

1990

Teaching Legal Ethics in a Program of Comprehensive Skills Development

James E. Moliterno

Repository Citation

Moliterno, James E., "Teaching Legal Ethics in a Program of Comprehensive Skills Development" (1990). *Faculty Publications*. 927.
<https://scholarship.law.wm.edu/facpubs/927>

Teaching Legal Ethics In A Program Of Comprehensive Skills Development

James E. Moliterno*

I. INTRODUCTION

Concerns have long been present regarding legal education's failure to develop skillful, ethical lawyers and to connect in any significant way with problems of law practice and the judiciary. These concerns have grown in recent years and have produced considerable criticism.¹ Partly motivated by these criticisms, a number of schools have embarked on new programs or made adjustments in the curriculum to

* Assistant Professor of Law and Director of the Legal Skills Program, Marshall-Wythe School of Law, College of William and Mary.

1. That the concerns are not new ones is demonstrated by an 1883 letter from Harvard Law Dean Ephraim Gurney to his President Charles Eliot lamenting that:

Langdell[']s] . . . ideal is to breed professors of Law, not practitioners; erring, as it seems to me, on the side from the other schools, which would make only practitioners. Now to my mind it will be a dark day for the School when either of these views is able to dominate the other, and the more dangerous success of the two would be the doctrinaire because it would starve the School. In my judgment, . . . if the School commits itself to the theory of breeding within itself its Corps of instructors and thus severs itself from the great current of legal life which flows through the courts and the bar, it commits the gravest error of policy which it could adopt. . .

Another feature to my mind of the same tendency is the extreme unwillingness to have anything furnished by the School except the pure science of the law. It seems to a layman that when the School exacts a year more than any other of study for its degree, it might concede something, at least at the start, of their time to such practical training as might be given successfully at such a school. I have never been able to see why this should be thought belittling to the School or its instructors. . . . If you[r] LLB at the end of his three years did not feel as helpless on entering an office on the practical side as he is admirably trained on the theoretical, I think he would begrudge his third year less. . . .

Quoted in A. SUTHERLAND, *THE LAW AT HARVARD: A HISTORY OF IDEAS AND MEN 1817-1967* (Harvard University Press 1967). *See also* Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907 (1933). A short list of recent expressions of concern may be found in Spiegelman, *Integrating Doctrine, Theory and Practice in the Law School Curriculum: The Logic of Jake's Ladder in the Context of Amy's Web*, 38 J. LEGAL EDUC. 243, 244 n.11 (1988). Spiegelman's article is required reading for all Legal Skills staff.

enhance skills teaching or to develop and expand the traditional ethics courses. Three such efforts have recently been described in the *Journal of Legal Education*.² Each is directed at accomplishing a different set of worthy goals: The Missouri plan is designed to "broaden . . . the students' understanding of the lawyer's role to include other perspectives and to acquaint . . . them with alternatives to traditional litigation so that they could assist their clients and society in choosing efficient and just dispute resolution methods"³; the Notre Dame method is designed to enhance ethics teaching by instituting a pervasive teaching approach to the subject; and the Syracuse Law Firm course is designed to teach research and writing, "introduce . . . some of the other fundamental skills of lawyering . . . , attempt to integrate the first-year substantive courses . . . , introduce an interdisciplinary dimension . . . , expose students to issues of professional responsibility . . . , [and] provide students with . . . opportunities for collaborative work."⁴ In an ambitious effort to do what these three efforts are designed to do and more, a new program of comprehensive skills development was initiated in 1988 at the College of William and Mary. The new program is called simply "Legal Skills." As we can best determine,⁵ Legal Skills covers more topics, uses more methodologies and varied teaching materials, in a more innovative format, with more sophisticated problem materials than any other program of skills development at a school with an otherwise fairly traditional curriculum.

As used here, the term "comprehensive skills development" refers to a program of study designed to address not only a group of lawyering skills related to a single category of functions (as would be the case, for example, in a research and writing course or a trial advocacy course), but also a wide array of skills which can be addressed successfully as having in common their usefulness to the lawyer's work generally. The skills addressed range from the mundane (doing a direct exam-

2. Braveman, *Law Firm: A First-Year Course on Lawyering*, 39 J. LEGAL EDUC. 501 (1989); Link, *The Pervasive Method of Teaching Ethics*, 39 J. LEGAL EDUC. 485 (1989); Riskin & Westbrook, *Integrating Dispute Resolution Into Standard First Year Courses: The Missouri Plan*, 39 J. LEGAL EDUC. 509 (1989).

3. Riskin & Westbrook, *supra* note 2 at 510.

4. Braveman, *supra* note 2 at 502.

5. Although somewhat unscientific, our claim is based on examination of the most recently available (usually 1988-89) catalogue in our library for each of 157 ABA or AALS accredited law schools. We have also attended and examined the materials from the ABA National Conference on Professional Skills and Legal Education (Albuquerque, New Mexico October 1987) and the AALS Annual Conference Mini-Workshop on Curricular Developments (New Orleans, Louisiana January 1989).

ination without saying "okay" or "um" after every other question) to sophisticated thinking processes that Professor Amsterdam finds to be the underpinnings of all skills,⁶ to recognizing and thinking cogent thoughts about ethical problems, and finally obtaining interpersonal skills to enable the executing of carefully thought-out plans to resolve ethical problems.

The Program's perspective is supported, although not motivated, by its relationship to the aspirational interests expressed in four of a group of five recently approved recommendations of the ABA Special Coordinating Committee on Professionalism that were themselves based on the 1986 report of the ABA Commission on Professionalism.⁷ These recommendations were generated by a diverse group including

6. Amsterdam, *Clinical Legal Education—A 21st Century Perspective*, 34 J. LEGAL EDUC. 612 (1984).

7. Summary of Action of the House of Delegates, ABA 1989 Annual Meeting at 21-22. The fifth of the recommendations relates primarily to admissions questions with which the Program has no real connection. These recommendations were approved by the ABA House of Delegates at its August 1989 Annual Meeting. The full text of the recommendations reads as follows:

Recommendation 1: Law schools should give continuing attention to the form and content of their instruction in ethics and professionalism, either in specific courses in ethics and professionalism, or by the infusion of ethical and professional issues into courses in both substantive and procedural fields or both. Law schools should consider using innovative teaching techniques in ethics and professionalism instruction.

Recommendation 2: Law schools should offer students opportunities to become aware of new methods of dealing with legal problems such as alternative methods of dispute resolution and processes of negotiation.

Recommendation 3: Deans and faculties of law schools should keep in mind that the law school experience provides a student's first exposure to the profession, and that professors inevitably serve as important role models for students. Therefore, the highest standards of ethics and professionalism should be adhered to within law schools.

