

AHEAD OF THE CURVE

TURNING LAW STUDENTS INTO LAWYERS

*A Study of the Daniel Webster Scholar Honors Program
at the University of New Hampshire School of Law*





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New Hampshire School of Law

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INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM



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IAALS, the Institute for the Advancement of the American Legal System, is a national, independent research center at the University of Denver dedicated to facilitating continuous improvement and advancing excellence in the American legal system. We are a “think tank” that goes one step further—we are practical and solution-oriented. Our mission is to forge innovative solutions to problems in our system in collaboration with the best minds in the country. By leveraging a unique blend of empirical and legal research, innovative solutions, broad-based collaboration, communications, and ongoing measurement in strategically selected, high-impact areas, IAALS is empowering others with the knowledge, models, and will to advance a more accessible, efficient, and accountable American legal system.

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Educating Tomorrow's Lawyers is an initiative of IAALS dedicated to aligning legal education with the needs of an evolving profession. Working with a Consortium of law schools and a network of leaders from both law schools and the legal profession, *Educating Tomorrow's Lawyers* develops solutions to support effective models of legal education.

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FOREWORD

BY LLOYD BOND, PH.D., AND WILLIAM M. SULLIVAN, PH.D.¹

Shortly after the publication of the Carnegie Foundation's *Educating Lawyers: Preparation for the Profession of Law* in 2007, John Garvey visited the foundation and spent an afternoon describing for us the newly established Daniel Webster Scholar Honors Program, which he directs at the University of New Hampshire School of Law. Professor Garvey stated that he believed the program comes close, both in its purpose and in its actual instantiation, to the vision we had of how legal education might be improved. We agree.

In *Educating Lawyers*, we called for a greater degree of intentional integration among what we designated the three “apprenticeships” or key components of legal education: the teaching of law as a mode of thinking, the development of practical competence, and the fostering of professional commitments and identity. We were immediately struck by the resonance between our recommendations and the enterprise on which John Garvey and his colleagues were embarked at New Hampshire. So, we were delighted when, several years later, the opportunity arose to study the program more rigorously and in depth.

In April 2013, we conducted a series of focus groups over two-and-a-half days at the University of New Hampshire to learn more about the program and its role in developing lawyers. The transcript and our resulting summary of events gave rise to this report, undertaken by IAALS and *Educating Tomorrow's Lawyers*, as part of its expressed mission to identify innovative models of legal education that ensure knowledgeable, ethical, and practice-ready professionals. In the paper, Gerkman and Harman make a powerful and convincing case that the program represents a landmark innovation in the preparation of lawyers. In it, they detail the instructional elements of the program, the intense exposure of students to the actual practice of law, the powerful innovations in formative and reflective assessment, the intimate involvement of the entire state of New Hampshire's legal community, and the acceleration of legal competence that the program fosters in students.

We eagerly endorse the conclusions herein that the Daniel Webster Scholar Honors Program “gives a glimpse of what is possible if we look beyond the limitations of today,” and “that any law schools and bar or bench initiatives taking a critical look at lawyer training should know about the establishment, structure, and success the program has had in positioning its scholars to be ahead of the curve.”

1 Lloyd Bond, Ph.D., was a Senior Scholar (Ret.) of the Carnegie Foundation for the Advancement of Teaching and Professor (Emeritus) at the University of North Carolina, Greensboro. He is a co-author of *Educating Lawyers: Preparation for the Profession of Law* (2007). William M. Sullivan, Ph.D., was a Senior Scholar (Ret.) of the Carnegie Foundation for the Advancement of Teaching. He was a co-founder of *Educating Tomorrow's Lawyers* and served as its first director. He is the lead author of *Educating Lawyers: Preparation for the Profession of Law* (2007).



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EXECUTIVE SUMMARY

In recent years, law schools have been the subject of great scrutiny—by media, by the profession, by law students, and even by legal educators within the schools—about the quality of legal education and training they offer students who will graduate to become tomorrow’s lawyers. There may be disagreement about the severity of the problem and the solutions to the problem, but there can hardly be disagreement that the increasing focus on the quality of legal education is creating more opportunities than ever for innovation in law schools and for building partnerships with the profession to develop improved models of legal education.

