

# MAKING LAW STUDENTS CLIENT-READY: A NEW MODEL IN LEGAL EDUCATION

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## INTRODUCTION

In the 1870's, Christopher Columbus Langdell, then Dean of Harvard Law School, introduced the teaching method of studying cases combined with Socratic questioning. It is still the primary method of teaching law in the United States.<sup>1</sup> Although worthy as part of an integrative program of instruction, the Langdellian method, as the primary form of instruction, fails to make law students client-ready.<sup>2</sup> While it may meet "the needs of future law clerks and eventual judges, as well as aspiring legal scientists,"<sup>3</sup> it leaves "newly admitted lawyers . . . ill-prepared to represent common people who have common legal problems."<sup>4</sup> This has negative ramifications not only for lawyers, but for "everybody who may be affected by the work of lawyers."<sup>5</sup>

Fortunately, numerous comprehensive, authoritative reports call for integrating the Langdellian method with training in professional skills and values.<sup>6</sup> Efforts at reform are being made in various law schools around the country. But change has been slow, and delay means serious negative consequences for law students and the clients they will eventually serve. The Langdellian method not only undertrains students generally, it

1. AMERICAN BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LEGAL EDUC. & PROF'L DEV – AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 106 (1992) [hereinafter MACCRATE REPORT]; see Laura I. Appleman, *The Rise of the Modern American Law School: How Professionalization, German Scholarship, and Legal Reform Shaped Our System of Legal Education*, 39 NEW ENG. L. REV. 251, 252, 267 (2005); Ruta K. Stropus, *Mend It, Bend It, and Extend It: The Fate of Traditional Law School Methodology in the 21st Century*, 27 LOY. U. CHI. L.J. 449, 452 (1996).

2. Roy Stuckey, *The Evolution of Legal Education in the United States and the United Kingdom: How One System Became More Faculty-Oriented While the Other Became More Consumer-Oriented*, 6 INT'L J. CLINICAL LEGAL EDUC. 101, 118 (2004); see also JAMES W. HURST, *THE GROWTH OF AMERICAN LAW* 270 (1950); Michael Bryce, *Teaching Justice to Law Students: The Legacy of Ignatian Education and Commitment to Justice and Justice Learning in 21st Century Clinical Education*, 43 GONZ. L. REV. 577, 597 (2008).

3. WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 6 (The Carnegie Foundation for the Advancement of Teaching 2007) [hereinafter CARNEGIE REPORT].

4. Stuckey, *supra* note 2, at 102.

5. *Id.*

6. See MACCRATE REPORT, *supra* note 1; CARNEGIE REPORT, *supra* note 3; ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* (2007), available at [http://cleaweb.org/documents/bestpractices/best\\_practices-full.pdf](http://cleaweb.org/documents/bestpractices/best_practices-full.pdf) [hereinafter BEST PRACTICES].

disproportionately alienates groups traditionally underrepresented in law schools, including women and minorities.<sup>7</sup> Law schools have a duty to their students and to society to provide a legal education that adequately trains law students to represent clients.<sup>8</sup> They have a duty to make legal education a means to greater equality, and not an inhibition. This paper attempts to provide a possible starting point for schools that have not yet begun the move toward integrative education, and an opportunity for further discussion among those schools already in transition.

We begin our discussion in Part I of this paper by tracing key points in the history of legal education in the United States, providing context for the current recommendations concerning legal education and assessment.<sup>9</sup> We then review the recommendations for change, including those of the 1992 American Bar Association (ABA) Task Force on Law Schools and the Profession (the MacCrate Report),<sup>10</sup> the 2007 report of the Carnegie Foundation for the Advancement of Teaching on Legal Education (the Carnegie Report),<sup>11</sup> and the 2007 report issued by Roy Stuckey and others on Best Practices for Legal Education (Best Practices).<sup>12</sup> In Part II, we focus on a unique pilot program at Franklin Pierce Law Center (Pierce Law) known as the Daniel Webster Scholar Honors Program. We describe the two-year program in detail, demonstrating how, consistent with the recommendations described in Part I, it fully integrates the instruction of legal doctrine with legal skills and values. The program also provides comprehensive assessment of a student's ability to practice law, which constitutes an alternative, two-year bar exam. Finally, in Part III, we recommend replicating the program in other states, and generally describe the process for doing so.

## I. Where Are We And How Did We Get Here?

### A. A Brief History of Legal Education in the United States

In a country whose Constitution was adopted more than 230 years ago,<sup>13</sup> it may seem surprising that formal legal education has been the norm for less than ninety years.<sup>14</sup> As recently as 1941, Robert H. Jackson was appointed as an

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7. For a more in depth discussion of how the undertraining of lawyers particularly affects women and minorities, see the article by Professor Irene Ayers, which also appears in this journal. See also LANI GUINIER ET AL., *BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE* (1997) (observing that the Langdellian method alienates female law students and, in part, causes them to underperform).

8. See ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS § 301(a) (2002) (law schools have an obligation to "prepare [their] graduates . . . to participate effectively and responsibly in the legal profession").

9. We will not attempt to chronicle a comprehensive history of legal education in the United States, because this has already been done well by others. For excellent compendia, see MACCRATE REPORT, *supra* note 1; Stuckey, *supra* note 2.

10. MACCRATE REPORT, *supra* note 1.

11. CARNEGIE REPORT, *supra* note 3.

12. BEST PRACTICES, *supra* note 6.

13. See U.S. CONST. art. VII (stating that convention of states adopted United States Constitution on September 17, 1787).

14. In 1921, a special committee of the American Bar Association Section of Legal Education and Admissions to the Bar reported, among other things, that law school was the only place where an

Associate Justice to the Supreme Court of the United States, later served as American Chief of Counsel prosecuting the principal Nazi leaders before the International Military Tribunal at Nuremberg,<sup>15</sup> and participated in the landmark decision of *Brown v. Board of Education of Topeka*,<sup>16</sup> even though he never attended college. Justice Jackson “apprenticed in a law office and attended Albany Law School for one year, [taking] the New York State bar exam at age twenty-one.”<sup>17</sup>

Around the time young Robert Jackson took the New York bar exam, education in the legal profession was undergoing a profound change that would eventually all but close the path of entry he had chosen. This change was the culmination of more than four decades of effort to bring the process of legal education under the control of law schools and the ABA.<sup>18</sup> Since Justice Jackson’s time, legal education has evolved from a traditional apprenticeship where the student is taught directly by the lawyer, into a thriving and organized education industry, where law schools compete with each other for the “best” students.<sup>19</sup> How and why this happened is relevant to understanding the challenges legal education faces today.

As noted by one commentator, “The more or less conventional history of American legal education has been told many times, chronicling the movement from apprenticeships to private proprietary law schools to universities, full time study, and increasingly academic (and some would argue more esoteric) legal scholarship and pedagogy.”<sup>20</sup> We need not repeat the entire history of American legal education here, and instead jump to the 1870’s, which marked the advent of the ABA and the Langdellian method of teaching law.<sup>21</sup>

During the 1870s, numerous groups of lawyers with elite practices “were distressed by the lack of standards and the low estate to which the bar had fallen in their local communities.”<sup>22</sup> These lawyers “launched a movement to raise standards and to promote a sense of profession,” which sowed the seeds for the creation of the ABA.<sup>23</sup> The ABA was created in 1878, and soon thereafter established a committee to develop a unified legal profession with common admission and educational requirements for the entire country.<sup>24</sup> In 1881, this committee began its efforts to “wrest legal education from the local control of the practicing profession during the early years of the 20th century and to place it

adequate legal education could be obtained. This report was approved by the 1921 ABA convention. See MACCRATE REPORT, *supra* note 1, at 107-08; see also Stuckey, *supra* note 2, at 127-29; ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S 115 (1983); Warren A. Seavey, *The Association of American Law Schools in Retrospect*, 3 J. OF LEGAL EDUC., 152, 162 (1950); cf. ALFRED Z. REED, TRAINING FOR THE PUBLIC PROFESSION OF LAW (1921).

15. John Q. Barrett, *Robert H. Jackson as Associate Justice of the Supreme Court*, <http://www.roberthjackson.org/Man/theman2-2-2-4/> (last visited Feb. 8, 2009).

16. 347 U.S. 483 (1954).

17. *The Life of Robert H. Jackson*, <http://www.roberthjackson.org/Man/> (last visited Feb. 8, 2009).

18. See MACCRATE REPORT, *supra* note 1, at 105-11.

19. See Stuckey, *supra* note 2, at 116-17, 132.

20. Carrie Menkel-Meadow, *Taking Law and \_\_\_\_\_ Really Seriously: Before, During and After “The Law,”* 60 VAND. L. REV. 555, 560-61 (2007).

21. MACCRATE REPORT, *supra* note 1, at 105-06.

22. *Id.* at 105; see STEVENS, *supra* note 14, at 25.

23. MACCRATE REPORT, *supra* note 1, at 105.

24. *Id.* at 106-07.

increasingly in the law schools,"<sup>25</sup> by "passing a resolution recommending attendance at law school for three years and that all states give credit toward required apprenticeship, for time spent in law school."<sup>26</sup> At the end of the nineteenth century, it was common for a board of bar examiners to require either a two-year apprenticeship and one year of law school or three years of law school.<sup>27</sup> Over time, the apprenticeship option was eliminated and three years of law school became the nearly universal requirement: "Today, all but seven states require all applicants for admission to have graduated from a three-year law school program (or its part-time equivalent)."<sup>28</sup>

Around the time the ABA was created, Langdell became dean of the Harvard Law School and introduced the case method of legal education.<sup>29</sup> Under the case method, law was a "science" that could be learned by reading cases and arranging their holdings into a coherent body of general legal principles.<sup>30</sup> Whereas before the case method, lawyers were instructed on a series of rules that they transcribed and memorized,<sup>31</sup> Langdell "articulated a vision of the law as an organic science with several guiding principles rather than a series of facts and rules to be memorized."<sup>32</sup> Among the things attributed to the "Langdellian 'revolution'" are: (1) the so-called "Socratic method," which relies upon teacher-directed learning through questioning intended to sort the relevant from the irrelevant facts and distill the holding of the case; and (2) the modern casebook or "case method," which is a collection of key appellate cases from the common law, from which students may derive the general principles of law.<sup>33</sup>

By 1900, the Langdellian method became the primary mode of teaching law in the United States.<sup>34</sup> Its proponents contended that it allowed students to do "under the guidance of an instructor, what [they] will be required to do without guidance as a lawyer."<sup>35</sup> This experience was said to be akin to working in a lawyer's office.<sup>36</sup>

The Langdellian method "remains the primary method of law teaching."<sup>37</sup> Modern-day proponents argue that "it teaches students to read and think carefully, logically and critically—i.e., to 'think like a lawyer,'" and to think on

25. *Id.* at 108.

