

# NEW HAMPSHIRE'S PERFORMANCE-BASED VARIANT OF THE BAR EXAMINATION: THE DANIEL WEBSTER SCHOLAR HONORS PROGRAM MOVES BEYOND THE PILOT PHASE

by John Burwell Garvey

In 2005, after years of committee work and consideration, New Hampshire launched a pilot program intended to be a “variant of the New Hampshire bar examination”<sup>1</sup> known as the Daniel Webster Scholar Honors Program, named after one of New Hampshire’s most distinguished lawyers. The program completed its three-year pilot phase in 2009. Upon thorough review, the New Hampshire Supreme Court unanimously approved the continuation of the program in May 2009. In May 2010, the third class of Webster Scholars was admitted to the New Hampshire Bar through this alternative licensing program. This article briefly reviews the history of the program, discusses the program requirements and evolution of the program’s assessment tools, and describes the information that is being collected on Webster Scholar graduates.

## WHAT IS THE PURPOSE OF THE DANIEL WEBSTER SCHOLAR HONORS PROGRAM?

The stated mission of the Daniel Webster Scholar Honors (DWS) Program is “Making Law Students Client-Ready.” Although the program does not presume to graduate new lawyers who are ready to take on all levels of complexity, and recognizes that legal education is a continuing process, it does seek to provide a practice-based, client-oriented education that

prepares law students for the tremendous responsibility of representing others.<sup>2</sup>

A stated goal of the program is to “significantly increase practical experience, supplementing learning in law school to reflect the reality of today’s practice.”<sup>3</sup> Upon completion of the program, Webster Scholars are expected to know how to advise clients and use existing resources; they are to be well versed in the substantive law and to have insights and judgment that usually develop after being in practice for some years.<sup>4</sup> The program was designed to add value to education and bridge the gap between education and practice by focusing on the 10 fundamental skills and 4 fundamental values described in the 1992 American Bar Association report *Legal Education and Professional Development: An Educational Continuum*, known as the MacCrate Report.<sup>5</sup> (See the sidebar on the following page for a summary of the MacCrate skills and values.)

## HOW WAS THE PROGRAM CREATED?

The Daniel Webster Scholar Honors Program was conceived and championed by Senior Associate Justice Linda S. Dalianis of the New Hampshire Supreme Court. She believed, after serving as a trial judge for more than 20 years and as a state Supreme Court justice for several additional years, that “there must be a better way to prepare students to practice

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## THE 10 MACCRATE SKILLS AND 4 MACCRATE VALUES

### **Fundamental Lawyering Skills**

1. Problem solving
2. Legal analysis and reasoning
3. Legal research
4. Factual investigation
5. Communication
6. Counseling
7. Negotiation
8. Litigation and alternative dispute resolution
9. Organization and management of legal work
10. Recognition and resolution of ethical dilemmas

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

1. Providing competent representation
2. Striving to promote justice, fairness, and morality
3. Striving to improve the profession
4. Engaging in professional self-development

*Source: American Bar Association Section of Legal Education and Admissions to the Bar, *Legal Education and Professional Development: An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (ABA 1992).*

law.”<sup>6</sup> Justice Dalianis led an effort to improve legal education coordinated between the New Hampshire Supreme Court (which is the state’s only appellate court), the New Hampshire Board of Bar Examiners, and the dean and other faculty from the state’s only law school, Franklin Pierce Law Center.<sup>7</sup> Justice Dalianis created the Webster Scholar Committee to consider an alternative bar licensing program. The committee spent two years researching and brainstorming ways to implement such a program.<sup>8</sup> In addition to seeking to create an alternative to the bar exam that would actually improve the quality of new lawyers, the committee was dedicated to “incorporat[ing] the MacCrate factors at every step along the way.”<sup>9</sup>

When deciding how to make the program a reality, the committee began by examining what courses Franklin Pierce Law Center offered at that time, what courses it did not yet offer, and what courses might be necessary to qualify a student to pass the bar.<sup>10</sup> Ultimately, the committee determined that it could

accomplish its goals “by requiring certain courses that are already offered but have not previously been required, and by adding practice courses such as Advanced Civil Procedure/Civil Litigation Practice; Contracts and Commercial Transactions Practice (Articles 3 and 9); Criminal Law Practice; Family Law Practice; Real Estate Practice; and Wills, Trusts, and Estate Practice.”<sup>11</sup> Additionally, the committee decided that these practice courses should be small, emphasize the MacCrate skills and values, and be taught in the context of real life.<sup>12</sup>

Because the program was intended to be an alternative to the bar exam, methods of assessment were a primary consideration. The committee determined that each Webster Scholar would “maintain a ‘portfolio’ that would contain all of the practice exercises as well as other materials, such as a video of the Scholar doing an opening statement, [leading] direct and cross examinations, conducting a mediation, or interviewing a client.”<sup>13</sup> The portfolio would be reviewed by members of the Board of Bar Examiners.

