This article is designed to begin a discussion about the impact of the MacCrate Report, and questions we should confront, ten years after the Report's publication. The article begins with a summary of the Report, the activity within the legal education world in the Report's wake and the accompanying scholarly debate. It then shifts from the national stage to that of an individual law school, using the New England School of Law in Boston as a case study. The article examines the curricular changes that occurred at that school over the past ten years, and the process that led to the changes. The article analyzes the impact of the changes and the effect of the MacCrate Report in this context, a discussion that necessarily includes an exploration of the process of assessment and a search for appropriate standards for analyzing the impact. The article next returns to the national scene, reaching preliminary conclusions about the Report's impact based on the limited information available, but also urging that we use the tenth anniversary of the MacCrate Report to engage in a more detailed assessment of our teaching of skills and values. The article then raises and explores a series of questions to guide this assessment. The article examines choices involving higher and lower credit programs, full-year and one-semester programs, programs that depend on careful sequencing versus programs that do not, and programs beginning in the first year versus programs focusing on the upper-level classes. The article then shifts to the debate regarding the relative merits of in-house clinics versus externship programs and the resulting implications for an overall skills and values program. The article ends with a discussion of strategies for filling gaps that we know exist in the teaching of values identified by the MacCrate Report that relate to the goal of "Pursuing Equal Justice" in legal education.
This article is designed to begin a discussion about the impact of the Report, the process of assessment and questions we should confront ten years after the Report's publication. Part I returns to 1992, providing a summary of the Report, the activity within the legal education world in the Report's wake and the accompanying scholarly debate. Part I sets the stage for assessment by providing a framework drawn from the Report and efforts to implement it.

Part II shifts from the national stage to that of an individual law school. Part II begins with a picture in 1992 of the New England School of Law in Boston, where I teach. It examines the curricular changes that occurred over the past ten years and the process that led to the changes, and begins the process of analyzing the impact of the changes and the effect of the MacCrate Report in this context. Because legal education has failed to develop objective standards to evaluate the effectiveness of our teaching, it is impossible to discuss the Report's impact at New England without also identifying standards for making the assessment. The section proposes five standards for evaluating the Report's impact at an individual law school and assesses the changes at New England in light of each standard. New England adopted changes involving individual courses, accompanied those changes with initiatives designed to change the culture at the law school with respect to the teaching of skills and values, and added both an upper-level professional skills requirement for graduation and a Skills and Ethics component to the first-year courses. To expand public service work at New England, the faculty established a Center for Law and Social Responsibility. Although these changes strengthened the school's teaching of skills and values, the landscape at New England does not seem substantially different from 1992. The ultimate assessment of the MacCrate Report's impact at New England depends on the standards we use in making such an assessment.

Part III shifts away from the New England example and begins the process of assessing the impact of the Report nationally. Although the process of assessment of the Report's overall impact is even more complex than that for one law school, it is nonetheless possible to reach a number of preliminary conclusions. First, the MacCrate Report served as an effective organizing tool for the activities and thinking of clinical teachers and proponents of clinical legal education. Second, the Report and its proponents played a crucial role in the adoption of changes to the American Bar Association (ABA) accreditation standards designed to strengthen clinical legal education and the teaching of skills and values. Third, any further effort at assessment is hindered by the complexity of the process of change in legal education. We may identify changes that occurred in legal education in the decade following the MacCrate Report. We may speculate as to the possible role the MacCrate Report played as one factor causing particular changes. But it is difficult to determine the extent to which the MacCrate report caused the changes, or whether the changes would have occurred in the absence of the Report. The difficulty in determining causation should not preclude efforts to assess the status of our teaching of skills and values. Those efforts, however, are stymied by gaps in our information about the current teaching at our individual schools, about the impact of changes that have occurred in the decade since the Report's publication, and about the cumulative impact nationwide of the changes at our different schools. Part III then turns to a series of questions to guide our attempts to fill those gaps. The MacCrate Report recommended that each law school undertake a study to determine which skills and values are taught in the curriculum and develop a coherent agenda for skills and values instruction. We should use the tenth anniversary of the MacCrate Report to assess the progress made both at our individual law schools and nationally. We should pool our knowledge regarding the structure and establishment of programs that seem effective in filling the gaps we identify, and develop new strategies for filling them. Our renewed efforts at assessment should begin with the methodology of the Report, but also should be informed by the scholarship published and initiatives undertaken in the intervening years. For example, the past decade saw an increase in scholarship by clinicians focused on learning theory and on externship programs. Over
the same period, clinical teachers joined, and often led, initiatives focusing law schools on the issues of pro bono and Equal Justice. [FN9] In light of the scholarship on learning theory, Part III explores choices involving higher and lower credit programs, full-year and one-semester programs, programs that depend on careful sequencing versus programs that do not, and programs beginning in the first year versus programs focusing on the upper-level classes. [FN10] Building on this analysis, Part III shifts to the debate regarding the relative merits of in-house clinics versus externship programs and the resulting implications for an overall skills and values program. [FN11] Finally, recognizing that recent initiatives regarding pro bono programs and "Pursuing Equal Justice" reflect ongoing gaps in the teaching of particular values identified by the MacCrate Report, Part III ends with a discussion of strategies for filling those gaps. [FN12]

Whether or not we continue to invoke the MacCrate Report in framing our questions and setting our agendas, we should acknowledge our debt to the Report and to those who contributed to the efforts to produce the Report and implement its recommendations. It would be a sad fate for the Report to die without anyone noticing, or *113 become passé in the eyes of most in legal education, while some smaller group clings to the notion that the Report has wrought important changes. Since clinical teachers played a major role in the writing of the report, as well as efforts to implement its recommendations at the national, state and individual law school level, it is appropriate for clinical teachers to insure that analysis and assessment occur. To begin the process, we return to 1992.

I. The MacCrate Report: Publication, Reaction & Mobilization

The MacCrate Report was published in 1992. Officially titled Legal Education and Professional Development-An Educational Continuum, and issued by the American Bar Association's Section of Legal Education and Admissions to the Bar, the 414-page document constituted "The Report of The Task Force on Law Schools and the Profession: Narrowing the Gap." The blue ribbon Task Force was chaired by Robert MacCrate, whose name became synonymous with the Report. The Report's core sets forth "The Statement of Fundamental Lawyering Skills and Professional Values": ten fundamental lawyering skills and four professional values "which new lawyers should seek to acquire." [FN13] Anticipating its critics, the Report acknowledged that the purpose of developing a Statement of Skills and Values (SSV) was not to identify a definitive set of skills and values, but to provide a vehicle for beginning a process through which "discussion in all sectors of the profession could be focused on questions about the nature of the skills and values that are central to the role and functioning of lawyers in practice." [FN14] The Report explained the focus and formulation of the statement and set forth possible uses of the SSV, by a range of possible users. [FN15] Anticipating its critics, the Report identified "Abuses of the Statement to Be Avoided," including that the SSV should not be used "as a standard for law school curriculum," "as a measure of performance in the accrediting process," as "an enumeration of ingredients *114 that are either necessary or sufficient to avoid malpractice," or as a "source for bar examinations." [FN16] The Report begins with over one hundred pages describing "The Profession for Which Lawyers Must Prepare," [FN17] before formulating, organizing and analyzing the SSV. The Report follows the SSV with a chapter on "The Educational Continuum Through Which Lawyers Acquire Their Skills and Values" [FN18] and concludes with "Recommendations of the Task Force." [FN19] Consistent with its theme of the Educational Continuum, the recommendations include not only twenty-five specific recommendations directed at the law schools, but also recommendations directed to the stages of development both before and after law school, as well as the transition to practice from law school and the licensing process. [FN20] The Report emphasizes the importance of clinical legal education in the teaching of skills and values:

Clinics have made, and continue to make, an invaluable contribution to the entire legal education enterprise. They are a key component in the development and advancement
of skills and values throughout the profession. Their role in the curricular mix of courses is vital. [FN21]
The Report's laudatory treatment of clinical legal education is hardly surprising, given the central role played by clinicians in shaping the document. Clinicians served as Members of the Task Force and Task Force Consultants. [FN22] One of the four public hearings held by the Task Force was dedicated to hearing the views of clinical teachers, and clinicians appeared or submitted written comments at other public hearings as well. [FN23] One clinical teacher, Randy Hertz of the New York University Law School, served as consultant to the subcommittee that developed the core of the Report, the SSV. [FN24]
The MacCrate Report was not the first comprehensive effort to address the lack of competence among graduating lawyers. Robert MacCrate was among the many who placed the Report in the context of previous efforts including the Reed Report (1921), the writings of Jerome Frank in the 1930's and 1940's, and the Crampton Report (1979). [FN25] The growth of clinical legal education beginning in the 1970's was spurred in part by "student demands for relevance in the law school curriculum." [FN26] Yet, by the mid-1980's, Gary Bellow spoke for many by observing that "contrary to the view of many law faculties, our present modes of education do not properly prepare students to practice law." [FN27] Outside the law schools, critics loudly decried "disjunctions . . . between legal education and the needs of lawyers and judges." [FN28]
Justice Rosalie Wahl laid the predicate for the Task Force in 1987, when she chaired the ABA Section on Legal Education. [FN29] The Task Force itself was comprised of members both inside and outside the field of legal education, and included liaisons both to the Association of American Law Schools and American Bar Foundations. [FN30] The Task Force held seven plenary sessions between 1989 and 1992, and four public hearings, held in 1990 and 1991, at which the Task Force received both oral and written comments. [FN31] A Tentative Draft of the SSV "was circulated nationally to members of the Bar and law school faculties," triggering comments from an array of groups; the comments in turn led to numerous changes to the SSV, and the Report was published in 1992. [FN32]
The MacCrate Report became a lightening rod for discussion, strategizing and critique both inside the world of legal education and in the profession as a whole. Following the Report's publication, a steady stream of conferences focused on the Report, as well as on the teaching of skills and values in general. [FN33] Both the American Bar Association (ABA) and the Association of American Law Schools (AALS) dedicated considerable energy to the Report, its recommendations and the reaction triggered by the report. [FN34]

*117 The discussions around the country were soon accompanied by scholarly articles involving descriptions, analyses and critiques of the Report and its recommendations. The trickle of law review articles that began to appear in 1993 became a flood by 1994. [FN35] Law reviews published individual articles and symposia dedicated to issues raised by the MacCrate Report. [FN36] One textbook, designed to explain "the fundamental lawyering skills, values and relationships in the practice of law," was dedicated to Rosalie Wahl and Robert MacCrate. [FN37]
The earliest scholarly responses included a scathing critique from Dean John J. Costonis. [FN38] Dean Costonis excoriated the Report for "essentially ignoring the most visible impediment to its implementation: the costs of its recommendations and the trade-offs that must be struck." [FN39] Although Dean Costonis asserted that his primary differences with the Report were "economic, not pedagogical," the structure and language of his article suggested more substantial differences. He criticized the SSV, the vision of the law school's role in the educational continuum, and the use of ABA oversight and *118 rulemaking to further the Report's goals. [FN41] The critique was packaged in the historical context of the previous efforts to reform legal education that had failed [FN42]- implying that a similar fate awaited the MacCrate Report. Other law school Deans joined Dean Costonis in his critique, most notably through a "Dean's letter" co-signed by fourteen law school Deans. [FN43] The Deans' Letter
explicitly opposed use of the accreditation process in its implementation. [FN44] As part of their critique, the Deans fought back directly at clinicians, citing the costs of clinical legal education, the dangers of using the accreditation process to push skills training and clinical legal education, and the flaw in any strategy that might use the MacCrate Report to enhance the status of clinical teachers. [FN45] Supporters of the Report responded swiftly and directly to the critique articulated by Dean Costonis. Robert MacCrate found it difficult to understand, how a law school, such as Dean Costonis describes, can derive 86 percent of its income from student tuition, send its graduates as a result out into practice with huge personal debt, and not be willing to assign equal priority in the law school, along with developing the law, to preparing its students to participate effectively in the legal profession. [FN46]

*A different author responded that, contrary to Dean Costonis' assertions, the real problems were not financial: they were "the beliefs of law school deans, as illustrated by Dean Costonis's critique, that our current legal education is perfectly acceptable." [FN47]

Law School Deans were not the only group that produced critics of the MacCrate Report. Inside the law school, non-skills teachers also worried about the restrictions on academic freedom and re-allocation of resources that would result were the Report implemented. Legal writing and research teachers criticized the Report for failing to elevate the status and role of their field, and teachers of Alternative Dispute Resolution (ADR) critiqued the Report's emphasis on litigation. [FN48] Outside the academy, bar administration leaders criticized the advocacy of performance testing, and bar association leaders criticized the lack of implementation of the report's recommendations. [FN49]

Clinical teachers joined in the critique as well, questioning the Report's efforts to set forth a taxonomy of fundamental lawyering skills and values in the first place, [FN50] but also lamenting "the poor prospects for effective implementation of the MacCrate Report's pro-clinical recommendations . . . ." [FN51] Proponents of in-house clinics worried that the effect of the Report would be to lead to an expansion of simulation courses or externship programs at the expense of in-house clinics. [FN52] Externship proponents argued that the Report had undervalued the learning that occurs in field placements and exalted a particular form of clinical pedagogy that relied too heavily on top-down, supervisory structures. [FN53]

*120 Clinical teachers also cautioned that implementation of the Report's recommendations might lead to an increase in skills training without the values articulated in the Report. [FN54] As Gary Bellow and Randy Hertz later explained, skills training alone would be inadequate, and needed to be "informed by a moral vision—a normative concern for the fairness, accessibility, and justness of the legal system and its influence on the social order of which it is a part." [FN55] Consistent with that view, clinical teachers both criticized the Report for "giving inadequate attention to the ways in which the law and legal institutions negatively affect the poor and other disenfranchised groups," [FN56] but also underscored the importance of teaching the MacCrate Report values relating to justice, fairness and morality. [FN57]

While some clinical teachers expressed concern regarding certain aspects of the MacCrate Report, the Report galvanized broader groups of clinical teachers. At least four clinical conferences were dedicated in whole or in part to discussion of the MacCrate Report in the first few years following 1992. [FN58] Newsletters from the AALS Section on Clinical Legal Education and newly-formed Clinical Legal Education Association (CLEA) were replete with references to the MacCrate Report, reactions to the Report, and efforts to implement it. [FN59]

Clinical teachers were central to the efforts to create committees at the state bar level in each of the fifty states for the implementation of the MacCrate Report. [FN60] The AALS Section on Clinical Legal Education and CLEA appointed a joint task force on implementation, before the AALS backed off from formalizing the collaboration with the use of the AALS name. [FN61] Renamed "The Clinicians' Working Group on MacCrate Implementation," the clinicians
identified six "Implementation Goals":

1. Law schools shall provide every student with appropriate instruction in the values and skills reflected in the SSV through a combination of direct client representation clinical programs, simulation courses and classroom instruction.

2. Law schools shall provide every student with a faculty supervised, direct client representation clinical experience designed to provide instruction in those values and skills reflected in the SSV which are best taught through such an experience.

3. Law schools shall make available to those students who want this experience an in-house, faculty supervised, direct client representation clinical program designed to provide instruction in the values and skills reflected in the SSV which are best taught through such an experience.

4. Law schools shall provide applicants with a copy of the SSV and advise them of the nature and availability of clinical programs and other programs for instructing students in the values and skills reflected in the SSV.

5. Law schools shall devote adequate resources toward ensuring that students fulfill their obligation to work towards enhancing the capacity of law and legal institutions to do justice.

6. Law schools shall provide every student with instruction in the skills and values necessary for the student to fulfill her obligation to provide legal services to those who cannot afford to pay for them. [FN62]

The importance of the MacCrate Report to clinicians, as reflected in the meetings, newsletters and strategies, resonated through the clinical scholarship. Most of the law review articles discussing the MacCrate Report were written by clinical teachers. [FN63] Issue after issue of the Clinical Law Review included articles in which the MacCrate Report figured prominently. [FN64] Some articles articulated and defended the case for using the accreditation standards as a tool for reform, thereby responding to the attacks by Dean Costonis and others. [FN65] Others used the contention that the MacCrate Report would meet a fate similar to its predecessors, such as the Crampton Report, as a rallying cry to insure that such a similar fate be avoided. [FN66]

Even the rallying cries contained a note of realism. Clinicians acknowledged that sweeping change was unlikely given the realities of legal education and the forces that would oppose change. [FN67] They used more tempered language, observing that "the MacCrate Report simply suggests that the current balance within law schools should be changed modestly." [FN68] Some supporters urged that the Report be used to strengthen in-house clinics. [FN69] Others focused on the "integration of skills education into the law school as a whole" [FN70] and using the Report as a tool in "negotiation within the law school and with the larger legal community." [FN71]

As the debate over the MacCrate Report swirled around the national stage, awareness of the Report and its recommendations began to grow at many individual law schools around the country. [FN72] By the spring of 1993, most Deans responding to a AALS survey "reported that their faculties had already discussed the report or were planning to do so in connection with a review of their curricula." [FN73] An informal survey of clinical teachers attending the Midwest Clinical Teachers Conference in October, 1993, indicated that at roughly half the schools, discussions regarding the Report already had occurred or been planned. [FN74] Published articles over the next few years revealed that at least some schools moved quickly to make curricular changes either consistent with the Report's recommendations, or directly as a result of them. [FN75]

*124 Other schools were slower to react to the MacCrate Report. Roughly half the clinical faculty at the Midwest Clinical Teachers Conference taught at schools that, as of October, 1993, neither had discussed the Report, nor had any plans to do so. [FN76] At the New England School of Law in Boston the first faculty-wide discussion about the Report occurred in March, 1994. [FN77] As Part II illustrates, that discussion began a steady stream of surveys, further discussion, and curricular change that continued through the end of the decade and into the twenty-first century.