Recommendation 4: Law schools should adopt codes of student conduct, possibly based on the Model Rules of Professional Conduct. With appropriate consideration to the due process and privacy rights of its students, law schools should report convictions of serious infractions of law school rules to the Character and Fitness Committees, or their equivalent, of states in which the student applies or admission to the Bar.

Recommendation 5: Law schools should at all times retain appropriate admission and graduation standards including seeking out and encouraging minorities, women, and socio-economically disadvantaged persons to attend law schools. A law school should employ admission standards designed to admit only those applicants who are adequately equipped for the study of law.

representatives of the AALS, the ABA Law Student Division, the ABA Young Lawyers Division, the ABA Section on Legal Education and Admissions to the Bar, and the National Conference of Bar Examiners.

The first recommendation encourages schools to "give continuing attention to the form and content of their instruction in ethics and professionalism . . . [including the use of] innovative teaching techniques."⁸ The Legal Skills Program employs a strategy of infusing the instruction of ethics into a series of simulated client representation settings so that the students experience the identification and treatment of ethical issues insofar as a practitioner might experience them.

The second recommendation encourages schools to "offer students opportunities to become aware of . . . alternative methods of dispute resolution."⁹ Alternative dispute resolution skills and topics are addressed explicitly by the Program. As such, all students at William and Mary will engage in both negotiation and mediation and will have had opportunities to counsel their "clients" regarding dispute resolution process choices that may be available to the clients within the context of the simulation.

The third recommendation charges law faculties with the responsibility of being "role models . . . [maintaining] the highest standards of ethics and professionalism . . . , [in part because] the law school experience provides a student's first exposure to the profession."¹⁰ In the Program, a faculty member takes the role of senior partner in the student's small (approximately 15 student) "law office." The faculty teaching in the Program, and thus acting as senior partners come to the task from a remarkably wide range of professional experiences. They have backgrounds in small, medium, and large firm practices; in solo practices; in the United States Department of Justice and other government practices; in legal services grantees; in public institutions; in military practices, including prosecution, defense, and judicial roles; and in law school clinical practices. The potential to serve as positive role models is enhanced greatly because each faculty member is in fact cast in the role of a practitioner.

The fourth recommendation encourages schools to "adopt codes of student conduct, possibly based on the Model Rules of Professional Conduct."¹¹ The Skills Program, through its simulations, charges stu-

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

dents with the responsibility of maintaining conduct that complies with a professional code of ethics.¹² The teaching of ethics is attentive to both the Model Code and the Model Rules, since half the students in the Program simulate practices in states governed by the Model Code while the other half simulate practices in states governed by the Model Rules.¹³ A disciplinary procedure largely paralleling the ABA Standards for Lawyer Discipline and Disability Proceedings has also been adopted.

The Program is now in its third year of operation. This is a report on its beginnings, its progress, and its promise, with particular emphasis on its efficacy as a vehicle for ethics teaching.

II. DESCRIPTION OF THE WILLIAM AND MARY LEGAL SKILLS PROGRAM

Legal Skills is a nine-credit course of study which begins with an Introduction to Law and Law Study/Orientation Week and continues for four semesters. The Program is aimed at rigorous presentation of the numerous interwoven topics. Legal Skills endeavors to be instrumental in the preparation of competent and ethical lawyers. Broadly stated, the Program's three primary goals are to: (1) impart and help develop necessary legal skills; (2) sensitize students to the ethical issues they will face as lawyers; and (3) augment and reinforce more traditional academic approaches. The Program seeks to accomplish these goals by using a wide variety of materials and teaching methodologies. The Program is an integrated part of the law school's first and second year curriculum and is not meant to stand apart from the rest of the curriculum as a wholly separate academic experience. Rather, a major goal of the Program is to reinforce the importance of other courses.

On another level, perhaps one more closely related to the recent criticisms of legal education, the Program is designed to address many perennial problems: dissatisfaction with the scope, staffing and lack of rigor of legal research and writing programs; concern with the limited number of students reached by skills or clinical programs; serious concern with the way ethics or professional responsibility is being taught as a 'subject' unconnected with other subjects or the 'real world'; the isolation many law students feel at the beginning of law school; and the lack of law-school-provided opportunities for students to work as

12. The simulation is not intended to replace William and Mary's highly regarded student Honor Code.

13. On this point we disregard the law of the state within which the students' simulation is otherwise placed.

members of a team on legal projects.¹⁴ Consequently, Legal Skills is charged with the responsibility of covering the following topics: History and Structure of the Legal Profession; Professional Ethics; Legal Research; Legal Writing; Legal Drafting; Interviewing; Negotiating; Counselling; Alternative Dispute Resolution; Pretrial Practice, including Motion and Discovery Practice; Introduction to Trial Practice; and Introduction to Appellate Practice.

These topics are covered at various times over the two years of the Program. A number of topics and skills build on others and out of necessity must follow them. For example, before students can effectively begin the simulated client representation that forms the core of the course, they must be exposed to the rudiments of professional ethics, particularly as they apply to the lawyer-client relationship, and must have some basis upon which to practice their interviewing skills. Similarly, introduction to trial practice will naturally precede introduction to appellate practice, and neither can be introduced until one of the simulated cases has developed to the trial stage.

Legal Skills instruction proceeds on two concurrent tracks: classroom instruction and simulated client representation. Because client representation is the methodological core of the Program, the entire Program is organized around the simulated student law office and its need to deliver effective, competent and ethical service.

A. Structure of the Student Experience

The staff and students in the Program are organized into firms, offices, working groups, and teams. Each entering class is divided into twelve offices, each typically composed of approximately sixteen students who serve as associates, one faculty member who serves as senior partner, and one third year student teaching assistant who serves as junior partner. The combination of offices headed by a single faculty member comprise a single firm. In most cases, because most faculty involved head one office from a given entering class, an office of first year associates, an office of second year associates, a faculty member senior partner and a teaching assistant junior partner form a single firm. The associates in each office are divided into four working groups of approximately four associates each. Each working group is further divided into two teams of two associates each.

14. Shaffer, *Moral Implications and Effects of Legal Education*, 34 J. LEGAL EDUC. 190, 191-2 (1984).

The Program's core is simulated client service.¹⁵ Associates serve five simulated clients over the two-year course. Three of those five clients are met by associates during their first year. Service for one of the three met in the first year is completed in that year, while service for the other two continues into the second year of the Program. For simplicity's sake, the client phases are labeled "A" to "E." In other words, at the end of the first year of the Program, associates have met and completed service for client A, have met but continue service for clients B and C, and have not yet met clients D and E.