The committee decided to implement the program initially as a three-year pilot program.<sup>14</sup> In May 2005, I was named the program’s first director.<sup>15</sup> As recommended by the MacCrate Report, the program is a collaborative effort, which involves the New Hampshire Supreme Court, the New Hampshire Board of Bar Examiners, the New Hampshire Bar Association, and Franklin Pierce Law Center. The program opened to students in January 2006 and graduated its first class of 13 students in May 2008.<sup>16</sup>

## WHAT ARE THE PROGRAM REQUIREMENTS?

Webster Scholars participate in the DWS Program during their last two years of law school; they must meet all of the law school’s requirements for

graduation in addition to requirements that are specific to the DWS Program (see the Requirements and Sequencing sidebar on this page). During each semester, in addition to electives, Webster Scholars must take specifically designed DWS courses, which generally involve substantial simulation, including Pretrial Advocacy, Trial Advocacy, Negotiations, and Business Transactions. They also take a miniseries that exposes them to Client Counseling, Commercial Paper (Articles 3 and 9), Conflict of Laws, and Family Law (including eight hours of training to be qualified as pro bono domestic violence attorneys who then volunteer<sup>17</sup> in New Hampshire's DOVE Project).<sup>18</sup>

The last semester of the program includes Advanced Problem Solving and Client Counseling, a capstone course that integrates and builds upon the skills students have already learned through the program and takes them to the next level, particularly emphasizing fact gathering (including witness interviewing), legal analysis, problem solving, and client counseling. The capstone course also introduces students to the practical aspects of law office management.

In addition to the six DWS courses, each student must take four additional courses that ordinarily would be elective: Business Associations; Evidence; Wills, Trusts, and Estates; and Personal Income Tax. Moreover, each student must have at least six credit hours of clinical

and/or externship experience, including related course work.

Students must obtain at least a 2.67 (B-) in all DWS courses and at least a 3.0 (B) cumulative overall grade point average on a 4.0 scale. Students create cumulative portfolios of their work, including performance videos; the portfolios are reviewed each semester by assigned bar examiners, and the students also meet with assigned bar examiners once a



**REQUIREMENTS AND SEQUENCING**  
(As of July 2010)

**GPA: Must graduate with a cumulative GPA of at least a B (3.0)**

**DWS Courses: No grade below a B- (2.67) in any DWS designated course**

**First-Year Credit Requirements** (required for *all* FPLC students): 30

**Upper-Level Courses** (required for *all* FPLC students):

- Administrative Process (3)
- Criminal Procedure (3)
- Professional Responsibility (3)
- Writing Requirement (3)

*Subtotal: 12*

**Additional Upper-Level Courses** (required for Webster Scholars):

- Evidence (3)
- Personal Income Tax (3)
- Business Associations (3)
- Wills, Trusts, and Estates (3)
- Clinic/Externship (6)

*Subtotal: 18*

**DWS Required Courses:**

- DWS Pretrial Advocacy (also satisfies 3-credit upper-level writing requirement) (4)
- DWS Miniseries (2)
- DWS Negotiations (2)
- DWS Trial Advocacy (3)
- DWS Business Transactions (3)
- DWS Capstone—Advanced Problem Solving and Client Counseling (3)

*Subtotal: 17*

**Total Required Credits: 77**

**Minimum Additional Elective Credits to Graduate: 8**

**Required Sequencing:\***

**2nd Year, Fall:** DWS Pretrial Advocacy (4); Personal Income Tax (3)

**2nd Year, Spring:** DWS Trial Advocacy (3); DWS Miniseries (2); DWS Negotiations (2)

**By the End of 2nd Year (Either Semester):** Business Associations (3); Wills, Trusts, and Estates (3); Evidence (3)

**3rd Year, Fall:** DWS Business Transactions (3)

**3rd Year, Spring:** DWS Advanced Problem Solving and Client Counseling (Capstone) (3 credits)

**By the End of 3rd Year:** Clinic/Externship at least 6 hours total (including course work) (plus any prerequisites)

\* DWS courses must be taken at time indicated; timing of non-DWS courses may be subject to modification by individual Webster Scholar request, primarily based upon scheduling conflicts.

year, in the spring semester, to go over the portfolios and answer any questions from the bar examiners. As discussed later, each Webster Scholar must also successfully complete a standardized client interview with a trained standardized client.

