinent to the subject of the Statement of Skills and Values were generated at a series of hearings conducted by the Task Force. (See Appendix C.) Observations and ideas were received from practicing lawyers, judges, law teachers, bar examiners, and representatives of bar associations about the demands of legal practice, the capabilities that it requires,

and the extent and nature of the deficiencies that entry level practitioners experience or exhibit.

Drawing on the prior literature as well as the information gathered at the hearings, the subcommittee prepared a first draft of the Statement. This draft and successive drafts reworked by the subcommittee were reviewed and progressively refined by the Task Force.

A Tentative Draft produced by this process was circulated nationally to members of the Bar and law school faculties in June 1991, with a request for comments on the substance of the draft, its form and content, and the uses to which a statement of skills and values might be put. This produced a considerable number of responses, including comments by representatives of American Bar Association sections and committees, the Association of American Law Schools, the Appellate Judges Conference, the Conference of Chief Justices, and state and local bar associations, as well as judges, law school deans and faculty members, practitioners, and professionals in other fields who regularly work with lawyers. The Task Force gave careful consideration to each of these comments and made numerous changes in the document as a result. These included the addition of sections dealing with skills and values omitted in the Tentative Draft, the reformulation of some skills and values discussed in the Tentative Draft, and the expansion or compression, particularization or generalization of others.

#### **D. Uses of the Statement**

##### **Range of Possible Uses**

*Uses by Law Students.* The Statement of Skills and Values can serve as an aid to law students in preparing for practice. As noted on page 228 of this Report, many law students are passive consumers of legal education: They lack an adequate understanding of the requirements for competent practice, the process by which a new member of the profession prepares for practice and attains competence, and the role that law schools play in that process. If the Statement of Skills and Values is distributed to all law students at the time they enter law school, students will begin their legal education with a clearer sense of the importance of acquiring skills and values in the course of professional development. Students will be encouraged to seek out opportunities to develop these skills and values while they are in law school (in law school courses, extra-curricular activities, and part-time and summertime employment) and after law school (in postgraduate education, continuing legal education, judicial clerkships, and legal practice). Moreover, students will be assisted to reflect upon and learn from these experiences and to develop for themselves a considered long-range educational agenda aimed at attaining professional competence and eventually excellence.

Familiarity with the Statement of Skills and Values will also enable law students to play a more active role in shaping the educational opportunities available to them while in law school and afterward. Thus, for example, law students will be able to participate more thoughtfully in their law schools' curricular planning and to offer suggestions to part-time and summertime employers about what types of experiences would complement the learning that takes place in law school. In this manner, law schools, employers, and other providers of legal education and training can benefit from a better informed consumer's perspective.

Finally, providing the Statement of Skills and Values to entering law students will allow them to take part in the process of refining the Statement and the profession's understanding of skills and values. As Chapter 4.A explains, the Task Force sees the Statement as the starting point for an ongoing exchange within the profession about the skills and values needed for competent practice and the best means to teach and learn these skills and values. By contributing their perspective, law students can substantially enrich this exchange.

*Uses by Law Schools.* The Statement of Skills and Values can serve as an aid to law schools in curricular development. The empirical data collected by the Task Force suggest that many schools are experimenting with a variety of curricular changes intended, *inter alia*, to enhance the quality of preparation for legal practice. See Chapter 7.B *infra*. This is as it should be. By providing the beginnings of a shared vocabulary in which local innovations as well as traditional law school courses designed to teach skills and values can be discussed, compared and debated, the Statement should facilitate the trade and refinement of ideas about curricular needs and directions.

Law schools can use the Statement as a focus for examining proposals to modify their curricula to teach skills and values more extensively or differently than they now do. Such modifications might include, for

example:

- revisions of conventional courses and teaching methods to more systematically integrate the study of skills and values with the study of substantive law and theory;
- revisions of existing skills courses or programs, or the creation of new ones, to better achieve pedagogical goals;
- development of courses or programs concerned with professional values.

The Statement of Skills and Values can also be of use to law schools when conducting the Self-Study required by Standard 201(a) of the American Bar Association Accreditation Standards. As the most complete (and, as of the date of this report, the most current) analysis of the skills and values needed for practice, the Statement can serve as a useful tool when a law school assesses the extent to which its curriculum "provide[s] a sound legal education and accomplish[es] the objectives of [the school's] ... educational program" (Standard 201(b)), "offer[sl instruction in professional skills . . . [and] the duties and responsibilities of the legal profession" (Standard 302(a)(iii)-(iv)), and provides "an educational program that is designed to qualify its graduates for admission to the bar" (Standard 301(a)). Although the Statement is not meant to serve as a blueprint or a measure of performance in the accrediting process (see Chapter 7.C *infra*), it is an instrument that faculties may wish to consider when developing and evaluating their educational programs.

*Uses by Developers of Programs for Continuing Legal Education.* In addition to informing the design and content of postgraduate courses in law schools, the Statement of Skills and Values can serve as an aid to the development and enrichment of programs for postgraduate education outside law school (including, for example, Continuing Legal Education (CLE) and bridge-the-gap programs). To assist new lawyers to acquire necessary skills and values, it is particularly important that providers of postgraduate legal education be encouraged to develop programs in which:

- Instruction includes exercises that require students to participate actively in role.
- Those teaching in the program have special expertise and training as teachers of skills and values.
- Teaching occurs in a context that allows students to receive immediate feedback on their applications of lawyering skills and values.

The Statement of Skills and Values can serve as a guide to commercial and non-profit organizations for continuing legal education-as well as to local, state, and national bar associations-in developing appropriate programs. It also can serve as a reference source for state bars, state supreme courts, and other entities responsible for overseeing the bar, in assessing the need for mandatory continuing legal education and evaluating the adequacy of existing programs of continuing legal education.