In each client phase, each of the four working groups within an office is assigned to represent a different simulated client. As a result, each office represents four client As, four client Bs, and so on. The four working groups of another office represent the four opposing client As, client Bs and so on.¹⁶ Each client phase is intended to facilitate the teaching of a range of skills and topics. Some service tasks to be performed for a particular client are performed by each individual in a working group, some are performed jointly by the working group, and some are performed by a team of two associates in each working group. When the latter occurs, the nonparticipating members of a working group are, along with the Program staff, responsible for providing a critique of the performance of the participating members.¹⁷

Although a high level of realism is sought in the simulations, the Program's overriding pedagogical goals are not always satisfied by precise correspondence between reality and the simulations. As such, realism is sought to the extent that it is both possible and not destructive of teaching goals. The past two years have been particularly instructive in helping clarify what is administratively possible within pragmatic

15. The client roles are played by third year students, by students in the Program, and by members of the community. All of the long-term roles are played by other students in the Program. Enough variations on the problem materials exist so that no student plays a role in a case in which his or her law office has any representation responsibility. The client role playing has itself proven to be a highly instructive activity for the students. See *infra* text page 152.

16. For realism's sake, the twelve law offices are "placed" two each in six different jurisdictions, currently California, Illinois, New York, Ohio, Pennsylvania, and Virginia. For most purposes, the two offices in each jurisdiction oppose each other.

17. For example, four separate memoranda of law, all on the same issue, might be written more or less individually by each member of a working group. A file on each client's case is maintained jointly by all members of the working group. An initial interview of a client might be assigned to one of the two teams of each working group. When an activity is assigned to a single team, the remaining team is assigned to perform a later, analogous activity, such as a follow-up interview with that client.

constraints.

B. The Five Simulated Client Phases

1. *Client A.*—Client phase A presents a problem to the associates that can be resolved through a negotiated settlement. Client As were on one side or the other of a business landlord tenant dispute in 1988. They were individuals disputing over an arguably breached contract for the sale of a business in 1989. The 1988 Client As, for example, had, prior to contacting the lawyers, negotiated for rental of a space for a business purpose. Some limited writings had been produced by the parties during the course of those negotiations. Some arguably unforeseen event had caused the prospective tenant to reduce the estimated value of the premises for his or her business purpose. This set up a situation in which the parties could analyze and dispute whether the writings had created an enforceable contract satisfying the statute of frauds, but ultimately left open the question of whether the parties could still reach some agreement for rental of the premises. The students begin working for Client As early in the first semester and conclude their work for Client As late in the first semester.¹⁸

2. *Client B.*—Client Bs are involved in a civil case with both factual and legal disputes. The cases presented by Client Bs involve auto accident, personal injury; a possible breach of a simple partnership agreement; possible fraud by silence in real estate transactions; dismissal from "at will" employment cases; and lawyer malpractice. Client B facts as distributed to the role-players are designed so that a trial is probable. Students begin work for Client Bs near the end of the first semester of the Program¹⁹ and complete work for Client Bs near the

18. The students do the following during the Client A phase:

Interview client A and write a memorandum to the file;

Write a short memorandum analyzing a potential conflict of interest question with respect to client A;

Write a closed research memorandum of law analyzing a legal issue in the case;

Write a formal opinion letter to the client expressing the legal analysis of their memorandum;

Conduct a follow-up interviewing and counselling session with client A to prepare for possible negotiations and write a memorandum to file;

Negotiate with opposing counsel and write a memorandum to file; and

Draft the core provisions of a tentative agreement or proposed agreement arising from the negotiation session.

19. Introducing the second client before the end of the fall semester is meant to give the students the feeling of being engaged in an ongoing enterprise rather than a

end of the fourth semester. By the end of the first year of the Program, students have drafted initial pleadings for Client B. By the close of the second year, the students have gone through the trial and appellate stages for Client Bs.²⁰

3. *Client C.* — Client C cases are criminal cases. Twenty-four criminal cases were created for the Client C phase so that no two working groups in the entire Program represent analogous simulated Client Cs. For its Client C, each working group is assigned to either prosecute or defend a criminal case. Each case has at least one significant fact issue that will make trial possible. The students begin work for Client Cs near the end of the second semester and complete their work for Client Cs near the end of the fourth semester. All students engage in bargaining in Client C cases. A few successfully settle. The remaining cases, and replacement cases for those who settle, go through the trial and appellate stages.²¹

4. *Client D.* — Client Ds present domestic relations cases in which students are approached by clients requesting mediation services.

class that ends cleanly with the close of the semester.

20. In the Client B phase the students do the following:

- Interview the client and write a memorandum to file;
- Meet with opposing counsel and write a memorandum to file;
- Counsel with the client concerning alternative dispute resolution techniques and various processes available to address the client's needs;
- Write an extensive, open research memorandum of law analyzing the various claims that might be stated by either party to the controversy;
- Draft the pleadings relevant to their particular case (complaint, answer, reply);
- Interview witnesses and write a memorandum to file;
- Draft interrogatories;
- Respond to the opposing party's interrogatories;
- Present or oppose a motion;
- Prepare for trial;
- Try the case to the court;
- Write an appellate brief as either appellant or appellee; and
- Present oral argument to the court of appeals.

21. By way of representation of Client C the associates do the following:

- Interview the client, complainant, or primary prosecution witness and open a file;
- Write a memorandum of law analyzing an evidentiary issue;
- Meet with opposing counsel to plea bargain;
- Try the case to the court;
- Write an appellate brief as either appellant or appellee; and
- Present oral argument to the court of appeals.

Work for Client Ds begins and ends in the third semester.²²

5. *Client E.*—Client Es appear in the final semester of the Program. To some extent, Client Es are the capstone of the course of study. Client Es present the student associate with a significant, ethical challenge at the same time that the academic portion of the course is reviewing ethical rules and requirements in preparation for the ethics final examination administered at the close of the fourth semester. Client Es require students to do careful analysis of a statutory scheme and administrative law material.

Client Es present the students a challenging problem, with which requires the integration of many of the elements previously covered by Legal Skills.²³ Associates may, for example, be presented with a client who has been refused assistance by the state department of welfare and thus the associates are required to analyze the federal AFDC regulations. Other associates may be presented with securities problems, tax disputes, civil RICO problems, and so on. Client E cases require the associates to seek a temporary restraining order from a federal district court or handle some other, short term emergency matter during the course of representation.