Finally, Webster Scholars must also pass the Multistate Professional Responsibility Exam (MPRE) and the character and fitness check. Students who successfully complete the two-year program are then certified by the Board of Bar Examiners as having passed the New Hampshire bar exam and are admitted to the New Hampshire Bar upon graduation.<sup>19</sup>

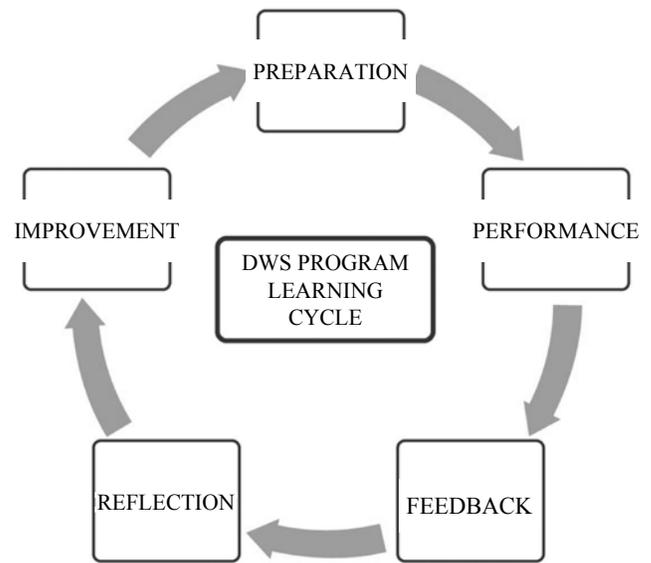
### HOW ARE STUDENTS SELECTED FOR THE PROGRAM?

To keep the program sufficiently small and flexible during the developmental phase, it was initially limited to 15 students per graduating class. Based upon its early success, it was expanded to 20 students per class commencing with the class of 2011. The goal is to offer the program to all qualified applicants as soon as possible, but competition is currently steep.<sup>20</sup>

Students apply to the program in March of their first year of law school and are selected in June following their first year by a committee composed of professors and graduated Webster Scholars. Selection is based upon a personal interview and holistic assessment of each applicant, which includes evaluation of academic, professional, and interpersonal skills and overall ability to succeed in the program. Because enrollment is limited, the committee identifies a balanced and diverse group from the pool of qualified applicants.<sup>21</sup>

### HOW WERE METHODS OF ASSESSMENT DEVELOPED?

When the first class of Webster Scholars began the program in the fall of 2006, it was a first-time experi-



ence for everyone. From the beginning, the learning cycle for all participants has been preparation, performance, feedback, reflection, and improvement. This has been true not only for the Webster Scholars, but also for those involved in program design, implementation, and oversight. The assessment methods recommended by the Webster Scholar Committee were implemented, but all persons involved in program oversight realized that the assessment methods would need to evolve and be refined.

The program has a Supreme Court Oversight Committee, which includes Justice Linda Dalianis, Justice James Duggan, Franklin Pierce Law Center Dean John Hutson, Associate Dean Susan Richey, Board of Bar Examiners Chair Frederick Coolbroth, and the eight bar examiners who are assigned to Webster Scholars—which include two former New Hampshire Bar presidents, Justice Dalianis’s permanent law clerk Anne Zinkin, and myself. The committee has met regularly since the program’s inception and has made improvements and adjustments based upon the experience of each cycle. As a result, assessment methods have been subject to some evolution, and this is expected to continue as a

natural and healthy part of the program's development. The following section describes the program as it currently exists for the entering class of 2012.