When New Hampshire’s law school teamed up with the New Hampshire Supreme Court and the New Hampshire Board of Bar Examiners over a decade ago, a unique program was born. The Daniel Webster Scholar Honors Program at the University of New Hampshire provides a combination of training and assessment over a two-year period that serves as a variant to the two-day bar examination—simply stated, students who participate in the program are evaluated for bar admission based on their performance over a two-year period and do not sit for the traditional bar examination.

But, the success of the program lies not in its relationship to the bar exam. Rather, the success of the program lies in the fact that, on some measures, the students are actually better prepared for the practice of law. The combination of formative and reflective assessment administered in a practice-based context appears to produce better outcomes for students, which ultimately translates to better prepared lawyers.

The two-year program, beginning in the second year of law school, works within a proscribed curriculum that immerses students in experience-based learning settings, and both provides and demands formative, reflective, and summative assessment. The ultimate assessment comes, of course, at the end of the program when student participants are reviewed for bar admission based on their performance over the course of two years.

From the outside, the program seems to have all the right elements for success, but is it actually doing a better job of preparing lawyers for practice and clients? To find out, IAALS worked with an evaluation consulting firm to conduct quantitative and qualitative analysis of existing research to evaluate outcomes of the Daniel Webster Scholar Honors Program. Notably, we learned:

- In focus groups, members of the profession and alumni said they believe that students who graduate from the program are a step ahead of new law school graduates;
- When evaluated based on standardized client interviews, students in the program outperformed lawyers who had been admitted to practice within the last two years; and
- The only significant predictor of standardized client interview performance was whether or not the interviewer participated in the Daniel Webster Scholar Honors Program. Neither LSAT scores nor class rank was significantly predictive of interview performance.

Based on our evaluation, we believe other schools, educators, and jurisdictions can learn from the success of the program. While aspects of the program may be difficult to replicate in larger jurisdictions, full-scale replication is not the only option for schools looking to build upon the success of the program. IAALS believes the program can be unbundled into the key elements—most notably, the combination of formative and reflective assessment in a practice-based context and a focus on collaboration between the academy and the profession. Part of the genius of the program was its collaborative roots. Together, practicing lawyers and law schools can innovate effectively.

The Daniel Webster Scholar Honors Program is ahead of the curve in graduating new lawyers ready to venture into the profession—and others can learn from its success.

INTRODUCTION

Law schools do not often find themselves on the front page of mainstream media sources, but in the last few years it has been happening with increasing regularity. New lawyers and their readiness—or lack of readiness—to move into practice were highlighted on the front page of the New York Times in November 2011.² The article claimed that recent graduates pay as much as \$150,000 for legal educations that do not prepare them to practice law. One recent graduate who went through a post-law school training program at his firm, Drinker Biddle, was quoted with, “What they taught us at this law firm is how to be a lawyer. What they taught us at law school is how to graduate from law school.” It was not the first article of its kind³ and it would not be the last, but it created a firestorm around the question: are law school graduates ready to enter the profession, engage in the practice of law, and serve clients?

It is a good question—and it is a question that many from both the profession and the academy have been asking for some time. In New Hampshire, just over a decade ago, a group of judges, lawyers, and law school administrators decided that the answer was increasingly looking like “no,” but they believed that they could change that—at least for a group of law students who would participate in a two-year program at the University of New Hampshire.

² David Segal, *What They Don't Teach Law Students: Lawyering*, N.Y. TIMES, Nov. 20, 2011, at A1, available at http://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html?pagewanted=all&_r=0.

³ Clark D. Cunningham, *Should American Law Schools Continue to Graduate Lawyers Whom Clients Consider Worthless?* 70 MD. L. REV. 499 (2011), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1805936.

THE DANIEL WEBSTER SCHOLAR HONORS PROGRAM

AT THE UNIVERSITY OF NEW HAMPSHIRE SCHOOL OF LAW

The calls to improve legal education are hardly new. More than two decades ago, a task force of the American Bar Association sought to narrow the perceived gap between the legal profession and the law schools who educate future members of that profession. In its final report, the task force said:

It has long been apparent that American law schools cannot reasonably be expected to shoulder the task of converting even very able students into full-fledged lawyers licensed to handle legal matters. Thus, a gap develops between the expectation and the reality, resulting in complaints and recriminations from legal educators and practicing lawyers.⁴

