

1996

# On the Future of Integration between Skills and Ethics Teaching: Clinical Legal Education in the Year 2010

James E. Moliterno

---

## Repository Citation

Moliterno, James E., "On the Future of Integration between Skills and Ethics Teaching: Clinical Legal Education in the Year 2010" (1996). *Faculty Publications*. 923.  
<https://scholarship.law.wm.edu/facpubs/923>

# On the Future of Integration Between Skills and Ethics Teaching: Clinical Legal Education in the Year 2010

James E. Moliterno

*Twelve years ago Anthony G. Amsterdam looked into the 21st century for a description of clinical legal education.<sup>1</sup> With the decided advantage of being that much closer to the turn of the century, I think I will take a similar stab. This essay is less a contradiction of Amsterdam's predictions than it is a supplement with the advantages of the passage of time. I will adopt his 21st-century perspective and look at clinical legal education from the vantage point of the year 2010.*

Even though we are only ten years into the 21st century, many of the predictions that Anthony Amsterdam made a generation ago have come to pass already. His predictions were self-fulfilling in the best sense: many of them have come true largely because of the considerable impact of Amsterdam's work both before and since his prescient 1984 essay. Ways of thinking about legal analysis have changed, in large measure in accordance with his predictions.<sup>2</sup> Helping students learn to learn from experience is now among the commonly accepted goals of most law schools.<sup>3</sup> Students now have a much wider variety of opportunities to learn in role.<sup>4</sup> Some curricular adjustments from repetitious doctrinal teaching to role-teaching methodologies have in fact occurred.<sup>5</sup>

Amsterdam correctly predicted that some redeployment of faculty resources would be necessary to achieve changes in legal education. A less predictable

**James E. Moliterno** is Professor of Law and Director of the Legal Skills Program at the College of William and Mary. This essay is based in part on a workshop presentation at the 1995 AALS Annual Meeting entitled Integration of Skills and Ethics Teaching.

Thanks for valuable comments on drafts of this essay to my colleagues John Levy, Paul LeBel, and Tom Krattenmaker, and to Anthony Amsterdam, Kenney Hegland, and Roy Simon, none of whom bears any responsibility for the views expressed here.

1. Clinical Legal Education—A 21st-Century Perspective, 34 J. Legal Educ. 612 (1984).
2. *Id.* at 613–15.
3. *Id.* at 615–16.
4. *Id.* at 616.
5. *Id.* at 618.

implication of this redeployment and of various otherwise unrelated forces has been the near demise of the live-client in-house clinic.

One of the curricular areas where these redeployments of faculty first took place was professional responsibility. In 2010, professional ethics is taught with less of a doctrinal focus and more of a basis in experiential learning. The result has been a limited redeployment of some ethics teachers from duplicative, doctrinal teaching to experiential-learning teaching. It seemed natural to incorporate professional responsibility teaching, which was, after all, about the ethics of and the rules governing lawyering, into skills teaching, which was, after all, about how lawyers do what they do. Indeed, the integration of mission between clinical education and ethics teaching has become so strong that any reference to one automatically includes the other.<sup>6</sup> Except for advanced research seminars, virtually no ethics teaching occurs outside the context of students in role-sensitive activities, and virtually no clinical education occurs without having as an explicit goal the teaching of professional responsibility.

In the late 1990s, legal educators concluded that ethics teaching is more usefully connected with skills teaching than with substantive law teaching. Connecting substantive law with professional responsibility merely presents students with connections between, for example, tort law and contingent fees or between corporate legal issues and attendant conflicts issues. But a broad-based skills/ethics connection gives students something much more immediate and compelling: the connections between what lawyers do, the law that governs how lawyers may do it, and the professional environments within which lawyers do what they do.<sup>7</sup>

The connections between skills teaching and ethics teaching have improved the teaching of both professional skills and professional responsibility. The addition of professional responsibility material gave skills teaching an academic component, which has enriched it.<sup>8</sup> Teachers of this new combination ("new" in the sense that it was now done consciously and explicitly) found scholarly outlets for their work in forms and forums previously underused by