## WHAT ASSESSMENT METHODS ARE USED IN THE PROGRAM?

Since its inception, assessment has been an integral part of the DWS Program, both as a critical aspect of the learning environment and as a means of measuring outcomes. Since the program has the dual purpose of educating students to be client-ready *and* testing their competency for actual bar admission, there is substantial formative, reflective, and summative assessment (see the sidebar on this page for an explanation of these different types of assessments). Unlike most legal education experiences and other bar examinations, the DWS Program immerses students in a loop of nearly continuous feedback. They study the basic law and then practice the skill. They receive feedback from numerous sources and reflect upon their own performance. They internalize the feedback and then perform the skill again, receiving additional feedback. The DWS courses are sequenced to be increasingly complex and to incorporate and build upon skills from the previous courses.

### Portfolios

Much of each student's performance is documented in writing and/or by video, becomes part of the student's portfolio, and is provided to the bar examiners for review each semester. (By the end of this year, the portfolios will be electronic. Students will upload their papers and videos, and bar examiners will be able to view them from their own computers on a secure website at any time.) In addition to the semester portfolio review, assigned bar examiners meet yearly with each student to review and discuss the portfolio and to evaluate the student's progress.

### ASSESSMENT TYPES

#### **Formative Assessment**

Feedback during the course or the program, which the student can process in time to apply to another attempt at the particular task. For example, in the Pretrial Advocacy simulation, the "junior associate" receives feedback from the "senior partner" on the initial evaluative memo and rewrites the memo incorporating the feedback.

#### **Reflective Assessment**

Students reflect upon their formative feedback from others and evaluate their own performance, identifying areas of strength and areas in need of improvement. Students provide a plan for overcoming the areas in need of improvement. For example, at the end of each course (and before a summative evaluation), students write a reflective paper in which they identify what they learned from the course about themselves and about their performance, including a "plan of action" for addressing perceived weaknesses.

#### **Summative Assessment**

Final evaluation of the end product of any piece of the student's work by a professor or bar examiner.

Currently, each of the eight bar examiners is assigned to no more than five Webster Scholars (there are currently 40 students in the program).

### **Implicated MacCrate Skills**

Webster Scholars are introduced to the concept of assessment from the very beginning. As soon as they are admitted to the program, they are required to read the MacCrate Report and to become familiar with the skills and values they will need to demonstrate by the end of the program. Beginning with an all-day orientation workshop, new Webster Scholars are informed of the goals for assessment, and the various assessment methods are explained. Since Pretrial Advocacy is the first DWS course, students are provided at orientation with a form entitled Pretrial Advocacy: Implicated MacCrate Skills, the first page of which is shown at the top of page 19.

The Implicated MacCrate Skills form shows the new students the various tasks they will be performing in the course, how those tasks relate to the MacCrate skills, and examples of performances indicating that the student is client-ready. In addition to the MacCrate skills, the form also uses information from a study conducted by University of California at Berkeley Professors Marjorie M. Shultz and Sheldon Zedeck in which they identify 26 factors related to effective lawyering and the behaviors associated with each factor.<sup>22</sup> Along with an Implicated MacCrate Skills form for each course, there is also a summary for the overall program that identifies the MacCrate skills and values each course is intended to teach.

### MacCrate Benchmarks

In addition to the Implicated MacCrate Skills form, Webster Scholars at the orientation are also given the Pretrial Advocacy Benchmarks (Ability-Based Outcomes) form, a portion of which is shown at the bottom of page 19. (As with the Implicated MacCrate Skills form, there are Benchmark forms for all DWS courses.) This form is intended to capture and assess in summative form those outcomes identified in the Implicated MacCrate Skills form. The student and/or professor checks off the description that best describes the quality of the work performed.

As of the 2010 fall semester, the Benchmark form will be completed by the professor and the student immediately following each activity. (These forms will be completed online as soon as the electronic portfolios are available.) Joint completion of the form will provide feedback and reflection for the student as well as information for the bar examiner as part of the student's portfolio. Bar examiners have repeatedly reported that they gain great insight into

a student's development and ability by reading the student's own reflection on and evaluation of work that is in the portfolio and available to the bar examiner for independent review. Bar examiners have also reported that they can review the portfolios over the two-year period and identify growth and increased maturity that correlate directly with the MacCrate skills and values. Instead of grading a two-day bar exam, examiners are essentially evaluating a two-year exam.<sup>23</sup>

### Additional Assessments

As noted above, the cycle of assessment is continual. Each semester, the students create written materials that are reviewed first by professors and then by bar examiners. Through simulations using trained actors, real judges, and court reporters, students also experience various events common to practice, such as taking a deposition and interviewing a client. They argue a motion for summary judgment before various judges in the judges' courtrooms, and they negotiate with each other using various fact patterns mostly involving commercial matters. They perform as lawyers in simulated civil and criminal trials.