II. New England School of Law & The MacCrate Report
A. New England School of Law in 1992

New England School of Law is an independent law school, located in downtown Boston. Founded in 1908 as Portia Law School, the only American law school established exclusively for the education of women, Portia Law School became coeducational in 1938. In 1969, the school's name was changed to New England School of Law (New England), and the American Bar Association granted accreditation. [FN78]

By 1992, New England had a Day Division, an Evening Division, and a Special Part-Time Program, in which students with child care responsibilities could take up to six years to complete the course of study. The graduating class of 1992 totaled 349. [FN79] As of March, 1993, over one-third of the 1992 New England graduates were working in small law firms, with another third split between employment in the business sector and government. [FN80]

The first-year curriculum consisted entirely of full-year, required courses in Civil Procedure, Contracts, Property, Constitutional Law, Torts and Legal Methods. [FN81] Required second-year courses were one *125 semester long, consisting of Criminal Law, Criminal Procedure, Evidence and Professional Responsibility. [FN82] The remaining forty-two of the eighty-four credits required for graduation were electives. One curricular innovation was the adoption in 1991 of the Pervasive Approach to teach Ethics, although there was little evidence that the rule implementing the approach was being followed or enforced as of 1992. [FN83]

Although the core curriculum was fairly traditional, the structure of the school's clinical programs was not. The school offered fourteen clinical courses, defined to include placements both in the school's single in-house clinic and its many externship sites. The semester-long courses were organized by subject matter, rather than by classification as in-house clinic or externship. [FN84] Eleven of the fourteen clinics were "clinical component" courses, in which all students worked in positions within the subject matter of the clinical course and took the related substantive classroom course as a co-or prerequisite. The clinical component course had separate seminars, co-taught by the Clinical Director and the nonclinical faculty member (either full-time or part-time) teaching the related substantive course. [FN85] The school's *126 single in-house clinic, the Clinical Law Office (CLO), was a small, poverty-law office in which students, under the supervision of two clinical instructors, represented indigent clients in civil cases. [FN86]

Enrollment in clinical courses climbed steadily throughout the 1980's. By 1992, almost half the graduating class took at least one clinical course. Most students in the clinical courses were day division students; almost two-thirds of the day students graduating in 1992 took at least one clinic, while under fifteen percent of the evening division students did so. [FN87]

The faculty at New England totaled 33 full-time faculty members by the spring of 1992, and included three clinical faculty positions. [FN88] Only the position of Clinical Director was a full-time, tenure-track position. The remaining two positions, labeled "Clinical Instructors," had no form of job security prior to 1990. [FN89] In September, 1990, the faculty established a system of one-year contracts for Clinical Instructors for the first five years of service, to be followed by three-year renewable contracts. In 1992, the faculty adopted a full rule regarding the appointment, review and evaluation of clinical faculty. [FN90]

B. Laying The Groundwork: Faculty Retreat, Dean's Charges & Study

The MacCrate Report remained on the shelf at New England until March of 1994. At that time New England, stepping up its efforts to gain membership in the AALS, held a two-day, six-session faculty retreat. The session on curriculum focused on the MacCrate Report; at the request of the Dean's Office and the Curriculum Committee, I made a presentation about the Report and then led a faculty discussion. [FN91] In my presentation, I described the Report and some of the criticism the Report had generated, before urging the faculty to use the Report as a basis for Self-Study of the
I suggested that we use the SSV by default, attempt to assess how and whether our curriculum was teaching the skills and values articulated in the SSV, and identify feasible options for filling gaps we identified. I selected three examples from the MacCrate Report: legal writing, the teaching of ethics and the value of "Contributing to the Profession's Fulfillment of its Responsibility to Ensure that Adequate Legal Services Are Provided to Those Who Cannot Afford to Pay for Them." A lively discussion ensued, with heavier focus on skills instruction, ethics and New England's clinical courses, and little discussion of the unmet needs of the poor.

Five months later, the Dean began including in his charges to the Curriculum Committee a specific charge regarding implementation of the MacCrate Report, and the teaching of skills, values and ethics. In response to the Dean's charges, the faculty both attempted to implement and reinvigorate the school's policy of teaching ethics pervasively throughout the Curriculum, and also surveyed the teaching of skills and values at New England.

The final report presenting and analyzing the survey results, as well as making recommendations, was adopted by the Curriculum Committee and reported to the full faculty at the end of the 1994-1995 academic year. The survey revealed that the skills of Counseling, Negotiation, Alternative Dispute Resolution and Organization and Management of Legal Work were receiving the least attention. Although most professors reported covering ethical issues in their courses, the primary exceptions were required, first-year courses and courses taught by adjuncts. In terms of the values identified in the MacCrate Report, Value 2.2, assisting the profession in providing counsel to those who cannot afford to pay, received by far the least attention in the curriculum. The final report included recommendations with regard to implementation of both the policy of teaching ethics pervasively and the MacCrate Report.

C. Changing the Courses, Changing the Culture
Against the backdrop of the MacCrate Report, the second half of the 1990's saw an array of changes at New England in the areas of skills, values and ethics. The faculty added new clinical, simulation and practice courses. Existing clinical courses were modified to increase flexibility in terms of credits, hours and availability to evening students. Enrollment in clinical courses climbed steadily, reaching a peak with the Class of 1996. Of the Class of 1996, 62.2% took at least one clinical course prior to graduation, with 74.4% per cent of the day division graduates having done so and 33% of the students from the Evening Division and Special Part-time Program. A survey of students not taking clinical courses, however, revealed a ceiling of participation, absent more dramatic curricular change and change to the overall culture at New England. At least some of the students not taking clinical courses were taking simulation courses, since between 80 to 90% of each graduating class took at least one clinical or simulation course.

The culture involving the faculty similarly reflected increased attention to the teaching of skills, values and ethics. With the increase in clinical and simulation courses, more nonclinical faculty began co-teaching these courses. Two-thirds of the nonclinical faculty responding to a 1997 survey indicated that they were incorporating clinical methodology into their nonclinical courses. In the area of ethics and values, the faculty modified the core professional responsibility course, added a section on legal ethics to all first year Legal Methods courses, conducted surveys, held faculty discussions and circulated materials that could be used to raise ethical issues in the substantive courses.

During this same period, the status of clinical faculty became increasingly secure, their salaries rose steadily, and the barriers between the clinical and nonclinical faculty were eroded. A third Clinical Instructor was hired on soft money in 1993. The Clinical Instructors, renamed "Clinical Professors," increasingly became involved in school
governance through committee work and at faculty meetings, and began teaching nonclinical courses. [FN113]

*133 By 1997, all three Clinical Professors had received long-term contracts, and their salaries had doubled since 1992. In 1998, the soft money disappeared for the third Clinical Professor position, but the school assumed the full salary with no change in status. Also in 1998, the Clinical Director was awarded tenure. In 1999, by a unanimous vote, the faculty modified the Faculty Rules to allow Clinical Professors to vote on hiring issues involving nonclinical faculty members, and thus participate fully at all faculty meetings. [FN114]

D. The Core Curriculum
By the 1997-1998 academic year, the Curriculum Committee concluded that, despite the increases in clinical and skills courses and enrollment, a critical number of New England students still gravitated toward "bar" courses. As a result, the Curriculum and Clinical Studies Committees drafted and recommended to the full faculty the following graduation requirement:

Professional Skills Requirement. Each student is required to take at least two courses from an approved list of clinical, simulation and practice courses. The faculty strongly recommends that at least one of these courses be a clinical course. [FN115]

The Professional Skills Requirement was adopted almost unanimously in April, 1998. [FN116]

There was more controversy when the Curriculum Committee turned its attention to the existing core curriculum. The review of the core curriculum dominated the Committee's efforts for most of the 1998-1999 and 1999-2000 academic years. [FN117] The final proposal focused mainly on changes to the first-year courses. [FN118] The teaching of *134 skills, values and ethics in the core curriculum, while not the primary focus of the proposals, was bolstered in two respects. First, the proposal added a third semester of Legal Research and Writing. Second, the proposal required that "at least one substantive exercise in either legal skills or legal ethics be integrated each semester" into each of the three remaining required, full-year courses. [FN119] The faculty approved the package with a sizeable minority voting against it. [FN120]

E. Public Service, Pro Bono and Unmet Legal Needs
In contrast to the energy, activity and collaboration that characterized many of the skills and ethics initiatives at New England throughout the latter half of the 1990’s, efforts to move the school forward in the related areas of public service, pro bono and responding to unmet legal needs were constantly pushed to the sidelines. [FN121] New England seemed impervious to the calls for action both nationally *135 in the law school world and within Massachusetts. Nationally, growing numbers of schools appeared to be adopting pro bono or public service programs. [FN122] In Massachusetts, in 1996, a Commission studying unmet legal needs in Massachusetts urged all law schools to "Consider Requiring That Students Perform Public Service as a Condition of Graduation." [FN123] Over the next two years, a different commission studied the issue of pro bono which led to the adoption of the Massachusetts version of Rule 6.1. [FN124] Part of New England’s lack of response might be explained by deep-seated institutional structures and habits. Nothing in the school's Mission Statement or curriculum suggested a particular commitment to these areas. New England graduates overwhelmingly gravitated to private practice and business concerns. [FN125] The Career Services Office had no separate department or position for public interest advisor and the school did not maintain a separate administrative person or structure to guide student pro bono work. Student pro bono work varied greatly from year to year, tailing off steadily throughout the decade. [FN126]

*136 Even the school's Clinical Programs sent mixed messages in this area. The programs meld in-house placements with externship settings, organize all such work into clinical courses, organize the courses around substantive areas or legal skills, and permit placements far beyond poverty law settings, including an occasional placement in
the private, for-profit sector. That structure allowed New England to make progress in embedding the clinical courses into the core culture at New England. One price for this success is the sense among most students that the clinics are first and foremost about skills training. [FN127]

The Curriculum Committee had not made proposals to fill gaps in the areas of public service or pro bono, partly because a Task Force on Co-Curricular Activities was studying the issue of pro bono activities at the law school. [FN128] The Task Force’s Final Report, issued in 1998, recommended development of a written policy supporting voluntary, pro bono/public interest work, defined in broad terms. [FN129] The report’s recommendations never came to a vote.

In 1998, I drafted and circulated a proposal for a different public service program for New England, focusing on poverty law settings and including both student and faculty work in these areas, while not limiting the work to volunteer work. [FN130] I disagreed with the Task Force’s approach of treating public service work primarily as an extra-curricular activity, which I believe sends powerful messages of marginalization. [FN131] Moreover, data from the clinics confirmed my impression that clinical placements in poverty law might be as good or better settings for instilling a pro bono ethic than the performing of volunteer work. I asked students whether their clinical course made them more likely to do pro bono work after they graduate, less likely, or had no effect. The most striking comparison was not the variation from clinic to clinic, but from setting to setting: 73% of students in legal services setting answered that the work made them "more likely" to do pro bono work, compared to only 31% of the students in government settings, and 31% of the students in private settings. Paralleling similar studies of attorneys performing pro bono work, students explained their answers by referring to the learning of skills, contact with clients, awareness of unmet legal needs, and gratification from helping others. [FN132]

Despite the circulation of various proposals, the issue remained tabled for two more years. Finally, in the Fall of 2000, faculty proponents of public service work proposed to establish a Center for Law and Social Responsibility. Over one-third of the faculty co-sponsored the proposal, which was unanimously approved by the full faculty. [FN133] As initial projects of the Center, three nonclinical faculty members began or continued the process of building bridges with public interest lawyers, identifying projects in need of research and writing, and incorporating those projects into classroom seminars as part of the required work. [FN134] The Center includes a "Public Service Project," created to identify, support and increase Public Service work among New England faculty, students and alumni. [FN135]

F. Assessing the Impact of the MacCrate Report at New England School of Law

Whether the changes that took place at New England School of Law over the past decade amount to a successful or unsuccessful effort to implement the MacCrate Report depends on the standards selected for such an assessment. That assessment in turn is complicated by the historic failure in legal education to identify objective standards to measure the successes and failures of our teaching. [FN136] It is further complicated by the fact that proponents of the MacCrate Report articulated a range of goals that might be accomplished through efforts to implement the Report. [FN137] Different conclusions would flow, for example, from use of the more conservative measure of incremental curricular change or the more ambitious set of goals articulated by the Clinicians’ Working Group. Finally, the assessment is hindered by the dearth of information regarding other schools, which impedes efforts to assess the changes at New England in comparison to other law schools. The effort to assess the impact of changes at New England therefore is intertwined with the related task of identifying possible standards for assessment.

This section proposes five standards, applying each to the New England context. The MacCrate Report itself provides one standard. A second standard is the relatively modest goals for implementation articulated a decade ago by clinical teachers, contrasting sharply with the third standard, the ambitious goals of the Clinicians Working Group
from that same period. A fourth measure of the changes is a comparison of New England in 2002 to itself a decade earlier. Finally, *139 a comparison of the changes at New England to those at other schools, which may be the most compelling standard for assessment, is hindered by gaps in our information, as described below.

A first standard for measuring the changes at New England is the MacCrate Report itself. The Recommendations section of the MacCrate Report includes 25 recommendations for "enhancing professional development during the law school years." [FN138] Fifteen of the twenty-five are directed solely at the law schools. [FN139] Arguably, New England fully or partially followed all fifteen recommendations. The school engaged in a comprehensive self-study of the curriculum to identify gaps in the teaching of skills and values and to fill those gaps. [FN140] Three more recommendations are designed to inform students regarding the SSV and the teaching of skills and values in the school's curriculum. [FN141] While New England did not follow those recommendations to the letter, the school's clinical courses, course registration materials, catalogue and graduation requirements all were modified to inform students of the importance of skills and values instruction and steer them toward courses designed to enhance their education in those areas. [FN142] With regard to particular skills, New England strengthened its teaching of certain skills and values that had received less attention and added a semester of required legal writing, while maintaining the curricular focus on the skills of "legal analysis and reasoning" and "legal research." [FN143] Through its reinvigorated "pervasive approach" to the teaching of ethics and the creation of the Center for Law and Social Responsibility, the school enhanced its teaching of ethics and values, including the value of "promoting justice, fairness and morality." [FN144] New England maintained and expanded its clinical programs, including its well-structured externship programs, all under the primary responsibility of full-time faculty, but utilizing practicing lawyers and judges as well. [FN145]

Two more potential standards come from the contrasting goals articulated by clinical teachers in their discussions aimed at implementing *140 the Report's recommendations in the period after the Report's publication. As discussed in Part I, some clinicians acknowledged from the outset that sweeping change was unlikely, and articulated more modest goals for implementation. Measuring New England's efforts to implement the Report by these goals, the changes at New England at least constitute "incremental changes" of a "positive" nature. [FN146] Many of the changes were designed specifically to "integrate skills training into the law school as a whole." [FN147] It seems fair to conclude that the "balance" at New England has "changed modestly." [FN148] New England fares less well when measured by the ambitious "Implementation Goals" of the Clinicians' Working Group on MacCrate Implementation. [FN149] The meaning of "appropriate" and "adequate" are crucial in assessing whether New England provides appropriate instruction in the values and skills reflected in the SSV and adequate resources toward ensuring that New England students fulfill their obligations to work in areas promoting justice. [FN150] New England has made more progress in the overall teaching of skills and values than on the particular values related to promoting justice. It is hard to assess whether New England provides "every student with instruction in the skills and values necessary for the student to fulfill her obligation to provide legal services for those who cannot afford to pay for them." [FN151] Whether New England confirms or allays the fears of clinical teachers that the MacCrate Report would exalt skills training over the teaching of values is debatable.

New England fares reasonably well on the standards of providing supervised, direct client representation, making available to students an in-house, faculty supervised, direct client representation program, and advising students of the availability of clinical courses and opportunities to gain instruction through the curriculum in skills and values. *141 [ FN152] Again, the ultimate assessment depends on what is meant by the goals. New England provides guidance as to the clinics, skills courses and skills and ethics training, without actually handing out the SSV to applicants; the overall package probably satisfies the spirit of goal #4. Although not every New England student takes a clinical course, most day division students do. No New England student seeking such an
opportunity is turned away. Both through the skills requirement and course materials, all students are encouraged to take clinical courses. Finally, the fact that in-house placements and externship placements are included under the same umbrella of clinical programs means that New England is in full compliance with Goal #3. Some in clinical legal education, however, might criticize the manner in which New England achieves compliance. All students who want an in-house, faculty supervised, direct client representation clinical placement receive one. No student wanting to work at the Clinical Law Office has been denied the opportunity at least since 1992. Due to the blended nature of the clinical programs, most New England students would not even recognize the philosophical divide between proponents of in-house clinics and proponents of externships; New England students would view the choice as one between particular clinics or placements, rather than programs or pedagogies. Whether this reality at New England should be attributed to successful blending of in-house clinics and externships into a single program, or a system involving misleading advertising and uninformed consumers, is a question that may divide many in clinical legal education.

Perhaps the standard that reflects the least amount of impact is a comparison of New England in 1992 to itself a decade later. Despite the flurry of curricular activity, the core of New England looks very much the same. Students still need 84 credits to graduate, spend at least their first year almost exclusively in large classes, and must take a required list of courses that is little changed from 1992. The size of the faculty and student body are somewhat smaller. New England students still work primarily in small firms, including solo practice, and in business settings. U.S. News and World Report continues to rank New England as a bottom tier school. There were three clinical faculty in 1992, and there are three today. The changes involving enrollment in the clinics, expansion of skills and values training, increased attention to ethics and improved status of the clinical faculty are more subtle changes. Even to insiders at New England, the importance of the initiatives in teaching skills and values is debatable. While there were curricular changes, at no time, with the possible exception of the period of the comprehensive survey of the curriculum in 1994-1995, has the topic even occupied center stage. Leading into 1994, and again into 1997, the primary focus was on obtaining membership in AALS, and boosting faculty scholarship along the way. By the mid-1990's the precipitous nationwide drop in law school applications, and the need to respond, dominated the stage at New England, as elsewhere, particularly for those with lower rankings. The eternal Sword of Damocles, otherwise known as the bar passage rate, hung over the New England community at every turn.