Best known for its Statement of Skills and Values,⁵ this report, colloquially referred to as the MacCrate Report, “set off a wide-ranging discussion among academics, practitioners, bar examiners, and the judiciary in a variety of contexts.”⁶ Among its many recommendations, the MacCrate Report suggested “[l]icensing authorities, the law schools and the organized bar should engage in continuing dialogue to determine the optimum content, methods and mix of instruction in skills and values in law school, during the licensing process and after admission to practice.”⁷

In response to the publication and its recommendations, representatives from the highest courts in Maine, New Hampshire, and Vermont met with the deans of Vermont Law School, the Franklin Pierce Law Center,⁸ and the University of Maine School of Law, as well as the presidents of the three state bar associations, to discuss the implications of the report for improving legal education in their respective states.

The meeting resulted in 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. The Task Force considered a multi-week transitional comprehensive education program for all bar applicants, which eventually led to the formation of a committee that would create the Daniel Webster Scholar Honors Program (“DWS”).⁹

4 ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM (REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP) 4 (1992) [hereinafter MACCRATE REPORT].

5 *Id.* at 123.

6 Dean Mary Lu Bilek et al., *Twenty Years After the MacCrate Report: A Review of the Current State of the Legal Education Continuum and the Challenges Facing the Academy, Bar, and Judiciary*, A.B.A. SEC. LEGAL EDUC. ADMISSIONS B. 2 (2013), available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/june2013councilmeeting/2013_open_session_e_report_prof_educ_continuum_committee.authcheckdam.pdf.

7 MACCRATE REPORT, *supra* note 4, at 334.

8 Franklin Pierce Law Center affiliated with the University of New Hampshire in 2010 and has now fully merged with the University of New Hampshire School of Law.

9 John Burwell Garvey and Anne F. Zinkin, *Making Law Students Client-Ready: A New Model in Legal Education*, 1 DUKE F. LAW & SOC. CHANGE 101, 115-117 (2009), available at <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1004&context=dfisc> [hereinafter Garvey, *A New Model in Legal Education*].

ESTABLISHMENT, STRUCTURE, AND LEADERSHIP

The DWS program was championed by then-Senior Associate Justice Linda S. Dalianis of the New Hampshire Supreme Court. When discussing the inception of the program, she said she was disturbed by the ineptness and lack of preparation of the young lawyers arguing cases before her and was especially concerned that they were leaving law school without learning how to make legal arguments in court.¹⁰ Justice Dalianis led a two-year conversation with the New Hampshire Supreme Court, the New Hampshire Board of Bar Examiners, and the dean of the Franklin Pierce Law Center, the only law school in New Hampshire. Their discussions resulted in what is now the Daniel Webster Scholar Honors Program at the University of New Hampshire School of Law.

The DWS program began with an ambitious goal to shrink the gap between law school and legal practice—to produce lawyers who would be client-ready—and it sought to achieve that goal by focusing on the ten skills and four values set forth by the MacCrate Report (see sidebar).¹¹

The DWS program operates under the leadership of Director John Burwell Garvey, who joined the University of New Hampshire School of Law as a full-time faculty member in 2005, but had a long association with the school as an adjunct faculty member. He brings 35 years of practice experience, starting his career as a Lieutenant in the United States Navy Judge Advocate General's Corps, and continuing at a private New Hampshire law firm.

He is joined by two full-time law professors and six adjunct faculty members: Marcus Hurn, a Professor of Law who teaches Contracts, Property, Writing for Practice, and Contract Design and Drafting; Peter S. Wright, a Professor of Law and Director of Clinical Programs; Crystal M. Maldonado, an adjunct professor and DWS graduate who is a domestic relations lawyer at a New Hampshire law firm; Petar M. Leonard, an adjunct professor and DWS graduate who is a domestic relations lawyer at a New Hampshire law firm; Kirk Simoneau, an adjunct professor and DWS graduate who is a civil trial and appellate lawyer in a New Hampshire law firm; Emily Gray Rice, an adjunct professor who is a civil trial and

¹⁰ See Existing Qualitative Data, page 12.

¹¹ MACCRATE REPORT, *supra* note 4, at 138-141.