6. *Clinical education* in this essay means education that uses role-sensitive activities at the core of its methodology. By *role-sensitive activities* I mean activities that place students in a role, usually that of lawyer. These activities occur primarily in sophisticated simulations and externship placements and to a lesser extent (much less than in the 1990s) in in-house clinics.
7. See James E. Moliterno, *An Analysis of Ethics Teaching in Law Schools: Replacing Lost Benefits of the Apprentice System in the Academic Atmosphere*, 60 U. Cin. L. Rev. 83 (1991).
8. The academic enhancement of skills teaching also tended to expose as valueless what came to be known in the late 1990s as "*faux* skills teaching." A proliferation of easy-to-use materials, mainly videotapes and poorly designed computer simulations, found a market in the '90s with a relatively small scattering of remarkably slothful skills teachers. By using such materials, they were able to navigate weeks of class sessions without ever having eye contact with a student. Quality skills teaching has always involved a great deal of student contact: observing, critiquing, and counseling with students about their role-sensitive activities. Adding an academic component (and the scholarship that went along with it) helped to expose the *faux* skills teaching that for a time threatened to destroy the reputation of skills teaching generally.

skills teachers.<sup>9</sup> Professional responsibility courses, not often well received by students in the '80s and '90s,<sup>10</sup> have been transformed; this is now an interactive, engaging subject of study that is among the highlights of any student's law school days. Combining the study of professional responsibility with clinical methodologies has given an experiential-learning base to a subject that cried out for it. Professional responsibility, as a subject, has always been about what lawyers do and how they interact with clients, each other, supervisors, law office organizations, the courts, and the public interest. Where the new format is in place, the student learns the subject and experiences the relationships together.<sup>11</sup>

None of this transformation has come easily, and it remains far from total. Like all the earlier important changes in legal education—Langdell's revolution, the changes brought about by the legal realists, the emergence in the '60s and '70s of the clinical education movement—the recent changes have been met with significant misgivings. Many hurdles have been overcome, but many remain.<sup>12</sup>

9. The status of skills teachers in legal education, long a contentious issue, has largely been resolved by this development. Professional skills teachers now produce both high-quality teaching and scholarship of all descriptions: pedagogy-oriented, heuristic, historical/analytical, and critical. Much of their scant '80s and '90s scholarship was considered to be at the fringe of respectability; today it is the mainstream. Status issues dissolved as their scholarship became more ambitious and effective and as the rest of the profession became better educated about its value.
10. See, e.g., Lawrence A. Dubin, *Professionalism Among Lawyers: The Law School's Role*, 68 Mich. B.J. 850 (1989); Rosemary C. Harold, *Dilemmas: Ethics Are Lawyers' Biggest Concern—So Why Isn't There Any Rational Way to Teach Them in Law School?* Student Law., Dec. 1989, at 9; Calvin Trillin, *A Reporter at Large: Harvard Law School*, New Yorker, Mar. 26, 1984, at 53.
11. For the full argument on this point, see Moliterno, *supra* note 7.
12. We sometimes forget the resistance that Langdell faced when his innovation was being tested. That resistance is well expressed in an 1883 letter from Ephraim Gurney, dean of the Harvard Law School, to Harvard's president, Charles Eliot:

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. . . .

Arthur Sutherland, *The Law at Harvard: A History of Ideas and Men, 1817–1967*, at 188–89 (Cambridge, Mass., 1967).

For example, the increased student contact that skills teaching calls for has matched badly with some teachers' interpersonal skills. Not all faculty are (and perhaps not all should be) skilled in interpersonal relations. As a result, some attempts at reconfiguring faculty responsibilities to include increased skills teaching have been disastrous.

Another difficulty has been the additional costs associated with the reduced student-faculty ratios that came with the combination of skills and professional responsibility. These costs initially threatened to derail the entire movement. But three things—redirected resources, a surprising contribution from the organized bar, and improved efficiencies in the format itself—have combined to overcome this funding crisis.