The use of role players who are not members of the law school community enhances the realism of the Client E phase. The Program has been fortunate, for example, to have a newspaper publisher play the role of a newspaper publisher, a hospital administrator play the role of a hospital administrator, a physician play the role of a physician, and businesspeople play the roles of businesspeople. The early results of the first run through the Client E phase have been remarkable: associates troubled by being asked to represent a pregnant teenager desiring an abortion without her parents' consent made an emotional case for being excused from such representation; "judges" have received late evening telephone requests for temporary restraining orders; third parties have sought to interfere with the client-lawyer relationship; and clients have berated associates for paying too little attention to the client's needs. All indications are that the Client E experiences have been very close to reality for the associates involved.

22. By way of representation of client D, the students engage in the following:
Interview the clients;
Mediate a dispute between the clients; and
Draft any agreement reached for their clients.

23. The complexity of generating and administering Client E required that this work be conducted on a limited, experimental basis during the first run through the Program. The experimental run is on-going as of this writing.

C. *Instruction*

Instruction comes in many forms in the Program, including reading assignments, class meetings of several varieties, activity critiques, written work critiques, panel discussions, and interaction between second year associates and first year associates. Formal instruction begins with the introductory week.

1. *The Introductory Week.* – Legal Skills begins one week before second and third year students return to school. During the week, first year students receive a stirring, evocative welcoming address, intensive academic instruction dealing with the legal system, precedent, case analysis and briefing, and an introduction to the profession and client service. Associates meet their partners and participate in their first law office activities, including the interview of a client and the preparation of a closed research memorandum based upon facts gathered from the interview by members of the office.²⁴ The introductory week was

24. The general schedule for our introductory week follows.

LEGAL SKILLS SCHEDULE – AUGUST 14TH-19TH

MONDAY, August 14th

8:00 Registration

11:00 Introduction to Legal Skills

11:15 Legal Skills Keynote Address

12:00 Lunch

1:30 Law as a Profession

2:45 Legal Skills: Content, Methodology, and Requirements

3:30 Adjournment; Self-administered English diagnostic test

TUESDAY, August 15th

9:00 The Nature of Law

12:00 Lunch

1:30 Law as a Literary Profession

2:30 Marshall-Wythe Honor Code, SBA Welcome, Administration

3:30 Adjournment

Homework: Case brief for use on Wednesday

WEDNESDAY, August 16th

9:00 Introduction to Legal Analysis

10:10 Case brief analysis (Introduction to study groups) [5 person student groups]

11:00 Release for afternoon class preparation and Lunch

1:00 Introduction to Legal Analysis

3:00 Adjournment

7:30 Social gatherings

THURSDAY, August 17th

9:00 Introduction to Legal Analysis

10:00 Introduction to the Law Library

12:00 Lunch

designed not only to academically prepare students for both Legal Skills and their other first year classes, but also to prepare the psychological framework for the law firm concept.

One particularly successful series of sessions of the week is directed at the dual goals of teaching fundamentals of common law analysis and introducing students to the dynamics of first year law classes. In these sessions, a traditional line of cases is analyzed to introduce legal analysis and case briefing skills. However, a conscious effort is made in these sessions to introduce the students to the law school classroom experience itself. The sessions are taught by three faculty members in groups of approximately sixty-five. The sessions' teachers intentionally ask various types of questions: open ended questions (e.g., "What's going on in this case?"); narrow questions (e.g., "Why didn't Plaintiff Sexias sue the 'house in New Providence'?"); questions about procedural posture (e.g., "What's all this about a 'nonsuit' and why does the appellate court seem to care so much about it?"); building block questions designed to lead students through a case (e.g., "What question was the court trying to answer? What did the court see as important to providing this answer? How will this answer affect people who face similar problems in the future?"); and so on. The teachers periodically step out of their "Socratic" role to explore the process and its goals and to identify, discuss, and demonstrate the goals of different teaching styles and questioning techniques.

Extensive critiques are completed by the students following the introductory week. Their remarks have reflected an extraordinary satisfaction with the introductory week.²⁵

1:00 Introduction to Interviewing and Fact Gathering

2:00 Introduction to clients: student interview and memo preparation

3:30 Adjournment

Homework: Prepare (closed) memorandum to senior partner

FRIDAY, August 18th

9:00 Memorandum review

10:00 The Interrelationship Between Law School and Law Practice - the Duty and Difficulty of Obtaining and Maintaining Competence

11:00 Adjournment

2:00 SBA student organization

5:30 Picnic at Lake Matoaka

25. A few such comments follow:

"The week made me more confident and less fearful of law school. It made me feel as if Marshall-Wythe really cares about each student and that each student is an important part of the law

2. *Reading Assignments.*—Because Legal Skills is so wide-ranging in content, reading assignments come from a wide variety of sources, address varied subject matter, and are drawn from purchased texts, library reserve materials, and original materials.²⁶ For example, when teaching the associates about negotiation, reading assignments come from both sources that teach techniques and from sources that discuss the relevant ethical issues raised in the negotiation session.²⁷

3. *Class Meetings.*—Because the Program has a wide range of goals, class meetings in Legal Skills come in a variety of forms. The standard class meeting is an office meeting of approximately sixteen associates. Most of the classroom instruction is conducted in this format to take advantage of the small group size and the relative ease of generat-

school."

"During the introductory week, the warmth, enthusiasm and caring that [the faculty] radiated had a visibly calming effect on the students. I was personally impressed and inspired by their dedication to excellence."

"I am particularly pleased with the overall emphasis on ethics and the law. Putting ethics rules in context helps anchor our legal studies in reality."

"The week made the transition to law school less abrupt. It made the study of law less of an unknown."

"The skills faculty's attitude made law school seem more human, less cut-throat."

26. Text List:

I. ALTERMAN, PLAIN AND ACCURATE STYLE IN COURT PAPERS (ALI ABA 1987 student ed.)[ISBN: 0-8318-0563-3].

G. BELLOW & B. MOULTON, THE LAWYERING PROCESS (Foundation Press 1981)[ISBN 0-88277-038-1, paper].

V. CHARROW & M. ERHARD, CLEAR AND EFFECTIVE LEGAL WRITING (Little, Brown 1986)[ISBN: 0-316-13771-5, paper].

C. KUNZ, D. SCHMEDEMAN, C. ERLINDER & M. DOWNS, THE PROCESS OF LEGAL RESEARCH (Little, Brown 1989)[ISBN: 0-316-50728-8, paper].

L. RISKIN & J. WESTBROOK, DISPUTE RESOLUTION AND LAWYERS (West 1987 abridged ed.)[ISBN: 0-314-68963-X, paper].

A UNIFORM SYSTEM OF CITATION (14th ed. Harvard Law Review).