MACCRATE SKILLS AND VALUES

FUNDAMENTAL LAWYERING SKILLS

- Problem solving
- Legal analysis and reasoning
- Legal research
- Factual investigation
- Communication
- Counseling
- Negotiation
- Litigation and alternative dispute resolution
- Organization and management of legal work
- Recognition and resolution of ethical dilemmas

FUNDAMENTAL VALUES OF THE PROFESSION

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

appellate lawyer at a New Hampshire law firm; Donna J. Brown, an adjunct professor who is a criminal trial lawyer at the New Hampshire Public Defender's Office; and David Cleveland, an adjunct professor trained in theater who works with the standardized clients used in the DWS program.¹²

ADMISSIONS CRITERIA AND SELECTION

When it began in 2005, the DWS program was limited to 15 students in each graduating class. That number has since increased to 24 students, for a total of 48 students in the two-year program. In each of the last two years, more than 40% of the class has applied to participate in the program.¹³ Students apply in March of their first year and are selected in June.

It would be easy to assume that the DWS program accepts students with only the top academic credentials, especially given that it is called an "honors" program. In fact, in its first year, academic excellence was a significant factor in admission. That changed, however, in subsequent years. The committee, comprising faculty and alumni of DWS, that determines the composition of each class of students who participate in the DWS program ("DWS scholars") looks at a much broader set of criteria, including how students interact in professional relationships, how they approach professional development, and how they accept personal responsibility as students who will eventually enter the profession.

Selection is based upon a personal interview conducted by graduated Webster Scholars and a holistic assessment of each applicant, which includes evaluation of academic, professional, and interpersonal skills and the student's overall ability to succeed in the program. Because enrollment is limited, the committee identifies a balanced and diverse group from the pool of qualified applicants.¹⁴

12 The DWS program has also provided a list of other partners it works with to deliver the program. See Appendix C.

13 John Burwell Garvey, "Making Law Students Client-Ready" – *The Daniel Webster Scholar Honors Program: A Performance-Based Variant of the Bar Exam*, N.Y. ST. BAR ASS'N J., September 2013, at 44, 46, and n.21.

14 *Id.* at 46.

ADMISSIONS CRITERIA¹⁵

| PROFESSIONAL RELATIONSHIPS | PROFESSIONAL DEVELOPMENT |
|--|--|
| <ul style="list-style-type: none"> • Have integrity and engage in honest discourse • Treat themselves and others with respect • Work well with others, acknowledging their own and others' strengths and weaknesses • Show empathy and kindness to others • Listen attentively—know when to listen and when to contribute • Have humility—admit to mistakes and make apologies | <ul style="list-style-type: none"> • Are committed to working as part of a learning team • Are motivated to improve—engage in a continuous process to improve their own and their classmates' performance • Eagerness to learn new skills • Learn from mistakes and are willing to take risks • Seek—and learn from—feedback • Are open to new ideas, seeing things from others' perspectives, and sharing their views • Are committed to developing strong written and oral skills |
| PERSONAL RESPONSIBILITY | ACADEMIC COMPETENCY |
| <ul style="list-style-type: none"> • Have a strong work ethic—maintaining positive relationships, staying productive, and managing stress when faced with a demanding workload and multiple deadlines • Seek to serve and help others, through volunteer projects or extracurricular activities • Are committed to continual professional and personal development and a healthy life balance | <ul style="list-style-type: none"> • Demonstrate academic skills sufficient to maintain a cumulative GPA of at least 3.0 upon graduation and to obtain at least a B- in any Daniel Webster Scholar course. |

CURRICULUM AND ASSESSMENT

The DWS program subjects students to an intensive, two-year program that begins during the second year of law school. Building on the traditional first-year curriculum, students follow a strict list of course requirements in a specified sequence. When the program was conceived, the committee identified existing classes at the law school that would be required for DWS scholars and created “practice courses that would be small, emphasize the MacCrate skills and values, and be taught in the context of real life.”¹⁶

The DWS program weaves together a combination of formative, reflective, and summative assessment, which we discuss in more detail on page 10. “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.”¹⁷ Notably, DWS scholars are admitted to the New Hampshire Bar based on their performance over the full, two-year program.¹⁸

¹⁵ University of New Hampshire School of Law – Daniel Webster Scholars: Criteria for Applicants, available at <http://law.unh.edu/academics/jd-degree/daniel-webster-scholars/criteria> (last visited Dec. 2, 2014).