These events are recorded and become part of the portfolio for evaluation by the bar examiners each semester. (The depositions are on video and transcript.) The students also evaluate each semester with a reflective paper, which is part of the portfolio. In addition to the benchmarks and the written feedback on the student's work, the professors provide a written summary of each student's overall performance for the course, which is also included in the portfolio. Bar examiners meet annually with each student and go over the portfolio and discuss the student's progress.

**PRETRIAL ADVOCACY: IMPLICATED MACCRATE SKILLS**  
Assessing Performance of Webster Scholars According to MacCrate Skills

Fundamental Lawyering Skill (MacCrate)	Examples of Performances Showing that Student Is Client-Ready <i>(Language primarily based upon other work performed on a grant to the principal investigators, Marjorie M. Shultz and Sheldon Zedeck, from the Law School Admission Council.)</i>	Project(s) Demonstrating Skill
<p><b>1. Problem Solving</b></p> <p><b>1.1 Identifies and diagnoses legal problems</b></p> <p><b>1.2 Generates alternative solutions and strategies</b></p> <p><b>1.3 Develops a plan of action</b></p> <p><b>1.4 Implements a plan of action</b></p> <p><b>1.5 Keeps the planning process open to new information and ideas</b></p>	<p>—Student demonstrates sufficient grounding in substantive law to enable him or her to recognize legal issues and potential courses of action</p> <p>—Student is able to identify potential outcomes and consequences and develop contingency plans to handle various possibilities</p> <p>—Student listens well and tries to use the experience, knowledge, and insight of others in dealing with a problem</p>	<p>Week 1: Interview of potential client by plaintiff’s firm attorneys; oral report to partner by defense firm attorneys</p> <p>Week 2: Evaluative memo to partner by plaintiff’s firm attorneys; conference call with HR person by defense firm attorneys</p> <p>Week 3: Letter to client</p> <p>Week 4: Discovery plan</p> <p>Week 5: Discovery requests</p> <p>Week 6: Discovery responses</p> <p>Week 7: Further discovery plans</p> <p>Weeks 8 &amp; 9: Depositions</p> <p>Weeks 10 &amp; 11: Summary judgment motion drafted by defense firm attorneys</p> <p>Week 12: Opposition to summary judgment motion drafted by plaintiff’s firm attorneys</p> <p>Week 13: Oral argument</p> <p>Week 14: Post-discovery memorandum to partner</p> <p>Week 15: Reflective paper</p> <p>Summative evaluation by professor</p>

**PRETRIAL ADVOCACY BENCHMARKS (ABILITY-BASED OUTCOMES)**

Assessing Performance of Webster Scholars According to MacCrate Skills

Nature of Task and Performance Goal	EXCEEDS	MEETS	APPROACHES
<p><b>Initial Memo to Partner FINAL</b></p> <p><b>Review FINAL memo in conjunction with initial memo and comments</b></p> <p><b>Individual Work</b></p> <p><b>Goal—demonstration of adequate evaluative and writing skills for first-year associate</b></p> <p><b>MacCrate 1, 2, 3, 4, 5, 6, 9</b></p>	<p>—Memo includes facts and law and is well-organized, coherent, and concise. Supervising attorney would <i>be confident that writer understood and appropriately analyzed issues.</i></p> <p>—Incorporates feedback from initial memo and improves quality.</p>	<p>—Memo includes facts and law and is <i>generally</i> well-organized, coherent, and concise. Supervising attorney would <i>require some additional clarification or analysis.</i></p> <p>—Incorporates feedback from initial memo and improves quality.</p>	<p>—Memo <i>lacks clear organization, coherence, or conciseness.</i> Supervising attorney would require significant additional clarification or analysis.</p> <p>—Fails to incorporate feedback from initial memo and improve quality.</p>

## Standardized Clients

In the summer of 2008, the program added a new assessment component by training eight standardized clients.<sup>24</sup> Standardized clients, similar to standardized patients used in medical schools, are actors who are trained to assess a student's skill in communicating with clients according to standardized criteria.<sup>25</sup> Each actor is given a persona, using a carefully prepared simulation. Although the roles are not scripted, the actors are trained to stay in character, based upon the detailed scenarios that are provided to them. Each actor is then interviewed by a student and acts like an authentic client during the interview. The interview is videotaped. Each interview varies, depending upon how the student conducts it and what questions are asked.

