



## ***Making Law Students Client-Ready: A New Model in Legal Education***

### **Background**

The Daniel Webster Scholar Honors Program was launched on July 1, 2005. Initiated by the New Hampshire Supreme Court, this is a comprehensive, practice-based, teaching and bar licensing honors program which takes place during the last two years of law school. The program is the first of its kind in the country and has already received national praise and encouragement from judges, lawyers, and legal education scholars. The first class of Webster Scholars is scheduled to graduate in May of 2008.

### **Program Description**

The program has many of the characteristics recommended by the American Bar Association's 1992 *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* ("MacCrate Report"); The Carnegie Foundation for the Advancement of Teaching's 2007 book entitled, *Educating Lawyers*; and the Clinical Legal Education Association's 2007 book entitled *Best Practices for Legal Education*. The program is a collaborative effort of the New Hampshire Supreme Court, the New Hampshire Board of Bar Examiners, the New Hampshire Bar Association, and Franklin Pierce Law Center. During the three-year pilot phase, the program is limited to fifteen students per class. These students are selected from the applicants who apply in March of their 1-L year. Selection is based upon overall ability to succeed in the program, including academic, professional and interpersonal strengths. Selected students undergo an intensive two-year program.

Although they continue to matriculate with their class and must meet all of the law school graduation requirements, Webster Scholars have many additional requirements. During each semester, in addition to electives, they take various specifically designed Daniel Webster Scholar ("DWS") courses, including Pretrial Advocacy, Trial Advocacy, Negotiations, a Miniseries involving numerous topics discussed below, Business Transactions, and a Capstone course integrating and building upon the skills they have learned during the program. They are required to have at least 6 credit hours of clinical and/or externship experience, and are required to take four additional courses which would otherwise be electives: Business Associations; Evidence; Wills, Trusts & Estates; and Personal Taxation. During this entire process, each Scholar is reviewed and evaluated by 3 members of the Board of Bar Examiners, who receive portfolios of student work, review videos of student performances, and meet with and question the students. All Scholars also work closely with the program director. In addition to participating as a teacher in numerous courses, the director serves as a mentor, counselor, and advisor; with over 25 years of private practice experience, he provides guidance and resources on

real world issues such as behavior, dress, punctuality, job searches, practice management, substance abuse, and life balance management.

Students must obtain at least a B- in all DWS courses, and at least a 3.0 cumulative law school average on a 4.0 scale. Those Scholars who successfully complete this two year process and who pass the Multi-State Professional Responsibility Exam and the character and fitness check will be certified as having passed the New Hampshire bar exam, and will be admitted to the New Hampshire Bar upon graduation.

### **Webster Scholars**

The current Webster Scholars are quite diverse; they are from many states other than New Hampshire, including California, Idaho, Maryland, Massachusetts, Nevada, New Jersey, New York, North Carolina and Pennsylvania; they are from large cities and little villages; they come from at least five different religious backgrounds and have recent ancestry in China, Cuba, the Dominican Republic, Eastern Europe, Egypt, and India; some are planning to practice in the area of intellectual property while others are leaning toward criminal law, transactional practice, real estate, dispute resolution, education law, or civil litigation. Some intend to practice in New Hampshire, but many will be in other locations throughout the country. With all of this diversity, Webster Scholars share the goal of the Daniel Webster Scholar Honors Program, which is to prepare law students to be "client-ready" in the broad sense. During their last two years of law school, Webster Scholars are exposed to numerous fields, including real estate law, transactional law, and litigation. As with a traditional bar exam, a broad range of legal knowledge is examined; however, unlike a two-day bar exam, the program provides a two-year, comprehensive exam - which is both formative and summative - in conjunction with the training received.