¹⁶ Garvey, *A New Model in Legal Education*, *supra* note 9, at 117.

¹⁷ *Id.* at 119.

¹⁸ Rules of the Supreme Court of New Hampshire: Administrative Rules 35 to 59: Rule 42. Admission to the Bar; Board of Examiners; Character and Fitness Committee, available at <http://www.courts.state.nh.us/rules/scr/scr-42.htm> (last visited Dec. 22, 2014).

DWS REQUIRED COURSES

This report will focus on the courses that were designed specifically for the DWS program. They are required courses that span the two-year program. DWS scholars are also required to take specific courses that are part of the regular law school curriculum.

PRETRIAL ADVOCACY

Taken in the fall semester of the scholar's second year of law school, this is a 4-credit course that divides the scholars into two law firms to litigate a mock case. In addition to the scholars, who act as junior associates, each team includes one experienced litigator and faculty member, who acts as a senior partner, and three third-year DWS scholars, who play the role of senior associates. Working together in small groups and working alone, 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 (videotaped); prepare deposition reports; prepare a motion or an objection to a motion for summary judgment and argue it before a real judge in the judge's courtroom (videotaped); and track and submit time for all activities each week.

Throughout the experience, the scholars receive feedback from a variety of sources, including senior partners, senior associates, other junior associates, court reporters, judges, attorneys, standardized clients, and witnesses.

At the conclusion of the semester, bar examiners receive a portfolio with a table of contents, student work, a student reflective paper, video URLs for the deposition and oral arguments, and a copy of the student's transcript. They also receive benchmarks, completed by the students and senior partner after each exercise, and a final evaluation by the senior partner.

ADR/NEGOTIATIONS

Taken in the spring semester of the scholar's second year of law school, this is a 3-credit course that helps students develop negotiation, mediation, collaborative law, and arbitration skills. Scholars learn basic negotiation theory, strategy, and technique through a combination of simulation and class discussions. At the conclusion of the semester, bar examiners receive the problem information, along with problem and strategy outlines created by the scholars, a weekly skills journal, final personal reflections, and comments by the professor and teaching assistant.

MINISERIES

Taken in the spring semester of the scholar's second year of law school, this is a 2-credit survey course that covers six focus areas with four professors in fourteen weeks: Introduction to Client Counseling, two weeks; Family Law, three weeks; Domestic Violence Emergency (DOVE),¹⁹ three weeks; Conflicts of Laws, one week; Negotiable Instruments, two weeks; Secured Transactions, two weeks. Throughout the course and in each segment, students participate in a variety of exercises, including a mock trial on a domestic violence petition, and take tests to demonstrate a basic understanding of the materials. At the conclusion of the semester, bar examiners receive personal reflection papers written throughout the course.

¹⁹ The DOVE program is used to strengthen professional formation by introducing scholars to pro bono work and helping them understand the obligation lawyers have to serve society. Every scholar is trained as a DOVE attorney and many take DOVE cases when they enter practice.

TRIAL ADVOCACY

Taken in the spring semester of the scholar's second year of law school, this is a 3-credit course that builds on the Pretrial Advocacy course. During the course, the scholars work with witnesses in a trial setting, learn the importance of good interrogatory and deposition questions and answers, conduct a simulated civil trial based on the case they litigated in Pretrial Advocacy the previous semester, and conduct a simulated criminal trial. Throughout the course, students receive feedback from other scholars, professors, lawyers, judges, jurors, and witnesses. At the conclusion of the semester, bar examiners receive course materials, the student's weekly journal entries, a reflective paper written after observing a real court proceeding, and a final reflective paper for the course.

BUSINESS TRANSACTIONS

Taken in the fall semester of the scholar's third year of law school, this is a three-credit course focused on the formation, financing, operations, and selling of business organizations. The course uses hypotheticals, writing assignments, and negotiation exercises; students are evaluated on writing assignments, a personal reflective paper that considers the MacCrate Skills and Values,²⁰ and a capstone exercise that pulls together facts and information from previous class exercises. At the conclusion of the semester, bar examiners receive the assignments from class and the reflective paper.