Using the written standardized criteria, which evaluate eight effectiveness categories on a scale of one to five, with five being the best, each client then evaluates the student's interviewing skills. The student must obtain at least 24 points (a "three" average on the scale of one to five) in order to pass this component of the exam. In the event the student does not receive a passing score, the video is reviewed and scored by a bar examiner other than the one normally assigned to the student. If the student does not receive at least 24 points from the second bar examiner, then the student must do another standardized client interview with a different standardized client and a different fact pattern.

Standardized clients enable students to learn important client relationship skills, particularly those associated with client counseling, and allow the DWS Program to assess student performance in those skills. Professors Maharg, Barton, Cunningham, and Jones have already published their findings on the validity of this form of assessment as used at the Glasgow Graduate School of Law.<sup>26</sup> The DWS

Program is carrying this work forward and expanding upon it. In the future, the number of standardized client interviews for each student will be increased.

Commencing with the class of 2011 in the spring 2011 semester, in addition to the summative standardized client assessments, each Webster Scholar will have a summative portfolio review and oral review before his or her assigned bar examiner and another bar examiner not previously assigned. The two examiners will participate at the same time.

## IN WHAT WAYS ARE WEBSTER SCHOLARS BEING STUDIED?

Given the small number of Webster Scholars during the pilot phase, the current available information is anecdotal. Here are some facts currently available:

1. Three classes have now graduated. All three classes began with the pilot size of 15 students per class. In the first class (2008), 13 completed the program. In the classes of 2009 and 2010, 14 students completed the program in each class, making a total of 41 Webster Scholar graduates. With the expanded class size of 20, there are currently 40 students in the program.
2. The 27 Webster Scholars who graduated in the first two years took a total of 13 bar exams in states other than New Hampshire, including Colorado (1), Illinois (1), Massachusetts (7), New Jersey (1), New York (2), and Virginia (1). All passed. (The information is not yet available for the graduates of the class of 2010.)
3. For the purpose of evaluating the effectiveness of the program, all Webster Scholars give permission to Franklin Pierce Law Center for subsequent interviews of employers, partners, associates, peers, judges, colleagues, and the like. Information has not yet been systematically

obtained via interviews, but a survey is being developed. Unsolicited employer feedback and judicial feedback to date, however, has been universally positive. In fact, I now regularly get inquiries from prospective employers specifically seeking Webster Scholar graduates, and I was recently informed by a major New Hampshire firm that it had just hired its second Webster Scholar associate in large part because of its positive experience with the first.

4. With the cooperation of the New Hampshire Supreme Court, recent New Hampshire Bar admittees are performing the same standardized client interviews as Webster Scholars so that their performances can be compared. Bar admissions in New Hampshire are twice per year, and the information has been collected for one year from two groups of admittees. Results will be published when sufficient data is obtained, but early information does suggest some positive findings.<sup>27</sup>

## WHAT ARE THE COSTS OF THE PROGRAM?

The costs of the program to date have been modest. Because the program is a joint effort of the New Hampshire Supreme Court, the New Hampshire Board of Bar Examiners, and Franklin Pierce Law Center, the program has received strong volunteer support from the New Hampshire Bar, active judges, court reporters, and others. As the program director, I co-teach Pretrial Advocacy and Negotiations, teach the capstone course, and supervise the other DWS courses. The courses are taught in sections of not more than 20 students, which is typical of upper-level courses at Franklin Pierce Law Center.<sup>28</sup> Adjuncts are currently used to assist in Pretrial Advocacy and Negotiations and to teach a section of

Trial Advocacy. The adjunct expense for 2009–2010 was less than \$20,000.

The judges, clerks of court, lawyers, and court reporters have all been excited to participate as volunteers, and there are more volunteers each year than are needed. The court reporters have donated eight “real time” depositions per year, at a value of many thousands of dollars. The judges use their own courtrooms, and court personnel consistently enjoy the experience of participating in the program. Lawyers regularly volunteer whenever available. Now that there are three classes of graduates, those graduates are volunteering in large numbers; as they gain experience, they will also be available as adjuncts. The standardized clients are paid 15 dollars per hour. One of the greatest benefits to the bar has been the strong working relationship that has developed among the volunteers and their sense of involvement in and responsibility for the development of young attorneys.