### **The Actual Experience**

The Webster Scholars of the class of 2008 went through an intensive first year in the program. As second year law students, in addition to regular classes with their peers, they participated in simulations and real client contact. During an intensive semester of Pretrial Advocacy in the fall, they divided into two law firms and "litigated" a Family and Medical Leave Act (FMLA) case in federal court. Each firm had an experienced litigator/professor in the role of "senior partner", and the Webster Scholars were "associates". Eight teaching assistants were appointed solely to stay in role as a party or a witness. During the semester, the associates interviewed clients and witnesses; prepared or answered a complaint; prepared and answered interrogatories; took and defended a deposition in the presence of a real court stenographer who took it in "real time" and provided a transcript; prepared a motion or an objection to a motion for summary judgment which was then argued before a real judge (Superior Court, United States District Court or former New Hampshire Supreme Court); and prepared mediation submissions and participated in a mediation with a real mediator. Throughout the semester, the "associates" also submitted timesheets to their "senior partners". In addition to the feedback received from their "senior partners" and from each other, the "associates" received constructive feedback from real stenographers, judges, attorneys and mediators; they were also able to observe and critique their taped performances. At the conclusion of the simulation, the students also received

feedback from the eight teaching assistants who had played the roles of witnesses and clients. All of this experience and feedback was available to the Webster Scholars at the end of the course, when they prepared reflective papers, which are required in all DWS courses. In the papers, using the MacCrate Skills and Values as a guide, the students identified those Skills and Values that were addressed in the course, reflected upon their own perceived strengths and weaknesses, and discussed how they planned to cultivate their strengths and improve upon their weaknesses.

In the second semester, Webster Scholars integrated their learning by going forward with the FMLA case in Trial Advocacy. Using the interrogatories and deposition transcripts they obtained in the first semester, they tried their hand at controlling the witnesses in the trial setting, and were able to see first hand the importance of having good interrogatory and deposition questions and answers in order to effectively control the witness responses at trial. They also tried a simulated criminal trial from beginning to end, complete with a student jury that deliberated. (Many of the jurors were newly selected Webster Scholars for the Class of 2009.) Again, Scholars were taped so that they could watch their performance, and they received feedback from peers, professors, lawyers, judges, jurors and witnesses. Their reflective papers were submitted when the course was completed.

Also during the second semester, Webster Scholars took an intensive seminar on Negotiations, where they role played in a variety of settings in cases primarily involving business and intellectual property issues. Two professors who are experienced negotiators and mediators taught the course, including an internationally known commercial mediator. As with the Pretrial Advocacy and Trial Advocacy classes, student performances were often taped so that Scholars could observe themselves and learn from that experience in addition to receiving feedback from their peers and professors. Experienced practitioners also came to the sessions to observe and provide valuable feedback. In addition to the negotiation problems that were designed by the professors, the Webster Scholars were asked to find and analyze two problems from current events; the class then chose one of those problems to negotiate. The students chose to negotiate a possible resolution to *Morse v. Frederick*, the public school case where a student was suspended for displaying a sign which said, "Bong Hits 4 Jesus". At the time, the case was pending before the Supreme Court of the United States. A simulation was created, and the Webster Scholars were assigned to play various roles, including parents, student, principal, and ACLU lawyer. Through negotiation, the parties were able to arrive at a settlement, which included an apology by the student for his immature conduct and an apology and acknowledgment by the principal that she overreacted. As with all other DWS courses, the students submitted a reflective paper at the conclusion of the course.

Also in the spring semester, the Webster Scholars received training in Family Law during a Miniseries that exposed them to numerous areas of practice; they subsequently participated at the Legal Advice and Referral Center (LARC), a nonprofit legal firm that offers legal services to low-income people. The students learned how to perform interviews and provided client advice to LARC clients. LARC staff provided training, supervision, and feedback. This experience provided valuable client contact and also integrated the concept of the lawyer as volunteer citizen. In total, the students helped over 90 clients. Again, reflective papers were submitted.

In addition to Family Law, the Miniseries also provided exposure to law office management. Students studied the business side of law practice, formed small firms, and developed business plans. There was also exposure to conflicts of laws, secured transactions, and negotiable instruments.

This fall, the Class of 2008 took a DWS course called Business Transactions, which focused upon the processes by which businesses are formed, financed, operated, altered and sold. Unlike a typical business course, the Webster Scholars were again involved in simulations. They created numerous documents and received substantial feedback. They were asked individually to issue-spot in complex fact patterns, and they then analyzed the fact patterns as a group. As with the other courses, they received review from their peers and from their adjunct professor, a practicing Boston lawyer involved in sophisticated commercial transactions. In addition, they integrated and built upon the negotiations experience of last spring, and negotiated various issues, including an executive employment agreement and a tax matter.