CAPSTONE COURSE: ADVANCED PROBLEM SOLVING AND CLIENT COUNSELING

Taken in the spring semester of the scholar's third year of law school, this two-credit course integrates lessons learned throughout the DWS program. The syllabus from the Spring 2014 course, taught by John Garvey, sets forth the course objective:

In order to be client-ready, a lawyer needs to be able to integrate many skills and correctly apply many values. As you have progressed through the DWS Program, you have reflected upon the MacCrate Skills and Values, and how they have applied to your development as a lawyer. This course will include the further development and refinement of many of those skills and values, with particular emphasis on the skills and values involved in the lawyer's relationship with the client. In order to emphasize the appropriate focus of that dynamic, we will refer to it as the client-lawyer relationship, rather than [sic] vice-versa. The skills we will focus upon include: 1) fact investigation (§4); 2) client and witness interviewing (§4.3 & 5); 3) client counseling (§6); 4) problem solving (§1); 5) organization and management of legal work (§9), and; 6) recognizing and resolving ethical dilemmas (§10). The values include: 1) provision of competent representation (§1); 2) striving to promote justice, fairness and morality (§2); 3) striving to improve the profession (§3), and; 4) professional self-development (§4).²¹

The course includes lessons from litigation and transactional practices and relies on simulations and role-playing that place scholars in various roles, including lawyer and client. During the course, all scholars interview a standardized client three times.

The DWS program added the standardized client interview model to its curriculum in 2008. Through a collaboration with Clark Cunningham of Georgia State University College of Law and funding from the W. Lee Burge Endowment for Law & Ethics, the standardized clients used in the program were actually trained through repeated sessions led by Paul Maharg and Karen Barton, who previously validated this form of assessment at Glasgow Graduate School

²⁰ MACCRATE REPORT, *supra* note 4, at 138-141.

²¹ John Garvey, DWS Capstone Course – Becoming Client-Ready: Advanced Interviewing, Counseling, and Problem Solving (Spring 2014) (unpublished syllabus, University of New Hampshire) (on file with author).

| COURSE REQUIREMENTS ²² | | |
|--|---|-----------|
| | Course | Credits |
| First Year Requirements: (Required for <i>all</i> UNH Law students): | | 31 |
| Upper Level Courses: (Required for <i>all</i> UNH Law students): | Administrative Process | 3 |
| | Criminal Procedure | 3 |
| | Professional Responsibility | 3 |
| | Writing Requirement | 3 |
| | Subtotal | 12 |
| Additional Upper Level Courses: (Required for Webster Scholars) | Evidence | 3 |
| | Personal Income Tax | 3 |
| | Business Associations | 3 |
| | Wills, Trusts, & Estates | 3 |
| | Clinic/Externship | 6 |
| | Subtotal | 18 |
| DWS Required Courses: | DWS Pretrial Advocacy (satisfies writing requirement) | 4 |
| | DWS Miniseries | 2 |
| | DWS Negotiations & ADR Workshop | 3 |
| | DWS Trial Advocacy | 3 |
| | DWS Business Transactions | 3 |
| | DWS Capstone - Advanced Problem Solving and Client Counseling | 2 |
| | Subtotal | 17 |
| Total Required Credits: | | 77 |
| Minimum Additional Electives to graduate: | | 7 |

| REQUIRED SEQUENCING ²³ | | |
|---|--|---|
| Semester | DWS Courses | Other Courses |
| Second Year – Fall | Pretrial Advocacy (4 credits) | Personal Income Tax (3 credits) |
| Second Year – Spring | Trial Advocacy (3 credits) Miniseries (2 credits) Negotiations (3 credits) | |
| By End of Second Year (courses may be taken in either semester) | | Business Associations (3 credits) Wills, Trusts, & Estates (3 credits) Evidence (3 credits) |
| Third Year – Fall | Business Transactions (3 credits) | |
| Third Year – Spring | Capstone Course: Advanced Problem Solving and Client Counseling (2 credits) | |
| By End of Third Year (courses may be taken in either semester) | Clinic/Externship (6 credits) | |

of Law.²⁴ Students role-play as lawyers and interview the standardized clients—actors who are trained to evaluate scholars using standardized criteria—in videotaped sessions. Students are evaluated on eight effectiveness criteria on a scale of 1-5 and must receive a total of 24 to pass each interview (See Appendix B).