As live-client clinics diminished in importance, law school funds that had once supported them were redirected to the new role-sensitive ethics courses. Some who had been teaching in clinics were interested in working in the new format and necessarily gave up some of their clinical responsibilities, redirecting the personnel resource. Additionally, some but not nearly all of the government support for live-client clinics has been redirected toward support for more efficient externship programs, particularly those involving service to the poor. Because the externships are an integral part of the new format, the government funds have reduced its added costs.

A surprising development has been the organized bar's contribution. Before the late 1970s, when lawyer mobility became an issue, law firms invested a great deal in the training of new lawyers. The investment was not always in formal training programs; more often it was simply that partners and associates alike spent large amounts of nonbillable (or less billable) time working through multiple drafts of documents and discussing case management and client relations. In the '80s and '90s such investment in training no longer made economic sense: law firms could not protect their investment because associates frequently departed and took their training with them, lower percentages of associates became partners,<sup>13</sup> and associates' salaries increased sharply so that an investment of their time became far more costly. Looking for someone to blame for this state of affairs, and for the general dissatisfaction with the performance of new lawyers who could no longer expect to be trained on the job, the bar turned its eye toward legal education. Several states convened so-called conclaves on the education of lawyers for the dual purpose of venting frustration and of fostering a dialog about the relative roles of the bar and the law schools in the training of new lawyers. Much to the bar's surprise, the law schools' response was that the schools could do more effective training only if student-faculty ratios could be reduced, and that such reductions would not be possible unless the bar helped foot the bill. And to the law schools' even greater surprise, the bar responded favorably: several state bars have created schemes something like IOLTA to raise money for

13. Richard L. Abel, *American Lawyers 194–96* (New York, 1989).

skills and ethics teaching in law schools.<sup>14</sup> In effect the bar has consolidated its training investment in a way that spreads the financial burden and protects the individual legal employer's investment.

In the '80s and '90s, while the skills/ethics connections were first being explored and developed at Stanford, then at NYU, and then at William and Mary, among other schools, there was a parallel ebb and flow of interest in the old pervasive method of ethics teaching.<sup>15</sup> Long regarded as a sham, the method was revitalized through efforts at Notre Dame and later by Deborah Rhode and others.<sup>16</sup> There were, as well, scattered but impressive successes of individual faculty innovators who incorporated skills/ethics teaching into a variety of other substantive law offerings through the use of sophisticated simulations. Together with the work of the new pervasive-method advocates, these innovators breathed new life into the connections between teaching ethics and teaching other substantive law.

Even so, schools continued to grapple with a serious problem: What should be the best available way of fully integrating ethics teaching with role-sensitive teaching methodologies, while also accomplishing a more limited integration of ethics teaching with the teaching of other areas of substantive law? An effective and feasible plan for teaching professional responsibility with clinical methodologies has now emerged and has been adopted by several schools; others are studying it carefully, and the pace of adoption, slow and grudging at first, appears to be picking up steam.

Early-21st-century innovators have taken lessons learned at Stanford, NYU, and William and Mary and added those learned from the new pervasive-method innovators. The result is a long-term experiential program, based in substantive law, that combines ethics, skills, and substantive law.

Through experiential learning, this new formula takes the best connections between what lawyers do and the ethics of what lawyers do, and combines them with simulations of specific work environments where the issues associated with particular substantive law offerings play out in practice: experiential in-house corporate counsel settings in the corporations course; plaintiff's

14. The IOLTA schemes began in the 1980s as a mechanism by which the interest on client trust accounts is directed to organizations that provide legal services to the poor. They cost lawyers nothing: the interest belonged to the clients whose money was on deposit, and before IOLTA the banks reaped the benefits of lawyers' using non-interest-bearing checking accounts for client trust purposes.
15. Paul Brest, *A First-Year Course in the "Lawyering Process,"* 32 *J. Legal Educ.* 344 (1982); James E. Moliterno, *Teaching Legal Ethics in a Program of Comprehensive Skills Development*, 15 *J. Legal Prof.* 145 (1990); James E. Moliterno, *The Legal Skills Program at the College of William & Mary: An Early Report*, 40 *J. Legal Educ.* 535 (1990) [hereinafter Moliterno, *Legal Skills*]; Steven A. Reiss, *The American Bar Association's National Conference on Professional Skills and Legal Education*, 19 *N.M. L. Rev.* 28 (1989).
16. See David T. Link, *The Pervasive Method of Teaching Ethics*, 39 *J. Legal Educ.* 485 (1989); Deborah L. Rhode, *Professional Responsibility: Ethics by the Pervasive Method* (Boston, 1994). The W. M. Keck Foundation supported a number of law schools' ethics teaching efforts during the '90s. Many were pervasive-method-revitalization programs of one type or another. See Symposium, *Law & Contemp. Probs.* (forthcoming) (reporting results of forum of November 2-3, 1995, sponsored by Keck Foundation).