SELECTED STATUTES, RULES, AND STANDARDS ON THE LEGAL PROFESSION (West 1987)[paper].

T. MAUET, FUNDAMENTALS OF TRIAL TECHNIQUES (Little, Brown 1988).

27. The assignment for the two weeks of class devoted to negotiation, which is fairly typical, is as follows:

G. BELLOW AND B. MOULTON, pp. 149-169;

L. RISKIN AND J. WESTBROOK, pp. 46-82;

SELECTED STATUTES DR's 6-101, 7-101, 7-102, 7-105, and MR's 1.1, 1.2, 3.1, 3.2, 4.1, 4.4;

White, *Machiavelli and the Bar*, AM. B. FOUND. RES. J. 926 (1980).

ing thoughtful discussion in smaller groups. Several topics are addressed in larger group meetings of approximately 80 to 110 students. Among the topics treated in large groups are general discussions of writing skills, memorandum and letter drafting; introductory discussions of negotiations, counselling, oral advocacy, and the nature of criminal law practice; research topics; trial practice topics; and ethics-legal profession topics.

Two factors drive the decision to treat some topics in larger groups. First, in some cases, topics are of a sufficiently general nature that the large group lecture format more efficiently conveys the body of information that the associates must have before proceeding to specific activities. Second, in other cases, the topic to be covered is within the special expertise of a limited number of Legal Skills faculty or, occasionally, an invited speaker. In these cases, we exploit such expertise for the benefit of the entire class.

Teaching notes have been prepared by Legal Skills staff members for each of the fifty-two academic weeks that the Program runs for each class of students. The notes include those points which are considered essential for the class as well as suggested additional points and material. The notes are designed to be specific enough to achieve a high degree of uniformity among the individual office meetings, but not so constricting as to inhibit an individual teacher from being creative with the material to be covered.

During the year, Legal Skills also co-sponsors with the Office of Career Planning and Placement panel discussions and presentations regarding the diversity of available legal careers. These presentations are one way for our students to be exposed to legal career choices other than the law firm choice most prominently represented by our simulations.

4. *Critiques.* — Associates engage in many activities in the course that are critiqued by staff. The critiques of activities are generally oral critiques that immediately follow the activity. Associates are also assigned to critique one another's performance, sometimes in writing. The recent addition of videotape equipment has provided better and more detailed critiques that have greater impact on the associates and has also enabled associates to observe their own work.

Associates submit numerous writing assignments during the course that are critiqued by staff. Some assignments are submitted originally in final form while others are submitted in draft, critiqued by staff, and then resubmitted in final form. Individual meetings with associates occur frequently, some by design and some by chance, with considerable in-

struction and critique occurring in that context.

D. Staffing

Program staff consists of faculty, teaching assistants, law librarians, a secretary who also operates as the clerk of the court in the Program,²⁸ and attorneys who are affiliated with an office on an "of counsel" basis. The "of counsel" positions have not yet been filled.

1. *Faculty.*—During the 1988-89 year, the Program was staffed by nine faculty, five of whom are residential.²⁹ With two exceptions, each was responsible for one office of approximately sixteen associates. Program faculty members are responsible for teaching class; observing and critiquing various performance activities by the associates; critiquing written work of the associates; assigning grades to individual associates; engaging in individual conferences with associates, supervising the work of a teaching assistant; and contributing to overall Program governance. Faculty for 1989-90 included the 1988-89 faculty plus three new faculty, two of whom are residential.³⁰

2. *Teaching Assistants.*—Seven carefully selected teaching assistants for 1988-89 contributed greatly to the Program's successful beginning.³¹ Fifteen teaching assistants served as staff for the 1989-90 academic year.³² All but three are third year students. Each of the third year students is responsible for work with one second year office and one first year office with approximately sixteen student associates in each office. The three second year students who are teaching assistants are responsible for some supervision of new first year associates and some administrative duties. Selecting a small number of second years to be teaching assistants will allow a carryover of expertise in the teaching assistants from year to year.

28. The Program's first secretary, Lizbeth Jackson, took her position in September 1989 and has made us wonder how we survived the first year of the Program without her.

29. Adjunct Professors Ed Bell, Rene Bowditch, Greg Davis, Betsy Schmidt, Assistant Professors Susan Grover and Jim Moliterno, Associate Dean for Placement and Career Planning Rob Kaplan, and Professors Fred Lederer and John Levy.

30. Deputy Director of the Institute of Bill of Rights Law Kay Kindred, Associate Professor of Law and Director of the Law Library Jim Heller, and Adjunct Professor Judy Ledbetter.

31. Kim Grove, Pam Posey, Pam McDade, Dave Johnson, Don Boyle, Cathy Woledge, and Kathy Hall.

32. Christy Adams, Marcia Asquith, Paul Barker, Allen Black, Matilda Brodnax, Kevin Clines, Jeff Craig, Anne Edwards, Michael Fuchs, Holly Hamilton, Carolyn Hanson, Mark Hedberg, Andrew Livingston, Dave Montgomery, and Brenda Williams.

Teaching assistant responsibilities in the Program parallel those of the faculty. Teaching assistants observe and critique associates' performances, critique student written work; perform administrative tasks; generate problem materials; contribute to the overall Program management and determination of policy; and, in some offices, do classroom teaching as well.³³

3. *Law Librarians.*—Each office is associated with a J.D./M.S.L. member of the law library staff,³⁴ with the library staff member acting as firm librarian. This association allows for enhancement of the research teaching in ways that the number of class hours devoted to such topics cannot measure. Associates are encouraged to seek assistance first from the librarian designated as their firm's librarian, but are permitted to request assistance on research projects from any librarian who is on duty. The associates can expect that their firm's librarian is familiar with the cases on which the firm is currently working and therefore is better situated to provide insightful assistance.

4. *Of Counsel.*—We anticipate adding to each office or firm a highly distinguished attorney who will be "of counsel" to the firm and who will visit the student associates at least once during the year, and also be available for limited consultation by associates during the school year. We anticipate that this program will enrich the student experience.

E. Grading Policy

At present, Legal Skills is a nine-semester-hour program of study. One of those hours is graded on the ordinary letter grade system, based on performance on a legal profession/ethics examination administered at the Program's end. The other eight hours are graded honors/

33. The teaching assistant hiring procedure is quite elaborate, reflecting the staff's commitment to the Program's goals. In early 1989, applications for the fifteen 1989-90 positions were received from over sixty students. Because one of the goals of the Program is to convey interpersonal skills and to create a good working relationship between faculty and students, having teaching assistants who are personable as well as academically capable is regarded as quite important. As a result, we interviewed each of the sixty-plus applicants for the teaching assistant positions. Relying extensively on the interviewers at each session, which included current teaching assistants, adjunct faculty, residential faculty, and usually two of the three from among the executive committee, a list of highly regarded candidates was generated. A full Legal Skills staff meeting was held to authorize the offers. Every student who was offered a teaching assistant position accepted the offer.