*Uses by Law Offices in Designing In-House Training for New Lawyers.* Many law firms, government agencies, corporate counsel, and other types of law offices have training programs for newly hired attorneys. These programs often provide training in lawyering skills and values in addition to teaching specialized substantive knowledge relevant to a particular field of practice.

The Statement can serve as a guide to the designers of law office programs in evaluating the adequacy of existing programs and, where appropriate, revising and expanding such programs. In particular, the Statement can inform judgments about the nature and amount of training that all lawyers should receive before beginning to represent clients and before assuming ultimate responsibility for a client.

*Uses by Practicing Lawyers in Self-Evaluation and Self-Development.* Although the Statement of Skills and Values is primarily directed at new lawyers and the means by which they prepare for practice, the Statement recognizes that the process of learning and refining professional skills continues long after a lawyer has commenced practice. Indeed, the Statement explicitly states that lawyers should be committed to the value of seeking out and taking advantage of opportunities to increase their knowledge and improve their skills in order to remain competent within their chosen field and in order to attain excellence. See Value ? 4 & Commentary; see also Value ? 1.2 & Commentary to Value ? 1.

The Statement's analysis of skills and values can be useful to practicing lawyers in evaluating their capabilities for the purpose of identifying areas in which further study would be beneficial. See also, e.g., AMERICAN LAW INSTITUTE-AMERICAN BAR ASSOCIATION COMMITTEE ON CONTINUING PROFESSIONAL EDUCATION, A PRACTICAL GUIDE TO ACHIEVING EXCELLENCE IN THE PRACTICE OF LAW: STANDARDS, METHODS, AND SELF-EVALUATION (1992) ("offer[ing]... a method by which all lawyers can assess their own skills, knowledge, ethical standards, and overall competence," *id.* at xiii). In addition, practicing lawyers can use the Statement's analysis of skills and values as a reference when selecting courses of study and as a framework when reflecting upon and learning from lawyering experiences. See Value ? 4.1.

### **Facilitating the Proposed Uses of the Statement**

*The Creation of a National Institute.* In later sections of this Report, the Task Force sets forth a proposal for a national institute for the practice of law. See Chapter 10 *infra*. Such a national institute could play a central role in furthering the various uses of the Statement proposed above. It could stimulate and facilitate discussion and critical analysis of the Statement and a progressive refinement of thinking about the subjects of the Statement within the profession. It could develop modes of instruction, course materials, problems, and methods of assessment to assist law schools to teach skills and values more effectively. And it could create and serve as a clearinghouse for model curricula, instructional materials, and teacher training for providers of continuing legal education and law office programs.

*The Use of the Statement as a Vehicle for Organizing Resources.* Several of the proposals set forth above will require the creation of new modes of instruction and the development of new instructional materials. Later sections of this Report will suggest various ways in which the proposed national institute, bar associations, and other organizations can assist law schools and providers of continuing legal education in these endeavors. See Chapters 7-10 *infra*. It appears likely, however, that law schools and providers of continuing legal education will need increased funding to implement the reforms suggested in this Report. The Statement of Skills and Values can serve as a vehicle for organizing the resources of providers and securing the requisite funding.

*Refinement of the Statement of Skills and Values Through Discussion Within the Profession.* As Chapter 4.A explains, the Task Force views the Statement of Skills and Values as a work in progress. The document is intended to serve as a stimulus and starting point for an ongoing exchange within the profession about the skills and values that a legal practitioner should have and about the types of education and training that lawyers should receive at various stages of their careers.

Dissemination of the Statement throughout the profession would allow the Statement to perform these functions. As suggested above, the Statement should be distributed not only to current members of the profession but also to law students, so that the exchange of views can include those of consumers of legal education. The profession's thinking about skills and values also should take into account the perspective of another population of consumers -- the consumers of legal services. Cf. Garth, *Rethinking the Legal Profession's Approach to Collective Self-Improvement: Competence and the Consumer Perspective*, 1983 W~s. L. REV. 639.

The profession's views on the teaching and attainment of skills and values will inevitably change over time, not only as a result of further discussions of the Statement but also as a result of experience in using the Statement (and courses and materials that grow out of it) and changes in the nature and demands of practice. It is the hope of the Task Force that the Statement will be periodically revised to reflect these changes, so that it can continue to fulfill its intended purpose of sparking and informing discussion of the means by which new lawyers prepare for practice.

### **E. Abuses of the Statement to Be Avoided**

The Statement would deserve its aims and the profession if it were used in ways not contemplated in its drafting. Specifically:

*The Statement is not, and should not be taken to be, a standard for a law*

*school curriculum.*

As later sections of this Report explain, the Task Force concluded after extensive study that the law schools and the practicing bar must share responsibility for giving new members of the profession the training needed to practice competently. This training is best provided through a combination of law school education and opportunities for learning outside the law school environment. Such a division of responsibility has the additional benefit of leaving both the schools and the Bar free to pursue a broader mission.

The Statement of Skills and Values is concerned with the limited goal of ensuring practice at a minimum level of competency. All law schools and the legal profession rightly aspire to assist lawyers to practice not merely capably but excellently. Excellence cannot be

promoted by the kind of standardization involved in formulating any particular list of prescriptions and prerequisites. It is best supported by encouraging pluralism and innovativeness in legal education and practice. This Statement should therefore not be viewed as denigrating the development of skills and values not included in it. Such skills and values will frequently mark the difference between an able lawyer and an outstanding one.