26. *Id.* at 106.

27. *Id.* at 108.

28. *Id.* at 108; see *Chart III: Permitted Means of Legal Study (Bar Exam)*, in ABA COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 2008, 22-25 (2008), available at [http://www.ncbex.org/fileadmin/mediafiles/downloads/Comp\\_Guide/CompGuide.pdf](http://www.ncbex.org/fileadmin/mediafiles/downloads/Comp_Guide/CompGuide.pdf).

29. MACCRATE REPORT, *supra* note 1, at 106.

30. Menkel-Meadow, *supra* note 20, at 561; see also MACCRATE REPORT, *supra* note 1, at 106; Stuckey, *supra* note 2, at 118.

31. Stuckey, *supra* note 2, at 117.

32. *Id.* at 118.

33. Menkel-Meadow, *supra* note 20, at 561-62.

34. Stuckey, *supra* note 2, at 121.

35. *Id.* at 119 (quoting STEVENS, *supra* note 14, at 56-57).

36. *Id.*

37. Cynthia G. Hawkins-Leon, *The Socratic Method-Problem Method Dichotomy: The Debate Over Teaching Method Continues*, 1998 B.Y.U. EDUC. & L.J. 1, 3 (1998).

their feet and make and defend legal arguments.<sup>38</sup> Advocates of the Langdellian method also assert that it “teaches students to learn to recognize the important facts and issues in a case and to separate these issues from red herrings and makeweight arguments, . . . [to] glean the substantive law in a particular field from the cases[.]” and requires them “to recognize that the law is a growing, changing body of doctrine.”<sup>39</sup> Unlike traditional lectures, the Langdellian method “forces students to work through legal doctrines on their own.”<sup>40</sup> Proponents also claim that it is “an efficient teaching device, even in large classrooms, because it stimulates broad-based active student involvement in the dialogue.”<sup>41</sup>

By contrast, critics of the method have argued that it is “not adequately preparing students for law practice and [is] not, in fact, an adequate substitute for apprenticeships.”<sup>42</sup> They note that while the Langdellian method helps students to think like lawyers, “the focus remains on cases rather than clients.”<sup>43</sup>

The skill of thinking like a lawyer is first learned without the benefit of actual clients, and the typical form in which the case books present cases may even suggest something misleading about the roles lawyers play, more often casting them as distanced planners or observers than as interacting participants in legal actions.<sup>44</sup>

To compare this to another profession, “[t]he analogy in medical training would be the tension between focusing teaching on disease processes, on the one hand or on patient care on the other.”<sup>45</sup>

Others critics note that “employing the Langdellian method to the exclusion of other methods mistakenly assumes that all students will learn ‘in a parallel fashion from any given exchange between student and instructor.’”<sup>46</sup> Moreover, “[s]till others maintain this method alienates some women and persons of color, and is ‘infantilizing, demeaning, dehumanizing, sadistic . . . self-serving, and destructive of positive ideological values.’”<sup>47</sup>

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38. Stephen J. Shapiro, *Teaching First-Year Civil Procedure and Other Introductory Courses by the Problem Method*, 34 CREIGHTON L. REV. 245, 247 (2000); see generally James M. Dente, *A Century of Case Method: An Apologia*, 50 WASH. L. REV. 93 (1974); Hawkins-Leon, *supra* note 37; William C. Heffernan, *Not Socrates, But Protagoras: The Sophistic Basis of Legal Education*, 29 BUFF. L. REV. 399 (1980); Thomas F. Konop, *The Case System – A Defense*, 6 NOTRE DAME L. REV. 275 (1931); Pierre R. Loiseaux, *The Newcomer and the Case Method*, 7 J. LEGAL EDUC. 244 (1954); John W. Wade, *Some Observations on the Present State of Law Teaching and the Student Response*, 35 MERCER L. REV. 753 (1984).

39. Shapiro, *supra* note 38, at 247–48.

40. Benjamin Barton, *The Emperor of Ocean Park: The Quintessence of Legal Academia*, 92 CAL. L. REV. 585, 590 (2004) (book review).

41. Robert E. Oliphant, *Will Internet Driven Concord University Law School Revolutionize Traditional Law School Teaching?*, 27 WM. MITCHELL L. REV. 841, 861 (2000).

42. Stuckey, *supra* note 2, at 120.

43. CARNEGIE REPORT, *supra* note 3, at 57.

44. *Id.*

45. *Id.*

46. Rogelio Lasso, *From the Paper Chase to the Digital Chase: Technology and the Challenge of Teaching 21st Century Law Students*, 43 SANTA CLARA L. REV. 1, 17 (2002) (quoting Paul F. Teich, *Research on American Law Teaching: Is There a Case Against the Case System?*, 36 J. LEGAL EDUC. 167, 168 n.3 (1986)).

47. *Id.* at 17 (citing Lani Guinier et al., *Becoming Gentlemen: Women’s Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1, 3–4, 63–65 (1994); see also Cathaleen A. Roach, *A River Runs Through It:*

The calls for change have accumulated rapidly since the 1970's.<sup>48</sup> Since then, "numerous groups of leaders of the legal profession and groups of distinguished lawyers, judges, and academics have studied legal education and have universally concluded that most law school graduates lack the minimum competencies required to provide effective and responsible legal services."<sup>49</sup> As will be discussed below, studies of current legal education consistently conclude that the now-traditional Langdellian method of education is only one aspect of legal training, and must be integrated with appropriate training in professional skills and values: "The dichotomy between doctrinal analysis and theoretical considerations on the one hand and practice on the other is unfortunate, since each has an important role to play in a sound legal education."<sup>50</sup>

## B. Recommendations for Reform

### 1. MacCrate Report

Of the numerous reports advocating for the integration of legal skills and values as part of the standard legal education, one of the most comprehensive was the MacCrate Report.<sup>51</sup> A monumental effort, it involved seven active subcommittees that spent in excess of 12,000 volunteer hours over a three-year period.<sup>52</sup> It included surveys and testimony of practicing lawyers and law professors.<sup>53</sup>

The report provided an exhaustive look at the legal profession, the skills and values new lawyers should seek to acquire, and the educational continuum through which lawyers acquire these skills and values.<sup>54</sup> The report's core set forth ten fundamental lawyering skills and four professional values that the Task Force believed "every lawyer should acquire before assuming responsibility for

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*Tapping into the Informational Stream to Move Students from Isolation to Autonomy*, 36 ARIZ. L. REV. 667, 669-70 (1994), and quoting Alan A. Stone, *Legal Education on the Couch*, 85 HARV. L. REV. 392, 407 (1971)).

48. Stuckey, *supra* note 2, at 135, 137 n.239; see also BEST PRACTICES, *supra* note 6, at 2. For earlier critiques, see REED, *supra* note 14, and Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907 (1933).

49. BEST PRACTICES, *supra* note 6, at 1. For a comprehensive discussion of the state of legal education and criticisms thereof up to 1980, see H. Russell Cort & Jack L. Sammons, *The Search for "Good Lawyering": A Concept and Model of Lawyering Competencies*, 29 CLEV. ST. L. REV. 397, 397-438 nn.1-111 (1980).

50. Margaret Martin Barry et al., *Clinical Education for this Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 33 (2000); see also Janeen Kerper, *Creative Problem Solving vs. The Casebook Method: A Marvelous Adventure in which Winnie-the-Pooh Meets Mrs. Palsgraf*, 34 CAL. W. L. REV. 351, 371 (1998).

51. MACCRATE REPORT, *supra* note 1; see also Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, 8 CLINICAL L. REV. 109, 115 (2001-02) ("The MacCrate Report was not the first comprehensive effort to address the lack of competence among graduating lawyers."). Prior efforts included the "Reed Report," see REED, *supra* note 14, and the "Crampton Report," AMERICAN BAR ASS'N, SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, REPORT AND RECOMMENDATIONS ON THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF LAW SCHOOLS (1979).

52. MACCRATE REPORT, *supra* note 1, at xiii.

53. *Id.* at 385-95.

54. *Id.* at 327.

the handling of a legal matter.”<sup>55</sup> The ten fundamental lawyering skills the report identified 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.<sup>56</sup> 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.<sup>57</sup>

The report culminated in sixty-four recommendations “for improving and integrating the process by which lawyers acquire [the ten] skills and [four] values and for enhancing lawyers’ professional development at all stages of their careers.”<sup>58</sup> The report observed that the Statement of Fundamental Lawyering Skills and Professional Values would particularly help law students understand the requirements for competent practice.<sup>59</sup> For example, in describing the law school’s role in professional development, the report stated:

Too often, the [Langdellian] method of teaching emphasizes qualities that have little to do with justice, fairness and morality in daily practice. Students too easily gain the impression that wit, sharp responses, and dazzling performance are more important than the personal moral values that lawyers must possess and that the profession must espouse.<sup>60</sup>

With respect to imparting these skills and values to law students, the report recognized “that students who expect to enter practice in a relatively unsupervised practice setting have a special need for opportunities to obtain skills instruction.”<sup>61</sup> Toward this end, the Report emphasized the importance of clinical legal education in the teaching of skills and values.<sup>62</sup> As the report stated: “Clinics have made, and continue to make, an invaluable contribution to the entire legal enterprise. They are a key component in the development and advancement of skills and values throughout the legal profession. Their role in the curricular mix of courses is vital.”<sup>63</sup>

The report also encouraged law schools “to develop or expand instruction in such areas as ‘problem solving,’ ‘factual investigation,’ ‘communication,’ ‘counseling,’ ‘negotiation’ and ‘litigation,’ recognizing that methods have been developed for teaching law students skills previously considered learnable through post-graduate experience in practice.”<sup>64</sup> The report also recommended

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55. MACCRATE REPORT, *supra* note 1, at 7.