Even assuming that the MacCrate Report and the teaching of skills and values had their moments in the New England sun, a cynic might conclude they did so as a passing fad. One year it seemed the emphasis was on the MacCrate Report. Next, it was the pervasive approach to teaching ethics. After that came the push to internationalize the curriculum. Most recently, technology in our teaching and in the law is the topic du jour. Whether the minimal impact of the Report on the larger picture of New England is due to the ineffectiveness of proponents of the Report at New England or the historic resistance to change in legal education is unclear. It does suggest, however, that the most compelling basis for assessing the impact of the MacCrate Report at New England might not be a comparison of New England to itself, but rather a comparison of New England’s reaction to the Report with that of other schools. Based on the limited available information about other schools, the conclusions here are also mixed. For example, many of the curricular trends and institutional responses identified recently by Margaret Martin Barry, Jon C. Dubin and Peter A. Joy apply to New England's efforts over the past decade. As at some other schools, New England introduced clinical methodology in the nonclinical courses, used hybrid in-house and externship clinical programs, involved clinical faculty in the teaching of nonclinical courses and improved the status and
salary of the clinical faculty. [FN161] Yet, programs at other schools are more extensive than the New England counterparts. New England’s use of clinical methodology in the first-year curriculum is less extensive than programs at the University of Maryland, NYU or the University of New Mexico. [FN162] Similarly, while the New England package of skills and values instruction begins in the first year and expands throughout the upper level courses, the New England programs are not as coordinated, structured or extensive as those at William and Mary, CUNY or D.C. School of Law. [FN163] Even the comparison to the schools highlighted by Barry, Dubin and Joy may be inappropriate, however, since those schools appear to be the exceptions, rather than the rule. According to the authors, "most schools continue to treat clinics and clinical teaching methodology as peripheral to the core curriculum." [FN164] How New England’s skills and values program fares in comparison to the more typical schools, and how the MacCrate Report’s impact at New England compares to the impact elsewhere, are questions that cannot be answered without more information from other schools. Part III returns to the national scene, drawing preliminary conclusions about the MacCrate Report’s impact nationally given the limited information that exists. It next urges that we undertake the task of reassessing our current teaching of skills and values, both to understand the changes that have occurred in the decade since the Report’s publication and to identify important gaps for us to fill. To guide the process of reassessment, Part III explores important questions that remain ten years after the MacCrate Report’s publication.

*144 III. Ten Years After MacCrate: Assessment, Questions, and Gaps We Should Narrow

A. Assessing the Report’s Impact Nationally
Assessing the impact of the MacCrate Report on a national scale is more complex than assessing the impact at a single school, such as New England. The same impediments still remain: the general lack of objective standards and varying goals of the proponents of the Report. The assessment is complicated further by difficulties in speculating about the impact on particular law schools of general trends or, alternatively, collecting information one law school at a time and determining a cumulative impact.
A number of conclusions about the Report’s impact nationwide nonetheless may be drawn from the sparse information available. First, even if the overall impact of the MacCrate Report on legal education is unclear, the Report’s impact on clinical teachers is not. The MacCrate Report’s greatest success might be as an effective organizing tool for the activities and thinking of clinical teachers and proponents of clinical legal education. [FN165] As described above, clinical teachers were extremely active throughout the 1990’s, and the MacCrate Report was front and center as a tool for fueling these efforts. Although references to the Report itself faded from the section newsletters and titles of articles appearing by the end of the 1990’s, the issues raised in the Report have remained in the forefront of clinical legal education, and the Report continues to influence clinical scholarship. [FN166]
The latter point is hardly surprising, since the MacCrate Report gave a substantial boost to clinical pedagogy and to clinics, and since clinical teachers played such an important role in shaping the document. It would be hard to imagine that the subject of the Report would stray too far from the center of the clinical world. At the same time, understanding the Report as an organizing tool helps to explain why direct reliance on the Report has faded. Clinical teachers seized on other opportunities, such as the efforts by AALS to push pro bono initiatives and the series of AALS Equal Justice Colloquia, to further various goals of importance to clinicians and which were prominent in *145 the MacCrate Report. [FN167]
Second, enough evidence exists to support a conclusion that, beyond serving as an organizing tool, the MacCrate Report had a significant impact on the national scene at least in the first five years after its publication. Most notably, the Report and its proponents played a crucial role in a series of amendments to the ABA accreditation
standards. In August, 1993, the ABA implemented one of the MacCrate Report's recommendations by amending Standard 301(a) to state explicitly that law schools have a responsibility to maintain an educational program that is designed to prepare graduates to participate effectively in the legal profession. [FN168] Although the 1993 amendment passed with relative ease, a more arduous battle over further changes ensued. The struggles culminated in 1996 with the ABA's adoption of changes strengthening the standards related to clinical legal education and the teaching of skills and values. [FN169] As CLEA's president trumpeted to its members:

For the first time, law schools are required under the standards:
- to provide full-time clinical teachers the opportunity to achieve tenure or job security reasonably similar to tenure;
- to provide full-time clinical teachers the opportunity to participate in governance in a manner reasonably similar to other full-time faculty members;
- to provide full-time legal writing directors and teachers conditions adequate to attract and retain competent legal writing teachers;
- to offer all students adequate opportunities for instruction in professional skills;
- to offer live-client or other real-life practice experience for credit through clinics or externships (not necessarily for all students); and
- to provide suitable space for conducting professional skills courses and programs.

[FN170] In addition to the numerous clinical teachers who worked tirelessly to effectuate the changes, other key players in the process were Robert MacCrate and Hon. Rosalie Wahl, whose initial call had led to the appointment of MacCrate Task Force in the first place. [FN171]

At the same time, however, there is little evidence to believe that the MacCrate Report transformed legal education, or led to sweeping changes when measured by the more ambitious criteria or goals. For example, the schools highlighted as leaders by Margaret Barry, Jon Dubin and Peter Joy in their recent article on various trends in clinical legal education established their programs before the publication of the MacCrate Report. [FN172] It would be hard to identify a school at which dramatic curricular changes were triggered by the MacCrate Report. Indeed, the authors themselves conclude that nearly a decade after the MacCrate Report, both the ABA and the legal academy are still ambivalent toward the essential tenet that law schools must prepare students for the practice of law and the exercise of sound judgment to solve client problems. [FN173] Nor is there reason to believe that the ambitious goals of "The Clinicians' Working Group on MacCrate Implementation" [FN174] have been realized. Although the Working Group set as a goal that law schools provide "every student with appropriate instruction" in the values and skills reflected in the SSV, ABA Standard 302(a) requires only "adequate opportunities for instruction in professional skills" [FN175]; Interpretation 302-1 further provides that "[i]nstruction in professional skills need not be limited to any specific skill or list of skills." [FN176] The Working Group called for every student to be provided "with a faculty supervised, direct client representation experience," and for an in-house clinical experience to be available to any student who wants one [FN177]; ABA Standard 302(d) instead requires law schools to "offer live-client or other real-life experiences," but specifically provides that a "law school need not offer this experience to all students." [FN178] The energy that clinical teachers recently devoted to the AALS Equal Justice Symposia suggests that clinical teachers do not believe either that law schools are devoting adequate resources to insure that law students are fulfilling their obligations to further "justice", or that law schools are providing every student with the skills and values instruction "necessary for the student to fulfill her obligation to provide legal services to those who cannot afford to pay for them." [FN179]

A third conclusion is that difficulties in determining causation will impede further efforts to identify the MacCrate Report's precise impact beyond the changes to the ABA Standards. The causation difficulties are illustrated by any effort to connect the improved status of clinical teachers throughout the 1990's to the MacCrate Report. By the end of the 1990's, more law schools had in-house clinics than a decade before, the
number of clinical teachers had risen dramatically, and the working conditions of the clinical teachers had improved in terms of job security, salary, and participation in law school governance. While the gains for clinical teachers are impressive, they are better explained by a series of trends dating back to the late 1960’s, than by the publication of a single report in 1992. Similarly, the extent to which the MacCrate Report "caused" change with respect to the increased use of performance testing in bar examinations is debatable.

Although we may never overcome the problem of causation, we should remove the major impediment to assessment resulting from a dearth of information regarding the current status of the teaching of skills and values at our various schools and regarding changes that have occurred in those areas over the past ten years. We know from our scholarship, conferences, and newsletters that the Report at least triggered discussions about curricula and the teaching of skills and values, around the country.

We know that a few schools made significant curricular changes soon after the MacCrate Report’s publication and relied, at least in part, on the Report in designing or justifying the changes. We also know that, "[i]n the past twenty years, law schools have started to develop new models and approaches for integration of clinical methodology throughout the curriculum." While this trend began in advance of the Report’s publication, the Report likely played an important role in spurring positive, incremental change in many law school curricula.

Beyond that sparse information, we know surprisingly little. It might be tempting to assume that since the MacCrate Report led to changes to the ABA Standards that those changes have, or will, result in changes at the law school level. As Marc Galanter and Gary Bellow have reminded us, however, the extent to which rule change alone affects outcomes is open to dispute. Rather than assume that changes occurred, or speculate as to what those changes might be, we should use the occasion of the tenth anniversary of the Report’s publication to undertake the task of assessing the progress we have made in filling the gaps in legal education, identifying the gaps that remain, and developing strategies for filling them.

The remaining sections raise questions to guide that assessment. Part III.B. explores questions involving choices between higher and lower credit programs, full-year and one-semester programs, programs that depend on careful sequencing versus programs that do not and programs beginning in the first-year and programs focusing on the upper-level classes. Against the backdrop of the ideas discussed in Part III.B., Part III.C. shifts to the potentially explosive debate as to the relative merits of in-house clinics versus externship programs, and their respective roles in an overall skills and values program. Part III.D. recalls the warnings from clinicians that the MacCrate Report might lead to the exalting of skills training at the expense of the values portion of the Report, and underscores the need for new strategies to fill the gaps in our curricula relating to the teaching of social justice issues.

B. Structural Questions: How Much? After What? How Early?
The MacCrate Report focused attention on the teaching of skills and values. That focus remains as important to us today as it did in 1992. Similarly, the Report’s recommended methodology is as valid today as it was ten years ago: we should "determine which . . . skills and values . . . are presently being taught . . . and develop a coherent agenda of skills" and values instruction. We should share ideas as to what we tried, what worked and what did not. To the extent the focus at our schools has shifted away from the teaching of skills and values, we should discuss how to return the focus to those issues. It may well be that invocation of the Report by name as part of an assessment is counterproductive, given the array of powerful opponents who organized in response to the Report’s recommendations. If so, our task might no longer be to "implement" the recommendations of the MacCrate Report, but to evaluate the adequacy of our schools’ "programs in legal skills, values and ethics" and recommend "changes deemed necessary to adequately prepare students for practice." As we reassess our teaching of skills and values, it is imperative to articulate and
prioritize particular goals as well as gaps in our programs. If the primary goal is to teach a certain set of skills, a program might involve certain in-house clinics, externship placements, and simulation courses, of certain credits in a prescribed sequence. We may choose a different mix if a primary goal is service and equal justice as opposed to skills training. 

Our choices both as to goals and program design should be informed not only by the MacCrate Report itself, but by the scholarship published and events occurring in the intervening decade. Clinical teachers increasingly have addressed learning theory in their scholarship. From the perspective of learning theory, how should we structure our skills and values programs? How do factors beyond learning theory, such as political and fiscal realities inside and outside the law school, force changes to that optimal mix?

Assume that extra resources become available at a given law school to strengthen the teaching of skills and values. As a first step, we should identify potential goals, such as:

- expanding existing clinical experiences to reach more students;
- focusing on providing multiple clinical experiences for students;
- opening up traditional clinical opportunities for students in their second year, or even their first year; or
- adding simulations to the first year, and, if so, as freestanding courses or integrated experiences into existing ones.

Which of those goals should we try to accomplish first? If we decide to expand clinical opportunities beyond simulations, should we focus on in-house clinics, externships, or some combination? What if the primary gap we seek to fill is the goal of "Promoting Equal Justice," as opposed to improving skills training? While the MacCrate Report reminds us that no one size fits all, we should nonetheless be able to articulate the justifications for a particular mix in a given context. The curricular imperative becomes the design not simply of a course or clinic but a coherent program, based on prioritized goals, that seeks to fill specific gaps within the realities of a given law school context.

1. How many hours, how many semesters?

Some clinical experiences involve full-time work, or most of a student's credit hours, in a given semester, while most take up considerably less time. Some programs are full-year programs, while others are only one semester long. Are the differences explained by learning theory or the realities at the legal academy? Northeastern's proponents suggest that the full-time nature of its program enhances the experiential learning since "the nature and intensity of the work are at least as important as any aspect of supervision in explaining what distinguishes a good learning environment." If more intensive experiences lead to better learning, is there a minimal number of hours that makes the learning inconsequential in terms of skills training? Values and Ethics? If so, while lower-credit programs may be more politically palatable in certain institutional settings, is the trade-off in terms of skills and values training too great?

On the other hand, what is the effect on the overall learning in the area of skills and values when we add the possibility of additional semesters? Assume that a student has one, full-time, "real-life" clinical experience in one of the four upper-level semesters, but, due to resources at the school, that is the only such experience the student will receive at law school. Is that a better package than a year-long, part-time experience? What about exposing students to multiple placements as opposed to keeping them in one placement?

The answers may vary depending on the perspective we adopt. Employers -including those running the in-house clinics- may prefer more time in a single setting to diminish the frequency with which they need to train new students. Institutions trying to accommodate large numbers of students might opt for lower-credit clinics. From the student's perspective, the answer may depend on how we prioritize the potential learning goals. If the primary goal is to expose the student to a setting that
most parallels practice after law school, a full-time experience might become more important. If the goal is to provide exposure to a range of skills and values, the use of various placements of fewer hours each might be more important. A related concern involves the difficulties in bridging the gap between learning in the law school classroom and learning in practice-based settings. [FN200] One response to the problem is to structure programs that have classroom and fieldwork occurring together. Yet, the more strongly we feel about pairing classroom and practice, the more likely it will be that we will favor more experiences tied to more courses, particularly if we are trying to pair practical experiences with many different courses. As the number of paired classroom and fieldwork experiences per student rises, the number of credit hours per experience is likely to fall. Do the benefits of pairing classroom and fieldwork outweigh the benefits of being immersed in work setting?

For New England students, I currently favor multiple experiences of lower credit hours for a variety of reasons. Many New England *153 students would avoid the clinics if they were year-long or for more credits. New England students who have taken second and third clinics seem better prepared for their careers after law school than students who have not. The more clinics students take, the more their classroom learning appears to be enhanced as well. Students regularly report, through journals and discussions, that their fieldwork helps them understand their classroom work. As students take more classes with an experiential component, a greater number of their classes are enhanced by the pairing of fieldwork and practice. Finally, some faculty would raise objections regarding the prominence of the clinics and even alleged grade inflation if clinical courses had credit hours well above the norm for other courses. The "marketing", "learning" and "political" considerations all therefore support a program built around multiple experiences of fewer credits each in the New England context. [FN201]

2. Sequencing
A related set of questions involves the sequencing courses, including clinical courses, to enhance student learning. Many clinical programs require simulations or other courses in advance of taking a clinic. [FN202] New England's clinical courses utilize a co- or prerequisite model with related substantive courses. [FN203] As logical as these structures may be, we should reexamine the extent to which we think sequencing is compelled by the needs of learning, or shaped by other concerns. Part of my uncertainty flows from my skepticism about how well any of the traditional law school training really prepares our students for their fieldwork. I doubt I am alone in believing, for example, that a student's ability to handle an evidentiary issue in a real or simulated trial is often unrelated to *154 whether he or she has had a course in evidence, and that students are not necessarily any better prepared to handle family law cases simply because they have taken a traditional family law course. If there is any correlation between clinic and classroom, my experience is that students who have had some experience in a certain area are better able to understand the classroom material, not the reverse.

The problem is compounded when we consider that the more sequencing one requires, the more likely it will be that the student's clinical experience will come later in law school, if at all. NYU's program, for example, involves sequencing that starts with a mandatory, six-credit first-year course utilizing simulations, then moves to intermediate-level clinical instruction available to both second- and third-year students, and ends with advance-level clinic instruction involving live fieldwork available in the third year. [FN204] Yet, the elective nature of NYU's upper-level courses and simulation structure of the first-year lawyering program "create a situation in which students can graduate without any exposure to real clients." [FN205] The learning theory questions are complicated by the fact that there may be other justifications for sequencing and prerequisites. For example, if clinical placements are scarce, they may be reserved for students in their last year, justifying a program that requires the completion of certain stepping stones. Student practice rules limit practice in some settings to the final year, or final two years, of law school. [FN206]
Supervisors at both in-house clinics and externships may prefer students who have been exposed to various concepts on someone else's watch. Some of us might give harder cases in our clinics initially to third-year students rather than second-year students. If in fact third-year students are better prepared for fieldwork than second-year students, the point bears closer examination from the perspective of learning theory. Are students later in law school better equipped for certain legal work than those earlier in their schooling? If so, what learning accounts for the difference? Is more useful, crucial learning occurring in the traditional classroom than we admit? Does careful sequencing of courses explain the difference? Or, are students more likely to have been exposed to volunteer or paid work, either during the school year or over the summer, that provides the true learning? *155* We need to understand the extent of learning—whether positive or negative—that occurs through part-time and full-time jobs over the summer and during the semester. [FN207]

None of this is to suggest that we ignore the literature indicating that sequencing is important to learning, and that one of the many problems with law school education is the lack of structure, particularly in the upper-level courses. [FN208] It is instead to suggest that we typically are making changes to an existing curriculum, and should be considering not only the skills and values portion, but the overall curriculum. If we believe that the first year of most law schools is misguided and even harmful to students' learning, legal education becomes a race against time. Placing sequencing roadblocks in the way may be counterproductive. [FN209]

My current practice is to advise New England students to take a clinic as early as they can in their law school career. I have found that, more than any other course, the clinics dramatically affect how students look at their legal career and at law school. Students often choose different courses than they otherwise would have taken absent their clinical experience, and are in a better position to take multiple clinical courses the earlier they start the process. Many students completing clinics in their last semester report that their only regret is that they did not take a clinical course sooner. For all of these reasons, I routinely advise students to take a clinical course as early as possible, rather than wait until they are "ready," based on having taken certain nonclinical courses, whether sequenced or not.