*The Statement is not designed to be used as a measure of performance in the accrediting process.*

The Statement should not be used by site inspection teams, by the Accreditation Committee and Council of the Section of Legal Education and Admissions to the Bar, or even by law schools themselves, as a standard for judging a law school's program. To the extent that the Statement plays any role in the accrediting process, it should be the limited one suggested in Chapter 4.D-as a resource for law schools when they conduct self-studies pursuant to Standard 201(a).

*The Statement is not an enumeration of ingredients that are either necessary or sufficient to avoid malpractice.*

The Statement has nothing to do with the standards governing malpractice liability, disciplinary infractions, or ineffective assistance of counsel. It is concerned with the elements which equip a lawyer for capable practice, not with the lawyer's actual performance. Just as an adequately equipped lawyer may sometimes perform below the level of his or her abilities, so may an inadequately equipped lawyer sometimes manage to take appropriate actions in a particular situation. Preparation to handle situations necessarily involves an ability to deal with more contingencies than turn out to occur. That kind of preparation is the hallmark of professionalism; its contents are the subject of this Statement.

*The Statement should not be used as a source for bar examinations.*

The Statement employs analytic models to describe the skills and values with which practicing lawyers should be familiar. While bar examinations may, and generally do, attempt to evaluate whether applicants have acquired certain of these skills and values, it would be neither possible nor desirable to test students' familiarity with the models themselves. Moreover, any attempt to test on particular portions of the Statement-or to reduce it to a set of general principles for testing purposes-would be at odds with the Statement's central approach of analyzing skills and values in a holistic way. In any event, the Statement was never intended to serve as a list of the skills and values in which every lawyer must be versed before he or she is admitted to the bar. Rather, as explained in Chapter 4.B, the Statement is concerned with the skills and values with which a lawyer should be familiar at the point at which he or she first accepts ultimate responsibility for clients.

## **Chapter Five The Statement of Fundamental Lawyering Skills and Professional Values**

### **A. Organization of the Statement**

### **B. Overview of the Skills and Values Analyzed**

#### **Fundamental Lawyering Skills Fundamental Values of the Profession**

### **C. The Analysis of Skills and Values**

#### **A. Organization of the Statement**

The Statement first analyzes the fundamental lawyering skills essential for competent representation. It begins with two analytical skills that are conceptual foundations for virtually all aspects of legal practice: problem solving (Skill ?1) and legal analysis (Skill ? 2). It then examines five skills that are essential throughout a wide range of kinds of legal practice: legal research (Skill ? 3), factual investigation (Skill ? 4), communication (Skill ? 5), counseling (Skill ? 6), and negotiation (Skill ? 7). The Statement next focuses upon the skills required to employ, or to advise a client about, the options of litigation and alternative dispute resolution (Skill ? 8). Although there are many lawyers who do not engage in litigation or make use of alternative dispute resolution mechanisms, even these lawyers are frequently in a position of having to consider litigation or alternative dispute resolution as possible solutions to a client's problem, or to counsel a client about these options, or to factor the options into planning for negotiation. To accomplish these tasks, a lawyer needs to have at least a basic familiarity with the aspects of litigation and alternative dispute resolution described in Skill ? 8. Skill ? 9 identifies the administrative skills necessary to *organize and manage legal work effectively*. This section reflects the perception that adequate practice management skills are an essential precondition for competent representation of clients. Finally, Skill ?10 analyzes the skills involved in recognizing and resolving ethical dilemmas.

The analysis of professional values recognizes that "training in professional responsibility" should involve more than "just the specifics of the Code of Professional Responsibility and the Model Rules of Professional Conduct"; it should encompass "the values of the profession," including "the obligations and accountability of a professional dealing with the lives and affairs of clients." McKay, *supra*, at 509-10. Value ?1 examines the value of competent representation, analyzing the ideals to which a lawyer should be committed as a member of a profession dedicated to the service of clients. Value ? 2 considers the value of striving to promote justice, fairness, and morality; it examines the ideals to which a lawyer should be committed as a member of a profession that bears "special responsibilit[ies] for the quality of justice" (Model Rules, Preamble). Value ? 3 addresses the value of striving to improve the profession; it explores the ideals to which a lawyer should be committed as a member of a "self-governing" profession (*ibid.*). Finally, Value ? 4 examines the value of professional self-development, analyzing the ideals to which a lawyer should be committed as a member of a "learned profession" (*ibid.*).

Each section is divided into a *statement* of the respective skill or value and a *commentary*. In the skills sections, the statements contain the bulk of the analysis, with the commentaries providing background on the particular skill and the manner in which it is analyzed. In the values sections, the statements tend to be briefer; the commentaries contain more analysis. These differences in style reflect a basic difference in the kinds of discourse best suited to express skills on the one hand and values on the other, particularly in a prescriptive format. Legal skills are illuminated by dissection and precise elaboration; values are better explicated in broad formulations nuanced by discussion.

The skills and values in this Statement are analyzed separately in order to promote clarity in examining the components of each one. However, the vision of legal practice underlying the Statement recognizes that individual skills and values cannot be neatly compartmentalized. There are numerous relationships between individual skills. Thus, for example, the formulations of the skills of counseling (Skill ? 6), negotiation (Skill ~ 7), and litigation (Skill ? 8) explain that these skills may require the application of the skills of legal analysis, legal research, and factual investigation (see, e.g., Skill ? 6.2(a)-(b), 7.1(b), 8.1(c),

8.3(d)); the analysis of the skill of negotiation explains that counseling skills are ordinarily employed to help a client decide whether to accept or reject the best terms obtained from the other side in a negotiation session (Skill ? 7.3(a)); and the skill of problem solving typically requires that a lawyer employ, interviewing skills to gather the facts needed to identify and diagnose the client's problem (see Skill ?1.1). Similarly, there are relationships between individual values. For example, both the value of competent representation (Value ?1) and the value of professional self-development (Value ? 4) call for a commitment to continuing study, although the former section conceives of such study as a means of maintaining competence while the latter treats it as a means of attaining excellence.