56. *Id.* at 138–40. Each of these lawyering skills has multiple subparts. For instance, the skills and concepts involved in Problem Solving are: Identifying and Diagnosing the Problem; Generating Alternative Solutions and Strategies, Developing a Plan of Action, Implementing the Plan, and Keeping the Planning Process Open to New Information and New Ideas. *See also id.* at 138.

57. *Id.* at 140–41.

58. *Id.* at 327; *see also id.* at 327–38 (supplying a list of recommendations).

59. *Id.* at 127.

60. *Id.* at 236.

61. MACCRATE REPORT, *supra* note 1, at 330.

62. Engler, *supra* note 51, at 114.

63. MACCRATE REPORT, *supra* note 1, at 238.

64. *Id.* at 332.

that each school's faculty review the Statement of Fundamental Lawyering Skills and Professional Values and other relevant literature, to "determine how its school can best improve the process of helping students acquire the skills and values that are important in the practice of law, . . . [and to] describe the skills and values content of their courses and make the information available to students."<sup>65</sup>

Because "[t]he transition from law school into individual practice or relatively unsupervised positions in small law offices . . . presents special problems of lawyer competence [in] law schools," the report recommended a coordinated effort among law schools, the organized bar and licensing authorities to address these special problems.<sup>66</sup> The report noted that it was important for law schools to "work with the organized bar to assure that the development of lawyering skills continues beyond law school."<sup>67</sup> The report encouraged "[t]he development, testing, and evaluation of pilot programs of transition education," suggesting that these programs perhaps be modeled upon those in Commonwealth jurisdictions.<sup>68</sup>

As one commentator observed, "[t]he MacCrate Report became a lightning [sic] rod for discussion, strategizing and critique both inside the world of legal education and in the profession as a whole."<sup>69</sup> Conferences were devoted to its recommendations, and a veritable flood of law review articles were dedicated to issues it raised.<sup>70</sup>

Commentators have suggested that "[t]he MacCrate Report's greatest success might be as an effective organizing tool for the activities and thinking of clinical teachers and proponents of clinical education."<sup>71</sup> There were "[a]t least four clinical conferences . . . dedicated in whole or in part to discussion of the MacCrate Report in the first few years following 1992."<sup>72</sup> Moreover, "[c]linical teachers were central to efforts to create committees at the state bar level in each of the fifty states for the implementation of the MacCrate Report."<sup>73</sup> Following its publication, "at least some schools moved quickly to make curricular changes

65. *Id.* at 260.

66. *Id.* at 334.

67. *Id.* at 260.

68. *Id.* at 335; *see also id.* at 405-12 (discussing practical skills training in six Commonwealth jurisdictions).

69. Engler, *supra* note 51, at 116; *see, e.g.*, THE MACCRATE REPORT: BUILDING THE EDUCATIONAL CONTINUUM 145 (Joan S. Howland & William H. Lindberg eds., 1994).

70. *See, e.g.*, John J. Costonis, *The MacCrate Report: Of Loaves, Fishes and the Future of American Legal Education*, 43 J. LEGAL EDUC. 157 (1993); Gerald J. Clark, *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*, 27 SUFFOLK U. L. REV. 1153 (1993) (book review); Jack Stark, *Dean Costonis and the MacCrate Report*, 44 J. LEGAL EDUC. 126 (1994); Robert MacCrate, *Preparing Lawyers to Participate Effectively in the Legal Profession*, 44 J. LEGAL EDUC. 89 (1994); Jonathan Rose, *The MacCrate Report's Restatement of Legal Education: The Need for Horse Sense*, 44 J. LEGAL EDUC. 548 (1994); Brook K. Baker, *Beyond MacCrate: The Role of Context, Experience, Theory, and Reflection in Ecological Learning*, 36 ARIZ. L. REV. 287 (1994); Wallace Loh, *Introduction: The MacCrate Report – Heuristic or Prescriptive?*, 69 WASH. L. REV. 505 (1994); Symposium, *Symposium on the MacCrate Report*, 1 CLINICAL L. REV. 349 (1994).

71. Engler, *supra* note 51, at 144.

72. *Id.* at 120; Symposium, *supra* note 70.

73. Engler, *supra* note 51, at 121.

either consistent with the Report's recommendations, or directly as a result of them."<sup>74</sup> By 2000, "there were 183 U.S. law schools with clinical programs in the database maintained by Professor David Chavkin on behalf of the [Association of American Law Schools] Section on Clinical Legal Education and [Clinical Legal Education Association]."<sup>75</sup> Approximately eighty percent of reporting clinicians indicated that they teach in-house clinics, whereas only a decade earlier, only thirty percent of all law schools reported that they had in-house live-client clinics.<sup>76</sup>

Clinical courses obviously serve several important purposes. They "expose students not only to lawyering skills, but also the essential values of the legal profession: provision of competent representation; promotion of justice, fairness, and morality; continuing improvement of the profession; and professional self-development."<sup>77</sup> Clinical programs also help thousands of low-income clients receive access to justice.<sup>78</sup>

Despite the rise in clinical programs since the MacCrate Report's publication, and "although clinical legal education is a permanent feature in legal education, too often clinical teaching and clinical programs remain at the periphery of law school curricula."<sup>79</sup> Generally, law schools have paid little attention to synthesizing "either bodies of substantive law or lawyering techniques that might help the student understand how the law lives and the lawyer's role in bringing it to life."<sup>80</sup> As stated in one critique:

[law schools] generally do not do a good job of teaching students how to gather and digest facts that are not neatly packaged; identify a range of solutions, legal and non-legal that might apply; determine what the limitations of a given forum might be and how best to work within that forum; counsel a client; and negotiate with an opponent.<sup>81</sup>

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74. *Id.* at 123. For instance, articles discussed programs at Seattle University, William Mitchell College of Law and law schools in Wisconsin. See, e.g., John B. Mitchell et al., *And Then Suddenly Seattle University Was on its Way to a Parallel, Integrative Curriculum*, 2 CLINICAL L. REV. 1 (1995); John Sonsteng et al., *Learning by Doing: Preparing Law Students for the Practice of Law – The Legal Practicum*, 21 WM. MITCHELL L. REV. 111 (1995); Graham C. Lilly, *Skills, Values, and Education: The MacCrate Finds a Home in Wisconsin*, 80 MARQ. L. REV. 753 (1997).

75. Barry et al., *supra* note 50, at 30. The database on clinical legal education and data collection form can be located via the internet at <http://www2.wcl.american.edu/> (last visited Mar. 16, 2009).

76. Barry et al., *supra* note 50, at 30–31; see also *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508, 518 (1992).

77. Barry et al., *supra* note 50, at 14; see also MACCRATE REPORT, *supra* note 1, at 207–21.

78. Barry et al., *supra* note 50, at 14; see also PHILIP G. SCHRAG & MICHAEL MELTSNER, REFLECTIONS ON CLINICAL EDUCATION 313 (1998).

79. Barry et al., *supra* note 50, at 32; see also Menkel-Meadow, *supra* note 20, at 577 ("Perhaps the greatest 'big bang' effect on legal education has been the growth of clinical education. Although largely still separated from traditional legal education and lacking the transformative effects its founders desired and predicted, virtually all law schools now offer students the opportunity to learn to practice law in some kind of supervised setting that is intentionally designed to focus simultaneously on both the theory and skills of lawyering.").

80. Barry et al., *supra* note 50, at 35.

81. *Id.*

While students may gain occasional exposure to these skills through clinical programs, they generally are not receiving the integrated learning experience that they need, and that the MacCrate Report described as necessary.<sup>82</sup>

Further, while clinical programs naturally expose students to the social justice dimension of legal practice, too few traditional courses explore these issues, and those that do “rarely explore[] the relationship between lawyers’ pro bono responsibility and their obligation to improve the legal system. Rarer yet [are] law schools in which the curriculum as a whole reinforce[s] these professional values.”<sup>83</sup> While there are exceptions to this general rule, they are few.<sup>84</sup>

## 2. Carnegie Report

In 2007, fifteen years after the MacCrate Report was issued, the Carnegie Foundation for the Advancement of Teaching released a report on legal education entitled *Educating Lawyers: Preparation for the Profession of Law*.<sup>85</sup> This was the third such report the Carnegie Foundation had issued on the legal profession.<sup>86</sup>

Like the Carnegie reports that preceded it, the 2007 Carnegie Report gave legal education “low marks for its practice and ethical-social components”<sup>87</sup>—what MacCrate referred to as “skills and values.” According to the report, the “lack of attention to practice and the weakness of concern with professional responsibility” are the “unintended consequences” of the reliance in legal education upon the Langdellian, or “case-dialogue” method of instruction.<sup>88</sup> The case-dialogue method leads students “to analyze situations by looking for points of dispute or conflict and considering as ‘facts’ only those details that contribute

82. *Id.*; see also Menkel-Meadow, *supra* note 20, at 578 (“ . . . [F]ormal integration of the relationship of the theory of practice to practice itself is still a dream on the horizon.”).

83. Barry et al., *supra* note 50, at 14.

84. *Id.* at 14 n.58 (describing programs at David A. Clarke School of Law in the District of Columbia and City University of New York [hereinafter CUNY]); see also Mary Lu Bilek, *A Sequenced Program to Create Access to the Legal Profession and Educate Professionals for Public Interest Practice*, Feb. 21, 2008, available at <http://law.gsu.edu/FutureOfLegalEducationConference/Papers/Bilek.pdf>. A podcast of Dean Bilek’s oral presentation is available at [http://law.gsu.edu/FutureOfLegalEducationConference/Program\(Final\).php](http://law.gsu.edu/FutureOfLegalEducationConference/Program(Final).php). The program of CUNY is of particular import in part because it represents one of the earliest attempts to put the MacCrate Report into action. Following publication of the MacCrate Report, CUNY created an academic program that seeks to integrate theory and practice throughout the three years of law school in a coordinated, sequenced program that culminates in a required clinical experience. See *id.* The program focuses upon the competencies identified in the MacCrate Report and provides students with formative and summative evaluations. See *id.* For an explanation of formative and summative evaluations, see *infra* note 106.