3. The First Year

The sequencing questions lead inevitably to questions involving the first year of law school, which clinical teachers, and others, have criticized. In the words of Richard Boldt and Marc Feldman:

The lineup of first year courses in virtually every law school continues to be dominated by private law subjects taught through appellate opinions to large groups of students. To the extent that public law is present, it remains at the periphery while questions relating to private gain facilitated by the market dominate the core of these courses. By the time students gain exposure to more contextualized presentation of the law in trial practice, simulation, or clinical courses, they are in their second or third year and they have already adopted a hard-to-shake account of law and law practice. [FN210]

Other critiques focus on the alienation among students, particularly among women, students of color and those with an orientation toward Public Interest work, as well as the hidden political messages that permeate the supposedly "neutral" standard first-year curriculum. [FN211]

In response to the "first-year problem," a number of schools have added "lawyering" programs, with heavy use of simulation exercises. [FN212] Other schools have incorporated various aspects of skills training into the traditional first-year courses, with Missouri's program and its focus on Alternative Dispute Resolution serving as a prominent example. [FN213] New England followed this approach to a lesser extent in attempting to integrate skills, values and ethics into the first-year curriculum, thereby providing a foundation for a more intensive *157* range of skills and values instruction in the upper years. [FN214] Other notable first-year programs include Maryland's...
pioneering Learning Theory and Practice Program [FN215] and Northeastern’s Law, Culture and Difference seminars. [FN216]

Of all the hallowed traditions within legal education, the first-year, core curriculum seems the hardest to reform. Before we attempt to construct an optimal first-year program for a given context, we should separate the strands of learning theory and political or fiscal reality. For example, if we believe that the damage from the existing first year is enormous, the sooner we can provide an antidote, and the stronger the antidote, the better. Since many clinicians have identified the limits of simulation courses in comparison to "real-life" clinical experiences, [FN217] we should question whether simulation programs provide a strong enough antidote. A related question recalls the fears of some clinicians in response to the MacCrate Report as to whether our programs exalt skills training at the expense of the values portion of the Report. [FN218] If so, we may need to consider whether some or all of the resources committed to lawyering programs can and should instead be dedicated to the expansion of in-house clinics or externship programs. We cannot even begin to explore these questions without a more careful analysis of the current teaching of skills and values at our various schools.

As I urge throughout this article, any such analysis should require us to be specific about the goals of our programs, and, where multiple goals exist, the prioritization of those goals. The process must assess the effectiveness of our programs in meeting the goals and identifying gaps to be filled. Depending on the gaps we identify, we may conclude that we should push for the expansion of in-house clinics and externships into the first year. If we choose not to go that route, we should be clear as to the reasons. If it is because of political realities at the law school, a pioneering school or two could establish a model *158 program for change. If it is because of student practice rules, we could try to amend those rules. If it is because of a shortage of in-house or externship positions, then it is a matter of resources. [FN219] At a minimum, we should understand the relative trade-offs between simulation courses, curricular and extracurricular programs and first-year or upper-level programs, as we try to identify the wisest way to strengthen a given law school’s overall instruction in skills and values.

For the reasons I expressed in the preceding section on sequencing, my preferred starting point is to push for the expansion of in-house clinics and externship programs into the first year. I favor this course because I agree with the various critiques leveled at the traditional first-year curriculum. I believe that a strong antidote is necessary to counter the first-year experience and that in-house clinics and externships are the most powerful antidotes. I also believe that first-year students are a logical group to be mobilized to help meet unmet legal needs of the poor. [FN220]

This is not to suggest, however, that we ignore practical and political concerns. Maryland modified the original Legal Theory and Practice model when it did not prove to be popular with students and some faculty viewed it as too demanding. [FN221] At New England, I concluded that the most that was politically and financially feasible was the incorporation of skills and ethics exercises into existing first-year courses; efforts to push for more either would have failed or required resource trade-offs that would have undermined the upper-level clinical courses. Schools with different political realities might serve their students better by incorporating clinical work beyond simulations into the first year in a way that overcomes the problems that eventually forced changes at Maryland.

C. In-House Clinics v. Externships

The same imperatives of clarifying our goals and untangling the extent to which our programs are shaped by learning theory or political reality must guide our discussions involving the respective roles of *159 in-house clinics and externship programs. The MacCrate Report itself fueled the debate as to the relative merits of each type of program. Proponents in each camp expressed fear that implementing the Report might harm their programs, but also invoked the Report and its recommendations in support of their various programs. [FN222] The decade since the MacCrate Report has seen not
only a steady stream of clinical scholarship focusing on in-house clinics, but an
outpouring of scholarship focused on externship pedagogy as well. [FN223]
Proponents of in-house clinics typically refer to advantages such as having the
opportunity to develop a full range of lawyering skills and benefit from close supervision
involving frequent and intensive critique of lawyering work, frequent contact between
the student and clinical faculty, and regular consultation between student and supervisor
before the student engages in lawyering tasks. [FN224] Proponents of externship
programs in turn rely on advantages of reality and context, contending that externships
expose students to a wide spectrum of legal practice settings and a wide variety of legal
tasks; they contend *160 further that the in-house setting can be artificial, where
students handle cases in a supervisory structure that will not be replicated in their
practice, and the learning as a result may not prepare students for the reality they will
face after law school. [FN225] An "uneasy truce" dominates clinical conferences and
clinical discourse. [FN226]
Were we to provide a safe environment for discussion, proponents in each camp might
acknowledge elements of truth in the various critiques. With respect to the "real world,"
proponents of in-house clinics might acknowledge the risk that their graduates might
jettison some or all of the training from in-house clinics in the face of a real-world
practice setting; proponents of externship programs might agree that the advantages of
thrusting students into a real- world setting might be undercut where supervision is
sparse or students pattern themselves after mediocre and even poor lawyering practice.
[FN227] *161 Proponents in both camps might recognize that while various settings offer
the potential for exposure to a wide range of skills and values, it does not follow that all
students will receive that wide range of training. [FN228] Proponents of both pedagogies
might also acknowledge that due to the wide varieties in learning styles, not all students
can be expected to thrive equally in each setting despite the stated advantages.
[FN229] Both might further agree that students might discount contemporaneous
classroom discussions that do not mirror what they are seeing in "real" life. [FN230]
Although clinical teachers should confront the hard questions involving the teaching of
skills and values ten years after the MacCrate Report, questions involving the superiority
of in-house programs versus externship programs are a poor place to start the
conversation. Rather, the discussion should begin with the context of the rest of law
school and its failure to prepare students for practice, which led to the MacCrate Report
and its predecessors. Given the enormous gaps in legal education that remain beyond
in-house clinics and externship programs, it is foolhardy to suggest that any single
experience, regardless of the structure, can fill all the gaps. [FN231] The MacCrate
Report *162 itself, with its emphasis on an "Educational Continuum," is a powerful
reminder of this reality. While the differences between in-house clinics and externship
programs should not be papered over, we should recognize the hurdles facing each
pedagogy when the unstated assumption is that a single program will constitute a
student's entire credit-bearing, experiential learning in law school.
We should then return to the previous discussions involving credit hours, semesters and
multiple experiences. For example, proponents of Northeastern's cooperative program
defend the merits of a program that involves four full-time cooperative experiences,
involving externship settings. [FN232] That structure, however, involves at least three
separate variables: four, full-time and externship. I believe the most important variable
is "four." Only by providing multiple opportunities in different settings do we have the
chance to "pool our risk" in terms of covering the enormous gaps in skills and values
education and allowing for different learning styles. I doubt that even the staunchest
proponents of either camp would insist, if given four opportunities with which to work,
that the optimal learning package is four similar settings, whether externship or in-
house.
Nor is learning theory the only concern. Political realities at the law school, including the
availability of money, play a major role in shaping the menu of in-house and externship
programs that may be feasible at a law school at a given time. [FN233] A separate
concern is the social justice/equal justice aspect of the program. [FN234] My own
preference for in-house clinics at the core of clinical programs stems less from my views on learning theory and more from my belief that law schools should commit their own resources to social justice work, both to support the work and to serve as a model for law students and graduates. While preferring in-house clinics as a starting point, I would choose an externship program limited to poverty law work over an in-house clinic that primarily serves those of ample means.

D. Pursuing Equal Justice
The latter example not only has implications for possible choices between in-house clinics and externship programs, but it also illustrates the manner in which the design of our programs would be affected *163 if we shift from a primary goal of skills training to a primary goal of Pursuing Equal Justice. As discussed in Part I, the publication of the MacCrate Report elicited fears among clinical teachers that implementation of the Report's recommendations might lead to an increase in skills training at the expense of the teaching of the values portion of the Report. [FN235] Clinicians specifically identified the need to use the Report to strengthen teaching of the values of fairness, justice and morality. [FN236]
Perhaps heeding the warnings, many clinical teachers continued to dedicate their time and effort to social justice initiatives in legal education. For example, clinical teachers served as members of The AALS Commission on Pro Bono and Public Service Opportunities and the Advisory Task Force to that Commission; [FN237] the Commission was appointed in 1997, and its findings and proposals were published in 1999. Clinical teachers played crucial roles in the AALS Equal Justice Project, and the series of colloquia held at law schools around the country on the topic of "Pursuing Equal Justice: Law Schools and the Provision of Legal Services"; [FN238] the Project was launched by Elliott Millstein, the first President of AALS to come from the clinical ranks. Also during the 2000-2001 academic year, the Clinical Law Review dedicated a portion of one issue to papers by clinicians presented at the Rutgers-Newark Law School Conference on the "Social Justice Mission of Clinical Legal Education." [FN239]
*164 The energy dedicated to these initiatives suggests that many clinical teachers remain committed to pursuing agendas that do not exalt skills over values or otherwise ignore social justice issues. Yet, the fact that clinical teachers feel the need to pour their energies into initiatives that might push social justice issues speaks volumes about the gap in this area that exists in our law school curricula nationwide. As a result, in this area, at least, the task of identifying gaps gives way to the more compelling task of developing a coherent agenda for filling the gap.
As with other gaps in the area of skills and values, the starting point remains our clinical courses. "To many people, the relationship between clinical programs and the justice mission of America law schools is so clear as to be self-evident." [FN240] Yet, the landscape is more complicated ten years after the publication of the MacCrate Report. [FN241] Representation of the poor is no longer inherent to in-house clinics. [FN242] Externship programs routinely include government, and even private, settings. [FN243] Pro bono programs range in their use of placements, with higher participation likely correlating to a broader range of placements, particularly where programs are mandatory. [FN244] At the same time, equal justice work appears outside the clinical and pro bono programs, with nonclinical faculty incorporating equal justice *165 work into seminars, scholarship and even required courses. [FN245] For these reasons, while our clinical programs should continue to lead our programmatic efforts to fill the gap, we cannot quarantine equal justice work to one particular segment of the curriculum. Instead, it becomes imperative to reassess the entire law school operation to identify other opportunities for filling the gap. Precisely this approach was envisioned by proponents of the AALS Equal Justice Project, as reflected in one of the five project goals:
To stimulate throughout the entire law school--in nonclinical courses, library programs, and pro bono projects, among others--cross-cutting interest in and commitment to the provision of legal services to underserved individuals, groups, and communities.
If the goal is to develop a coherent program for filling the gap it is not enough simply to identify resources outside of the clinical courses that can be dedicated to equal justice work. Rather, it is important to build bridges to equal justice efforts apart from the clinics and coordinate programs where possible and advisable. As we do so, however, we should be cognizant of one potential drawback to this approach: that our initiatives with the balance of the law school might be less likely to change the law school and more likely to lead to the mainstreaming of our clinics, with the overall effect being a retreat from, rather than a promotion of, equal justice work. [FN247] Despite the potential drawback, it is hard for me to believe that retreating to the safe confines of our clinics is preferable to engaging with the other parts of our institutions and fighting for change beyond our clinics.

The approach of building bridges and engaging with the entire law school operation requires us to recognize other uneasy truces that exist at most of our law schools, such as the truce between many proponents of clinical legal education and proponents of pro bono programs. Although each camp invokes similar goals of skills training and service, pro bono programs often remain separate under the logic that pro bono work is volunteer work, and clinical work is work for credit. [FN248] Some proponents of clinical legal education worry that pro bono programs might trigger cutbacks in credit-bearing programs. [FN249]

As with many of the questions of program design, we need to prioritize the goals to be achieved and gaps to be filled in deciding how to structure pro bono or public service programs and coordinate them with clinical programs. If the primary goal is skills training, a clinical program of greater hours provides better skills training than a pro bono program with a lesser commitment, assuming similar settings. [FN250] The pro bono program might in that situation be structured as a supplement to the clinical program, and its design should be informed by our answers to the question as to whether there exists a minimum number of hours below which the skills training becomes truly marginal. [FN251] A similar analysis would apply if the goal is to provide service. A commitment of more hours is likely to yield greater service, and a wiser dedication of supervisory resources, whether in-house or external. [FN252] The less that clinical programs focus on social justice work, the more pro bono or public service programs are crucial in filling that gap.

If the primary goal is to imbue an orientation toward pro bono work after law school, the question is more complicated. Proponents of pro bono programs report that students who participate in pro bono programs indicated overwhelmingly that they were more likely to perform pro bono work after law school, even when the programs were mandatory. [FN253] Yet, my data from New England suggests a similar impact for students who performed credit-bearing work when the placement involved the representation of the poor. [FN254] Of course, none of the programs has tracked graduates to determine whether their stated orientation toward pro bono work in fact translates into pro bono work. Absent crucial information about which law school experiences, if any, actually influence the performing of pro bono work after law school, designing a program to fill the gap is mainly guesswork. Moreover, if the goal is to get law students in the habit of volunteering, the difference between mandatory pro bono programs and credit-bearing ones becomes obscured. Finally, relying on volunteer programs to train our students for service work ignores the potentially harmful effects of perpetuating a system that delivers service work through voluntary practice. [FN255] *168 The need to prioritize goals, design programs to fill identified gaps and identify potential resources beyond the clinical programs applies to programs involving other aspects of the law school operation. At schools where such an approach is politically feasible, landmark schools such as D.C. School of Law, CUNY, and D.C.'s antecedent, the Antioch School of law, can serve as examples of schools that moved clinical teaching and justice education to the core of the curriculum. [FN256] For those of us at schools that may never be ready for that approach, the concepts of a "pervasive" approach or "spiral curriculum," [FN258] may still be guiding forces. We need to identify
a place in our curriculum, whether the clinical courses or elsewhere, in which equal
justice work is a central goal. We need to identify places in the nonclinical portions of
the curriculum, and particularly in the core curriculum, in which equal justice issues
should be taught; where an absence of materials impedes our colleagues' willingness to
teach equal justice issues, we must help develop materials, with an eye toward their
inclusion in standard textbooks. We need to scour the balance of the law school
operation, including the extra-curricular activities, career services, financial aid and
admissions offices, loan forgiveness programs, and alumni relations efforts, in search of
additional resources that can be utilized. We then need to build bridges and coordinate
efforts to develop a coherent program that attempts to fill a gaping hole at most of our
law schools. [FN259]

Conclusion
As we approach the ten-year anniversary of the publication of the MacCrate Report,
proponents of clinical legal education should begin the process of assessing the Report's
impact. As a movement, we dedicated tremendous resources not only to the Report
itself, but to subsequent efforts to analyze it and implement its recommendations both
nationally and at our various law schools. It would be disturbing if we did not pause to
assess whether the Report made no difference or a big difference and, if we sense that
the answer is somewhere in *169 between, to have no idea as to whether the impact
was closer to one or the other end of the spectrum.
Regardless of our sense of the impact of the MacCrate Report itself, however, it is worth
returning to the document at least for its recommendations and its methodology. The
Report's overall purpose is to help narrow the gap and to urge law schools as part of an
educational continuum to improve their teaching of fundamental lawyering skills and
values to help prepare law graduates for practice. The specific recommendations include
the development and expansion of programs designed to strengthen instruction in
lawyering skills that tend to get lesser treatment in law school curricula, to emphasize
training in ethics and fundamental lawyering values, to promote justice, fairness and
morality, and to emphasize the profession's expectation that lawyers will fulfill their
commitment to provide legal services to those who cannot afford to pay. [FN260] Even
were we to conclude that the Report itself has lost much of its strategic value outside of
clinical legal education, it would be hard to imagine that the goals articulated in the
Report's recommendations have become passé.
As it was ten years ago, it is important to take stock of our curricula and identify gaps in
our teaching of skills and values. As part of that process, we should pool our knowledge
regarding programs that seem effective in filling the gaps we identify, and ideas for
structuring and marketing, to increase their chances for success at our particular law
schools. Where we have not done so, we should prioritize, rather than simply list, the
goals of our various programs and clinics. We should also untangle the extent to which
our programs are shaped by our understanding of learning theory or other institutional
concerns.
Ten years after the MacCrate Report, and nine years after I began clinical teaching, two
lessons seem crucial in designing programs to teach skills and values. First, the
important skills or values that typically are ignored by the standard law school curricula
can best be taught through clinical courses. Second, however, to the extent important
skills and values are left exclusively to the clinics, they are likely to be marginalized in
the overall law school experience. As a result, we must not simply try to strengthen our
teaching of those skills and values in our clinics, but seek to achieve coordinated
programs that marshal resources from the entire law school to fill those gaps.

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in Boston. I am grateful for the helpful feedback I received from clinicians in attendance
at the New England Clinician's Conference in June, 2001, and from Inge Thorn Engler,
Lee Engler, Judi Greenberg, Richard Huber, Ilene Klein, Deborah Maranville, Mary Helen
McNeal and Tracy Miller. This work was supported by a Summer Stipend from the Board
of Trustees of New England School of Law.


[FN2]. See infra Part I.

[FN3]. A comparison of results of four Westlaw searches reveals this shift. Three different Westlaw searches for the Report either in the title of articles or prominently discussed confirms that most such articles bear a publication date of 1995 or before. When the search is expanded to involve simply citations to the Report, the citations are spread fairly evenly over each year from 1994 to the present. All four searches were conducted on May 25, 2001. (Data on file with author). For a discussion of the Report's impact nationally, see infra Part III.A.

[FN4]. See infra Part II.F.