personal injury and insurance defense offices in Torts or Products Liability; government agency settings in Administrative Law or Environmental Law; the Federal Reserve or the International Monetary Fund in International Finance Law; the United Nations in Public International Law; legal aid or state human services offices in a child welfare or juvenile law course; prosecutor and public defender offices in Criminal Law and Procedure. The final educational "product" includes a three- or four-semester skills-and-ethics course, broad based but oriented to general practice,<sup>17</sup> combined with a *coordinated* variety of simulations. The simulations are an integrated part of ten or more substantive law courses; they bring in the benefits of the pervasive method in a managed way.

Test and survey results have revealed that students who take only the required basic general-practice-oriented course without any of the electives (though this situation is highly unusual) have a better learning experience than did earlier law students who almost always took professional responsibility as a freestanding course.<sup>18</sup> The great number of students who take not only the required basic course but six or so of the electives are far better prepared to begin practice than were their predecessors—even those who took a smattering of elective (and disconnected) skills courses in addition to Professional Responsibility.

The basic program also makes use of externships. Advances in placements and supervision brought in the final pieces of the new format. Students in the externships are simultaneously enrolled in the comprehensive simulation/ethics course. The externships serve an important purpose of clinical legal education: they provide a realistic forum for critique of the profession.<sup>19</sup> Students keep journals for review by the faculty supervisor and report their externship experiences to their small group within the course. The externship enriches the simulation experiences in the law school while the simulations give students an analytical framework within which to experience and evaluate their externship activities.

Technological advances have been significant in expanding externships and increasing their sophistication. Long a difficult problem, faculty monitoring of the externships has become much easier. Largely through electronic mail and video conferencing, faculty supervisors are now much more familiar with the placement settings, even those that are some distance from the law school building. Reporting by voice mail and especially by e-mail on placement activities has all but eliminated the time-wasting game of telephone tag. The same technological advances have allowed for the efficient use of alumni

17. This would be like most of William and Mary's Legal Skills Program, described in Moliterno, *Legal Skills*, *supra* note 15.

18. For an early empirical study indicating the preliminary results of such testing, see James E. Moliterno, *A Comparative Study of Lawyer Preparation for Practice Based on Professional Responsibility Curricula*, 59 *Law & Contemp. Probs.* (forthcoming, 1996).

19. See Robert J. Condlin, "Tastes Great, Less Filling": The Law School Clinic and Political Critique, 35 *J. Legal Educ.* 45 (1986).

volunteers as supervisors, expanding the available placements while further reducing their cost.

Adding a sophisticated externship component to the new skills/ethics program served another important interest of clinical legal education: service to the community. Inevitably, many of the externship placements are in public service. The brief externships, required of all students, were found to provide significant service, perhaps more than the in-house clinics that a school might otherwise have been able to afford. At many schools the externships are tied to a public service graduation requirement. Schools where all students are exposed to the public service experience provide a great deal more service than was previously provided by the estimated 30 percent of students who could be accommodated in in-house clinics (at those schools that had them).<sup>20</sup>

The new program has assumed the goals (and the credits) formerly assigned to courses in professional responsibility, legal research and writing, interviewing, negotiating and counseling, appellate advocacy, pretrial advocacy, trial advocacy, and alternative dispute resolution. It includes externship credits and also accounts for about 25 percent of the credit earned in ten or so other courses (3- or 4-credit electives). The average student takes six of these electives and, as a result, earns 14 credits in the basic program, 4 externship credits, and 6 skills/ethics credits from the substantive law courses: a total of 24 credits of the 86 required for graduation, or approximately 28 percent. This is a dramatic increase from the early '80s, when the average student took a 2-credit professional responsibility course, a 4-credit research and writing sequence, and a handful of clinics or skills offerings.