85. CARNEGIE REPORT, *supra* note 3.

86. James R. Maxeiner, *Educating Lawyers Now and Then: Two Carnegie Critiques of the Common Law and the Case Method*, 35 INT’L J. OF LEGAL INFO. 1, 1 (2007); see CARNEGIE REPORT, *supra* note 3, at 92; see also JOSEF REDLICH, THE COMMON LAW AND THE CASE METHOD IN AMERICAN UNIVERSITY LAW SCHOOLS: A REPORT TO THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING, BULLETIN NO. 8 (1914); NEW DIRECTIONS IN EDUCATION: A REPORT PREPARED FOR THE CARNEGIE COMMISSION ON HIGHER EDUCATION (Herbert L. Packer et al. eds., 1972).

87. Maxeiner, *supra* note 86, at 3.

88. CARNEGIE REPORT, *supra* note 3, at 187–88.

to someone's staking a legal claim on the basis of precedent."<sup>89</sup> The strength of this method is that it teaches students to "think[] like a lawyer," in that it teaches them to "redefin[e] messy situations of actual or potential conflict as opportunities for advancing a client's cause through legal argument before a judge or through negotiation."<sup>90</sup> Missing, however, is "the task of connecting these conclusions with the rich complexity of actual situations that involve full-dimensional people, let alone the job of thinking through the social consequences or ethical aspects of the conclusions."<sup>91</sup>

The Carnegie Report proposed an "integrative strategy" for legal education.<sup>92</sup> It identified three apprenticeships—the cognitive, the practical and the ethical-social—that should be integrated to marshal all three apprenticeships "in support of the larger goal of training competent and committed practitioners."<sup>93</sup> The first apprenticeship, the cognitive, "focuses the student on the knowledge and way of thinking of the profession."<sup>94</sup> The second apprenticeship, the practical, schools students in "the forms of expert practice shared by competent practitioners."<sup>95</sup> The third apprenticeship, the ethical-social, "introduces students to the purposes and attitudes that are guided by the values for which the professional community is responsible."<sup>96</sup>

With an integrative strategy, "each aspect of the legal apprenticeship—the cognitive, the practical, and the ethical-social—takes on part of its character from the kind of relationship it has with the others."<sup>97</sup> Under the traditional Langdellian model of legal education, "the cognitive apprenticeship . . . dominates, [and] the other practical and ethical-social apprenticeships are each tacitly thought of and judged as merely adjuncts to the first."<sup>98</sup> By contrast, under an integrative model of legal education, all three apprenticeships are deemed equally critical and are "linked so seamlessly that each contributes to the strength of the others."<sup>99</sup> Further, in an integrative model, assessment in law school includes "formative practices that, by providing important information about the students' progress in learning to both students and faculty, can strengthen law schools' capacity to develop competent and responsible lawyers."<sup>100</sup>

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89. *Id.* at 187.

90. *Id.*

91. *Id.*; see Barry et al., *supra* note 50, at 34 ("Doctrine, theory, and skills cannot be appreciated if they are introduced without engaging the pathos of the human issues that the lawyer encounters when representing clients.").

92. CARNEGIE REPORT, *supra* note 3, at 191.

93. *Id.* at 28–29, 191.

94. *Id.* at 28.

95. *Id.*

96. *Id.*

97. *Id.* at 191.

98. CARNEGIE REPORT, *supra* note 3, at 191.

99. *Id.*

100. *Id.* at 171.

### 3. *Best Practices*

Around the same time the Carnegie Foundation issued its 2007 report on legal education, Professor Roy T. Stuckey<sup>101</sup> and others published the report of the Steering Committee for the Best Practices Project of the Clinical Legal Education Association, entitled *Best Practices for Legal Education*.<sup>102</sup> The Best Practices Project began in 2001 when the Clinical Legal Education Association asked Professor Stuckey to chair the project and appoint a steering committee whose task it would be to develop a statement of best practices.<sup>103</sup> Best Practices was intended to provide “a vision of what legal education might become if legal educators step back and consider how they can most effectively prepare students for practice.”<sup>104</sup>

Similar to the MacCrate Report, which in 1992 had concluded that law schools could not reasonably be expected to prepare law students fully to be practicing attorneys,<sup>105</sup> Best Practices observed that while “[i]t may not be possible to prepare students fully for the practice of law in three years, . . . law schools can come much closer than they are doing today.”<sup>106</sup> Law schools can and should do much better.

The key recommendations of Best Practices, reminiscent of those in the MacCrate and Carnegie Reports, include the following: (1) the primary goal of legal education should be to develop competence defined as the ability to resolve legal problems effectively and responsibly; (2) law schools should integrate the teaching of theory, doctrine, and practice, and teach professionalism pervasively throughout all three years of law school; (3) law schools should employ context-based instruction; and (4) law schools should assess student learning through various methods of assessment, including multiple formative and summative assessments.<sup>107</sup>

### C. Current Efforts

Like the MacCrate Report before them,<sup>108</sup> the Carnegie Report and Best Practices led to a flurry of conferences on the future of legal education.<sup>109</sup> This

101. Webster Professor Emeritus of Clinical Legal Education and Distinguished Professor Emeritus of Law, Univ. of S. Carolina Sch. of Law, Roy T. Stuckey, <http://law.sc.edu/faculty/stuckey/> (last visited Feb. 10, 2009).

102. BEST PRACTICES, *supra* note 6.

103. *Id.* at ix.

104. *Id.* at 1.

105. MACCRATE REPORT, *supra* note 1, at 4.

106. BEST PRACTICES, *supra* note 6, at 5.

107. *Id.* at 5–7. According to this report: “Formative assessments are used to provide feedback to students and faculty. Their purpose is purely educational and, while they may be scored, they are not used to assign grades or rank students.” *Id.* at 191. By contrast, summative assessments are “used for assigning a grade or otherwise indicating a student’s level of achievement.” *Id.* Usually, a summative assessment is given at the end of a course of study to make a final judgment of the student alongside his or her peers. *Id.*

108. Engler, *supra* note 51, at 116.

109. For a relatively complete list of such conferences, see A Place to Discuss Best Practices for Legal Educ., Past Events, <http://bestpracticeslegaled.albanylawblogs.org/events-presentations-2/past-events/> (last visited Feb. 21, 2009).

time, however, many law schools are taking a wholesale look at curriculum. The conferences resulted in easy access to a wealth of written and video information from various schools describing their initiatives.<sup>110</sup> Some schools are working directly with the Carnegie Foundation to consider and advance the recommendations in the Carnegie Report.<sup>111</sup>

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110. See *id.*

111. Jonathan D. Glater, *Training Law Students for Real-Life Careers*, N.Y. TIMES, Oct. 31, 2007, at B9, available at [http://www.nytimes.com/2007/10/31/education/31lawschool.html?\\_r=1&scp=1&sq=&st=nyt](http://www.nytimes.com/2007/10/31/education/31lawschool.html?_r=1&scp=1&sq=&st=nyt). In December 2007, the Carnegie Foundation for the Advancement of Teaching and Stanford Law School convened a meeting of forty leaders in American legal education to discuss strategies for change in law school curricula. A Place to Discuss Best Practices for Legal Educ., *Breaking News: LEARN Report Sent to All Deans*, <http://bestpracticeslegaled.albanylawblogs.org/2009/03/06/breaking-news-learn-report-sent-to-all-deans/> (last visited Mar. 10, 2009). The group included three representatives from each of ten law schools that have formed the Legal Education Analysis and Reform Network [hereinafter LEARN], in addition to other leading thinkers on the subject. *Id.* The ten law schools that comprise LEARN are: CUNY Law School, Georgetown Law School, Harvard Law School, Indiana University School of Law (Bloomington), New York University School of Law, Southwestern Law School, Stanford Law School, University of Dayton School of Law, University of New Mexico Law School, and Vanderbilt University Law School. *Id.* After two days of meetings, the group decided to focus its efforts on: (a) the structure of the law school curriculum as a whole; (b) the teaching enterprise as practiced by individual faculty members; and (c) the assessment of student learning. *Id.* The group has recently published an outline of the initial projects it plans to launch [hereinafter LEARN Outline]. General Description of Plan Projects 2009–2010, LEARN (2009), available at [http://www.law.stanford.edu/display/images/dynamic/events\\_media/LEARN\\_030509\\_lr.pdf](http://www.law.stanford.edu/display/images/dynamic/events_media/LEARN_030509_lr.pdf). Among the projects are: (1) a follow-up report to the 2007 Carnegie Report to be published in 2010 and that will consider the developments that have taken place between 2007 and 2009; (2) collaborations among faculty who teach doctrinal courses and those that teach skill courses; (3) a study of the use of interactive classroom technology; (4) an assessment of the use of periodic written assignments and/or examinations; (5) an assessment of the use of simulations; and (6) an assessment of alternatives to the traditional bar examination. *Id.* Schools should access and consider this information when developing integrative models of their own.

One current initiative is the CaseArc Integrated Lawyering Skills Program at Case Western Reserve University School of Law. See Kenneth R. Margolis, *Turning Law Students into Lawyers: The CaseArc Integrated Lawyering Skills Program Helps Prepare Students to be Practitioners* (Feb. 22, 2008), <http://law.gsu.edu/FutureOfLegalEducationConference/Papers/Margolis.pdf>. A podcast of Professor Margolis' oral presentation is available at [http://law.gsu.edu/FutureOfLegalEducationConference/Program\(Final\).php](http://law.gsu.edu/FutureOfLegalEducationConference/Program(Final).php). The CaseArc program begins with an intensive week-long orientation structured around a simple criminal case in which the students interview the defendant, review and analyze the relevant law, watch the trial, act as the jury and hear the appeal in a few short days. *Id.* The rest of the program develops over the first two years of law school. *Id.* Each year, students take one CaseArc course that is integrated with a substantive subject and focuses upon different fundamental skills. *Id.* In this way, CaseArc courses are integrated with a doctrinal subject. *Id.* The program relies upon simulations and evaluates students both formatively and summatively. For a description of formative and summative assessments, see *supra* note 107.