[FN5]. The changes to individual courses included adoption of new clinics and skills courses, expansion of enrollment in existing skills courses and clinics, and efforts to integrate skills training into nonclinical courses. See infra Part II.C. The changes to the culture included the re-energizing of the pervasive approach to teaching ethics; the integrating of clinical faculty into nonclinical courses and of nonclinical faculty into clinical courses; the improvement in status of the school's clinical teachers; and the sharing of teaching techniques and pedagogies among the faculty. Id. The changes to the core curriculum also included the addition of a third semester of legal writing. See infra Part II.D.

[FN6]. See infra Part II.E.

[FN7]. See infra Part III.A.

[FN8]. MacCrate Report, supra note 1, at 331 (Recommendation #8).

[FN9]. See infra Part III.

[FN10]. See infra Part III.B.

[FN11]. See infra Part III.C.

[FN12]. See infra Part III.D.

[FN13]. MacCrate Report, supra note 1, at 121-221 (Part II). The ten fundamental lawyering skills, each with multiple subparts, are Problem Solving; Legal Analysis and Reasoning; Legal Research; Factual Investigation; Communication; Counseling; Negotiation; Litigation and Alternative Dispute Resolution Procedures; Organization and Management of Legal Work and Recognizing and Resolving Ethical Dilemmas. The four fundamental values are Provision of Competent Representation; Striving to Promote Justice, Fairness and Morality; Striving to Improve the Profession; and Professional Self-Development. Id.

[FN14]. Id. at 124. "The Task Force itself could not hope to write a comprehensive set statement of skills and values that all members of the profession would--or could reasonably be expected to--accept as definitive." Id. at 123.
The possible users included law students, law schools, developers of programs for continuing legal education, law offices designing in-house training for new lawyers, and practicing lawyers in self-evaluation and self-development. Id.

Id. at 131-33.

Id. at 9-119 (Part I).

Id. at 223-323, (Part III).

Id. at 325-38 (Part IV).

Id.

Id. at 238. The paragraph continues:

Much of the research leading to the advancement of knowledge about lawyering, the legal profession and its institutions is found in the work of clinicians, and many are recognized to be among the most dedicated and talented teachers in law schools. Clinics provide students with the opportunity to integrate, in an actual practice setting, all of the fundamental lawyering skills. In clinic courses, students sharpen their understanding of professional responsibility and deepen their appreciation for their own values as well as those of the profession as a whole.

See also Wallace Loh, Introduction: The MacCrate Report-Heuristic or Prescriptive?, 69 Wash. L. Rev. 505, 514 (1994) ("Some academics and practitioners will undoubtedly hail the MacCrate Report as the Magna Carta of clinical legal education ....").

MacCrate Report, supra note 1, at v-vi.

Id. at 392-94. The second public hearing, held on June 7, 1990 at Ann Arbor, Michigan, was reserved for Clinical Teachers. Id. at 392.

Id. at xi-xii. Some critics would later contend that it was the views not simply of clinical teachers, but clinical teachers who were proponents of the methodologies of simulations and in-house clinics that were reflected prominently in the Report. See, e.g., infra notes 50 and 53.

See, e.g., Robert MacCrate, Keynote Address-The 21st Century Lawyer: Is There A Gap to be Narrowed? 64 Wash. L. Rev. 517, 517-20 (1994); Loh, supra note 21, at 507 ("The MacCrate Report represents the most comprehensive effort to date to bridge the perceived gap between law schools and the bar."). The Reed Report was more formally known as: Alfred Z. Reed, Training for the Public Profession of the Law (1921). Jerome Frank's widely cited articles include Why Not a Clinical-Lawyer School?, 81 U. Pa. L. Rev. 907 (1933) and A Plea for Lawyer-Schools, 56 Yale L.J. 1303 (1947). The Cramton Report, named in recognition of Roger Cramton, Chairman of the Task Force that produced the Report, was more formally titled: American Bar Association, Section of Legal Education and Admissions to the Bar, Report and Recommendations on the Task Force on Lawyer Competency: The Role of Law Schools (1979)[hereinafter Cramton Report]. For a summary of the challenges throughout the twentieth century to the prevalent structure of legal education, including the growth of clinical legal education, see Margaret Martin Barry, Jon C. Dubin & Peter A. Joy, Clinical Education for this Millennium: The Third Wave, 7 Clin. L. Rev. 1 (2000).

Id. at 16.

Gary Bellow, On Talking Tough to Each Other: Comments on Condlin, 33 J.
Legal Educ. 619, 622 (1983). Bellow added: 
Al Sacks once said to me, "Well, it seems to me that what you're saying is that law school is empirically irrelevant, theoretically flawed, pedagogically dysfunctional, and expensive." And I am, of course, saying just that. When you add to these deficiencies, the incoherence of the second- and third-year course offerings, the amount of repetition in the curriculum, the degree to which unacknowledged ideology pervades the entire law school experience and the fact that no graduate of an American law school is able to practice when graduated, you have a system of education which, I believe, is simply indefensible.
Id. at 622-23.


[FN30]. See, generally, MacCrate Report, supra note 1, at v-vi for a list of Task Force members and at xi-xiv for a description of the process and procedures that led to the report.

[FN31]. Id. at xi-xvi, 392-94.

[FN32]. Id. at 126.

[FN33]. For example, the ABA, the University of Minnesota, and West Publishing Company sponsored a conference dedicated to the Report, the proceedings of which were memorialized in a West publication by the same name. See The MacCrate Report: Building the Educational Continuum 145 (Joan S. Howland & William H. Lindberg, eds., 1994). Conferences among clinical teachers occurred in 1993, 1994 and 1995. See infra note 58 and accompanying text. In January, 1995, the AALS held a one-day Mini-Workshop during its Annual Meeting, titled "Professors in the Profession: Skills and Values in Legal Education." See Program Materials, AALS Mini-Workshop on Professors in the Profession, January 5, 1995 (on file with the author).

[FN34]. The ABA House of Delegates adopted Resolution 8A at its February 1994 meeting, inviting the Section of Legal Education and Admissions to the Bar to report to the 1994 Annual Meeting "as to the manner in which skills and values instruction should be integrated in the accreditation process ...." Memorandum D9394-107 from James P. White, Consultant on Legal Education to the American Bar Association, to Deans of ABA Approved Law Schools, regarding "Report to the House of Delegates Concerning Resolution 8A" (July 15, 1994)(on file with the author). For a taste of the official AALS reaction, see, for example, Carl C. Monk, Notes from the Executive Director: The Law Schools and the Profession, AALS Newsl. (AALS), Nov. 1993, at 6-7; Statement of the Association of American Law Schools on the MacCrate Report, AALS Newsl. (AALS), Nov. 1993, at 8-9; Elizabeth M. Schneider, The MacCrate Report: The AALS Role, AALS Newsl. (AALS), Nov. 1994, at 6-7.


The height of publication of articles directly dealing with the MacCrate Report was the period from 1994-1997. For example, fourteen of the sixteen articles under the heading of the MacCrate Report in the second edition of Clinical Education: An Annotated Bibliography, bear publication dates from 1994-1997; the last two have a 1998 date. See J.P. Oglivy & Karen Czapanskiy, Clinical Education: An Annotated Bibliography, Clin. L. Rev. 36-37 (Special Issue No. 1, Spring 2001). The symposia issues on the MacCrate Report are from these same years. See infra at note 36. Assuming a lag time of two to three years from the beginning of the article to publication date, the bulk of the scholarly activity occurred roughly between 1992 and 1995.


[FN38]. Costonis, supra note 35. At the time, Dean Costonis was Dean of Vanderbilt University School of Law.

[FN39]. Id. at 190.

[FN40]. Id. at 197.

[FN41]. Id. at 174-89.

[FN42]. Id. at 157-73.

[FN43]. Letter from Dean Ronald Cass, et al., to Deans of Law Schools Accredited by the American Bar Association (Apr. 28, 1994)(on file with the author)[hereinafter "Deans' Letter"].


[FN45]. For critiques of the Report based on the high costs of clinical legal education and skills training, see Costonis, supra note 35; Matasar, supra note 44, at 478 ("Generally, skills training costs more than traditional classroom teaching .... Clinical education just does not do well on most objective standards."). The Dean's Letter twice cited clinical legal education as an example of the harm that flows from use of the
accreditation process. See Dean's Letter, supra note 43, at 2 ("[T]he accreditation process ... has become in substantial measure a barrier to difference--... no law school can eschew expensive clinical programs."); id. at 3 ("[T]he accreditation process drags on endlessly, under ABA requirements to file reports periodically explaining any departure from the pattern that has been prescribed for all schools--why, for instance, the clinical faculty are treated differently than the research faculty in some respect ...."). Sensing that clinicians would use the Report to seek to enhance their status, Dean Matasar warned: "if implementing MacCrate comes with the additional requirement that law schools must add new teachers who have full faculty status, but who may not share the same set of values as the people who are on the tenure-track, MacCrate will be dead on arrival." Matasar, supra note 44, at 485.

[FN46]. MacCrate, supra note 35, at 92.

[FN47]. Stark, supra note 35, at 129.

[FN48]. Elson, supra note 44, at 364.

[FN49]. Id.

[FN50]. Id. at 375-77; Clark, supra note 35, at 1157. See also Carrie Menkel-Meadow, Narrowing the Gap by Narrowing the Field: What's Missing from the MacCrate Report-of Skills, Legal Science and Being a Human Being, 69 Wash. L. Rev. 593 (1994). Dean Costonis was among the many who commented on this aspect of the Report. Costonis, supra note 35, at 177. As noted previously, however, the Report itself anticipated this critique. See supra note 14 and accompanying text.

[FN51]. Elson, supra note 44, at 364 n.8.


[FN54]. Mark Heyrman, Regulating Law Schools: Should the ABA Accreditation Process Be Used to Speed the Implementation of the MacCrate Report Recommendations?, 1 Clin. L. Rev. 389, 390 (1994)("Clinical teachers, in particular, have criticized the SSV for: (1) placing too great an emphasis on skills rather than values ...."); Balos, supra note 52.


[FN56]. Heyrman, supra note 54, at 390.
[FN57]. Bellow & Hertz, supra note 55, at 345 n.20, citing MacCrate Report, supra note 1, at 207-21 ("Fundamental Values of the Profession"); Juergens, supra note 52, at 420 ("We should not, however, overlook opportunities to educate skeptical colleagues about the pedagogical validity of teaching law students about social justice issues.").


[FN61]. See Joint CLEA/Clinical Section MacCrate Implementation Task Force, CLEA Newsl. (Clinical Legal Educ. Assoc.), Mar. 1994, at 3; Letter from Carl Monk, Executive Director of AALS, to Minna Kotkin, Chair, AALS Section on Clinical Legal Education (Apr. 26, 1994)(on file with author); Letter from Carl Monk, Executive Director of AALS, to Minna Kotkin, Chair, AALS Section on Clinical Legal Education (May 17, 1994)(on file with author); Letter from Minna Kotkin, Chair, AALS Section on Clinical Legal Education, to Carl C. Monk, Executive Director of AALS, (May 2, 1994) (on file with author). The AALS was concerned about lending its name to efforts to utilize the accreditation standards as part of the strategy to implement the MacCrate Report. Id.


[FN63]. See Oglivy & Czapanskiy, supra note 35, at 36-37.


[FN65]. See, e.g., Elson, supra note 44, at 366-72; Heyrmann, supra note 54, at 395-98. Dean Costonis identified the use of the accreditation process as a major danger of the MacCrate Report, a theme that became central to the signatories of the “Dean’s letter.” See Costonis, supra note 35, at 187, 190; Dean’s letter, supra note 43.

[FN66]. See, e.g., Juergens, supra note 52, at 424 (“The MacCrate Report may indeed meet that same fate, but this can be avoided.”). See also Peter A. Joy, The MacCrate Report: Moving Toward Integrated Learning Experiences, 1 Clin. L. Rev. 401, 401 (1994). For the suggestion regarding the fate of the MacCrate Report, see, for example, Costonis, supra note 35, at 162-64.

[FN67]. See, e.g., Elson, supra note 44, at 372-74. Elson identified himself as “a practicing clinician, lamenting herein the poor prospects for effective implementation of the MacCrate Report’s pro-clinical recommendations ....” Id. at 364 n.8.

[FN68]. Heyrmann, supra note 54, at 392. As Peter Joy observed, in most law schools, the positive changes in legal curricula that might result from the MacCrate Report “are likely to be incremental changes. Over time, even incremental changes will help transform law schools into integrated learning experiences closer in spirit to competence-oriented skills and values training found in clinical courses.” Joy, supra note 66, at 401.

[FN69]. See, e.g., Juergens, supra note 52.


[FN71]. Juergens, supra note 52, at 412.

[FN72]. “There is a freight train gathering speed on the tracks of legal education, and it is called SSV-Statement of Skills and Values.” Loh, supra note 21, at 505.

[FN73]. Hertz Memorandum, supra note 58, at 3. The AALS surveyed deans of the 175 ABA-approved schools in the spring of 1993, with 67 schools (38%) responding. Id. at 2.

[FN74]. See, Joy, supra note 66, at 401. Of the approximately fifty clinical teachers in attendance, eight worked at schools where the entire faculty had held at least one discussion, five more worked at schools where discussions had occurred at the Curriculum Committee or some other collection of faculty, and eleven more worked at schools at which plans for the entire faculty to meet and discuss the Report were underway. Id.

[FN75]. For example, while Chicago-Kent’s "Litigation and Alternative Dispute Resolution" (LADR) program was developed shortly before the publication of the MacCrate Report, those involved in the design of LADR had the opportunity to review early drafts of the Report, "and these drafts informed and helped shape" their thinking. Gary Laser, Significant Curricular Developments: The MacCrate Report and Beyond, 1

[FN76]. See supra note 73.

[FN77]. See infra Part II.B.

[FN78]. New England School of Law, 2001 Catalog, at 8-9 (on file with the author) [hereinafter "2001 Catalog" ]; see also New England School of Law website, http://www.nesl.edu.

[FN79]. "During any given year, approximately 650 men and women will study law in the school's Day Division while another 550 will pursue degrees in the evening division." New England School of Law, 1993/1994 Catalog, at 11 (on file with the author).

[FN80]. Of the 1992 graduates, 48.3% were employed in private practice (with 5.9% of the class Self-Employed, 35.7% in Small Firms and 6.7% in large firms, defined as firms with over 25 attorneys), and 15.7% of the class of 1992 was employed in the business sector (5.5% in "Legal" jobs and 10.2% in "Non-legal"). Of the remaining graduates, 16.6% were employed in Government positions (13.7% in "Legal" jobs and 3.9% in "Non-legal"), with the rest split between Public Interest (3.5%), Judicial Clerkships (5.9%), Academic (7.1%) and Miscellaneous (1.9%) categories. (Data on file with author).

[FN81]. For all New England students, Civil Procedure and Constitutional Law were 6-credit courses, while Property, Torts and Contracts were 5-credit courses. In 1992, the Legal Methods program consisted of a three-credit Legal Methods portion and a one-credit Legal Research course. The two pieces were combined into a single, four-credit Legal Methods course in 1995. The first- year curriculum was spread over two years for the Evening Division.

[FN82]. Professional Responsibility was a two-credit course; the others were three credits each.

[FN83]. The rule, which was passed by voice vote at a faculty meeting and later memorialized in a written memorandum, provided that "issues involving legal ethics should be explicitly identified and discussed on at least several occasions in all law school courses." Memorandum from Dick Child, Chair, Curriculum Committee, to Faculty of the New England School of Law (Mar. 4, 1991) (on file with the author).

[FN84]. See, e.g., Clinical Programs at the New England School of Law (unpublished booklet on file with author) (hereinafter "Clinical Booklet"). The booklet describes the clinical courses, and is updated each semester at the time of registration for the clinical courses. The most recent version is online at http://www.nesl.edu, "Legal Clinics." The courses ranged from two to six credits and were under the jurisdiction of the Director of Clinical Programs, a full-time, tenure-track faculty position. The fourteen clinical courses as of 1992 were the Lawyering Process (Civil Litigation Clinic), Government Lawyer, Tax Clinic, Administrative Law Clinic, Criminal Procedure II Clinic, Domestic Violence Clinic, Environmental Law Clinic, Health and Hospital Law Clinic, Immigration Law Clinic, Land Use Clinic, Massachusetts Practice Clinic, Mediation Clinic, Mental Health Law Clinic and
Prisoners' Rights Clinic. The Mediation Clinic had only been offered in 1989, and there were no plans to offer it again.

[FN85]. For example, students wishing to work in the field of land use would take Land Use as a co- or prerequisite, and enroll in the Land Use clinic. Clinic work then included the required fieldwork in the area of land use (2 credits, 10 hours per week), weekly journals, and seminars co-taught by the Land Use Professor and Clinical Director. The Lawyering Process ("Introduction to Civil Litigation"), placed students at the school's in-house clinic and included a weekly two-hour class introducing students to lawyering skills, through a range of teaching methodologies, including simulation, discussion, lecture and a variety of classroom exercises.

[FN86]. The CLO, established in 1973, handled landlord-tenant, domestic relations, government benefits and consumer cases.

[FN87]. In the mid-1980's, enrollment in the clinical courses rose from 34% of the graduating class in 1983 to 44.7% of the Class of 1985. New England School of Law Clinic Programs, Report of the Clinical Director, June 1, 1983- May 31, 1985, at 4 (on file with author). The figures for the early 1990's are as follows:

<table>
<thead>
<tr>
<th>Year of grad. &amp; div.</th>
<th>total #</th>
<th># in clinics</th>
<th>% in clinics</th>
</tr>
</thead>
<tbody>
<tr>
<td>92--D + E</td>
<td>349</td>
<td>164</td>
<td>47%</td>
</tr>
<tr>
<td>D</td>
<td>222</td>
<td>147</td>
<td>66.2%</td>
</tr>
<tr>
<td>E</td>
<td>127</td>
<td>17</td>
<td>13.38%</td>
</tr>
<tr>
<td>91--D + E</td>
<td>328</td>
<td>161</td>
<td>49%</td>
</tr>
<tr>
<td>208</td>
<td>143</td>
<td>68.75%</td>
<td></td>
</tr>
<tr>
<td>120</td>
<td>18</td>
<td>15%</td>
<td></td>
</tr>
</tbody>
</table>

Memorandum from Russell Engler, to Clinical Studies Committee (Dec. 8, 1995) (on file with author) [hereinafter, "Enrollment in Clinical Courses Memorandum"].