34. Associate Professor and Director of the Law Library Jim Heller, Associate Law Librarian Marty Rush, and Reference Librarians Rick Buchanan and Mary Grace Hune.

pass/fail.³⁵ Students who fail a semester of Legal Skills may not continue in the Program until they successfully retake the failed semester. This requires the student to "sit out" a semester of Legal Skills. Successful completion of Legal Skills is a graduation requirement.

Although student motivation has been as high as fairly could be expected, the sentiment has been expressed that providing letter grades to students might motivate them further. The countervailing interest to raising the motivation level with letter grades is the sacrifice in

35. An "honors" grade is given to the student who has demonstrated consistent excellence on all of the assignments, activities, and responsibilities during the relevant grading period. A "pass" grade is given to the student who has completed all assignments, activities, and responsibilities during the relevant grading period and has made satisfactory progress toward lawyer competence at a level that would be expected of a student completing the relevant grading period. A "fail" grade is given to the student who has not made satisfactory progress toward lawyer competence at a level that would be expected of a student completing the relevant grading period.

Progress is evaluated by examining the quality of the student's performance of all assignments, activities, and responsibilities during the relevant grading period. A student may fail for lack of effort, for lack of demonstrated progress toward competence despite best efforts, or for gross ethical breach. Failure because of lack of effort might be indicated, for example, when a student fails to submit assignments or participate in activities, is late in submitting assignments, fails to carry out program responsibilities, or does inadequate work that results from minimal effort. Failure is also indicated when a student, despite best efforts, fails to demonstrate the necessary development toward lawyer competence that would be expected of a student at the relevant grading period's stage of development. Failure because of gross ethical breach is indicated, for example, when a student suborns perjury, commits a gross breach of the duty of client loyalty or confidentiality, or other similarly unethical conduct.

The nine hours of credit are distributed as follows: two in the first semester, two in the second semester, two in the third semester, and three in the fourth semester. Students will receive a grade at the end of each semester and credit will be earned in any semester for which the student receives either a "pass" or "honors" grade. A student receiving a "fail" in a semester is not permitted to proceed to the next semester of Legal Skills. Instead, such a student must wait until the next academic year and re-enter and repeat the semester of the program for which the student received the failing grade. The student must receive a "pass" or "honors" grade before going on to the next semester in the Legal Skills series.

If a student has received a "fail" for the fourth semester but a passing letter grade on the legal profession/ethics examination, one hour of credit has been earned and the student need not repeat the examination at the end of the student's repetition of the fourth semester of the program. If a student has received a "pass" or "honors" grade for the fourth semester of the program, but has failed the legal profession/ethics examination, two hours of credit have been earned and that student must attend the class sessions relating to ethics during the spring semester of the following academic year and must retake the legal profession/ethics examination at the end of the following academic year.

collegial relations and the attendant ability that skills faculty currently enjoy to provide non-threatening critiques of student work. We are hopeful that with the increased employer awareness of the Program will come increased emphasis by employers on obtaining a recommendation from the student's Legal Skills senior partner. This development may serve as a substitute for letter grades in providing what some perceive to be a need for enhanced motivation without the attendant harm to collegial relations.

F. Governance

Because of the size of the Legal Skills Program, some form of organized coordination and decision-making apparatus is necessary. Each faculty member retains full academic freedom and grading responsibility. Beyond that, Program administration itself echoes to some degree the structure of a law firm. The Legal Skills staff makes all major policy decisions affecting the Program as a whole. The Legal Skills staff ordinarily meets monthly to ensure proper discussion and decision of major matters, although the difficulty of getting twenty-seven individuals together when some are residential faculty, some are nonresidential faculty, and some are students has sometimes caused more time to pass between meetings. During the interim, important matters are decided by an Executive Committee³⁶ after consultation with available faculty. Day-to-day operations, some of which necessarily implicate policy calls, are supervised by the Director. During the first two years of the Program's existence, virtually all decisions were made by consensus. The basic coordinating structure has proved highly successful. Publication of centralized resolution of matters of general student concern is accomplished by the Legal Skills Policies, Procedures and Rules.³⁷

III. CHIEF FEATURES OF THE WILLIAM AND MARY LEGAL SKILLS PROGRAM RELATIVE TO ETHICS TEACHING

A number of features distinguish the Program from other skills de-

36. The Executive Committee is composed of Assistant Professor James E. Moliterno, Professor Fredric I. Lederer, and Professor John M. Levy.

37. These Rules are quite extensive; they are organized in the following sections:

I. General Rules

A. Administration

B. Rules Relating to Client Representation

C. Rules of Ethics

II. Rules of Trial Court Procedure and Evidence

velopment programs organized around a law office structure, particularly regarding ethics/legal profession teaching. Importantly, the Legal Skills Program *is* the Ethics/ Professional Responsibility course at William and Mary. As such, ethics is not a side topic treated only to the extent that time will allow. Rather, the Program's day-to-day teaching is built around the demands of teaching ethics. Ethical considerations permeate every phase of the Program's two year operation and are approached from a wide variety of perspectives. A number of these perspectives and features follow.

A. *Experiential Exposure to Ethics*

On one level, the Program provides the students with experiential learning of ethical concerns. The treatment of ethics within the context of the simulations allows the simulated experiences to become more than mere games. While there remains no doubt that the depth of emotional impact of a live client experience exceeds that of a simulated client representation experience,³⁸ the inclusion of ethics teaching changes the simulations from mere competitive games to much truer, better textured representations of client service. For example, emphasizing the ethics of truth-telling involved in negotiation, in conjunction with teaching negotiation tactics, allows us to imbue the negotiating experience with consideration of legitimate client and lawyer goals other than and beyond the mere "beating" of an opponent. This aspect of the Program speaks to the sound scholarly criticism of the gaming that is involved in many practice skills programs.³⁹ I am in agreement as much as anyone can be with the concerns of Professor Heglund regarding the potential for the negative learning of ethics that can occur in the context of some simulation courses. Having taught legal writing courses, simulation clinics, live-client clinics, alternative dispute resolution courses, and the legal ethics course before directing the integrated program described in this article, I am as convinced of the danger of separating ethics teaching from skills teaching as I am delighted when I now see students planning to engage in a practice activity carefully by considering the moral and ethical dilemmas they will

III. Rules of Appellate Procedure.

38. It matters that our clients are not "paper clients", but are individuals with whom the student lawyers deal over the term of the simulation.