Moreover, there is a relationship between the skills and the values. As Value ?1 explains, the specific skills examined in Skill ?? 1-10, together with the more general skill of self-appraisal (which is discussed in the text and Commentary of Skill ?1) are essential means by which a lawyer fulfills his or her responsibilities to a client and simultaneously realizes the ideal of competent representation. The process of preparing to represent clients competently is a matter both of accepting certain professional values and of acquiring the skills necessary to promote these values.

These relationships between skills and values were taken into account in deciding the order in which to present the various skills and values. Thus, for example, the Statement analyzes skills before values because familiarity with Skill ??1-10 is essential for understanding the ideal of competent representation which is discussed in Value ? 1. General foundational skills such as problem solving (Skill ?1) and legal analysis (Skill ? 2) are addressed before other skills that build upon them, just as the value of continuing study for the purpose of maintaining competence (Value ?1) is addressed before the value of continuing study for the purpose of attaining excellence (Value ?4). Otherwise, the order in which skills or values are presented does not reflect any views about their relative importance in the practice of law or in the process of preparing for practice.

The arrangement of skills is also not descriptive of the sequence in which they may be used in handling a client's legal problem. Effective lawyering is rarely, if ever, a linear, step-by-step process. Although skills such as problem solving and legal analysis are ordinarily applied at an early stage of the process, they are also relevant throughout a lawyer's representation of a client. As the analyses of these skills explain, a lawyer must constantly reassess a plan for solving a client's problem or a legal theory when new information becomes available (see Skill ??1.4(d), 1.5, 2.1(c)(iii)). In much the same manner, other sections recognize that the acquisition of new information may require that a lawyer reassess the validity of a plan for legal research (Skill ? 3.3(d)(ii)) or an investigative strategy (Skill ? 4.2(b)(i)(B)), that he or she counsel a client about the advisability of reconsidering a decision or adopting a new course of action (Skill ? 6.5(c)), and that the lawyer re-evaluate the goals for a negotiation or the negotiating strategies or tactics which he or she previously selected to achieve those goals (Skill ? 7.2(c)).

## **B. Overview of the Skills and Values Analyzed**

### **Fundamental Lawyering Skills**

#### **Skill ? 1:**

In order to develop and evaluate strategies for solving a problem or accomplishing an objective, a lawyer should be familiar with the skills and concepts involved in:

- 1.1 Identifying and Diagnosing the Problem;
- 1.2 Generating Alternative Solutions and Strategies;
- 1.3 Developing a Plan of Action;
- 1.4 Implementing the Plan;
- 1.5 Keeping the Planning Process Open to New Information and New Ideas.

**Skill ? 2:**

In order to analyze and apply legal rules and principles, a lawyer should be familiar with the skills and concepts involved in:

- 2.1 Identifying and Formulating Legal Issues;
- 2.2 Formulating Relevant Legal Theories;
- 2.3 Elaborating Legal Theory;
- 2.4 Evaluating Legal Theory;
- 2.5 Criticizing and Synthesizing Legal Argumentation.

**Skill ? 3:**

In order to identify legal issues and to research them thoroughly and efficiently, a lawyer should have:

- 3.1 Knowledge of the Nature of Legal Rules and Institutions;
- 3.2 Knowledge of and Ability to Use the Most Fundamental Tools of Legal Research;
- 3.3 Understanding of the Process of Devising and Implementing a Coherent and Effective Research Design.

**Skill ? 4:**

In order to plan, direct, and (where applicable) participate in factual investigation, a lawyer should be familiar with the skills and concepts involved in:

- 4.1 Determining the Need for Factual Investigation;
- 4.2 Planning a Factual Investigation;
- 4.3 Implementing the Investigative Strategy;
- 4.4 Memorializing and Organizing Information in an Accessible Form;
- 4.5 Deciding Whether to Conclude the Process of Fact-Gathering;
- 4.6 Evaluating the Information That Has Been Gathered.

**Skill ? 5:**

In order to communicate effectively, whether orally or in writing, a lawyer should be familiar with the skills and concepts involved in:

- 5.1 Assessing the Perspective of the Recipient of the Communication;

## 5.2 Using Effective Methods of Communication.

### **Skill ? 6:**

In order to counsel clients about decisions or courses of action, a lawyer should be familiar with the skills and concepts involved in:

- 6.1 Establishing a Counseling Relationship That Respects the Nature and Bounds of a Lawyer's Role;
- 6.2 Gathering Information Relevant to the Decision to Be Made;
- 6.3 Analyzing the Decision to Be Made;
- 6.4 Counseling the Client About the Decision to Be Made;
- 6.5 Ascertaining and Implementing the Client's Decision.

### **Skill ? 7:**

In order to negotiate in either a dispute-resolution or transactional context, a lawyer should be familiar with the skills and concepts involved in:

- 7.1 Preparing for Negotiation;
- 7.2 Conducting a Negotiation Session;
- 7.3 Counseling the Client About the Terms Obtained From the Other Side in the Negotiation and Implementing the Client's Decision.

### **Skill ? 8:**

In order to employ-or to advise a client about the options of litigation and alternative dispute resolution, a lawyer should understand the potential functions and consequences of these processes and should have a working knowledge of the fundamentals of:

- 8.1 Litigation at the Trial-Court Level;
- 8.2 Litigation at the Appellate Level;
- 8.3 Advocacy in Administrative and Executive Forums;
- 8.4 Proceedings in Other Dispute-Resolution Forums.