Faculty continue to be resistant to intrusions into their courses. Faculty in the 1990s were not accustomed to teamwork. The adjustment for those involved has been a struggle; some have simply not overcome the difficulties. The adjustments have been not unlike those experienced by the practicing branch of the legal profession in the '80s and '90s. As practice became more complex, the multiple areas of law affecting the affairs of individual clients became too much for any single lawyer to manage. It became increasingly common for lawyers to work in teams on client matters. Lawyers (and for that matter others) slowly learned to adjust to the new situation. Simply put, all sophisticated workers in the society had to add team skills to the skills previously needed to accomplish their respective jobs. Lawyers joined in this workplace adjustment movement in the '80s and '90s. Law faculty are doing so now in 2010.

Legal education was late in sensing the need to give law students serious opportunities to learn the skills of working in teams on law-related projects. Aside from cocurricular activities such as moot court and other competitions, law students did few team assignments until the early to mid 1990s, when skills-oriented teachers of legal research and writing, clinics, and simulation courses

20. Report on the Future of the In-House Clinic, 42 J. Legal Educ. 508, 522 (1992). The percentage of students doing public service through in-house clinics was actually somewhat lower; not every in-house clinic is a public service clinic.



began in earnest to break down the barriers of individual student projects. Following the lead of early 1990s innovators, somewhat later in the '90s teachers of a variety of courses routinely began to have students do team projects for grades and other credit: negotiating and drafting a contract in Contracts, drafting discovery materials in Civil Procedure, and so on.

Naturally, teachers of the upper-division electives at first were skeptical about adding a simulation component to their courses. They have found, however, that the simulations are not disruptive and that in important ways they enhance their students' learning of substantive law. The level of cooperation among faculty has been enhanced by this common experience.

Several factors have contributed to the current and rather astonishing degree of coordination among formerly lone-actor faculty. First, the staff of the basic skills/ethics simulation course have provided the simulation design and management expertise. They have created and executed the simulations in consultation with teachers of the electives, who have borne little of the burden of design and administration. This was an efficient arrangement that took advantage of the relative expertise of the involved personnel. Second, the simulations have been flexible and varied. Some faculty have preferred a nearly semester-long simulation to complement their courses, while others have preferred a simulation as short as two weeks. Some faculty have been central characters in the simulation, while others have preferred that the simulation be executed by others and run parallel to the course. Third, faculty began to see that simulations enhanced their experience as teachers. They began to recognize the benefits of teaching students who had a simultaneous practice context for the area of substantive law being taught. Such students could move beyond rudimentary issues more quickly; the teacher could explore the substantive area more deeply and from a wider variety of perspectives than had been possible before.

A typical simulation works something like this. The skills/ethics staff work with the teacher of the substantive course to plan the simulation, which may run anywhere from two or three weeks to the full semester. They consult about the primary issues to be addressed: in Products Liability it may be contingent fee structures and multiple-client conflicts of interest; in Juvenile Law it may be limits of confidentiality when a lawyer is aware of child abuse, confidentiality in the mediation context, and paternalism in lawyer-client relationships; in Corporations it may be client-as-entity issues, client fraud, and attorney-client privilege in the institutional setting; in Criminal Procedure it may be the nature of the prosecutor's role, client perjury, and witness preparation. Several simulations are designed, mainly by the skills/ethics program staff, for the particular practice settings relevant to the substantive law course. Role players, some from within and some from outside the law school community, are located and given their instructions. Students in the course are divided into working groups of four to six, depending on the complexity of the client's needs, and groups are assigned to representation settings and client representation responsibilities. The skills/ethics staff and the course teacher cooperate in executing and monitoring the scenarios.