At the conclusion of the semester, bar examiners receive the course syllabus; course assignments; standardized client interview materials, including assessment criteria, fact pattern, memo to lawyer, memo to file, interviewing assessment, videos of interviews, and student benchmarks; weekly journal entries; a final reflective paper that considers the MacCrate Skills and Values;²⁵ and the professor's final assessment of the scholar's progress.

FORMATIVE, REFLECTIVE, AND SUMMATIVE ASSESSMENT

The DWS program uses three forms of assessment that work together to ensure that scholars progress satisfactorily through the program and leave law school prepared to enter the profession: formative, reflective, and summative.

FORMATIVE ASSESSMENT

Formative assessment is a central component of the DWS program's overall assessment plan. Scholars receive frequent and constructive feedback on their performance as they advance through the courses and the program. This feedback comes from professors, lawyers, judges, other scholars, and bar examiners. It is delivered before the scholar has completed the course or program, which allows the scholar to reflect on the feedback and self-correct by applying the feedback to future exercises. This report discusses formative assessment and program participant reactions more fully in later sections.

REFLECTIVE ASSESSMENT

Reflective assessment complements formative assessment in the DWS program. Through frequent reflection exercises, referenced in the DWS required courses described above, scholars consider formative feedback they have received, evaluate their own performance (See Appendix A), contemplate what they are learning about themselves, and develop a plan to address any weaknesses. Reflection allows them to understand better the lessons they are learning, how those lessons are intended to help them improve, and how those lessons are related to the practice of law and their roles as lawyers.

SUMMATIVE ASSESSMENT

Summative assessment is used in each DWS required course and in the DWS program. At the conclusion of each course, the professor evaluates the scholar's performance and progress throughout the course. As noted in the course descriptions, these evaluations are shared with the bar examiners, who also review the student's performance for the semester. While summative assessment is commonly used in law school courses, the DWS program is unique in its use of summative assessment to evaluate student performance in the full, two-year program. At the end of the program, which coincides with graduation, scholars are evaluated by bar examiners who determine, based on two years' performance in the DWS program, whether those students will be admitted to the New Hampshire bar without further testing.

22 University of New Hampshire School of Law – Daniel Webster Scholars: Curriculum, available at <http://law.unh.edu/academics/jd-degree/daniel-webster-scholars/curriculum> (last visited Dec. 2, 2014).

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

24 The validity of this model as an assessment tool is evaluated by Karen Barton, Clark D. Cunningham, Gregory Todd Jones, and Paul Maharg, *Valuing What Clients Think: Standardized Clients and the Assessment of Communicative Competence*, 13 CLINICAL L. REV. 1 (2006), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1817764 [hereinafter Barton et al., *Valuing What Clients Think*].

25 MACCRATE REPORT, *supra* note 4, at 138-141.

A TWO-YEAR BAR EXAMINATION

While there are many elements of the DWS program that are of interest, perhaps the most discussed aspect is its conclusion: successful DWS scholars are admitted to the bar in New Hampshire without sitting for the traditional bar examination. DWS replaces a two-day bar examination with a two-year course path and assessment of each student. Formally, classroom performance is assessed by law school faculty and bar passage is approved by each student's assigned bar examiner.

This is facilitated by use of individual student portfolios:

Consistent with the recommendations in the Carnegie Report and Best Practices, 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. Every semester, each portfolio is evaluated by a bar examiner, who provides written comments to the student. In the spring semester of each year, every scholar meets with and is questioned by a bar examiner about the portfolio.²⁶

Bar examiners review student portfolios, including reflective papers and video, to evaluate each student and, in the end, determine whether the student should be admitted to practice. The five bar examiners interviewed by Lloyd Bond and William Sullivan in April 2013 generally agreed that these are students who are not likely to fail.

The bar examiners also explained that each DWS bar examiner commits to five DWS scholars per year and receives a stipend of \$800 per year for participation in the program. One bar examiner suggested that it would not be possible for a bar examiner to evaluate more than five students per year and that they would have to add one additional bar examiner for every five students added to the program.