Other initiatives include the following: (1) the University of Idaho College of Law has begun a strategic planning process with the aim of creating a law degree program informed by the insights of the Carnegie Report and Best Practices, see Richard Henry Seamon, *Strategic Planning*, Future of Legal Education Conference, Feb. 22, 2008, available at <http://law.gsu.edu/FutureOfLegalEducationConference/Papers/Seamon.pdf> (podcast available at [http://law.gsu.edu/FutureOfLegalEducationConference/Program\(Final\).php](http://law.gsu.edu/FutureOfLegalEducationConference/Program(Final).php)); and (2) Harvard Law School, faculty are experimenting with a first year required problem-solving course that will integrate problems, skills exploration and analysis of substantive law and legal theory critique, see *A Place to Discuss Best Practices for Legal Educ., Curricular Ideas From Harvard, New Mexico And Stanford*, available at <http://bestpracticeslegaled.albanylawblogs.org/2009/03/06/curricular-ideas-from-> (last visited Mar. 11, 2009).

Although a number of promising initiatives are attempting to integrate the traditional Langdellian method of instruction with training in skills and values, one program is unique: The Daniel Webster Scholar Honors Program fully integrates the instruction of legal doctrine with legal skills and values *and* provides a *comprehensive* assessment of a student's ability to practice law. Unlike any other program in the country, the Daniel Webster Scholar Honors Program provides for a two-year bar exam instead of a two-day exam, and actually trains and tests the skills and values needed by lawyers to practice law competently.<sup>112</sup> Upon successfully completing the program, scholars are automatically eligible for admission to the New Hampshire bar.<sup>113</sup> While scholars must pass the Multistate Professional Responsibility Exam and the character and fitness review, they need not take the traditional two-day New Hampshire bar exam.<sup>114</sup>

## II. THE DANIEL WEBSTER SCHOLAR HONORS PROGRAM

According to Robert MacCrate, the central message of both Best Practices and the Carnegie Report is that law schools should:

- broaden the range of lessons they teach, reducing doctrinal instruction that uses the Socratic dialogue and the case method;
- integrate the teaching of knowledge, skills and values, and not treat them as separate subjects addressed in separate courses; and
- give much greater attention to instruction in professionalism.<sup>115</sup>

As demonstrated below, the Daniel Webster Scholar Honors Program achieves all three of these goals.

### A. Genesis

Development of the Daniel Webster Scholar Honors Program can be traced directly to the MacCrate Report's publication.<sup>116</sup> In May 1994, representatives from the high courts of Maine, New Hampshire, and Vermont met with the deans of Vermont Law School, Pierce Law, and Maine Law School, as well as the

112. Leigh Jones, *Dream Come True: No Bar Exam – N.H. Honors Program Would Replace Taking the Bar*, 28 NAT'L L. J. 4 (2006).

113. See N.H. SUP. CT. R. 42(13).

114. See *id.* This aspect of the program may have particular significance to women and minorities upon whom the bar exam has been found to have a disparate impact. See Lorenzo Trujillo, *The Relationship Between Law School and the Bar Exam: A Look at Assessment and Student Success*, 78 UNIV. OF COLO. L. REV. 69, 83 (2007); see also *Society of American Law Teachers Statement on the Bar Exam*, 52 J. LEGAL EDUC. 446, 446 (2002). A five-year study conducted by the Law School Admission Council found that the first-time bar passage rate for Caucasians was 91.9% as compared to 80.7% for Asian-Americans, 75.8% for Mexican-Americans, 66.36% for Native-Americans, and 61.4% for African-Americans. Trujillo, *supra* note 114, at 83; see also LINDA F. WIGHTMAN, LSAC NATIONAL LONGITUDINAL BAR PASSAGE STUDY 27 (1998). Moreover, a recent study by the National Conference of Bar Examiners concluded that men outperform women on the Multistate Bar Exam by five points, which is a statistically and practically significant difference. Trujillo, *supra* note 114, at 84; see Susan M. Case, *The Testing Column, Men and Women: Differences in Performance on the MBE*, 75 B. EXAMINER 44, 44 (May 2006).

115. BEST PRACTICES, *supra* note 6, at vii.

116. Linda Stewart Dalianis, *Admission to the Bar in Northern New England: An Unprecedented-But Modest Proposal*, 67 B. EXAMINER 33, 33-34 (May 1998).

presidents of the bars of the three states, to discuss the implications of the MacCrate Report for improving competence in the legal profession.<sup>117</sup> The upshot of the meeting was the creation of a Tri-State Task Force on Bar Admissions consisting of members of the judiciary, law school deans, bar presidents, bar examiners, and other community leaders.<sup>118</sup>

The members of the Tri-State Task Force on Bar Admissions were united in their belief that to improve lawyer competence, new lawyers should be provided with practical education that would allow them to practice in the region.<sup>119</sup> Initially, the task force decided that before admission to the bar, an applicant had to attend and pass a transitional comprehensive education program of several weeks duration.<sup>120</sup> While a feasibility study was authorized by the justices of all three states, the study was never completed due to budgetary and other problems.<sup>121</sup> Over time, this idea of transitional education morphed into what is now known as the Daniel Webster Scholar Honors Program.<sup>122</sup>

The Daniel Webster Scholar Honors Program was the brainchild of Senior Associate Justice Linda S. Dalianis of the New Hampshire Supreme Court.<sup>123</sup> She believed, after serving as a trial judge for more than twenty years and a state Supreme Court justice for several additional years, that “there must be a better way to prepare students to practice law.”<sup>124</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, Pierce Law.<sup>125</sup>

The committee spent two years researching and brainstorming ways to implement such a program.<sup>126</sup> In seeking to create an alternative to the bar exam that would actually improve the quality of new lawyers, the committee was

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117. See *id.* at 34; see also Hon. Linda Stewart Dalianis, *Crossing the Connecticut River: Reciprocal Admission in New Hampshire and Vermont*, 72 B. EXAMINER 1, 1 (February 2003).

118. Dalianis, *supra* note 116, at 34.

119. *Id.*

120. *Id.* at 35.

121. Dalianis, *supra* note 117, at 1.

122. Elizabeth Walters, *Pierce Law Launches New Daniel Webster Scholar Program*, CONCORD MONITOR, Apr. 18, 2006, at B1.

123. Katherine Mangan, *N.H. Allows Law Students to Demonstrate Court Skills in Lieu of Bar Exam*, THE CHRON. OF HIGHER EDUC., Jul. 4, 2008, at 8.

124. *Id.*

125. Hon. Linda S. Dalianis & Sophie M. Sparrow, *New Hampshire’s Performance-Based Variant of the Bar Examination: The Daniel Webster Scholar Program*, 74 B. EXAMINER 23, 26 n.2 (Nov. 2005); see John D. Hutson, *Preparing Law Students to Become Better Lawyers, Quicker: Franklin Pierce’s Webster Scholars Program*, 37 U. TOL. L. REV. 103 (Fall 2005); see also Ray Duckler, *Law in the Real World: Franklin Pierce’s Daniel Webster Scholar Program Breaks New Ground*, CONCORD MONITOR (May 18, 2008), at B1. The committee Justice Dalianis chaired was composed of: fellow Associate Justice James E. Duggan, who was previously a law professor and acting dean of Pierce Law; Frederick J. Coolbroth, Chair of the New Hampshire Board of Bar Examiners; Bruce W. Felmlly and Martha Van Oot, former presidents of the New Hampshire Bar Association; Lawrence A. Vogelmann, member of the New Hampshire Board of Bar Examiners and former clinical professor; John D. Hutson, dean of Pierce Law; and Sophie M. Sparrow, also a professor at Pierce Law. Dalianis & Sparrow, *supra* note 125, at 26 n.2.

126. Dalianis & Sparrow, *supra* note 125, at 25.

dedicated to “incorporat[ing] the MacCrate factors at every step along the way.”<sup>127</sup> Eventually the committee drafted the following mission statement:

The Daniel Webster Scholar Program shall be established as an honors program at Franklin Pierce Law Center. The Program will significantly increase practical experience, supplementing learning in law school to reflect the reality of today’s practice. Upon completion, Webster scholars will: know how to advise clients; know how to use existing resources; be well-versed in the substantive law; and, have insights and judgment that usually develop after being in practice for some years. The Webster Program seeks to add value and bridge the gap between education and practice by focusing upon the ten fundamental skills and four fundamental values described in the MacCrate report. The goal is to make new lawyers better, sooner. Because students who have successfully completed the Webster Program will have demonstrated core competencies required to practice law, Webster Scholars will not be required to take . . . the State Bar Examination in order to be admitted to the Bar in New Hampshire.<sup>128</sup>

When deciding how to make the program a reality, the committee began by examining what courses Pierce Law then offered, what courses it did not yet offer, and what courses might be necessary to qualify someone to pass the bar.<sup>129</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; Wills, Trusts and Estate Practice.”<sup>130</sup> Additionally, the committee decided to offer program participants practice courses that would be small, emphasize the MacCrate skills and values, and be taught in the context of real life.<sup>131</sup>

Because the program was also intended to be an alternative bar exam, methods of assessment were a primary consideration. The committee determined that each 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, direct and cross examinations, conducting a mediation, or interviewing a client.”<sup>132</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>133</sup> In May 2005, co-author John Burwell Garvey was named the program’s first director.<sup>134</sup> The program opened to students in January 2006,<sup>135</sup> and graduated its first class of thirteen scholars<sup>136</sup> in May 2008.<sup>137</sup>

127. Hutson, *supra* note 125, at 103.

128. *Id.* at 104–05.

129. *Id.* at 105.

130. *Id.* at 106.

131. *Id.*

132. *Id.*

133. Dalianis & Sparrow, *supra* note 125, at 26. The class of 2011 will be the first class to participate outside of the pilot phase of the program. *Id.*

134. Press Release, N.H. Supreme Court, Concord Lawyer John Garvey to Direct New Webster Scholars at Pierce Law Ctr. (May 12, 2005), <http://www.courts.state.nh.us/press/garvey.htm>.