One scenario in Criminal Procedure, for example, involves a mid-level drug dealer who is charged with various crimes and is in hiding. The dealer, through his attorneys (a working group of four students), is seeking preferential treatment from the U.S. attorney's office (a working group of four students) in exchange for revealing information about the organization for which he works. The attorneys' negotiations proceed. (The prosecutors consider: What are the legitimate interests of the government?) Later, the defense lawyers learn that their client is attempting to gain his advantage in exchange for false information that they have, to that point, unwittingly been giving to the U.S. attorneys. (They wonder: Should, must, they tell the prosecutors?) The defendant then calls one of his lawyers, at night, to tell her that while the *authorities* have not found him, his *coconspirators* have and he is in great danger. Over the telephone, the lawyer hears gunshots, a door being broken down, and glass shattering. The phone line goes dead. (Should she call an ambulance, or the police?) The next morning the defendant calls again to report that he narrowly escaped from his coconspirators the night before. Losing confidence and patience with his lawyers, the defendant calls one of the prosecutors directly. (How should the rules about contact with opposing, represented parties rules apply to a prosecutor?) From there, the scenario proceeds in one of several possible directions, depending on the actions taken by the prosecutors and the defense lawyers. All this activity occurs over a period of about four weeks during the semester.<sup>21</sup>

For a variety of reasons, as the use of simulations and externships has increased, the in-house clinic has faded—undoubtedly the most wrenching development of the past fifteen years.

As state support for legal education (and higher education in general) eroded in the '90s, the impact on clinics was magnified by even more dramatic losses in traditional sources of funding such as Department of Education and Legal Services Corporation grants. In particular, a significant study commissioned by LSC in 1998 demonstrated that service to the poor could more efficiently be provided by shifting clinic support to direct grants to legal services offices. Hiring additional lawyers, paralegals, clerical support, and, yes, law student externs allowed legal services offices to provide more service per dollar than had in-house law school clinics supported by the same funds. The privatization of LSC was accompanied by the adoption of a private-business perspective on grants. In their attempts to convince grant-making personnel that they could efficiently provide service-for-dollar, law school

21. Experimentation is currently underway with the next generation of simulations. These new, experimental simulations involve scenarios that cut across course boundaries. For example, students in a social programs course work in an attorney general's office representing the state child services administration; students in the juvenile law course work in a legal aid office representing a pregnant teenager who is contemplating an abortion; students in a health law course represent the hospital at which that teenager seeks abortion services; students in a family law course represent prospective adoptive parents who seek to place an advertisement offering possibly illegal benefits to birth parents who will give up a healthy child to them for adoption; and students in a First Amendment course represent the newspaper in which the prospective adoptive parents place their advertisement. The multiple interactions among such clients give students a fascinating, invaluable semester.

clinics were no match for established legal aid offices—let alone the private law firms, particularly the well-established private legal clinics, that began bidding for the grants as well. The brief but intense Republican Revolution of the mid '90s accelerated the cessation of Department of Education grants.<sup>22</sup>

With faculty positions a rare commodity and competition for the few openings fierce, law schools began hiring so-called bridge faculty to do clinical and simulation teaching and provide “bridging” to professional responsibility and other substantive law components of the curriculum. Some of these relationships proved marvelously effective, resulting in innovative improvements in simulation teaching and the teaching of substantive law, especially professional responsibility. But they also meant that fewer and fewer faculty hours were spent in clinical work.

Clinical faculty in greater numbers also began to take on scholarly responsibilities in earnest. New forums for clinical scholarship were established. Clinicians' scholarship was highly successful; much of their scholarship fit well within postmodern scholarly fields, and it was published in the best law reviews. Finding time for scholarship meant that more efficient ways of using clinical methodologies were needed. It also meant that clinicians began receiving released time from their teaching duties. For many the released time came during the academic year, but for others it was the first summer relief of their careers. More clinicians began to spend more of their time teaching within the substantive curriculum as well, effectively importing clinical methodologies and improving the quality of the curriculum as a whole. All this activity reduced time available to supervise caseloads and clinic students, and since most of the lost supervision resources were not replaced, there was a rather dramatic decrease in the amount of clinical legal education occurring in the in-house live-client setting. Schools increasingly looked to simulations and externships. Simulation teaching became more sophisticated and, combining with expanded externship placements, became the dominant method of delivering clinical experience.