[FN88]. The full-time faculty consisted of 24 men and 9 women; 4 full-time faculty were people of color. The faculty also included 41 part-time members, and 17 Legal Methods Instructors.

[FN89]. One Clinical Instructor was fired in the mid-1980's after a court imposed sanctions against the in-house clinic in one case. The decision triggered a crisis for the Clinical Program, and the in-house clinic remained under fire, as the school scrutinized the clinic's operations and contemplated shutting down the program. By the end of the 1980's, the in-house clinic not only had survived, but the Clinic Director from that period had become the Associate Dean.

[FN90]. New England School of Law Faculty Rule 4.10 (adopted Mar. 5, 1992). A section labeled "Perquisites of Clinical Faculty" authorized Clinical Instructors to participate fully in faculty meetings and faculty committees, and be entitled to the same research and travel allowance, as well as sabbatical leave, as other faculty members. Clinical Instructors could not "vote on matters concerning appointments of tenure-track faculty." Id.

[FN91]. Faculty Retreat - Agenda, March 11-12, 1994 (on file with author). The six sessions covered: Introduction and Overview of the AALS Inspection and Evaluation Process, Institutional Strengths and Weaknesses, The Intellectual Atmosphere at the Law School, Curriculum, Diversity and Student-Related Issues. Id. The MacCrate Report originally was scheduled to be only one of six items to be covered in the hour-and-a-half session allotted for discussion of the curriculum, along with: Current institutional philosophy, Questions raised in the Self-Study Report, Long-Range Planning discussions, Integration of professional ethics into substantive law courses, and Review of Clinical Offerings. Id.
The MacCrate Report itself had recommended this route. MacCrate Report, supra note 1, at 331 (Recommendation #8). In terms of criticism, I focused primarily on the issues identified by Dean Costonis, including the difficulties in attempting to set forth a statement of fundamental lawyering skills and values as well as the issues of cost. See Costonis, supra note 35. Reminding the faculty that, despite the criticism, the Report was too major an event to be ignored and that even Dean Costonis had stated that the "problem, in short, is predominantly economic, not pedagogical." Id. at 197.

As possible options for filling gaps, I identified 1) offering different courses, 2) modifying graduation requirements, 3) modifying the listing of recommended courses, 4) integrating clinical methodology into the core curriculum, and 5) some combination of those four.

I chose Legal Writing first because we were already dedicating considerable resources to the teaching of this skill, we were hiring a new Director of Legal Writing, the MacCrate Report included a specific recommendation on legal writing (#14) and Dean Costonis focused on this skill. See MacCrate Report, supra note 1, at 332; Costonis, supra note 35, at 184-85.

I chose the teaching of ethics, which I described as an overlap of skills and values in the language of the MacCrate Report (See MacCrate Report, supra note 1, at 213-21 [Skill#10, Recognizing and Resolving Ethical Issues, and Values 1-4]), because the pervasive approach to teaching ethics was the stated policy at the school, and the "Integration of professional ethics into substantive law courses" was one of the topics for the retreat.

MacCrate Report, supra note 1, at 213-15 (Value 2.2). I did not want to miss the opportunity to raise the issue of unmet legal needs for the country's poor.

Although the Report originally was to have been one of six topics in one of the six sessions, lyrics written for a Faculty Holiday party later that year suggest greater prominence:
Went on a Retreat, Down Dan'l Webster's Way,
You know we dropped down on our knees,
And to MacCrate we prayed
The retreat was held at the Daniel Webster Inn, Sandwich Village, MA.

The charges for 1994-1995 read:
To recommend how the school might best implement the recommendations of the MacCrate Report .... The committee should also recommend a mechanism for implementing the [policy] for integrating ethical teaching into each course.
Memorandum from Dean O'Brien, to Faculty Committees, New England School of Law (Aug. 1994) (on file with the author). Beginning with the 1995-1996 the charges read:
"To monitor the school's implementation of the recommendations of the MacCrate Report. To monitor the school's efforts on teaching ethics throughout the curriculum."
Memorandum from Dean O'Brien, to Faculty Committees, New England School of Law (Aug. 1995) (on file with the author). The charges explicitly referred to the MacCrate Report each year until the 2000-2001 year, in which the following language appeared:
"To continue to evaluate the adequacy of the school's program in legal skills, values and ethics and to recommend changes deemed necessary to adequately prepare students for practice." Memorandum from Dean O'Brien, to Faculty Committees, New England School of Law (Aug. 2000) (on file with the author).

See infra Part II.C., notes 105-14. I developed the survey form, which consisted of two pages: one for the teaching of skills and the second for the teaching of values. The skills page listed the ten skills from the SSV, with an 11th skill for "Other" and
asked faculty choose from one of three choices:
KEY: 1 = Teaching this skill is a primary goal of the course
2 = I teach this skill, but not as a primary goal of the course
3 = Other (please describe below) (Survey Form on file with author).

The values page followed a similar format but included several subsections of the four values. I set forth particular subsections to insure that we would obtain survey results specifically with respect to Value 2.2 ("Assisting the Profession in Providing Counsel to Those Who Cannot Afford To Pay") and 3.3 ("Striving to Rid the Profession of Bias & Rectify the Effects of Bias").

[FN100]. See Report of the Curriculum Committee, submitted by Richard B. Child (June 1995) [hereinafter "1994-1995 Curriculum Survey" ]. The report acknowledged its shortcomings as a picture of skills and values instruction, because faculty were self-reporting and may have had different standards as to what it meant to teach a skill. Still, the results were revealing, both in terms of which skills and values professors identified as ones that were primary goals of their teaching, and those that faculty were not even claiming to teach.

[FN101]. Id. A. SKILLS DATA--LISTED BY FREQUENCY TAUGHT
TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

[FN102]. Id.

[FN103]. Id. C. VALUES DATA--LISTED BY FREQUENCY BEING TAUGHT
TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

[FN104]. The recommendations consisted of eight steps regarding teaching of ethics, and four on the MacCrate Report itself: 1. Continued faculty discussions about teaching and exchange of ideas regarding teaching methodologies; 2. Focus on the particular skills and values underrepresented in the curriculum survey to determine the extent to which they deserve greater prominence in the curriculum; 3. Provide information to NESL students regarding the MacCrate list of Skills and Values; 4. Continue to study the extent to which further steps need to be taken, and include consideration of the teaching of skills and values in future curricular decisions. Id.

[FN105]. The new clinical courses were the Local Government Law Clinic (1994), Employment Law Clinic (1994), Federal Courts Clinic (1996), Family Law Clinic (1997) and International Law Clinic (1999). Two other clinical courses were revitalized, allowing the Mediation Clinic to be offered for the first time since 1989 (2000) and the Advanced Lawyering Process to be offered for the first time (1994). The new simulation and practice courses were Advanced Legal Writing (1994), Understanding the Appellate Process (1996), Civil Motions Practice (1997), Patent Trial Practice (2001) and Criminal Advocacy (2001). That menu already included Trial Practice, Trial Preparation, Clinical Evidence, Negotiation and Business Planning. Three other courses, Alternative Dispute Resolution, Law Office Management, and Mediation, which had been offered only occasionally, were now offered regularly, and Mediation was expanded from two to three credits. Additional sections of existing simulation courses were added as well. The faculty created the Business Law Practice Credit program, permitting students taking business law courses to perform externship work under the auspices of a nonclinical faculty member teaching a business law course. The program involves one credit and five hours per week of fieldwork. In many respects, the program resembles a "mini-clinic" described recently by Deborah Maranville. See Deborah Maranville, Passion, Context and Lawyering Skills: Choosing Among Simulated and Real Clinical Experiences, 7 Clin. L. Rev. 123, 131 (2000).

[FN106]. The changes were in part attempts to respond to student surveys indicating
that bars to taking clinics included a perceived lack of flexibility in the clinical offerings, the absence of offerings in the business area and the difficulties facing evening division students in carving out ten hours per week. The Faculty began to offer the clinics at a choice of credit options and to use a menu of co- and prerequisite courses, where pedagogically sound, to allow certain clinics to be offered more frequently. Placements within existing clinics that included work that could be done in the evenings and weekends were identified and reserved for evening division students.

[FN107]. Memorandum from Russell Engler, to Clinical Studies Committee & Curriculum Committee (Apr. 9, 1996) [hereinafter "Class of 1996 Survey" ] (on file with author). The numbers reflected a steady increase over the previous two years:

<table>
<thead>
<tr>
<th>Year of grad. &amp; div.</th>
<th>total #</th>
<th># in clinics</th>
<th>% in clinics</th>
</tr>
</thead>
<tbody>
<tr>
<td>95--day</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>95--D + E</td>
<td>332</td>
<td>165</td>
<td>49.6%</td>
</tr>
<tr>
<td>D</td>
<td>200</td>
<td>136</td>
<td>68%</td>
</tr>
<tr>
<td>E</td>
<td>132</td>
<td>29</td>
<td>21.9%</td>
</tr>
<tr>
<td>94--D + E</td>
<td>332</td>
<td>165</td>
<td>49.6%</td>
</tr>
<tr>
<td>D</td>
<td>200</td>
<td>136</td>
<td>68%</td>
</tr>
<tr>
<td>E</td>
<td>132</td>
<td>29</td>
<td>21.9%</td>
</tr>
</tbody>
</table>

Cf. Enrollment in Clinical Courses Memorandum, supra, note 87 (on file with author). The numbers then dropped slightly with the next three graduating class. For the Class of 1997, 55.9% of the class took at least one clinical course (Day Division: 73.6%, Evening & Special Part-Time Division: 25.7%; 13.6% of the class took a second clinic). For the Class of 1998, 59.2% took at least one clinical course, broken down by 74.2% of the Day Division and 32.4% of the Evening and Special Part-Time Divisions; 21% of this class took a second clinical course. For the Class of 1999: 59.6% overall taking at least one clinical course, broken down by 73.3% of the Day Division and 37% of the Evening and Special Part-time Divisions, with 19.6% of the class taking a second clinic. (Data on file with author)

[FN108]. Most students, particularly evening division students, listed the lack of time in their schedule as the primary reason for not taking a clinical course (77%, of 48 survey responses); the only other choices registering significant responses were those indicating other courses, in particular "bar" courses, seemed more important (35.4%) and that students felt they already had work experience (20.8%). Class of 1996 Survey, supra note 107.

[FN109]. For the graduating classes of 1991 through 1996, the breakdown is as follows:

<table>
<thead>
<tr>
<th>Class</th>
<th>Total %</th>
<th>Day Division</th>
<th>Evening &amp; SPT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996</td>
<td>86.2%</td>
<td>90.6%</td>
<td>76.5%</td>
</tr>
<tr>
<td>1995</td>
<td>89.5%</td>
<td>92.1%</td>
<td>84.6%</td>
</tr>
<tr>
<td>1994</td>
<td>85.2%</td>
<td>93%</td>
<td>73.5%</td>
</tr>
<tr>
<td>1993</td>
<td>89.2%</td>
<td>90%</td>
<td>87.7%</td>
</tr>
<tr>
<td>1992</td>
<td>82%</td>
<td>88.3%</td>
<td>71.6%</td>
</tr>
<tr>
<td>1991</td>
<td>82.9%</td>
<td>87.5%</td>
<td>75%</td>
</tr>
</tbody>
</table>

(Data on file with author). Separate studies had shown that New England students primarily took simulation courses that were litigation-based. Forty-two percent of New England students graduating between 1987 and 1992 took Trial Practice; that figure had risen to 52% by 1995. Twenty-nine percent of New England students graduating between 1987 and 1992 took Clinical Evidence; the 1995 figure was 30%. (Data on file with author).

[FN110]. Five full-time, nonclinical faculty members now offered a clinical component either for the first time, or in both fall and spring, and others taught new simulation and practice courses. The Business Law Practice Credit program allowed seven additional full-time faculty members to add a practice- based component to their courses.

[FN111]. Each faculty member described the exercises, with the terminology of simulations, role-plays, drafting exercises and practice-related problems appearing most
frequently. Other faculty responding to the survey, who did not report using clinical methodology in their courses, were co-teaching the school’s clinical component courses at the time. This survey was triggered by an inquiry from the AALS Standing Committee on Clinical Legal Education. E-mail message from Randy Hertz, to lawclinic@lawlib.wuacc.edu (Mar. 26, 1997) (printed version on file with author). For the description of the responses of the New England faculty, see Letter from Russell Engler, to Randy Hertz (Apr. 25, 1997) (letter on file with author).

[FN112]. The faculty changed the required course in professional responsibility from two to three credits. The incorporation of a section on ethics in the Legal Methods course was designed to highlight the importance of ethical issues and to provide a foundation for the pervasive approach to the teaching of ethics. The text, Deborah L. Rhode, Professional Responsibility: Ethics by the Pervasive Method (1994), was first used in the Legal Methods course in the fall of 1995. The materials included a Selected Annotated Ethics Bibliography, prepared in 1995, which catalogued available materials for incorporating ethical issues into the curriculum and organized the materials by substantive area (on file with author), and Deborah L. Rhode’s Annotated Ethics Bibliography, 58 Law & Contemp. Probs. 361 (1995). With respect to surveys and speakers, two faculty discussions in 1995 and one in 1997 focused on the "Pervasive Instruction in Ethics," with Deborah L. Rhode speaking at the latter session. In 1997, the Curriculum Committee conducted a survey of the faculty to identify the extent to which faculty were complying with the school's policy on the pervasive teaching of ethics and to attempt to discern which ethical issues were being covered, and what gaps remained to be filled. See Survey, Pervasive Ethics at New England (Aug. 15, 1997)(on file with author) (hereinafter “1997 Survey”); Memorandum from Charlie Sorenson, for the Curriculum Committee, to Faculty of the New England School of Law (Oct. 1, 1997)(on file with author).

[FN113]. See New England School of Law Faculty Rule 4.10. The Clinical Instructors earned routine renewals of their short-term contracts, before each was shifted to long-term contracts pursuant to the faculty rule, and contact between the clinical and nonclinical faculty increased steadily.


[FN115]. See, e.g., 2001 Catalog, supra note 78, at 15. The Committee considered requiring students to take a clinical course, but needed a requirement that could apply equally to both Day Division and Evening Division students. The approved list of clinical, simulation and practice courses is listed in the "Red Book", which students receive each semester in advance of registration. See, e.g., New England School of Law, Registration and Tuition Materials 3 (Fall 2001) (on file with the author) [hereinafter "Fall 2001 Red Book" ].

[FN116]. The faculty also adopted a Seminar Requirement: "Each student is required to take at least one course designated as a seminar. Usually a substantial part of the seminar grade is based on a paper, which may be used to satisfy the upperclass writing requirement." 2001 Catalog, supra note 78, at 15. The approved list of seminars similarly appears in the Red Book each semester. See Fall 2001 Red Book, supra note 115, at 3-4.

[FN117]. The effort resulted in the type of struggle, controversy and even acrimony one might expect when changes to required courses, and in particular the first-year courses, are considered. See, e.g., Neil P. Cohen, The Process of Curricular Reform, 39 J. Legal Educ. 535 (1989).

[FN118]. Under the final proposal: 1) Torts was reduced by one credit and became a
four-credit, one-semester course; 2) Constitutional Law was reduced from a full-year, six-credit course, to a one-semester, four-credit course; 3) the faculty adopted a two-course "Public Law" requirement, requiring students to select courses from an approved list of courses; and 4) Criminal Law was moved from the second year into the first year. See 2001 Catalog, supra note 78, at 11 (the list of required courses). The Public Law distribution requirement is described as follows:

Each student must choose two courses from an approved list developed by the faculty. For purposes of this requirement, public law is the body of law that address the legal position of individuals in relation to the government and the structure and operation of government itself. As such, public law necessarily raises issue of constitutional and social concern.

Id. at 15. The Public Law Distribution was adopted to help compensate for the reduction in Constitutional Law.

[FN119]. Memorandum from Charlie Sorenson, for the Curriculum Committee, to Dean John F. O'Brien and Faculty of the New England School of Law 7 (Nov. 22, 1999) (on file with the author). The remaining full-year courses are Civil Procedure, Contracts and Property, each of which is required to incorporate a skills or ethics exercise per semester, defined as follows: "An exercise is considered to be the equivalent of one class hour, although material on practice skills or ethics issues could be presented over several class periods." Id. at 7 n.1. Each faculty member retained the discretion to choose the specific topics and methodology, limited by the fact that the skills areas were to come from an identified list of skills that our surveys revealed were receiving short shrift in the curriculum. The six identified skills were: 1) interviewing and counseling; 2) negotiation; 3) ADR; 4) organization and management of legal work; 5) fact investigation/fact development and 6) drafting in subject area. Id. See 1994-1995 Curriculum Survey, supra note 100. Each professor is required to identify explicitly in his or her course materials that the topics are being covered and "make clear that the material is subject to being tested." Memorandum from Charlie Sorenson, supra, at 7.

[FN120]. The primary opposition was to the reduction in credits for Constitutional Law and the addition of the Public Law requirement; the Skills and Values portion received less attention.

[FN121]. The faculty discussion about the MacCrate Report at the 1994 retreat foreshadowed the school's activities in this area, and skills and values in general. See supra Part II.B. In the years following the retreat, the general topics of skills, ethics and values triggered lively discussion and tangible change. The topics of public service, pro bono and unmet legal needs were met with a mixture of silence, polite discussion and occasional study.

[FN122]. The AALS also focused attention on the topic, providing pro bono consultants and ultimately creating an AALS Pro Bono Section. See infra Part III.D.

[FN123]. Massachusetts Commission on Equal Justice, Equal Access to Justice: Renewing the Commitment 56 (1996)(on file with the author). Explaining the recommendation, the report stated: The commission believes that law schools should inculcate in all law students an understanding that public service is an ethical and moral requirement of all attorneys. Many leading law schools in the country, including Northeastern University School of Law, require public service as a condition of graduation. By doing so, these law schools instruct students in the value of public service and teach them how it may be performed. All law schools in Massachusetts could increase access to justice and help ensure the continuation of high professional standards by requiring their students to provide civil legal assistance to low-income people.

Id.