## B. Overview of the Program<sup>138</sup>

The stated mission of the Daniel Webster Scholar Honors 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, which prepares law students for the awesome responsibility of representing others. As recommended by the MacCrate Report, the program is a collaborative effort, which includes the New Hampshire Supreme Court, the New Hampshire Board of Bar Examiners, the New Hampshire Bar Association and Pierce Law.

To keep the program sufficiently small and flexible during this developmental phase, it is currently limited to fifteen students per class. Based upon its early success, however, the current goal is that it be available to all qualified applicants by 2010. Students apply to the program in March of their first year of law school and are selected in the June following their first year.<sup>139</sup> Selection is based upon overall ability to succeed in the program, which includes evaluation of academic, professional and interpersonal skills.<sup>140</sup>

Program participants must meet all of the law school’s requirements for graduation, in addition to requirements that are specific to the Daniel Webster Scholar Honors Program. During each semester, in addition to electives, scholars must take specifically designed Daniel Webster Scholar (DWS) courses, which generally involve substantial simulation, including: Pretrial Advocacy; Trial Advocacy; Negotiations; a miniseries that exposes them to Family Law, Law Office Management, Commercial Paper (Articles 3 and 9) and Conflicts of Law; Business Transactions; and a capstone course that integrates and builds upon the skills they have already learned through the program. Each student must also take four additional courses that ordinarily would be elective: Business Associations; Evidence; Wills, Trusts & Estates; and Personal Taxation. Moreover, each student must have at least six credit hours of clinical and/or

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135. *Id.*

136. Thirteen of the original fifteen scholars finished the program.

137. Mangan, *supra* note 123, at 8.

138. This section is based upon a presentation that co-author Garvey gave in 2008 at Georgia State College of Law. See John Burwell Garvey, *Making Law Students Client-Ready: A New Model of Legal Education*, <http://piercelaw.edu/websterscholar/description.php>. A podcast of co-author Garvey’s oral presentation is available at [http://law.gsu.edu/FutureOfLegalEducationConference/Program\(Final\).php](http://law.gsu.edu/FutureOfLegalEducationConference/Program(Final).php). Detailed information about the Daniel Webster Scholar Honors Program can be found on the Pierce Law website. See *Daniel Webster Scholar Honors Program*, <http://www.piercelaw.edu/websterscholar/> (last visited Feb. 21, 2009).

139. June selection is a new procedure; prior classes were selected in April. This program, however, is constantly evolving. Upon reflection, the selection committee concluded that more information would be available by waiting until June to make final selections.

140. All applicants are interviewed by the director and complete an application. See Application for Program Admission, <https://forms.piercelaw.edu/trusted/forms/webster/websterapp.cfm> (last visited Feb. 21, 2009). The application requires two writing samples from the student’s first year course in writing skills (so that the topics are common to all), a recommendation by a professor and up to two other references, a brief essay on why the student is applying, and an authorization allowing the director to review all of the student’s school files, including the student’s original law school application. *Id.*

externship experience. Following the miniseries exposure to Family Law, each student must work at least twelve pro bono<sup>141</sup> hours at the Legal Advice and Referral Center (LARC) providing telephonic advice to low-income clients.<sup>142</sup> Students must obtain at least a B- in all DWS courses and at least a 3.0 cumulative school transcript grade point average on a 4.0 scale. Scholars who successfully complete the two-year program and who pass the Multi-State Professional Responsibility Exam and the character and fitness check 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>143</sup>

### 1. Assessment

Formative, reflective, and summative assessment is an integral part of the program, both as a critical aspect of the learning environment and as a means of measuring outcomes.<sup>144</sup> Beginning with an all-day orientation workshop, new Webster Scholars are informed of the various goals for assessment and are provided with the outcomes rubric for Pretrial Advocacy, their first DWS Course. The first page of the current Pretrial Advocacy rubric is shown below:

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141. 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.” CARNEGIE REPORT, *supra* note 3, at 138–39.

142. Due to staffing cuts necessitated by its budget, LARC cannot adequately supervise the telephonic advice portion of the LARC experience this year. Although students will still be providing pro bono assistance to LARC, they are also being trained to participate in a landlord and tenant “swat team” through the New Hampshire Bar Association’s Pro Bono Referral Program, which represents low income tenants in landlord/tenant matters, including evictions.

143. See N.H. SUP. CT. R. 42(13).

144. See MACCRATE REPORT, *supra* note 1, at 331; CARNEGIE REPORT, *supra* note 3, at 171; BEST PRACTICES, *supra* note 6, at 6–7. For a description of formative and summative assessments, see *supra* note 105.

## PRETRIAL ADVOCACY: SUMMATIVE EVALUATION

## Assessing Performance of Webster Scholars According to MacCrate Skills

<b>Fundamental Lawyering Skill (MacCrate)</b>	<i>Examples of "Client Ready" Performances by Student ***</i>	<i>Project(s) Demonstrating Skill</i>
<b>1. Problem solving</b> 1. Identifies and diagnoses legal problems 2. Generates alternative solutions and strategies 3. Develops a plan of action 4. Implements a plan of action 5. Keeps the planning process open to new information and ideas	<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>

In addition to the MacCrate skills and values, the rubric uses information from a study conducted by University of California at Berkeley Professors Marjorie M. Shultz and Sheldon Zedeck, in which they identify twenty-six factors related to effective lawyering and the behaviors associated with each factor.<sup>145</sup> Other rubrics are in development. Additionally, a master document is being created that lists all of the courses in the program and identifies the MacCrate skills and values each course is intended to teach.

DWS courses are graded based upon individual performance as measured against predetermined desirable outcomes, rather than upon a curve.<sup>146</sup> In keeping with all of the assessment recommendations discussed above, students are assessed by faculty, judges, lawyers, court reporters, lay people, bar

\*\*\* Language primarily based upon other work performed on a grant to the principal investigators, Marjorie Shultz and Sheldon Zedeck, from the Law School Admissions Council.

145. Marjorie M. Shultz & Sheldon Zedeck, Phase I Final Report: Identification and Development of Predictors for Successful Lawyering (2003) (unpublished manuscript, on file with authors); see Jonathan D. Glater, *Study Offers a New Test of Potential Lawyers*, N.Y. TIMES, Mar. 11, 2009, at A22, available at <http://www.nytimes.com/2009/03/11/education/11lsat.html?scp=1&sq=Sheldon%20Zedeck&st=cse>.

146. See CARNegie REPORT, *supra* note 3, at 170; BEST PRACTICES, *supra* note 6, at 181–82.

examiners, peers, and themselves.<sup>147</sup> Scholars keep a journal and, for each course, reflect upon their strengths and weaknesses, relating to and identifying the MacCrate skills and values in their work.<sup>148</sup> At the conclusion of each DWS course, scholars also write a reflective paper, again using the MacCrate skills and values against which to evaluate themselves.<sup>149</sup> The students identify which MacCrate skills and values were implicated during the course; they then discuss their own perceived strengths and weaknesses as they relate to the identified MacCrate skills and values, and reflect upon how they intend to improve going forward. In addition to enabling students to develop the life-long skill of self-reflection, the reflective paper requires students to become familiar with the MacCrate skills and values, thus helping them understand the requirements for competent practice.<sup>150</sup>

Consistent with the recommendations in the Carnegie Report and Best Practices,<sup>151</sup> scholars have portfolios of their work compiled throughout their participation in the program. The portfolio includes papers, legal documents the scholar has drafted, exams, self-reflective analysis based upon the MacCrate skills and values, peer evaluations, teacher evaluations, various videos of student performances in simulated settings, and the like.<sup>152</sup> Every semester, each portfolio is evaluated by a bar examiner, who provides written comments to the student.<sup>153</sup> In the spring semester of each year, every scholar meets with and is questioned by a bar examiner about the portfolio.<sup>154</sup> This repeated review and reflection from multiple sources “integrate[s] the teaching of knowledge, skills and values,”<sup>155</sup> rather than as separate subjects addressed in separate courses.<sup>156</sup>

In the summer of 2008, the program added an additional assessment component, by training eight standardized clients. “Standardized clients” are actors trained to assess a student’s skill in communicating with clients according to standardized criteria.<sup>157</sup> Each actor is given a persona, using a carefully prepared simulation.<sup>158</sup> Although the role is not “scripted,” the actors are trained to stay in character, based upon the detailed scenario that is provided to them. Each is then interviewed by a student, and acts like an authentic client during the interview. Each interview will vary, depending upon how the student conducts

147. See BEST PRACTICES, *supra* note 6, at 183–84; MACCRATE REPORT, *supra* note 1, at 331.

148. MACCRATE REPORT, *supra* note 1, at 135–221.

149. *Id.*

150. *Id.* at 127.

151. See CARNEGIE REPORT, *supra* note 3, at 174; BEST PRACTICES, *supra* note 6, at 196–97.

152. As with everything during the early years of the program, the nature and exact content of the portfolios are evolving based upon experience gained through each program cycle. Although the program will always be subject to assessment and improvement, it is expected that the sheer volume of refinements will be reduced with time. This is already proving to be the case.

153. The written comments from the examiners were added as a new feature in the fall of 2008.

154. The first class of Webster Scholars met only once in person with a bar examiner, but their portfolios were examined every semester. Currently, the Webster Scholars meet each spring with a bar examiner and their portfolios are examined every semester.

155. BEST PRACTICES, *supra* note 6, at vii.

156. *Id.*

157. See Karen Barton et al., *Valuing What Clients Think: Standardized Clients and the Assessment of Communicative Competence*, 13 CLINICAL L. REV. 1, 3–5 (Fall 2006).

158. See *id.*

it and what questions are asked. According to the standardized criteria, each client then evaluates the student's interviewing skills. Standardized clients are similar to standardized patients used in medical schools.<sup>159</sup>

The standardized clients used in the Daniel Webster Scholar Honors Program were trained by Paul Maharg and Karen Barton of the Glasgow Graduate School of Law. Co-author Garvey is working with Professors Maharg and Barton, as well as with Clark Cunningham and Greg Jones of Georgia State University School of Law, in connection with this aspect of the program. Going forward, the standardized clients will be trained and coordinated by David Cleveland, a Dartmouth graduate, former Broadway actor, and local director, who participated in the initial training.