### **Skill ? 9:**

In order to practice effectively, a lawyer should be familiar with the skills and concepts required for efficient management, including:

- 9.1 Formulating Goals and Principles for Effective Practice Management;
- 9.2 Developing Systems and Procedures to Ensure that Time, Effort, and Resources Are Allocated Efficiently;
- 9.3 Developing Systems and Procedures to Ensure that Work is Performed and Completed at the Appropriate Time;
- 9.4 Developing Systems and Procedures for Effectively Working with Other People;
- 9.5 Developing Systems and Procedures for Efficiently Administering a Law Office.

**Skill ? 10:**

In order to represent a client consistently with applicable ethical standards, a lawyer should be familiar with:

- 10.1 The Nature and Sources of Ethical Standards;
- 10.2 The Means by Which Ethical Standards are Enforced;
- 10.3 The Processes for Recognizing and Resolving Ethical Dilemmas.

### **Fundamental Values of the Profession**

**Value ? 1:**

As a member of a profession dedicated to the service of clients, a lawyer should be committed to the values of:

- 1.1 Attaining a Level of Competence in One's Own Field of Practice;
- 1.2 Maintaining a Level of Competence in One's Own Field of Practice;
- 1.3 Representing Clients in a Competent Manner.

**Value ? 2:**

As a member of a profession that bears special responsibilities for the quality of justice, a lawyer should be committed to the values of:

- 2.1 Promoting Justice, Fairness, and Morality in One's Own Daily Practice;
- 2.2 Contributing to the Profession's Fulfillment of its Responsibility to Ensure that Adequate Legal Services Are Provided to Those Who Cannot Afford to Pay for Them;
- 2.3 Contributing to the Profession's Fulfillment of its Responsibility to Enhance the Capacity of Law and Legal Institutions to Do Justice.

**Value ? 3:**

As a member of a self-governing profession, a lawyer should be committed to the values of:

3.1 Participating in Activities Designed to Improve the Profession;

3.2 Assisting in the Training and Preparation of New Lawyers;

3.3 Striving to Rid the Profession of Bias Based on Race, Religion, Ethnic Origin, Gender, Sexual Orientation, or Disability, and to Rectify the Effects of These Biases.

**Value ? 4:**

As a member of a learned profession, a lawyer should be committed to the values of:

4.1 Seeking Out and Taking Advantage of Opportunities to Increase His or Her Knowledge and Improve His or Her Skills;

4.2 Selecting and Maintaining Employment That Will Allow the Lawyer to Develop As a Professional and to Pursue His or Her Professional and Personal Goals.

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**Part IV.**

**Recommendations of the Task Force**

**Task Force Recommendations**

A. Disseminating and Discussing the Statement of Skills and Values

B. Choosing a Career in Law and a Law School

C. Enhancing Professional Development During the Law School Years

D. Placing the Transition and Licensing Process in the Educational Continuum

E. Striving for Professional Excellence After Law School

F. Establishing an American Institute for the Practice of Law

This Report has provided a unique overview of the legal profession today for which new lawyers must prepare (Part I, *supra*) has presented a vision of the skills and values that one aspiring join that profession should seek to acquire before assuming responsibility for the handling of legal matters (Part II, *supra*). Against this backdrop, we have examined the process by which lawyer) skills and professional values are acquired: before law school, during law school and after law school (Part III, *supra*).

Interspersed through these preceding chapters are recommendations for improving and integrating the process by which lawyers acquire their skills and values and for enhancing lawyers' professional development at all stages of their careers. In this final segment of the Report (Part IV), the recommendations of the Task Force are summarized with cross-references to the chapters where the recommendations are discussed. The recommendations are arranged by topic to emphasize the educational continuum which the report has sought to elucidate.

#### **A. Disseminating and Discussing the Statement of Skills and Values**

1. The Statement of Skills and Values should be published by the American Bar Association and widely disseminated throughout the legal community and to other interested institutions and individuals. (Chapter 4.D and Chapter 5)
2. The Statement of Skills and Values should be viewed as a work in process and the initial formulation of the Statement should be discussed, critically analyzed and progressively refined under the auspices of the proposed national institute. (Chapter 4.D, Chapter 5 and Chapter 10)
3. The Statement should be used by law students as an aid in preparing for practice and seeking out opportunities for professional development in their curricular planning and in their part-time or summertime employment. (Chapter 4.D, Chapter 5 and Chapter 7.D)
4. The Statement should be used by law schools in curricular development to help focus their consideration of proposals to modify their curricula to teach skills and values more extensively or differently than they do now. (Chapter 4.D and Chapter 5)
5. The Statement should be used by law schools in self-study when assessing the extent to which their curricula advance their students' professional development and prepare them for the practice of law. (Chapter 4.D and Chapter 5)
6. The Statement should be used by providers of continuing legal education both in the development of programs of transition education to assist new lawyers to acquire necessary skills and values and also in the development of other CLE programs to enrich generally the quality of instruction and enhance the process of professional development. (Chapter 4.D, Chapter 5 and Chapter 8.E)
7. Providers of continuing legal education should use the Statement as a vehicle for organizing their resources and for securing the requisite funding to implement the reforms suggested in this Report. (Chapter 4.D and Chapter 9.C)
8. The Statement should be used by individual lawyers in evaluating their own capabilities and to identify areas in which further study would be beneficial to their professional development as well as to aid them in reflecting upon and learning from their lawyering experiences. (Chapter 4.D, Chapter 5 and Chapter 9)