See supra note 80. Since the focus of the discussion is MacCrate Value 2.2., it is unnecessary to engage in the debate as to whether government positions should be considered public interest.

Nor were students aware of faculty pro bono work. Almost half the faculty reported that they engaged in "pro bono legal activities." See 1994-1995 Curriculum Survey, supra note 100. Few faculty, however, would disagree that pro bono work, part of "Service to the Community," ran a distant fourth behind "Teaching Effectiveness," "Scholarly Activity" and "Service to [New England]" in importance for the purposes of Retention, Promotion and Tenure. See New England School of Law Faculty Rule 4.4.

The core placements in the clinical program remain in poverty law settings, and the school's single in-house clinic is exclusively a poverty law office.

Other reasons included the difficulties in figuring out how to fill the gaps, the sense that other gaps were more important to fill and ideological opposition. The Curriculum Committee's Surveys had revealed significant gaps in handling in the classroom issues related to unmet legal needs. See 1994-1995 Curriculum Survey, supra note 100; 1997 Survey, supra note 112.

The final report included a list of schools that had adopted a mandatory pro bono requirement, but recommended that the school "not adopt a mandatory pro bono/public interest requirement at this time." Id. at 10. The possibility that the Task Force might recommend that the school adopt a mandatory pro bono requirement triggered a lively discussion among the faculty, including widespread concern about such a requirement. Part of the impetus for the creation of the Task Force was a Student Bar Association proposal in 1995, passed unanimously, and calling either for a compulsory or aspirational standard for all students to perform a minimum number of hours of pro bono work before graduation.

A Proposal for a Public Service Program at [New England School of Law] (July 21, 1998)(on file with author); Memorandum from Russell Engler, to Curriculum Committee of the New England School of Law (Feb. 18, 1998)(on file with author). My frustration came in part from the disjunction between my individual activities and those of law schools, including New England. My scholarship focuses on issues facing the unrepresented poor in the courts. See, e.g., Russell Engler, And Justice for All--Including the Unrepresented Poor: Revisiting the Roles of the Judges, Mediators and Clerks 67 Fordham L. Rev. 1887 (1999); Russell Engler, Out of Sight and Out of Line: The Need for Regulation of Lawyers' Negotiations with Unrepresented Poor Persons, 85 Cal. L. Rev. 79 (1997). Yet, in my contacts with the legal services community and the courts, I often
played the role of apologist, not problem-solver, spending more time explaining why law
schools were unlikely to fill certain gaps than delivering new resources and programs.

[FN131]. In the language of the MacCrate Report, utilizing a broad definition of pro bono
and public interest seems guaranteed to deflect efforts away from values such as
MacCrate Value 2.2.

[FN132]. Data and unpublished report on file with author. I analyzed data for the years
1994-1996. The questions were included in end-of-semester, written evaluations by
students of the clinics. I have continued to ask that question of clinic students, and have
received similar responses over the years. Clinic students often submit journals
consistent with these findings.

[FN133]. The Center was "intended as a vehicle to aid professors, students and alumni of
[New England] in designing, carrying out, and publicizing projects that study and/or
utilize the law as a tool for achieving socially responsible goals." See The New England
School of Law Center for Law and Social Responsibility, Draft Proposal: For Discussion
Purposes 1 (Nov. 1, 2000) (on file with author). The Center proposal stated that the
Center was designed to serve in part as New England's implementation of Mass. R. Prof.
Conduct R. 6.1. Id.

[FN134]. Given the mission of supporting and promoting public service work, the
launching of the Center's website became an early activity. See http:// www.nesl.edu,
"Center for Law and Social Responsibility" and "Public Service at NESL." The efforts of the
three faculty members in this area are described on the Center's website under "Criminal
Justice Project," "Environmental Justice Project," and "Domestic Violence Project," as well
as in Russell Engler, Integrating Public Service Legal Work Into Nonclinical Courses, IX

[FN135]. Only a small number of New England students perform volunteer, pro bono
legal work during the school year. However, between 60-70 students a year work in
clinical placements in which the students represent indigent clients in civil or criminal
cases. Another forty students per year work at the school's Prison Outreach Project,
teaching law to inmates as part of the students' required work as staff members of the
New England Journal of Criminal and Civil Confinement. Through the seminar courses
described in this article, an additional 40-50 students are performing public service legal
work. (Data on file with author).

[FN136]. "Legal Education has never been noted for the richness of the available
empirical research into its teaching methodologies." Maranville, supra note 105, at 130.

[FN137]. See supra notes 62-71 and accompanying text.

[FN138]. MacCrate Report, supra note 1, 330-34.

[FN139]. Id. Three others involve the law schools in combination with the practicing bar
(#1, 20 & 21). Four recommendations (#3-5 & 7) involve accreditation standards, and
three others (#18, 22 & 23) are directed at prospective employers and employment. Id.

[FN140]. See id. at 330-31 (recommendations #5, 6 & 8); see also supra Part II.B.

[FN141]. See id. at 331 (recommendations #9-11).

[FN142]. See supra Part II.C.

[FN143]. See MacCrate Report, supra note 1, at 331-32 (recommendations #12- 14);
see also supra Parts II.C. and II.D.

[FN144]. See, MacCrate Report, supra note 1, at 332-33 (recommendations #16, 17 & 19); see also supra Part II.E.

[FN145]. See, MacCrate Report, supra note 1, at 332-34 (recommendations #15, 24 & 25); see also supra Part II.A.

[FN146]. See Joy, supra note 66, at 401. New England adopted new clinics and skills courses, enrollment in existing skills courses and clinics increased, and the status of the school's clinical teachers improved. The faculty also added a professional skills requirement for graduation, and created the Center for Law and Social Responsibility to inspire, support and expand public service work among the faculty, students and alumni at New England. See supra Parts II.C.-E.

[FN147]. See Martin & Garth, supra note 70, at 454. For example, the New England faculty attempted generally to integrate skills training into nonclinical courses, re-energize the teaching of the Pervasive Approach to Ethics, and integrate clinical faculty into nonclinical courses and nonclinical faculty into clinical courses, while also adding a Skills and Ethics component in the first-year courses. See supra Parts II.C. and II.D.


[FN149]. See Implementation Goals, supra note 62 and accompanying text.

[FN150]. Id. (Goals #1 & #5).

[FN151]. Id. (Goal #6).

[FN152]. See id. (Goals #2, #3 & #4).

[FN153]. Excess demand therefore is easily shifted from the externship placements to the in-house placements, and vice versa, depending on the demands of a particular semester.


[FN155]. Both goals were achieved. New England became a member of AALS in 1998. See, e.g., 2001 Catalog, supra note 78, at 8. A list of faculty scholarship is online at http://www2.nesl.edu/faculty/facpubs.htm.


[FN157]. In 1999, faculty were encouraged to "internationalize" their domestic courses, and contribute to a chapter of a book on the pervasive approach to international law. See http://www.nesl.edu/center/pubs/3drpt.htm.

[FN158]. Barry et al., supra note 25. The discussion of trends appears between a summary of the history of clinical legal education and identification of important challenges ahead. For the summary of the history of clinical legal education and the
development of clinical legal methodology, see id. at 5-23. For the exploration of issues for the future, see id. at 50-71. For the discussion of trends, see id. at 26-50.

[FN159]. Id. at 32-40; see also supra Part II.C.


[FN161]. Id. at 27-32. New England has increased the involvement of clinical teachers outside the clinics without increasing the faculty-student ratio of the clinical teachers; indeed, the faculty-student ratio typically drops in semesters in which clinical faculty do their nonclinical teaching.

[FN162]. Id. at 41-44.

[FN163]. Id. at 46-49.

[FN164]. Id. at 41.

[FN165]. See supra Part I.


[FN167]. As discussed below, clinical teachers served as Members of The AALS Commission on Pro Bono and Public Service Opportunities and of the Advisory Task Force to that Commission and played crucial roles in the AALS Equal Justice Project. See infra notes 237-38.


[FN169]. See Stuckey, supra note 168.


[FN171]. Message from Tokarz, supra note 170, at 2. See also Stuckey, supra note 168. The changes in the accreditation standards were followed immediately by backlash, most notably in the form of unsuccessful attempts by opponents of the MacCrate Report and the use of the accreditation standards in the first place to divest the ABA House of Delegates of its supervisory role with respect to the issuance of Accreditation Standards by the Section of Legal Education and Admissions to the Bar. Message from CLEA President Margaret Martin Barry, CLEA Newsl. (Clinical Legal Educ. Assoc.), June 1996; CLEA Comments on ABA Accreditation Process, reprinted in CLEA Newsl.(Clinical Legal Educ. Assoc.), June 1999, at 5-8; Message from CLEA President Margaret Martin Barry, CLEA Newsl.(Clinical Legal Educ. Assoc.), Sept. 1999.
See Barry et al., supra note 25, at 41-49. The exception in terms of timing is Seattle University, with its "Parallel, Integrative Curriculum." The authors' description of the path to curricular change suggests that while the MacCrate Report played some role, it would be inaccurate to conclude that the Report caused the changes. See Mitchell et al., supra note 75.

Barry et al., supra note 25, at 73, and material cited id. at 73 nn.288-89.

See supra note 62 and accompanying text.

Compare Implementation Goals, supra note 62 (Goal #1) with ABA Standards, supra note 168 (Standard 302(a)(3)).

ABA Standards, supra note 168 (Standard 302-1).

See Implementation Goals, supra note 62 (Goals #2 & #3).

See ABA Standards, supra note 168 (Standard 302(d)).

See Implementation Goals, supra note 62 (Goals #5 & #6). Nor is there any reason to believe that law schools are providing law school applicants with copies of the SSV; evidence regarding the adequacy of information provided to law students regarding course selection is more difficult to assess. See id. (Goal #4).

See Barry et al., supra note 25, at 30-32. See also http://www2wcl.american.edu/clinic/ (database on clinical legal education).

See generally Barry et al., supra note 25, at 12-32.

The Report urged licensing authorities to "consider modifying bar examinations that do not give appropriate weight to the acquisition of lawyering skills and professional values to insure that applicants for admission are ready to assume their responsibilities in practice." MacCrate Report, supra note 1, at 334 (recommendation #D.2.). In the years following the publication of the MacCrate Report, more and more states began using the Multistate Performance Test (MPT), designed to evaluate an applicant's use of lawyering skills in various practical settings, as part of the state's bar exam. By 2001, twenty-nine states had adopted the MPT. See Barry et al., supra note 25, at 38 n.150; http://www.ncbex.org. Whether the changes to bar exams are positive ones is debatable as well.

See supra notes 58-61 and accompanying text.

See supra note 75.

See Barry et al., supra note 25, at 39.

See, e.g., supra note 75.

As Professor Galanter argues in his classic study explaining why the "haves" come out ahead of the "have nots," Rule change is in itself likely to have little effect because the system is so constructed that changes in the rules can be filtered out unless accompanied by changes at other levels .... The system has the capacity to change a great deal at the level of rules without corresponding changes in everyday patterns of practice or distribution of tangible advantages.

Marc Galanter, Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal
Change, 9 L. & Soc'y Rev. 95, 149 (1974). A few years earlier, Gary Bellow made a similar point: ‘rule’ change, without a political base to support it, just doesn't produce any substantial result because rules are not self-executing; they require an enforcement mechanism. Comment, The New Public Interest Lawyers, 79 Yale L.J. 1069, 1077 (1970) (quoting Bellow’s comments about drawbacks to test case litigation as approach for achieving social change, told to author in 1970 interview).

[FN188]. See MacCrate Report, supra note 1, at 331 (Recommendation #5).

[FN189]. As clinical teachers find themselves being pulled in multiple directions, it is essential to resist the temptation to go on a wild goose chase for no clear purpose. Clinical teachers and our allies devoted a tremendous amount of time and energy to the MacCrate Report. See supra Parts I & III.A. If a similar opportunity emerges in the future, clinical teachers will again be in the thick of things. The prominence of clinical teachers in subsequent efforts, such as the AALS Commission on Pro Bono and Public Service and the Equal Justice Colloquia is one indication of this likelihood. See infra notes 237-38 and accompanying text. While we owe it to ourselves to ask whether it is worth the effort before we dedicate our resources to a future assessment, we also should understand the implications of concluding that it is not important for us to assess our current teaching in the areas of skills and values.

[FN190]. This language is from a recent charge by the Dean of New England School of Law to our curriculum committee. As noted previously, each year since 1994-1995, the Dean of New England School of law has specifically charged the curriculum committee to focus on the teaching of skills and values, although reference to the MacCrate Report itself has been dropped from the charge. See supra note 98.

[FN191]. Clinicians have recognized that not all clinical courses or programs share the same goals, and that program design may vary as the goals vary. See, e.g., McNeal, supra note 166, at 359; Seibel & Morton, supra note 53, at 416-21; Mary Jo Eyster, Designing and Teaching the Large Externship Clinic, 5 Clin. L. Rev. 347, 353-54 (1999). The nature of the choices increases the need for appropriate counseling to match students' interests and educational needs with available clinical opportunities. For an example of such counseling, see McNeal, supra note 166, at 378-94. The process of clarifying and prioritizing goals and objectives is one that we regularly train our students to undertake as part of the client counseling process.

[FN192]. See, e.g, supra Part III.D.


[FN194]. See, e.g., MacCrate Report, supra note 1, at 260.

(1992) [hereinafter The Future of the In-House Clinic], the average number of credits per semester for clinical courses at the end of the 1980's was 3.72 clinical credits, with an average of 2.17 separate class credits as well. With externships, the regulatory structure of ABA Standards reflects a preference expressed through less rigorous oversight requirements for lower-credit externships. See ABA Standards, supra note 168 (Interpretation 2 of 306(2)). Subsection (h) of Interpretation 2 sets forth additional criteria for "field placement programs that award academic credit in excess of six credit hours per semester." Id. Despite the ABA's "special attention" to higher credit externship programs, "the overwhelming majority ... have a maximum credit allocation of six units or less." Seibel & Morton, supra note 53, at 426. Robert Seibel's data from the 1994-95 academic year suggests that, for in-house clinics, the average package of clinical and classroom credit was slightly above 5 credits, while the average package for externships was slightly below 5 credits. E-mail from Robert Seibel, SEIBEL @law.mail.cornell.edu, to lawclinic@lawlib.wuacc.edu (Nov. 13, 1997) (on file with the author) [hereinafter "Seibel e-mail"].

[FN196]. Givelber et al., supra note 195, at 3. At the workplace, students "experience the elaborate web of interpersonal relationships that compose the workplace, a social field rich with connection, relationship, and interdependency." Id. at 12 (footnote omitted).

[FN197]. This concern also has implications for pro bono programs, which typically involve many fewer hours. See infra note 248 and accompanying text.

[FN198]. Some may prefer having students closer to full-time over a more limited period, while others may prefer to have the students over a longer period of time for continuity.

[FN199]. See Seibel e-mail, supra note 195 (reporting that his data "suggests that larger enrollment clinics tend to have fewer credits").

[FN200]. "Perhaps one of the most serious failings in contemporary legal education is that all too many students graduate with a vast doctrinal base of knowledge sealed within a context that is not translatable to practice." Mitchell et al., supra note 75, at 21. Making classroom learning useful and trying to connect theory and practice have been explicit goals not only of Seattle's Parallel, Integrative Curriculum, but of many of the efforts to integrate clinical methodology into the nonclinical classroom. Id.; Barry et al., supra note 25, at 38-41. For discussions of the placement of experience into conceptual constructs, or schema, see, e.g., Blasi, supra note 193, at 343 ("expertise consists mainly of the acquisition of a large repertoire of knowledge in schematic form...."); id at 355 ("the hallmark of expertise is structured knowledge [the ability to match patterns in the problem-solving environment with stored schemas for problems, solutions, or solution procedures]."). See also Baker, supra note 35.

[FN201]. Despite this preferred starting point for New England students, I would support a structure of lower-credit programs for most students, supplemented by higher-credit programs for particular students where the structure furthers specified goals, such as the expansion of Equal Justice work. See infra Part III.C.

[FN202]. See Maranville, supra note 105, at 137, citing Carrie Menkel-Meadow, Taking Problem-Solving Pedagogy Seriously: A Response to the Attorney General, 49 J. Legal Educ. 14 (1999) ("A common view of the appropriate way to integrate clinical methodologies into the law is that we should keep the first year curriculum more or less as is, introduce simulation courses on such topics as interviewing and trial advocacy in the second year, and provide client representation opportunities in the third year, either through in-house clinics or externships."); Gregory S. Munro, Integrating Theory and Practice in a Competency Based Curriculum: Academic Planning at the University of Montana School of Law, 52 Mont. L. Rev. 345 (1991). Examples of programs using
careful sequencing are NYU's and the William and Mary writing program. See Barry et al., supra note 25, at 46-47.

[FN203]. Under the New England structure, students in a given clinical component course will either already have taken, or be taking contemporaneously, the related substantive area course. See supra notes 84-86 and accompanying text.

[FN204]. See, e.g., Barry et al., supra note 25, at 43; Martin Guggenheim, Clinical and Advocacy Education at NYU, 1993-94 (16-page booklet describing NYU's programs to prospective clinic students for the clinic application process)(on file with author).

[FN205]. Barry et al., supra note 25, at 44.

[FN206]. For citations to student practice rules around the country, see David F. Chavkin, Am I My Client's Lawyer?: Role Definition and the Clinical Supervisor, 51 SMU L. Rev. 1507, 1546-54 (1998)(Appendix A).

[FN207]. See, e.g., MacCrate Report, supra note 1, at 333 (Recommendation #21): Law schools and employers of law students should work together to inject educational value into any work experience during the law school years, developing models for strengthening the educational content of part-time employment and developing workshops offered at the beginning of the summer clerkship season to support the educational aspects of summer employment.

[FN208]. See, e.g., supra notes 27 & 202. One discussion group at the 1993 MacCrate Conference suggested that more sequencing might be necessary in the aftermath of the MacCrate Report. See MacCrate Conference Proceedings, supra note 33, at 130.

[FN209]. As Debbie Maranville explains, deferring real client representation to the third year also fails to nourish our students' passions for learning and legal education. See Deborah Maranville, Infusing Passion and Context into the Traditional Law School Curriculum Through Experiential Learning, 51 J. Legal Educ. 51 (2001).