Implementation on a larger scale will be more expensive and will require more faculty effort, but work on economies of scale and increased efficiency is under way, including electronic simulation software and secure online portfolios. Franklin Pierce Law Center is working with Professors Maharg, Barton, and Cunningham to apply and integrate the Simulated Learning Environment (SIMPLE) software as a platform for running and assessing simulations.<sup>29</sup> Developed by Maharg, Barton, and others, and already operating in the United Kingdom, this transactional software is a vibrant learning opportunity and can provide economies of scale for running simulations as the number of Webster Scholars increases. Franklin Pierce is also working with Christopher Conkey, a principal at FifthYear-Software, which designed Notebuuk™ online

academic portfolios,<sup>30</sup> to develop an electronic portfolio software that will be called Lawbuuk.

## CAN THE PROGRAM BE REPLICATED IN OTHER STATES?

Each state has its own unique needs and challenges. I would not presume to answer for others the question of whether the DWS Program can be replicated in their states. But the DWS Program has been very successful in New Hampshire, and early indications suggest that it has been worth the effort.

In April 2010, Supreme Court justices, bar examiners, examination professionals, state bar leaders, and law school personnel from eight other states met for a day at Franklin Pierce Law Center; they listened to a comprehensive program description from various DWS participants, including justices, judges, lawyers, bar examiners, professors, and students. One of the presenters (by video) was Lloyd Bond, a retired Senior Scholar at the Carnegie Foundation for the Advancement of Teaching who was an author of the 2007 Carnegie Report entitled *Educating Lawyers: Preparation for the Profession of Law*.<sup>31</sup> Professor Bond previously taught measurement and assessment at the University of North Carolina and the University of Pittsburgh and had this to say about the DWS Program:

As many of you are no doubt aware, the Carnegie Foundation, as part of its series on education in the professions, published *Educating Lawyers* in 2007. . . . In the book we called upon law schools to rethink the way they educate aspiring lawyers. . . . We called for nothing less than a sea change in the way lawyers are prepared. More realistically, what we hoped for was to nudge legal education in the direction of preparing students to be competent lawyers rather than competent law students.

Quite independent of our book, Pierce Law has done just that, and much more. Never in our most

optimistic moments did the Carnegie authors envision a school bringing . . . real stenographers, real paralegals, real lawyers, and yes, real judges into the training program. We can only hope that other state Supreme Courts will seriously consider the Webster Scholar method as an alternative approach to training and licensing.

When I studied the program in depth three or so years ago, I said that it fused instruction, assessment, and practice in such an integrated way that the three became indistinguishable. The Daniel Webster Scholar Program at Pierce Law exemplifies the sea change we had in mind. . . .<sup>32</sup>

Franklin Pierce Law Center and the Supreme Court of New Hampshire are currently sharing information with other states that are interested in implementing similar programs, and welcome inquiries.<sup>33</sup> 

## NOTES

1. N.H. SUP. CT. R. 42(13).
2. For a thorough discussion of the history of legal education and the development of the DWS Program, see John Burwell Garvey & Anne F. Zinkin, *Making Law Students Client-Ready: A New Model in Legal Education*, 1 DUKE FORUM FOR LAW AND SOCIAL CHANGE 101 (2009), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1477391](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1477391).
3. John D. Hutson, *Preparing Law Students to Become Better Lawyers, Quicker: Franklin Pierce's Webster Scholars Program*, 37 U. TOL. L. REV. 103, 104-05 (Fall 2005).
4. *Id.*
5. American Bar Association Section of Legal Education and Admissions to the Bar, *Legal Education and Professional Development: An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* 106 (ABA 1992) [hereinafter MacCrate Report].
6. Katherine Mangan, *N.H. Allows Law Students to Demonstrate Court Skills in Lieu of Bar Exam*, CHRON. OF HIGHER EDUCATION, Jul. 4, 2008, at 8.
7. Hon. Linda S. Dalianis & Sophie M. Sparrow, *New Hampshire's Performance-Based Variant of the Bar Examination: The Daniel Webster Scholar Program*, THE BAR EXAMINER, Nov. 2005, at 23, 26 n.2.

Franklin Pierce Law Center and the University of New Hampshire are in the process of fulfilling an affiliation agreement (likely to be effective at the time of this publication), the first step in a multi-year process toward full merger. Franklin Pierce Law Center will be named the University of New Hampshire School of Law pending approval of the affiliation by the American Bar Association and the New England Association of Schools and Colleges. The 2011 Webster Scholar graduates will graduate under the name of the UNH School of Law.