#### **B. Choosing a Career in the Law and a Law School**

1. Prelaw students contemplating a career in the law, as well as law students, should be advised that the foundation for professional development at each stage of a legal career is accurate self-assessment, the making of informed decisions and the setting of personal standards and goals. (Chapter 6.A)
2. Prelaw students contemplating a career in the law, when planning their undergraduate studies, should be advised to review the Statement on Prelegal Education of the Association of American Law Schools and that a broad liberal education is a preferred, but not mandatory, preparation for law school. (Chapter 6.B)
3. Advisors of prelaw students should make use of the Statement of Skills and Values in their counseling as an aid in identifying what may be expected of one who seeks to make a career in the law. (Chapter 4.D and Chapter 5)
4. The organized bar through programs of law-related education should seek to inform students who contemplate a career in the law of the breadth, variety and differentiation of legal careers. (Chapter 2 and Chapter 6.B)
5. The ABA should consider producing a regularly updated volume of materials on careers in the law for use by pre-law students at an early stage in establishing their career goals. (Chapter 2 and Chapter 6.A)
6. The Section of Legal Education and Admissions to the Bar, in cooperation with the Law School Admission Council and the Association of American Law Schools, should seek to assure that prospective law students who are selecting a law school can obtain information about all law schools relating to:

- admission statistics,
- tuition, costs and financial aid,
- enrollment and graduation statistics,
- composition of faculty and administration,
- curricular offerings and class sizes,
- library resources, physical plant,
- housing availability,
- financial resources available to support educational program, and
- placement and bar passage statistics. (Chapter 6.B)

7. The current policy of absolute confidentiality for the information submitted annually by law schools to the Office of the ABA Consultant on Legal Education should be reconsidered to the extent such information is relevant, accurate and useful to applicants to law school in their decision-making. (Chapter 6.B)

8. Consideration should be given to providing all LSAT registrants with explanatory information (but not purported "rankings") explaining the differences among law schools and questions which they might ask law school admissions personnel to elicit information upon which they might base their decisions. (Chapter 6.A and B)

### ***C. Enhancing Professional Development During the Law School Years***

1. Law schools and the practicing bar should look upon the development of lawyers as a common enterprise, recognizing that legal educators and practicing lawyers have different capacities and opportunities to impart to future lawyers the skills and values required for the competent and responsible practice of law. (Introduction, Chapter 4.D, Chapter 5.C, Chapter 7.A, Chapter 7.B, Chapter 7.D, Chapter 8.E and Chapter 9)

2. Standard 301(a) regarding a law school's educational program should be amended to clarify its reference to qualifying "graduates for admission to the bar" by adding: ". . . and to prepare them to participate effectively in the legal profession." This would affirm that education in lawyering skills and professional values is central to the mission of law schools and recognize the current stature of skills and values instruction. (Chapter 7.C and Chapter 7.B)

3. It is time for the Section of Legal Education and Admissions to the Bar to revisit generally the treatment of skills and values instruction in the accreditation process in recognition of the skills and values identified in the Statement of Fundamental Lawyering Skills and Professional Values as those with which a lawyer should be familiar before assuming ultimate responsibility for a client. (Chapter 7.C, Chapter 4.D, Chapter 5.C, Chapter 7.A and Chapter 7.B)

4. In light of developments in skills instruction and the Task Force's Statement of Skills and Values, the interaction between core subjects, treated in Standard 302(a)(I), and professional skills, treated in Standard 302(a)(iii), should be revisited and clarified. The interpretation of Standard 302(a)(iii) should expressly recognize that students who expect to enter practice in a relatively unsupervised practice setting have a special need for opportunities to obtain skills instruction. (Chapter 7.C, Chapter 7.A, Chapter 7.B, Chapter 4.D and Chapter 5.C)

5. Each law school faculty should determine how its school can best help its students to begin the process of acquiring the skills and values that are important in the practice of law, keeping in mind not only the resources Recommendations presently available at the school, but the characteristics of effective skills instruction. (Chapter 7.B, Chapter 4.D and Chapter 5.C)

6. To be effective, the teaching of lawyering skills and professional values should ordinarily have the following characteristics:

- development of concepts and theories underlying the skills and values being taught;

- opportunity for students to perform lawyering tasks with appropriate feedback and self-evaluation;
- reflective evaluation of the students' performance by a qualified assessor. (Chapter 7.B and Chapter 4.D)

7. The Interpretation to Standard 201(a) relating to the self-study process should require law schools to evaluate their programs in the light of Standard 301(a) and (c) and should refer to the Task Force's Statement of Skills and Values and the literature analyzing the roles and competencies of lawyers. (Chapter 7.C, Chapter 7.B and Chapter 4.D)

8. Each law school should undertake a study to determine which of the skills and values described in the Task Force's Statement of Skills and Values are presently being taught in its curriculum and develop a coherent agenda of skills instruction not limited to the skills of "legal analysis and reasoning," "legal research," "writing" and "litigation." (Chapter 7.B, Chapter 7.C and Chapter 4.D)

9. Law schools should identify and describe in their course catalogs the skills and values content of their courses and make this information available to students for use in selecting courses. (Chapter 7.B, Chapter 6.B and Chapter 4.D)

10. The Task Force's Statement of Skills and Values should be made available to all entering law students to inform them about the skills and values they will be expected to possess as lawyers and to help them seek appropriate educational opportunities in law school, in work experience and in continuing legal education. (Chapter 4.D, Chapter 5 and Chapter 6.B)

11. Law students should be advised with respect to course selection to consider what opportunities may or may not be available to them after law school to develop the skills and competencies they will need in practice. (Chapter 2, Chapter 6 and Chapter 7.B)