39. Heglund, *Moral Dilemmas in Teaching Trial Advocacy*, 32 J. LEGAL EDUC. 69 (1982); see also Lubet, *What We Should Teach (But Don't) When We Teach Trial Advocacy*, 37 J. LEGAL EDUC. 123 (1987).

face in the activity to at least as great an extent as they consider the tactics and strategies that will play a role in the activity.

B. Readings

The readings on ethics come from a variety of sources. In addition to the text of the Model Code of Professional Conduct and Model Rules of Professional Conduct, the students read from Bellow and Moulton, *The Lawyering Process, Ethics and Professional Responsibility* (Foundation 1981), our own compiled cases and materials, as well as current newspaper and magazine articles that raise questions of interest.

C. Classroom Discussions

The classroom experiences of the students nearly always have an ethics component. The almost-weekly office meetings frequently have an ethics aspect to them, as, for example, meetings to discuss soon-to-be or recently completed negotiations, interviews, motion hearings, trials, and so on. Panel discussions also are held at which practitioner participants discuss the daily trials of the practice. One particular office meeting is held to generate a pro bono policy for each individual office. These meetings have proven particularly lively and more realistic than discussions of the same topic in free-standing legal profession courses. Although the policy need only apply to the office's simulations, a few of our offices have begun to engage in actual public service in part as a result of the discussions at these office meetings.⁴⁰

There are also relatively traditional large group sessions on ethics/legal profession issues (approximately eighteen hours). Much of the large group instruction takes place in the fourth semester of the Program. We use these sessions to ensure that all topics that would have been covered in a free-standing legal profession course are covered and to provide more opportunity for academic discussion of the topics to which the associates were exposed by their simulated client experience over the two years of the Program.

40. This previously untapped resource for providing public service holds the promise of exceeding the beneficial product of live client clinics that is often the reason supporting the quite considerable expense of such programs. This development may also provide the student generated impetus at some schools toward a form of the Tulane pro bono requirement.

D. Written Work

The students produce a number of short writings regarding ethics questions at the request of their partners during the two years. They address frivolous claims and Federal Rules of Civil Procedure Rule 11 concerns when they are preparing to draft their first pleadings; they address a potential conflict of interest that representation of their initial client may pose; and many of their planning documents (such as their memorandum on trial plans) contain discussions of relevant ethics issues. They also produce a short, ethics-related writing assignment⁴¹ that provides the learning for our associates regarding entry to the bar and is tied to the computer-assisted research training to enhance the integration of that training into Legal Skills work.⁴²

E. Exposure to a Range of Faculty Role Models

In the context of the simulations, the students work for a faculty senior partner. Further, the students observe the work of other offices' senior partners. As recommended by the ABA Special Coordinating Committee on Professionalism, we are providing the students with a positive first exposure to the profession, significantly with practitioner behavior to model.⁴³

F. Disciplinary Process

The Program has in place a disciplinary process to deal with complaints of conduct violative of the Model Code or the Model Rules. (The governing code depends on the student's office affiliation.) As recommended by the Committee on Professionalism, students are being exposed early to the rigors of maintaining high standards of profes-

41. We intentionally assign some projects for short turn-around and some for long to give students a feeling for the need to budget their time and maintain control of their calendars.

42. This assignment is designed as a memo from partner to associates informing the associates that the partner is a member of the state board of bar examiners and would like the associate's input on a particular application to take the bar exam from a problematic law graduate. The CALR trainers have been most cooperative in using our entry to the bar problem, to which the associates must respond in writing to the partner, as the basis of their CALR training sessions.

43. See *infra* text page 2. As well, the positive effect of role models in the law school community generally has been acknowledged as an important ingredient of a student's moral development. Wasserstrom, *Ethics in Academia: Power and Responsibility in Legal Education*, 34 J. LEGAL EDUC. 155-228 (symposium 1984).

sional conduct.⁴⁴ This feature is thought to enhance the realism of the simulations and forms the perspective of sensitivity to ethical concerns.

G. The Effect of Playing Client Roles

The benefits to students from playing the role of a particular client for a long term have been greater than we anticipated. Many students have reported that they have obtained a valuable perspective on the practice from the client roles that will make them more sensitive to client needs than they might otherwise have been. A few have reported an enlightening feeling of helplessness from their client roles, particularly when the service being provided by their lawyers was less than might be expected.

H. Comprehensive Simulation

The problem materials and thus the simulated client service that the associates provide are comprehensive. The simulations are comprehensive in the sense that they allow associates to represent the clients from a logical beginning point (an initial interview) through a logical end point (such as a negotiation of a settlement and drafting of the attendant agreement or a mediated agreement or the conclusion of an appellate process). Because associates can see the results of each activity in which they engage, they learn more about that particular activity. In addition to the obvious skills teaching benefits of such comprehensiveness, from an ethics teaching perspective, the benefits are dramatic. Unlike ethics teaching in isolated activities such as a negotiation or interviewing exercise that appears and as quickly disappears, students deal with a single individual in the role of client, another in the role of adverse party, others in the role of adverse counsel, others in the role of co-counsel, and still others in the role of court personnel for up to two years from the beginning to the closing of the case. As such, a relationship poorly begun must be repaired; unethical behavior of fellow members of the bar must be reported under appropriate circumstances; and consequences of lawyering conduct are realized. Even in the live-client clinic, where a student's work will usually not exceed one semester in duration and where the student's relationship with a particular client may be shorter still and incomplete at the end of the term, students have less occasion to realize the consequences of their actions, particularly as they relate to the lawyer-client relationship. In the Program, stu-

44. See *infra* text page 147.

dents, by dealing with the client from beginning to end, have greater opportunities for reflection on the ultimate lawyer ethics questions that arise only through experiencing long-term the day-to-day activities and relationships of lawyering: "Who am I and who do I want to be as a lawyer and a person?"

IV. EARLY CONCLUSIONS

The Program appears to be working extraordinarily well at such an early stage in its development, both generally and specifically as to ethics teaching. Although a number of areas for improvement have been identified and a number of matters are of concern, the first years of the Program have been successful beyond fair expectations.

Remarkably, the Associate Dean for Administration reports that she received no complaints from associates regarding Legal Skills in its first year, and only a few in its second year, which represents quite a difference from conditions of many research and writing programs. Although the Program has been well received by the students, we are not suggesting that everyone is perfectly happy.⁴⁵ We believe, however, that the Program structure has been receptive to student concerns and complaints when they have arisen with most associates at least reasonably satisfied to have their concerns heard by Program staff rather than by the law school administration. Indeed, a number of adjustments to the Program's rules and procedures made after the Program's first semester and at the end of its first year have been the result of student critiques of the Program.