8. *Id.* at 25.
9. Hutson, *supra* note 3, at 103.
10. *Id.* at 105.
11. *Id.* at 106.
12. *Id.*
13. *Id.*
14. Dalianis & Sparrow, *supra* note 7, at 26. The class of 2011 is the first class to participate totally outside of the pilot phase of the program.
15. Press Release, New Hampshire Supreme Court, "Concord Lawyer John Garvey to Direct New Webster Scholars at Pierce Law Center" (May 12, 2005), available at <http://www.courts.state.nh.us/press/2005/garvey.htm>.
16. Thirteen of the original 15 scholars finished the program.
17. Pro bono work not only provides an opportunity for early exposure to clients but can also "strongly influence a student's future involvement in public service and even become a highlight of the law school experience." William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond & Lee S. Shulman, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 6*, 138–39 (The Carnegie Foundation for the Advancement of Teaching/Jossey-Bass 2007).
18. The Domestic Violence Emergency (DOVE) Project is a program of the New Hampshire Bar Association's Pro Bono Referral Program that provides victims of domestic violence with emergency legal services. DOVE is operated in partnership with domestic violence services agencies throughout New Hampshire and relies on the donated services of specially trained attorneys. The DOVE Project provides free legal representation to qualifying clients at final Domestic Violence Restraining Order hearings under New Hampshire RSA 173-B, "Protection of Persons from Domestic Violence." For further information, see <http://www.nhbar.org/uploads/pdf/DOVEbrochureNHEnglish.pdf>.
19. See N.H. SUP. CT. R. 42(13).
20. Despite the stringent requirements, about one-third of the class (of approximately 150 students) has applied in each of the last two years.
21. For further detail regarding the selection process, see "Criteria for applicants," <http://piercelaw.edu/websterscholar/criteria.php> (last visited July 14, 2010).
22. Marjorie M. Shultz & Sheldon Zedeck, *Final Report: Identification, Development, and Validation of Predictors for Successful Lawyering* (2008), available at <http://www.law.berkeley.edu/files/LSACREPORTfinal-12.pdf>.
23. Bar examiners have stated that the total time they spend on their complete evaluation of five Webster Scholars each semester is comparable to the amount of time they spend on grading a single essay question for all exam takers of the traditional bar exam.
24. The standardized clients used in the DWS Program were initially trained by Paul Maharg, now of Northumbria Law School, and Karen Barton of the Glasgow Graduate School of Law. I am working with Professors Maharg and Barton as well as with Professors Clark Cunningham and Greg Jones of Georgia State University School of Law in connection with this aspect of the program, including conducting empirical research regarding a comparison of the client interview performance of Webster Scholars and other new bar admittees.
25. See Karen Barton, Clark D. Cunningham, Gregory Todd Jones & Paul Maharg, *Valuing What Clients Think: Standardized Clients and the Assessment of Communicative Competence*, 13 *CLINICAL L. REV.* 1, 3–5 (Fall 2006), available at <http://law.gsu.edu/ccunningham/PDF/ValuingWhatClientsThink.pdf>.  
Franklin Pierce Law Center uses mostly local actors, who are paid 15 dollars per hour.
26. *Id.*
27. Clark Cunningham and I made a presentation at the 2010 AALS Conference on Clinical Legal Education entitled "Developing Criteria for Effective Client Communication from Standardized Client Assessment Protocols," during which Professor Cunningham presented some very preliminary observations. He can be reached at [cdcunningham@gsu.edu](mailto:cdcunningham@gsu.edu).
28. More than half of all upper-level courses at Franklin Pierce Law Center have 20 or fewer students.
29. See The SIMPLE Project, <http://130.159.238.105/?q=node/20> (last visited Aug. 3, 2010).
30. See <http://notebuuk.com/> (last visited Aug. 3, 2010).
31. William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond & Lee S. Shulman, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 6* (The Carnegie Foundation for the Advancement of Teaching/Jossey-Bass 2007).
32. Lloyd Bond, Consulting Scholar (retired), The Carnegie Foundation for the Advancement of Teaching, "Prepared Remarks to the Conference on a Performance-Based Approach to Licensing Lawyers: The New Hampshire 'Two-Year Bar Examination'" (Apr. 23, 2010).
33. I can be reached at [john.garvey@law.unh.edu](mailto:john.garvey@law.unh.edu).



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