12. Law schools should continue to emphasize the teaching of the skills of "legal analysis and reasoning" and "legal research," as described in the Statement of Skills and Values, through a wide variety of instructional modes, including well-structured clinical programs. (Chapter 7.B and Chapter 4.D)

13. Law schools should be encouraged to develop or expand instruction in such areas as "problem solving," "factual investigation," "communication," "counseling," "negotiation" and "litigation," recognizing that methods have been developed for teaching law students skills previously considered learnable only through post-graduation experience in practice. (Chapter 7.A, Chapter 7.B and Chapter 5.C)

14. In view of the widely held perception that new lawyers today are deficient in writing skills, further concerted effort should be made in law schools and in programs of transition education after law school to teach writing at a better level than is now generally done. (Chapter 7.B, Chapter 7.C, Chapter 8.E and Appendix B)

15. Law schools through well-structured clinical programs should help students understand the importance of the skill of "organization and management of legal work," although it will remain for the first employer or mentor to translate that awareness into a functioning reality through providing supervised practice experience. (Chapter 7.B, Chapter 7.D, Chapter 8.E and Chapter 5.C)

16. Law schools should play an important role in developing the skill of "recognizing and resolving ethical dilemmas" and in placing these issues in an organized conceptual framework, although the exposure in law school clinical programs or classrooms is necessarily very limited compared to the variety and complexity of the dilemmas presented in practice. (Chapter 7.B, Chapter 7.D, Chapter 8.E and Chapter 5.C)

17. Law schools should stress in their teaching that examination of the "fundamental values of the profession" is as important in preparing for professional practice as acquisition of substantive knowledge. (Chapter 7.A and Chapter 5.C)

18. The practicing bar should be assiduous in discharging its responsibilities for inculcating professional values through contact with students in part-time work and summer jobs and as colleagues or mentors in the early years of practice. (Chapter 7.A, Chapter 7.D and Chapter 5.C) Recommendations 333

19. Law school deans, professors, administrators and staff should be concerned to convey to students that the professional value of the need to "promote justice, fairness and morality" is an essential ingredient of the legal profession; the practicing bar should be concerned to impress on students that success in the practice of law is not measured by financial rewards alone, but by a lawyer's commitment to a just, fair and moral society. (Chapter 7.A, Chapter 7.D and Chapter 5.C)
20. Law schools and the organized bar should work together to make law students aware of the full range of opportunity for professional development in the rich variety of private practice settings, in panels for prepaid and group legal services, in positions in the public sector, in staff counsel's offices in corporations and other organizations, and in the practice of public interest law in all its dimensions, as well as of the profession's expectation that all lawyers will fulfill their responsibilities to the public and support pro bono legal services for those who cannot afford a lawyer. (Chapter 2, Chapter 5 and Chapter 6.B)
21. Law schools and employers of law students should work together to inject educational value into any work experience during the law school years, developing models for strengthening the educational content of part-time employment and developing workshops offered at the beginning of the summer clerkship season to support the educational aspects of summer employment. (Chapter 7.D)
22. Since the employment marketplace is a crucial forum in which the practicing bar transmits its values to law students, members of the bar who recruit, interview, and hire should convey to students, both by words and by their decisions, the importance they place on a student's having had exposure to a broad range of skills and values instruction, including clinical courses. (Chapter 7.A, Chapter 7.D and Appendix B)
23. The National Association of Law Placement (NALP) should be asked by the Section of Legal Education and Admissions to the Bar to add to NALP's annual employer questionnaire questions designed to elicit information pertaining to the educational quality of law office summer programs. (Chapter 7.D)
24. Law schools should assign primary responsibility for instruction in professional skills and values to permanent full-time faculty who can devote the time and expertise to teaching and developing new methods of teaching skills to law students. In addition, law schools should continue to make appropriate use of skilled and experienced practicing lawyers and judges in professional skills and values instruction with guidance, structure, supervision and evaluation of these adjunct faculty by full-time teachers. (Chapter 7.B)
25. There should be faculty involvement in the design, supervision and evaluation of every program of extern experience, and accreditation standards should emphasize the critical importance of faculty responsibility for overseeing extern programs. (Chapter 7.B and Chapter 8)

#### **D. Placing the Transition and Licensing Process in the Educational Continuum**

1. Licensing authorities should not set specific curriculum requirements for law schools but should look to the Council of the Section of Legal Education and Admissions to the Bar as the appropriate body for assuring through the accreditation process that adequate instruction in lawyering skills and professional values is provided to law students. (Chapter 8.B)
2. Licensing authorities should consider modifying bar examinations that do not give appropriate weight to the acquisition of lawyering skills and professional values to ensure that applicants for admission are ready to assume their responsibilities in practice. (Chapter 8.C and Chapter 4.D)
3. Licensing authorities, the law schools and the organized bar should engage in continuing dialogue to determine the optimum content, methods and mix of instruction in skills and values in law school, during the licensing process and after admission to practice. (Chapter 7, Chapter 8, Chapter 9 and Chapter 4.D)
4. The transition from law school into individual practice or relatively unsupervised positions in small law offices, both public and private, presents special problems of lawyer competence which the law schools, the organized bar and licensing authorities must address. (Chapter 8, Chapter 4.D and Chapter 7)
5. Apprenticeship programs, if retained, should be examined in the light of the Task Force's Statement of Lawyering Skills and Professional Values and consideration should be given to revision of the programs to ensure that skills and values instruction is provided by practitioners in sufficient numbers and properly

guided in their mentoring responsibilities to give adequate feed-back to apprentices, holding them to an acceptable level of performance. (Chapter 8, Chapter 4.D and Chapter 7)