This spring, the Class of 2008 is taking the DWS Capstone Course, which integrates and builds upon what they have learned during the three prior semesters. Once again, there is substantial simulation. As in the real world, students are given factual situations that are not clearly categorized into “litigation”, “real estate”, “transactional law”, etc. The primary focus is on the client/lawyer relationship - interviewing, counseling and negotiating in all contexts of practice. In order to interview effectively, the students need to establish rapport, listen, and appropriately follow up with pertinent questions; in order to counsel, they need to creatively analyze the problems, provide a clear explanation to the client, and develop a cooperative working relationship; in order to effectively negotiate or mediate, they need to develop an appropriate strategy, work with their client to develop agreed upon objectives, and then apply their negotiation skills. As part of this experience, we are in the process of developing “standardized clients”, similar to the medical model for standardized patients.

Also during this final semester of the four semester program, Webster Scholars in the Class of 2008 are involved in clinical courses and/or externships – including court clerkships - where they are applying and expanding upon what they have learned.

The Class of 2009 started the program in the fall of 2007. With two classes now running simultaneously, the program is “up to capacity” for its pilot phase. The entering class is already benefiting from adjustments to the program which have been made based upon last year’s experiences; they will also be exposed to opportunities that are being tried for the first time. For example, in the Pretrial Advocacy course this year, 3-L Webster Scholars were recruited to serve as teaching assistants, who played the role of “senior associates”. As in the real world, these senior associates had more experience than the junior associates; they were able to provide another layer of training and feedback while solidifying their own learning.

#### **Looking Ahead**

Going forward, we will follow the Webster Scholars to see how, if at all, their client-readiness and practice experience differs from their cohorts who did not participate in the program. Although our work is in the developmental stages, we plan to use the standardized client examinations as one method of testing. By testing other newly admitted New Hampshire

Bar members who did not have the Webster Scholar experience, and comparing them to the Webster Scholars, we would have one measure. Also, we plan to follow the Webster Scholar graduates and study them going forward – comparing them to their peers in practice. This type of research will require multiple interviews with Webster Scholar supervisors, peers, subordinates, support personnel, judges, lawyers with whom they interact, and clients. We are also currently working on the refinement of our assessment criteria for the New Hampshire bar examiners. Although our early feedback from judges, lawyers and clients is extremely positive regarding the quality of the efforts they have seen from the program participants, we recognize the importance of reliable and valid testing data, as well as the value of long-term follow up.

This pilot program is labor intensive, and requires many resources to function properly. For example, Pretrial Advocacy for the class of 2008 enlisted eight stenographers, eight teaching assistants, four judges, eight mediators, and two professors. (With structural modifications for the Class of 2009, we were able to provide the same experiences with four stenographers, eight teaching assistants, three judges, four mediators and two professors.) Because it operates as a simulation, the course is different each time, depending upon decisions the student/ associates make; the senior partner/professors are constantly reviewing and critiquing drafts, counseling their associates, and providing formative and summative feedback. We readily acknowledge that this type of teaching requires energetic commitment from the faculty and, at least in the short run, probably increases the per capita cost of teaching the students. However, if our expectations are correct, this is an investment in our students that will reap dividends for their clients. Franklin Pierce Law Center has committed to the cost of running the pilot, and is looking for grant assistance with the evaluative portion. As we go forward, we will be analyzing the projected cost of increasing the size of the program, and the feasibility/advisability of offering it to the entire student body. We know that this program is not static, and will evolve. We embrace the fact that it is a work in *progress*, as it seeks to improve the process of making law students client-ready.

*For more information, you may access:* <http://www.piercelaw.edu/websterscholar/index.htm>

***Contact information:***

John Burwell Garvey  
Professor of Law and Director  
Daniel Webster Scholar Honors Program  
Franklin Pierce Law Center  
2 White Street  
Concord, New Hampshire 03301  
(603) 513-5214  
[jgarvey@piercelaw.edu](mailto:jgarvey@piercelaw.edu)