Standardized clients will enable students to learn important client relationship skills, particularly those associated with client counseling, and will allow the Daniel Webster Scholar Honors Program to assess student performance of those skills. Professors Maharg, Barton, Cunningham and Jones have already published on the validity of this form of assessment as used at the Glasgow Graduate School of Law.<sup>160</sup> The Daniel Webster Scholar Honors Program will be carrying this work forward and expanding on it. In May of 2009, through the Daniel Webster Scholar Honors Program, standardized clients will be used for the first time in the United States as a bar competency criteria.<sup>161</sup>

Additionally, co-author Garvey is working with Professors Maharg, Barton, and Cunningham to apply and integrate the Simulated Learning Environment (SIMPLE)<sup>162</sup> software as a platform for running and assessing simulations. Developed by Maharg, Barton and others, and already operating in the United Kingdom,<sup>163</sup> this transactional software is a vibrant learning opportunity and can provide an economy of scale for running simulations as the number of Webster Scholars increases.

## 2. *A Two-Year Bar Exam*<sup>164</sup>

While it is beyond the scope of this article to discuss in depth the need for alternatives to the traditional two-day bar examination<sup>165</sup> and the value of the

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159. *Id.*

160. *Id.*

161. Experiments are already underway to test and compare Webster Scholars with a cohort of non-Webster Scholars.

162. See The SIMPLE Project, Project Summary, <http://130.159.238.105/?q=node/20> (last visited Feb. 21, 2009).

163. See *id.*

164. The Daniel Webster Scholar program assesses the competencies of students to practice law over a two-year period. In this way it is like a two-year bar exam, instead of the traditional two-day bar exam. Upon graduating from the program, scholars are automatically eligible for admission to the New Hampshire State Bar, without having to take the bar exam.

165. For sources discussing critiques of and alternatives to the bar exam, see Society of American Law Teachers [hereinafter SALT], *Potential Alternatives to the Existing Bar Exam 6-7* (undated and unpublished manuscript), available at <http://www.saltlaw.org/~salt2007/files/uploads/barexamalternatives.doc>; see also Trujillo, *supra* note 114; Kristen Booth Glen, *Thinking Out of the Bar Exam Box: A Proposal to "MacCrate" Entry to the Profession*, 23 PACE L. REV. 343 (Spring 2003). The Carnegie-affiliated LEARN, in identifying the thirteen current projects in education reform it proposes to study, has noted as well that "current standard form of the bar examination in most

Daniel Webster Scholar Honors Program as a viable alternative,<sup>166</sup> it is worth noting that the assessment piece of the Program uses outcome measures recommended by Best Practices,<sup>167</sup> the July 2008 Final Report of the Outcome Measures Committee of the ABA Section of Legal Education and Admissions to the Bar,<sup>168</sup> and the Society of American Law Teachers (SALT).<sup>169</sup> Given these assessments, students that graduate from the program gain admission to the bar and are not required to take the traditional two-day state bar exam.

### 3. *The Actual Experience*<sup>170</sup>

As noted above, the Daniel Webster Scholar Honors Program makes adjustments after each learning cycle. To provide a flavor for the actual experience, we will chronicle the program as it currently exists. Those interested in comparing the current details to the experience of the first class may compare an earlier description.<sup>171</sup>

The scholars have an intensive first year in the program, which begins in the fall of their 2L year. In addition to their regular classes, they participate in simulations and have real client contact. That fall, they take Pretrial Advocacy, which divides them into two law firms to “litigate” a Family and Medical Leave Act (FMLA) case in mock federal court. As in the actual case upon which the simulation is based, issues of ethics and professional behavior are integrated into the fact pattern,<sup>172</sup> meeting the third apprenticeship discussed in the Carnegie

states is ripe for reform,” and that “[a]lthough the process of effecting change in bar admissions is a formidable one, the impact of the bar examination on the nature of legal education is too powerful to ignore.” LEARN Outline, *supra* note 111.

166. LEARN has identified the Daniel Webster Scholar Honors Program’s assessment as one of the thirteen projects it will study over the coming years. See LEARN Outline, *supra* note 111. LEARN has described this aspect of the program thusly: “The State of New Hampshire recently adopted a model, in conjunction with the state’s only law school, allowing students to choose a two-year bar examination, administered over the course of a student’s legal education. One purpose of this radically modified bar examination is to find vehicles to assess students’ competencies ‘in professional skills and judgment through simulated, clinical and externship settings.’ LEARN proposes to support and study the development of the simulated client protocols that are being developed in New Hampshire’s pathbreaking program.” *Id.*

167. See BEST PRACTICES, *supra* note 6, at 175–96.

168. AMERICAN BAR ASS’N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, REPORT OF THE OUTCOME MEASURES COMMITTEE (2008), available at <http://www.abanet.org/legaled/committees/subcomm/Outcome%20Measures%20Final%20Report.pdf>.

169. Statement from SALT to ABA Outcome Measures Committee (Feb. 1, 2008), [http://www.abanet.org/legaled/committees/subcomm/Outcome%20Measures\\_comments\\_SALT%20Feb%202008.pdf](http://www.abanet.org/legaled/committees/subcomm/Outcome%20Measures_comments_SALT%20Feb%202008.pdf).

170. See Garvey Podcast, *supra* note 138.

171. See *id.*

172. In the course of discovery, there are numerous issues which arise regarding professionalism—continuances, working together to create a discovery plan, scheduling of witnesses, to name a few. In the course of responding to document requests, both firms have to make difficult production decisions about documents that may be responsive to the discovery requests. Also, both sides discover for the first time during a deposition that the witness did not produce all requested documents in advance of the deposition. Because this witness is under the control of the defendant corporation, this creates a real-time ethical dilemma for the defending attorneys and a professional decision for the deposing attorneys as to how they choose to behave in light of the disclosure. These events are later debriefed by the firms when there is time to reflect.

Report.<sup>173</sup> Each firm has an experienced litigator/professor in the role of “senior partner,” and the 2L scholars are “junior associates.” There are also two 3L scholars in each firm who serve as “senior associates,” providing the kind of assistance one would normally expect from a teaching assistant staying in role as a senior associate. Standardized clients play the roles of the parties and various witnesses.

Sometimes working in small groups and sometimes working alone, the junior associates: interview clients and witnesses; prepare or answer a complaint; prepare and answer interrogatories; take and defend a deposition with a real court reporter who records it in real-time and provides a transcript; prepare a motion or an objection to a motion for summary judgment which is then argued before a real judge in the judge’s courtroom; and prepare a post-discovery evaluation of the case for the senior partner. Throughout the semester, the junior associates also submit timesheets to their senior partners.

The junior associates receive constructive feedback from their senior partners, senior associates, and from each other, as well as from court reporters, judges, attorneys, standardized clients and witnesses.<sup>174</sup> They are also able to observe and critique their taped deposition and oral argument performances. At the end of the course, each scholar prepares a reflective paper in which, using the MacCrate skills and values as a guide, the student identifies those skills and values that were addressed in the course, reflects upon the student’s own perceived strengths and weaknesses, and discusses how the student plans to cultivate strengths and improve weaknesses.

In the spring 2L semester, the scholars continue their FMLA case in Trial Advocacy. Using the interrogatories and deposition transcripts they obtained in the first semester, they try their hand at controlling the witnesses in the trial setting. They also participate in a simulated criminal trial from beginning to end, complete with a student jury that deliberates. Again, scholars are taped so that they can watch their performance, and they receive feedback from peers, professors, lawyers, judges, jurors and witnesses. Their reflective papers are submitted when the course is completed.

Also during the spring 2L semester, the scholars take an intensive seminar on Negotiations, where they role-play in a variety of settings in cases primarily involving business and intellectual property issues. As with the Pretrial Advocacy and Trial Advocacy classes, student performances are often taped so that scholars can observe and critique themselves. They also receive feedback from their peers and professors as well as from practitioners who observe sessions. In addition to the negotiation problems that are designed by the professors, the scholars are asked to find and analyze two problems from current events; the class then chooses one of those problems to negotiate. As an example, the 2008 scholars chose to negotiate a possible resolution to *Morse v. Frederick*,<sup>175</sup> the public school case where a student was suspended for displaying a sign

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173. CARNegie REPORT, *supra* note 3, at 28.

174. The students receive an added benefit by seeing practicing attorneys and sitting judges volunteer their time to the program; the Webster Scholars learn from their example the importance of giving back to the profession from their example.

175. 551 U.S. 393 (2007).

which said, “Bong Hits 4 Jesus.” At the time, the case was pending before the United States Supreme Court. A simulation was created, and the scholars were assigned to play various roles, including parents, student, principal, and lawyer. Through negotiation, the parties arrived 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.

Additionally, in the second semester of their 2L year, the students receive five weeks of training in Family Law as part of a Miniseries Course—a number of short course modules that expose them to numerous areas of practice. They subsequently participate at the LARC, learning how to interview and provide advice to low-income clients, while LARC staff members provide training, supervision and feedback.<sup>176</sup> This experience provides valuable client contact and integrates the concept of the lawyer as volunteer-citizen. Through this experience, the 2008 class of scholars helped over ninety clients. At the conclusion of this experience, students again submit reflective papers.

The Miniseries Course also provides exposure to law office management. Students study the business side of law practice, form small firms, and develop business plans. The Miniseries also exposes students to conflicts of laws, secured transactions, and negotiable instruments.

In the fall of their 3L year, scholars take Business Transactions, which focuses upon the processes by which businesses are formed, financed, operated, altered, and sold. Unlike a typical law school business course, the scholars are again involved in simulations. They create numerous documents and receive substantial feedback. They are asked individually to issue-spot in complex fact patterns, and they then analyze the fact patterns as a group. As with the other courses, they receive review from their peers and from their professor. In addition, they integrate and build upon the negotiations experience of the previous semester, and negotiate various issues, including an executive employment agreement and a tax matter.

Then, in the spring of their 3L year, the scholars take the Capstone Course. In this course, as in the real world, students are assigned roles in various factual situations that involve multiple areas of substantive law, without being first guided as to what issues are relevant. The course primarily focuses upon the client/lawyer relationship and developing the listening, analytical and counseling skills necessary to be a competent lawyer. Clients are then interviewed, necessary research is performed, and advice is given. Students observe and provide feedback to each other using the same assessment forms that the standardized clients will later use. This familiarizes the students with what is being tested and makes them more conscious of the skills necessary to interview a client successfully.