6. Sponsors of programs of transition education should examine their programs in the light of the Task Force's Statement of Lawyering Skills and Professional Values to ensure the inclusion of significant skills and values instruction. This instruction should include participatory exercises, trained instructors and concurrent feed-back and evaluation. (Chapter 8.E, Chapter 4.D and Chapter 7)

7. The Task Force encourages sponsors of transition education programs to examine the State of Washington's Skills Practice Course for its "learn by doing" structure and small-group, problem-solving format. (Chapter 8.E)

8. The Task Force encourages sponsors of programs of transition education to study the programs in Commonwealth countries, described in Appendix E, for guidance on methods of funding, length of instruction, the focus on lawyering skills, the use of practitioners as instructors, and the assessment techniques used to determine competency levels. (Chapter 8.E and Appendix E)

9. The development, testing and evaluation of pilot programs of transition education, begun by ALI-ABA with the Real Estate Training Module, should be carried forward under the auspices of the proposed national institute. (Chapter 8.E and Chapter 10)

10. Jurisdictions that have mandated transition education programs should reexamine their programs in the light of the Task Force's Statement of Skills and Values to ensure that sufficient time is allocated for professional skills instruction, that there is sufficient flexibility to allow attorneys to choose the skills they wish to study, and that the programs incorporate the features set forth in Recommendation D.6. (Chapter 8.E and Chapter 4.D)

11. The Task Force encourages legal organizations with developed in-house programs of skills and values instruction for new lawyers to share their experience with local and state bar groups to improve bar-sponsored programs of transition education. (Chapter 8.E)

12. The organized bar, with the support of the proposed national institute, should strive to make available to all new lawyers effective instruction in lawyering skills and professional values at a cost that new lawyers can afford with scholarship aid provided as needed. (Chapter 8.E, Chapter 4.D and Chapter 10)

#### **E. Striving for Professional Excellence After Law School**

1. Law schools should work with the organized bar to assure that the development of lawyering skills and values continues beyond law school and throughout lawyers' professional lives and that continuing legal education incorporates the characteristics of effective skills and values instruction. (Chapter 7, Chapter 8 and Chapter 9)

2. The Task Force urges that all states, including those states with an MCLE requirement and those who have yet to adopt MCLE, consider imposing upon all attorneys subject to their jurisdiction a requirement for periodic instruction in lawyering skills and professional values. This instruction should include participatory exercises, trained instructors and concurrent feedback and evaluation. (Chapter 9)

3. The Task Force urges the gathering of national data on the courses currently provided by CLE organizations to determine how many courses include significant instruction in lawyering skills and professional values. (Chapter 9)

4. The Task Force encourages law firms, corporate law departments and government agencies to examine their in-house training programs for lawyers in the light of the Task Force's Statement of Skills and Values to ensure that appropriate and effective instruction in skills and values is provided. Course materials and advice on skills and values instruction should be made available to sponsors of in-house programs by the proposed national institute. (Chapter 8.E, Chapter 9.D and E, Chapter 10 and Chapter 4.D)

5. The Task Force urges providers of continuing legal education to examine their programs in the light of

the Statement of Skills and Values and the developments in effective teaching of skills and values described in this report, and strive to ensure that their courses provide for active participation by students, instruction by persons having special expertise and training in this sort of teaching, and a format that includes the immediate assessment of the students' participation. (Chapter 9, Chapter 7.B and Chapter 4.D)

6. The Task Force urges providers of continuing legal education in planning their programs and courses to focus upon the essential linkage between lawyering skills and professional values and to evaluate the quality and methods of their instruction mindful of this holistic approach to lawyering. (Chapter 9.E)

#### **F. Establishing an American Institute for the Practice of Law**

1. A new national institute should be established that would qualify as a 501(c)(3) corporation and have the central purpose of promoting excellence in the practice of law; it would address on a continuing basis the entire process by which lawyers acquire and refine the lawyering skills and professional values requisite for competent and responsible practice. (Chapter 4, Chapter 5, Chapter 7, Chapter 9 and Chapter 10)

2. The law schools and the organized bar should assume a shared responsibility for lawyers' professional development and support the proposed national institute as a means for working toward a more integrated process of education to assist the legal profession more adequately to meet the public's appropriate expectations with respect to lawyer competence and professional responsibility. (Chapter 10)

3. The institute should play a central role in furthering the various uses of the Task Force's Statement of Skills and Values. It can facilitate critical analysis and progressive refinement of the Statement; develop modes of instruction, course materials and teaching aids to assist law schools to teach skills and values more effectively; create and serve as a clearinghouse for model curricula, instructional materials and teacher training for providers of continuing legal education and law office programs; and promote research and publication relevant to the understanding and enhancement of skills and values. (Chapter 4.D and Chapter 10)

4. The work and activities of the institute should be in three principal areas:

- Serving as a resource center and forum for those engaged in the professional development of lawyers in law schools and in continuing legal education;
- Fostering research and development to enhance the profession's understanding of lawyering skills and professional values and the means and methods by which lawyers learn;
- Developing a plan and organizational structure to promote continuing legal education and the dissemination of courses and programs. (Chapter 10 and Appendix F)

5. The initiative for establishing the new institute should be taken by the American Bar Association and the American Law Institute. The educational resources of the ABA Division of Professional Education and of the ALI-ABA Joint Committee should be combined. The Practicing Law Institute and the Association of American Law Schools should be invited to join ABA and ALI as joint sponsors of the new institute. (Chapter 10, Chapter 9 and Appendix F)

For Membership Call: 1-800-285-2221

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