We have also concluded that Legal Skills can be improved through joint projects with other faculty. In the first year of the Program's existence, we worked with a faculty member who teaches the property course and requires a title search exercise.⁴⁶ Now, we are making the title search an integral element in a client's representation to better demonstrate its function and importance. Two sections of the evidence

45. Student complaints have certainly not been absent, but neither have they been as ubiquitous as they often seem to be regarding more traditional research and writing programs, for example. The complaints have had much in common with the typical complaints regarding other programs, however. Examples of those common and "in common" complaints include these: too much work for too little credit; too little coordination and consistency among offices (sections); too slow in providing feedback; too much self-learning; too little teaching of how to do an assignment; and time demands on students are unevenly distributed over the semester.

46. Our thanks to Professor Lynda Butler for her suggestion of this activity and for her help in designing it.

course are offered in the fall of each year to allow all interested second year associates to avail themselves of the course before their trial work in the Program begins. This arrangement allows the Program to dovetail some of the evidence course with skills assignments.⁴⁷ Reinforcement of other courses is a goal we hope to be able to further in future years.

Our conclusions do not mean, however, that all is perfection. We have a number of areas of concern that will undoubtedly occupy our attention as the Program matures. A brief description of the two most troubling areas follows:

A. Law Firm Concept

Although we adhere to the belief that a simulated law firm model is highly useful for instructional purposes, we are concerned that the model be neither misleading nor limiting. It is important to ensure that students recognize the multiplicity of possible legal careers. There seems to be very little controversy over the desirability of exposing the students to possibilities other than law firm life through the Program. The difficulty is in managing that exposure within our current format. The structure of the Program as it presently exists (particularly the comprehensiveness of the problem materials) inhibits the designation of some of the Legal Skills offices as entities other than law firms for either the duration of the Program or for some limited block of time within the Program. We have endeavored to expose the students to other possibilities by co-sponsoring the panel discussions on law careers during the year and by exposing the students to criminal law practice and mediation in the Program. There is general agreement that, if it is administratively feasible, more should be done along the lines of splitting

47. I happen to have been both Director of the Skills Program and the teacher of a 100-plus person section of the evidence course during fall 1989. Being simultaneously on both sides of the academic/practical teaching fence has proven highly instructive to me. I have always had students who say, for example, "I learned more about evidence (contracts) in the simulated exercise (by producing that writing assignment) than I did in the whole semester of the evidence (contracts) course." I have always told such students that they were wrong, but that they were now, because of the simulation or the writing assignment, realizing the gain in knowledge that had largely occurred though not necessarily been credited in the substantive law course. Now, however, when students make such comments to me, they are at once talking to both the skills and the substantive teacher. Other considerations aside, I now attach greater credibility to the student who, in effect, has made the comment to both the involved teachers. More importantly, however, I have come to realize in a more concrete way the relative paucity of value in either a wholly ungrounded skills exercise or a substantive course not closely followed by some application of the learning accomplished there.

away specialized offices (to act as an in-house corporate counsel or a government agency representative, for example) as a student elective for some portion of the Program. Over time, creative solutions to the difficult administrative problems involved in creating greater exposure to other law careers through the Program must be explored.

B. Decentralization and Experimentation

During this first two years of the Program's existence, we have endeavored to walk a fine line that permits sufficient autonomy to an individual office in the Program while maintaining the necessary level of consistency through the central management of the Program. In doing so, the central rules for the Program have set goals and outlined procedures for accomplishing assignments, but left some decisions about implementation of the assignments to individual offices.⁴⁸

That has resulted in some student confusion when one office chooses to do an assignment in a slightly different way than another. Associates must be made more aware of the discretion that is retained by individual offices so that no misperceptions will occur when one office handles a situation in a way that is slightly different from the others. We fear that too much centralization will inhibit the creativity of individual office partners while too little centralization will create a fractured, inconsistent experience for the associates.

As would be expected, a program as ambitious as this one is not likely to have arrived at its final stage of development after a mere

48. We even have a rule, more a policy really, that informs the students that we continue to struggle with this dilemma:

Rule 3 - Program Management; Centralization

(a) Centralization

In a program such as Legal Skills, too much centralization will inhibit the creativity of individual office partners while too little centralization will create a fractured, inconsistent experience for the students. Therefore, in drafting these rules an attempt has been made to permit sufficient autonomy to an individual office in the program while maintaining the necessary level of consistency through the central management of the program. In doing so, the central rules for the program have set goals and outlined procedures for accomplishing assignments, but left some decisions about implementation of the assignments to individual offices. Occasionally one office will choose to do an assignment in a slightly different way than another. Such slight differences should not be a cause for concern; instead they represent one means by which more can be learned about the efficacy of methods used in the program.

three years of operation. Particularly, as a vehicle for ethics teaching, it has proven remarkably flexible to the various goals served by teaching in that field. We are able to use large classroom settings to accomplish efficient conveyance of large blocks of material; teach by example; and provide students with exposure and time to reflect upon the role of lawyer, since much of the substance of ethics is not found in cases or rules but in the way lawyers choose to live. We have been gratified to observe many instances of behavior by our students that reflect an integration of their understanding of ethics and the day-to-day activities of lawyering. The early data reveals that they have gained better command of the law of lawyering in this setting than in a free standing classroom experience.⁴⁹ We could not have asked for, written nor predicted a better beginning run for such an ambitious undertaking.

49. As a teacher of the standard, large group, classroom version of the legal profession course at three schools, I have typically given an exam that is part essay and part multiple choice, the latter portion patterned after the MPRE. Having given such a course and such an exam to 66 William and Mary students in the spring of 1989, and knowing at the time that I would be giving at least the objective portion of such an exam to our first class of Legal Skills students in the spring of 1990, I carefully controlled access to my questions. Among the questions on the exam given to our 185 Legal Skills students in April of 1990 were thirteen of the questions asked of my large group Legal Profession class in spring 1989. On those thirteen questions, the Legal Profession students scored 70.6% correct; the Legal Skills students scored 79.2% correct. Because I did not draft the Legal Skills exam until after all teaching of that Program had concluded, it is unlikely that I consciously provided more information or guidance on the particular issues raised by the questions. Although not conclusive, I am gratified to know that the early evidence shows that our students not only acquire far more role sensitive experience with ethics questions in the Program, they are also better able to respond to objective questions about the law of lawyering.