[FN210]. Richard Boldt & Marc Feldman, The Faces of Law in Theory and Practice: Doctrine, Rhetoric, and Social Context, 43 Hastings L.J. 1111, 1116 (1992)(footnotes omitted). See also Russell, supra note 64, at 147 ("Law students, especially in their first year of students, may wonder (quite understandably) about the pertinence of both doctrine and anti-doctrinal grand theory if these concepts are introduced in a context devoid of experiential reflection.")

[FN211]. For discussions of the effects of law school socialization on students with an orientation toward public interest law, see Robert Stover, Making It and Breaking It: The Fate of Public Interest Commitment During Law School 46, 48, 66 (1989). For a discussion of the negative effects of law school on women, see Lani Guinier et al., Becoming Gentlemen: Women's Experiences at One Ivy League Law School, 143 U. Pa. L. Rev. 1 (1994). For particular references to the first-year experience, see id. at 37, 42. For a discussion of the crucial role of course title in the first-year curriculum, see Leslie Bender, Hidden Messages in the Required First-Year Law School Curriculum, 40 Clev. St. L. Rev. 387 (1992).

For a discussion of law school socialization generally, see Boldt & Feldman, supra note 210, at 1111-19. As the authors explain, "counter-socialization" was an explicit goal in the design of Maryland's Legal Theory and Practice Program. Id. at 1119-44.

[FN212]. See, e.g., supra note 204. For references to articles discussing the "introduction of 'lawyering' materials in courses in the first year and beyond," see, Hornstein & Deise, supra note 166, at 78 nn.6-7. William Mitchell College of Law has combined the skills


[FN214]. For a description of New England's efforts, see supra Part II.D.

[FN215]. For discussions of Maryland's first-year curriculum, see, for example, Barry et al., supra note 25, at 41-42 and articles cited therein; Hornstein & Deise, supra note 166, at 78 n.8.

[FN216]. For a discussion of Northeastern's program, see, e.g., Learning to Serve: The Findings and Proposals of the AALS Commission on Pro Bono and Public Service Opportunities 32 (October, 1999) [hereinafter "Learning to Serve"]. After spending a semester studying the impact of law on social issues such as race, poverty, gender and sexual orientation, students must perform 20 hours of uncompensated work on community lawyering projects. Id.


[FN218]. See supra notes 54-57 and accompanying text.

[FN219]. Debbie Maranville's thoughtful article Infusing Passion and Context into the Traditional Law School Curriculum Through Experiential Learning, supra note 209, urges incorporation of experiential education in the first-year courses as part of the solution to the problem of the failure of law schools to nurture our students' passion for legal education and provide a context for doctrinal learning.

[FN220]. First-year law students could be among the "lay" advocates to be mobilized if unauthorized practice of law rules are loosened to help meet the unmet legal needs of the poor. See, e.g., Symposium, Conference on the Delivery of Legal Services to Low-Income Persons: Professional and Ethical Issues, 67 Fordham L. Rev. 1713, 1759-65, 1813-17 (1999).

[FN221]. See, e.g., Barry et al., supra note 25, at 42 ("[T]he law school replaced the first-year LTP with a requirement that students take LTP or a clinic course at some time prior to graduation.").

[FN222]. As noted above, proponents of in-house clinics feared that the Report would fuel simulation and externship programs at the expense of in-house clinics. Proponents of externship programs in turn critiqued the report for devaluing externship programs. See supra notes 52-53. For articles invoking the Report in support of the various pedagogies, see, e.g., Juergens, supra note 52; Elson, supra note 44; McNeal, supra note 166, at 362-63 n.90; Seibel & Morton, supra note 53, at 414.

[FN223]. See, e.g., Baker, supra note 35; Baker, supra note 53; Givelber et al., supra note 195; Seibel & Morton, supra note 53; Cole, supra note 195; Symposium, Papers Presented at the Catholic University Law School Symposium on "Developments in Legal Externship Pedagogy," 5 Clin. L. Rev. 337 (1999)(including articles by J.P. Oglivy; Mary
Clinics can integrate a foundation in the ten fundamental lawyering skills with instruction in advanced aspects of these skills, ethical judgment and values, the distribution of justice and the lawyer's pro bono obligation. Moreover, clinics allow students to use lawyering skills in a real-world context and to discover for themselves how they respond to the role of "lawyer."

One articulation of the principal goals of in-house live-client clinics comes from the Future of the In-House Clinic, supra note 195. The stated goals in that report are 1) developing modes of planning and analysis for dealing with unstructured situations, 2) providing professional skills instruction, 3) teaching means of learning from experience, 4) instructing students in professional responsibility, 5) exposing students to the demands and methods of acting in role, 6) providing opportunities for collaborative learning, 7) imparting the obligation for service to indigent clients, information about how to engage in such representation and knowledge concerning the impact of the legal system on poor people, 8) providing the opportunity for examining the impact of doctrine in real life and providing a laboratory in which students and faculty study particular areas of the law, critiquing the capacities and limitations of lawyers and the legal system. Id. at 511-17.

For reference to articles discussing on-going resistance to externship programs, see Maranville, supra note 105, at 124 n.8.

Brook Baker has written extensively in defending the learning value of externships, and in critiquing the MacCrate Report for devaluing that experience. See, e.g., Baker, supra note 35; Baker, supra note 53; and his co-authored study of Northeastern's cooperative programs, Givelber et al., supra note 195. For the emphasis on the need for immersion, see, e.g., Baker, supra note 35, at 317 ("the central impact of this discussion of contextualism for a theory of ecological learning is that the law student will learn about lawyering primarily by immersion in the community of legal practitioners ....") For the emphasis on reality:

Proponents of externships, where contextual realities are maximized, are even more insistent about contextual authenticity. These clinicians assert that legal externships and other practice-based legal work are superior in contextual realism to any other form of legal education by exposing students to: (1) a wide spectrum of legal practice settings, including highly specialized areas of practice, (2) a wide variety of legal tasks, and (3) the myriad economic, interpersonal, intrapsychic, and ethical constraints that impact the legal practitioner.

Id. at 352. For the need for repetition in learning, see id. at 327 ("repetition is a critically important aspect of skill development"; ... [r] epetition leads to automaticity and efficiency as well as refinement of earlier approaches ...."). For an example of Professor Baker's critique of the over-emphasized role of the supervisor in traditional theory, see, e.g., Baker, supra note 53, at 31 ("Traditional clinical theory has also tended to over-emphasize the importance of explicit feedback and reflective or learning-mode dialogue with supervisors.").

I agree with Professor Maranville that "the common typology, which divides 'clinical' courses into simulation courses, 'live' client clinics, and "externship has become more misleading than helpful, masking both differences within categories and similarities among them." Id.

See, e.g., MacCrate Report, supra note 1, at 271 ("A significant problem with credit-bearing externships is that the quality of supervision varies considerably depending
on the experience of the field placement supervisor and the amount of time he or she is able to devote to such supervision."). Brook Baker acknowledges this potential critique, but nonetheless argues against overregulation and heavy reliance on top-down, supervisory-centered structures as a solution. See Baker, supra note 53, at 81-84. In a sense, the question is whether "practice makes perfect," as the cliche instructs. One of my son's baseball coaches instead stated that "practice makes permanent." One of my music teachers instructed that "practice makes more of what you practice."

[FN228]. In in-house clinics, this may in part be due to limited caseloads that characterize most in-house programs. The average caseload that clinic students handle at any one time at in-house clinics at the beginning of the 1990's was 6.18 open cases. The Future of the In-house Clinic, supra note 195, at 548, 549. The figure is higher than the average for criminal cases, and lower than for civil cases. Id. The average caseload has likely dropped over the past decade, as more clinical teachers have added nonclinical teaching, faculty meetings and committee work to their plate.

[FN229]. With respect to learning styles, clinical teachers have shown interest in the Myers-Briggs Type Indicator (MBTI), "an instrument designed to help people understand how they see the world and how they make decisions." Cole, supra note 195, at 178 n.12. For articles discussing MBTI, see id.; Vernellia R. Randall, The Myers-Briggs Type Indicator, First Year Law Students and Performance, 26 Cumb. L. Rev. 63 (1995). For a discussion of differences in learning related to differences in adult development, see, e.g., Morton, Weinstein & Weinstein, supra note 193, at 491-515.

[FN230]. See id. at 489-90 ("Most of our students, we surmise, would prefer not to attend class at all, nor do any readings .... Hence, a certain tension exists in creating a mandatory classroom component focusing on issues that students have only occasional interest in studying."); Harriet N. Katz, Using Faculty Tutorials to Foster Externship Students' Critical Reflection, 5 Clin. L. Rev. 437, 445 (1999) ("Both faculty and students may assume unhelpful teaching paradigms."); id. at 447 ("In a fieldwork-centered program, my observation is that externship students nearly always prefer to put energy and time into fieldwork experience of any type rather than into school assignments related to the program."). That effective adult learning may depend on the instructor's ability to recognize and "seize the disorienting moment" itself suggests that students are by no means ready to learn what we are ready to teach. See, e.g., Quigley, supra note 193. I suspect most law teachers would recognize the truth of that statement from their own experiences.

[FN231]. The MacCrate Report actually took the position "that there is no 'gap'. There is only an arduous road of professional development along which all prospective lawyers should travel." MacCrate Report, supra note 1, at 8. Many readers were not persuaded. See, e.g., Givelber et al., supra note 195, at 48 ("The MacCrate Report identified a profound gap between legal education and the practice of law.").

[FN232]. See Givelber et al., supra note 195, at 7; Baker, supra note 35; Baker, supra note 53.

[FN233]. See, e.g., Maranville, supra note 105, at 141 ("I suspect that the expansion of externship programs at law schools across the country derives more from the combination of external pressures to provide practical experience, the desire to do so at low cost, and student demand, than from any theory of ecological learning.")(footnote omitted).

[FN234]. It is beyond the scope of this article to worry about distinctions between the two terms.
Seventeen colloquia were held at law schools around the country between September 2000 and March, 2001. The list of steering committee members and contacts for the various colloquia is dominated by clinical teachers. See, e.g., Brochure, AALS Equal Justice Project, (on file with author) [hereinafter "Equal Justice Project Brochure"]. The articulated goals of the Equal Justice Project were:

1. To develop models that can be used in different law school settings with various levels of resources to encourage teaching, scholarship, and service activities that support the provision of legal services to underrepresented groups.
2. To stimulate throughout the entire law school—in nonclinical courses, library programs, and pro bono projects, among others—cross-cutting interest in and commitment to the provision of legal services to underserved individuals, groups, and communities.
3. To establish formal relationships between law schools and equal justice communities aimed at promoting on-going support for the provision of legal services to underserved individuals, groups, and communities.
4. To evaluate the effectiveness of the variety of models and approaches that emerge from the Project with the goal of creating sustained commitments of equal justice education, scholarship, and work in law schools on both the national and local levels.
5. To encourage collaboration among law schools and their faculties in addressing the pressing issues and themes that will be considered in the Colloquia.


Robert D. Dinerstein, Clinical Scholarship and the Justice Mission, 40 Clev. St. L. Rev. 469, 469 (1992). Clinical teachers have long been dedicated to the goal of equal justice; in the early years of clinical legal education, the equal justice or social justice component of clinical programs was a given. See, e.g., Barry et al., supra note 25, at 5-16; id. at 55 ("Given clinical education's longstanding commitment to social justice and the inculcation of the professional values of access to justice, fairness, and non-discrimination in the legal system ...."). For recent clinical scholarship on "the social justice mission of clinical legal education," presented at the Rutgers-Newark Law School Conference on that topic, see Jane H. Aiken, Provocateurs for Justice, 7 Clin. L. Rev. 287 (2001); Antoinette Sedillo Lopez, Learning Through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training, 7 Clin. L. Rev. 307 (2001); Stephen L. Wizner, Beyond Skills Training, 7 Clin. L. Rev. 327 (2001).

The MacCrate Report's goals of promoting "justice, fairness and morality" and training all lawyers to "fulfill their responsibilities to the public and support pro bono legal services for those who cannot afford a lawyer" are only two of the twenty-five recommendations directed toward law schools in the report. See MacCrate Report, supra note 1, at 330-34 (recommendations 19 & 20).

See, e.g., Matasar, supra note 44; Laser, supra note 75 (discussing Chicago-Kent's fee-generating clinics).

as involving "a wide range of law students in many types of placements" including "state and federal judges' chambers, state and federal agencies, prosecutors and defenders offices, legal services, and a variety of other placements ....").

[FN244]. See, e.g., Learning to Serve, supra note 216.

[FN245]. See, e.g., Barry et al., supra note 25, at 14 ("The social justice dimension of the practice of law and other professional values can find expression in other parts of the curriculum as well."). For articles dedicated to the justice mission, see Symposium, The Justice Mission of American Law Schools, 40 Clev. St. L. Rev. 277 (1992).

[FN246]. See, e.g., Equal Justice Project Brochure, supra note 238 (Goal #2). For the other four goals, see id.

[FN247]. My sense from listening to many clinical teachers at conferences is that they often articulate the fact that a variety of factors pull them toward an existence that looks more and more like that of our nonclinical colleagues than that of clinical teachers a generation ago. Without paralyzing ourselves with self-doubt, we should nonetheless be vigilant to the possibility that the price we pay for security, coordination and acceptance with respect to the balance of the law school might be a diminution of equal justice work.

[FN248]. See, e.g., Learning to Serve, supra note 216, at 5 ("Without the actual experience of integrating volunteer pro bono work with the rest of her life, an experience which can be learned and reinforced during law school, the pressures to do nothing but her job may be overwhelming."). The report sets out other similarities and differences between clinical courses and pro bono projects as follows: Both clinics and pro bono programs serve important educational values. They each provide students an opportunity to learn about the legal needs of people who are poor. They each provide an opportunity to learn about the satisfactions of service to a client. But the principal goal of most clinics is to teach students lawyering skills and sensitivity to ethical issues through structured practice experiences and opportunities to think about and analyze those experiences. By contrast, the most important single function of pro bono projects is to open students' eyes to the ethical responsibility of lawyers to contribute their services. Most clinical programs are intense and extended. Most pro bono experiences are intense but brief. A pro bono project typically involves a student in a routine legal matter that provides a first taste of handling a legal problem for another person. A clinical case is often quite complex. Id. at 13.

[FN249]. See id. at 12-13, which anticipates this danger ("We strongly encourage law schools not to assume that even a good pro bono program is a substitute for a clinical program, or that a good clinical program eliminates the need for a law school to support student pro bono projects."). As noted previously, clinical teachers played prominent roles in the AALS initiative on Pro Bono and Public Service. See supra note 237 and accompanying text. At many schools, clinical work is coordinated with pro bono work. Some of the law schools that have mandatory pro bono programs permit students to receive compensation or course credit. See, e.g., Learning to Serve, supra note 216, at 30-31. In some programs, "schools use volunteer students who are receiving no credit for their work to supplement the work of clinical students." Id. at 47. Both the descriptions of various programs and the list of contact people appearing in Learning to Serve reveal overlap. Id. at 33-55.

[FN250]. For schools with a pro bono requirement, the hours required range from twenty to seventy, with most at forty or below. See Caroline Durham, Law Schools Making a Difference: An Examination of Public Service Requirements, 13 L. & Ineq. 39, 42-43 (1994). One survey, covering mandatory and voluntary programs, reported a range of
required or suggested service of 8-300 hours per year. William B. Powers, Report on Law School Pro Bono Activities, ABA Center for Pro Bono Exchange 6 (April 1995). More programs have fewer hours. See Learning to Serve, supra note 216, at 13 ("Most pro bono experiences are intense but brief.")

[FN251]. See supra at Part III.B.1.

[FN252]. As with clinical programs, a trade-off exists if fewer hours means that more students participate in the program.

[FN253]. See, e.g., Learning to Serve, supra, note 216, at 32 ("Eight-six percent of students [participating in the mandatory pro bono program at The Brandeis School of Law in Louisville, Kentucky] say the experience has had a positive effect on their willingness to do pro bono work after they graduate."); see also Durham, supra note 250, at 49 ("A survey of Tulane's class of 1990 found that sixty-five percent said the program had increased their willingness to provide pro bono services' after graduation and seventy-two percent believed 'they gained confidence in their ability to handle cases for indigent clients."") (footnote omitted). For a description of Tulane's program, see id. at 43-46.

[FN254]. See supra note 132 and accompanying text. This result was the same regardless of whether the setting was in-house or external. Id.

[FN255]. Lucie White, critiquing Learning to Serve, has recently made a case for revisiting the traditional pro bono model. Lucie E. White, Pro Bono or Partnership? Rethinking Lawyers' Public Service Obligations for a New Millennium, 50 J. Legal Educ. 134 (2000). According to Professor White, under the typical pro bono model, lawyers work alone, they volunteer their time, and the work involves one-shot representation of clients. Id. at 140. Suggesting that those features were designed for public service "for a vanished world," White identifies the factors of changing gender roles, changing race norms and changing immigration patterns as leading to concerns about applying the old pro bono model to the new millennium. Id. at 140-42. One concern is the "mommy track problem," since lawyers with caretaking responsibilities are already squeezed for time; the traditional model "envisions, and indeed values, public service as a volunteer activity that individual lawyers add on to their regular work obligations." Id. at 142. The second concern comes from the fact that the individualized one-shot case-based approach "creates a big risk of unsatisfactory results - for clients, lawyers, and communities - particularly in contexts of unremediated racial injury or extreme social inequality." Id.

[FN256]. See, e.g., Barry et al., supra note 25, at 46-49.

[FN257]. Id. Deborah Rhode has written extensively on the subject. See, e.g., Deborah L. Rhode, Ethics by the Pervasive Method, 42 J. Legal Educ. 41 (1992).

[FN258]. A "spiral curriculum" is one "in which students encounter fundamental doctrinal concepts and lawyering tasks repeatedly throughout their legal education, but at increasingly sophisticated levels." Maranville, supra note 209, at 61.

[FN259]. New England's Center for Law and Social Responsibility is a modest step in this direction, although its effectiveness and staying power are unclear. See supra Part II.E.


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