Additionally, in the spring, 3L students serve as a focus group for practicing attorneys involved in a real pending case. The attorneys ask the students for feedback about their theories of the case and the like. This experience allows students to view litigation from the eyes of a prospective juror or other decision

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176. See *supra* note 144 and accompanying text.

maker. And toward the end of the semester, students interview standardized clients, who provide written assessments based upon a standardized form. This form is nearly identical to the one used at Glasgow Graduate School of Law.<sup>177</sup> This year, for the first time, a satisfactory score on the standardized client assessment is necessary to pass the alternative bar exam provided through the program.<sup>178</sup>

Finally, during the last semester of the four-semester program, scholars participate in clinical courses and/or externships—including court clerkships. These activities involve extensive feedback from supervising professors and outside attorneys. Students prepare reflective papers about these experiences. The experience culminates with their final interview with a bar examiner during which the bar examiner and scholar review the scholar's portfolio and the scholar answers any questions posed by the bar examiner.

#### 4. *Evaluations of the Program*

The program will graduate its second class in May of 2009. We recognize that it is still in the early stages, but feedback has been positive. Experts in legal education agree that the Daniel Webster Scholar Honors Program is noteworthy.<sup>179</sup> Lloyd Bond, one of the authors of the Carnegie Report, has said:

[The Daniel Webster Scholar Honors Program] fuses instruction and assessment in the most intimate and integrated way that I have ever seen. Two years of it. It's two years of what we actually recommended in [the Carnegie Report], integrated in such a way that truly instruction and assessment are indistinguishable.<sup>180</sup>

Additionally, SALT encouraged replication of the program,<sup>181</sup> and LEARN proposed to support and study the program's use of simulated client protocols.<sup>182</sup> We are gratified by this early success; we believe, however, that the program's ultimate contribution to broad-based reform will depend upon the extent to which it is expanded and replicated. Below, we provide a recipe for developing similar programs.

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177. See Barton et al., *supra* note 157.

178. All interviews are taped. If a student does not receive a passing mark, the interview will be examined by the director and by the standardized client coordinator, who have the authority to overturn an adverse decision. Students who do not pass the interview the first time will have an opportunity to take it again.

179. See SALT, *supra* note 165 (“[Pierce Law], through its Daniel Webster Scholar Program, is developing and testing assessment tools for a wide range of lawyering skills. That program, and others like it, should serve as a resource for this Committee.”).

180. Lloyd Bond, Consulting Scholar, The Carnegie Found. for the Advancement of Teaching, Remarks Before the Carnegie Foundation/Legal Education Reform Project Assessment Workshop at New York University School of Law (Jun. 25, 2008).

181. The SALT Committee on Issues in Legal Education, chaired by Professor Andrea A. Curcio of Georgia State University, has recommended that the Daniel Webster Scholar Honors Program be replicated by other states.

182. See *supra* notes 113, 169 and accompanying text.

### III. MOVING FORWARD: REPLICATING THE DANIEL WEBSTER SCHOLAR HONORS PROGRAM

We recognize that change can be a challenge in any institution, and we do not presume to tell schools exactly how to implement their own Daniel Webster Scholar Honors Program. As we described above, developing the synergy for creating the program was quite complex, and involved the buy-in of numerous stakeholders—including the New Hampshire Supreme Court, the New Hampshire Bar Examiners, the New Hampshire Bar, as well as Pierce Law administration, faculty, staff, and students. From that experience, we offer the following recommendations for creating a program like the Daniel Webster Scholar Honors Program:

1. Draft a mission statement. Using the MacCrate Report,<sup>183</sup> the Carnegie Report,<sup>184</sup> and Best Practices<sup>185</sup> as guides, identify the goals for students to reach before they graduate.

2. Review your school's current curriculum to assess the extent to which it addresses the goals identified above. If possible, survey the faculty and ask professors to describe their courses and the skills and values addressed in each course. At Pierce Law, the curriculum committee prepared a survey accessible by computer to faculty members. A survey provides important information for the new program and helps to make all faculty members more mindful of what they are teaching and why.

3. Consider what you would like to teach in the new program, and how you would like to integrate it into the overall curriculum. Because the program attempts to integrate the educational experience in increasingly complex layers, it is important to be intentional about the educational sequencing. For example, the Webster Scholars must take Business Associations and Personal Tax in their 2L year because they need the information to take full advantage of the learning opportunities in the DWS Business Transactions course in their 3L year.

4. Identify all available resources in your law school, legal community, and community at large. For example: (a) Identify professors with substantial practice experience who are willing to participate, and catalogue that experience; (b) Identify programs in the school which already exist, such as clinics, externship programs and moot courts, which can be integrated into an overall program; (c) Announce the program in your alumni magazine and on the web, and seek alumni volunteers; (d) Announce the program in the state and local bar publications, and seek volunteers; (e) Use contacts to request volunteers personally. This includes judges, lawyers, court reporters, lay people and paralegals. You are only limited by your imagination and enthusiasm, and many people enjoy participating as volunteers in the law school setting.

5. Design your courses, intentionally weaving them together so that they create a seamless fabric. Carry simulations forward from one course to the next, so that as the courses progress, you build additional complexity. This allows the students to build upon their skills as they go from exposure, to competency, to

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183. See MACCRATE REPORT, *supra* note 1.

184. See CARNEGIE REPORT, *supra* note 3.

185. See BEST PRACTICES, *supra* note 6.

mastery. For example, we carry the FMLA fact pattern forward from Pretrial Advocacy to Trial Advocacy so students see how the pieces fit together, and their skills and insights improve in the process through repetition. When they try the FMLA case in Trial Advocacy, students may discover how difficult it is to control a witness if they gained only vague questions and answers from a deposition taken the prior semester in Pretrial Advocacy.

When designing courses, take advantage of resources that are already available. Visit our program. We have already created simulations that others may use. Some texts now offer electronic files with case documents. When the SIMPLE software simulations are developed they should be readily transferable, and schools using the technology should be able to share programs that they create.

6. Select your faculty. This is a critical task because not everyone has the energy, teaching skill, and patience to run simulations and provide formative assessments. Experienced adjuncts can be very useful, but inexperienced adjuncts need substantial preparation and training. If possible, have a new adjunct co-teach the first time with a teacher who is experienced with the teaching method.

7. Communicate clearly and constantly with the faculty as you develop the program. Change can be threatening to some. Seek input and ideas, and show skeptics that the program provides added value. If they are not already familiar with the MacCrate Report, the Carnegie Report, and Best Practices, educate them. You need faculty buy-in for the program to flourish. This should be easier now, with the publication of the ABA Section of Legal Education and Admissions to the Bar, Report of the Outcome Measures Committee, which makes it clear that outcomes assessment will be part of accreditation.<sup>186</sup>

8. Communicate with the students. Explain the program on the web, in person, and in writing. Have meetings where you offer pizza. Get them excited. Have a plan.

9. Create an application.<sup>187</sup> Make it straightforward. You can effectively evaluate the applicants if you conduct personal interviews and obtain writing samples, references from 1L professors, access to student school files.

10. Have a selection committee – not just an individual. We use the director and four professors of 1Ls because they have personally observed the students in the learning environment.

11. At least initially, limit enrollment. We have found that fifteen students per class are manageable, although our plan is to expand and enroll all qualifying students by 2011.

12. As for the bar licensing part of this program, the school will need to approach the licensing entity in its state to see if there is any interest. We are happy to offer case-specific suggestions and guidance.

While this is only intended to serve as an overview, it does demonstrate that the program can be easily replicated on a modest budget and with a lot of energy. We have implemented the pilot phase with one full-time director, who

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186. AMERICAN BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, *supra* note 168.

187. *See supra* note 142 and accompanying text.

also teaches at least nine credit hours during the year, supervises the other DWS courses, and has continued a part-time practice as an arbitrator and mediator.<sup>188</sup> The judges, lawyers, and court reporters have all been excited to participate as volunteers.<sup>189</sup> The standardized clients are paid fifteen dollars per hour. Implementation on a larger scale will be more expensive and will require more faculty effort, but the SIMPLE simulation software will provide for an economy of scale. We are confident that the program can be replicated and expanded, and we encourage others to do so.

### CONCLUSION

We agree with those who opine that “[l]aw schools have a moral and ethical obligation to society—and, to an even greater degree, to their students—to adequately prepare the students to succeed as professionals.”<sup>190</sup> After many thousands of hours of analysis from different interest groups, the overwhelming consensus is that law schools can and should do much better in this regard.<sup>191</sup> Law schools train students who will represent clients and become fiduciaries. As such, law schools are the fiduciaries of the future fiduciaries. Law schools have an obligation to make students client-ready, and to make legal education a means—and not a bar—to greater equality in the profession. Change is not only necessary, but, as the Daniel Webster Scholar Honors Program and other initiatives around the country demonstrate, possible.

We conclude with the very recent exhortation from LEARN:

In many ways, legal education has come a long way since [the 1940’s], but in many other ways it has not. The stars have aligned now to create a prime moment of opportunity for reflective, thoughtful, meaningful and lasting change. But we need to seize the moment . . . . Over the next 20 years more than one million future lawyers will graduate from America’s law schools. These students will be the leaders of the next generation and will include lawyers of all stripes as well as heads of state, legislators, judges and justices, business and world leaders. LEARN believes that we can significantly improve the education these future lawyers and leaders receive in ways that will yield great benefits. This is an extraordinary moment of opportunity. We must not let it pass.<sup>192</sup>

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188. Such mediations and arbitrations now take place at the school whenever the parties agree, which allows students to observe them.

189. The court reporters have donated eight “real time” depositions per year, at a value of many thousands of dollars, but we have more volunteers each year than we need. The judges use their own courtrooms, and court personnel consistently enjoy the experience. Lawyers consistently volunteer whenever available.

190. Trujillo, *supra* note 114, at 70; *see also* Garvey Podcast, *supra* note 138.

191. BEST PRACTICES, *supra* note 6, at 1-5.

192. LEARN Outline, *supra* note 111.