A fairly large group of live-client clinicians argued vehemently against this shift toward scholarship. They had long maintained that traditional scholarship was of little real value and that their time spent in public service and advocacy activities would suffer if they were required to commit time to scholarship. Along with a number of faculty committed to the tradition of public service, these clinicians continue at many schools to block the progress of the new skills/ethics model. The missed communication between the advocates of the new model and the traditional clinicians and their allies involves evaluation of means rather than a disagreement over desired ends. In

22. See ABA Syllabus, Winter 1995, at 14. Having learned a lesson from the mistake of Ronald Reagan's failed efforts to dismantle LSC entirely, the 1990s Republicans protected LSC and focused their dismantling efforts at law school clinical programs. In Reagan's time, the threatened zero funding for LSC sent an unprecedented wave of lawyers oriented to poverty legal services scrambling into legal education jobs, changing the character of legal academia (and therefore the training of lawyers) for years to come in a way not desired by Reagan and his advisers.

fact, the new model, through extensive public service externships and through additional resources (former federal support for live-client clinics) for legal services offices, has meant more rather than less legal service to the poor. The fact that law faculty play less of a role in the provision of that service has simply proved too much for some traditional clinicians to bear.<sup>23</sup>

On the merits of the educational experience for students, the debates had long been framed as in-house clinic vs. externship<sup>24</sup> or in-house clinic vs. simulation. Those debates were fully and well argued. With the *combination* of simulation and externships in a single coordinated program, however, the debate changed. Every advantage of in-house clinics over either externships or simulations standing alone was countered by a like strength found in the combination of externships and simulations. For example, while in-house clinics have an advantage over simulations in service to the community, externships can provide as much or more service. While in-house clinics have an advantage over simulations in exposing students to situations that are the genuine article, externships are more realistic than in-house clinics because students are placed in the actual legal aid office, for example, rather than a law school's internally created model of a legal aid practice. Likewise, while in-house clinics offer more predictable supervision than externships, simulations can be made to have still more stable and predictable supervision than an in-house clinic. While in-house clinics offer more predictable levels of quality work than externships, simulations are created and managed with the express purpose of providing even levels of work, escalating levels of challenge, variety in issues and types of cases, and opportunities to see a matter through from beginning to end. The advantages of either externships or simulations over in-house clinics remained as features of the new, coordinated program. Advantages of the in-house clinic over either externships or simulations standing alone became largely irrelevant.

The combination of these developments has meant that now, in the year 2010, fewer than 10 percent of law students do a full semester of in-house live-client work, but 90 percent of law schools now have *required* simulation skills/ethics courses and coordinated, required externships.<sup>25</sup> More than 90 percent of students do public service work during law school, either as an externship or in fulfillment of graduation requirements imposed by most law schools. The credits earned by students in these required courses have largely been drawn from reduced emphasis on teaching the breadth of legal doctrine. As the law became more complex (despite the Republican Revolution of the mid

23. See James E. Moliterno, Goodness and Humanness: Distinguishing Traits? 19 N.M. L. Rev. 203 (1989); Frank W. Munger, Clinical Legal Education: The Case Against Separatism, 29 Clev. St. L. Rev. 715 (1980).

24. See, e.g., Condlin, *supra* note 19.

25. A number of schools now follow the simulation program with a mini-clinic, a service-oriented live-client experience of four to eight weeks. The remaining in-house clinics are concentrated at schools located in a few urban areas and at schools with a religious tradition. In many of the latter, the balance between academic goals and service goals had always been tilted heavily toward the service goals.

'90s), the final remnants of the mid-20th-century notion that law schools could somehow teach in three years all the law a lawyer would need to know were reduced to ash. The emphasis of legal education—clinical and role-sensitive education in particular—has finally and fully shifted to teaching fundamental legal principles and philosophies, perspectives on the law's place in society, and, significantly, the thought processes and judgments inherent to lawyering. The intent is to graduate lawyers who will be capable and flexible learners and practitioners in a remarkably wide variety of settings.