THE STANDARDIZED CLIENT ASSESSMENT

As discussed earlier in the Capstone Course section, page 8, DWS began using “standardized client interviews” in 2008 to evaluate student performance. Based on the Glasgow Graduate School of Law model,²⁷ which was based on the “standardized patient” model used in medical education, actors are trained to act as new clients and to evaluate scholars using standardized criteria. All interviews are videotaped for later review and reflection. The actors are trained to evaluate students using two criteria: 1) the students' interpersonal and professional interaction with the client during the interview (Part A); and 2) the extent to which the students ascertain all relevant information necessary for a competent representation of the client (Part B). See page 17. Students are evaluated on eight effectiveness categories on a scale of 1-5 and must receive a total of 24 to pass each interview (See Appendix B). In *Analysis of Standardized Client Interviews by Current DWS Scholars and Non-DWS Lawyers*, page 17, we evaluate the performance of DWS scholars in these assessments.

26 Garvey, *A New Model in Legal Education*, *supra* note 9, at 121 (citations omitted).

27 The validity of this model as an assessment tool is evaluated in Barton et al., *Valuing What Clients Think*, *supra* note 24.

ACCELERATED COMPETENCE

GRADUATING AHEAD OF THE CURVE

When we first learned about the DWS program, it looked impressive from the outside. It placed students in highly experiential educational settings. It allowed them to succeed and fail with ongoing assessment and personal reflection. It utilized standardized client assessment to evaluate the scholars' ability to interview clients. It collaborated with the local legal community to do all of this effectively. And it resulted in admission to the state bar. The elements of the program were promising, but were they actually better preparing lawyers for practice and clients? To find out, IAALS and *Educating Tomorrow's Lawyers* worked with an evaluation consulting firm to conduct quantitative and qualitative analysis of existing research to evaluate outcomes of the DWS program.

EXISTING QUALITATIVE DATA

In April 2013, Lloyd Bond and William Sullivan conducted focus groups at the University of New Hampshire School of Law with various groups that participate in or interact with the DWS program. The participating individuals were placed in groups based on their roles: New Hampshire judges (four judges participated), lawyer supervisors and peers of DWS alumni (eight supervisors and two peers participated), DWS alumni (ten alumni participated), DWS scholars in second year of law school (ten scholars participated), DWS scholars in third year of law school (seven scholars participated), administrators from the University of New Hampshire School of Law (five administrators participated), law faculty from the University of New Hampshire School of Law (nine faculty members participated), and members of the New Hampshire Board of Bar Examiners (five bar examiners participated).²⁸ The focus groups were facilitated as discussions, rather than formal question and answer sessions. A non-verbatim transcript of the focus groups was prepared by Margaret Haskett, a court reporter who was present during all sessions. Our qualitative analysis of the DWS program is based on this transcript.

EXISTING QUANTITATIVE DATA

To evaluate how DWS scholars compare to new lawyers, the DWS program administered the standardized client interview assessment to 123 non-DWS lawyers who had completed law school within the last two years. The assessments were conducted in December 2009, 2010, and 2012, and June 2010, 2011, and 2012. We compared this data to the standardized client interview assessments of sixty-nine DWS scholars conducted in their final semesters of law school in April 2009, 2010, 2011, and 2012.

As discussed below, our analysis of this data suggests that DWS scholars are as competent, or more competent, than lawyers who have graduated from law school within the last two years. The focus groups we evaluated, described below, suggested that this may be attributable to a selection process that favors high-achieving students. To test this, we also obtained and analyzed data from the DWS program on the LSAT scores and class ranks of the DWS scholars and new lawyers who participated in the study.

28 To allow for open discussion, John Garvey, Director of the DWS program, and Krystal Johnson, Coordinator of the DWS program, did not participate in the focus groups.

FOCUS GROUPS

WHAT DWS IS ACHIEVING

All eight focus groups discussed the accelerated competence of DWS graduates. Participants expressed that DWS graduates are a step ahead of new law school graduates, with some claiming DWS graduates are up to two years ahead and others being less specific about the number of years the experience represents. Compared with new lawyers who spend their first few years learning to practice, DWS graduates are able to hit the ground running, working with clients and taking a lead role on cases immediately.

Both students and the professionals who interact with them value DWS graduates' accelerated competence. Students appreciate feeling competent and value the opportunities they are presented with as a result of this competence—even prior to leaving law school. For example, students discussed being given additional responsibilities (e.g., arguing at a hearing, taking a lead role on a research project) during internships. In addition, many students chose to attend the University of New Hampshire Law School because of the DWS program's reputation for producing client-ready graduates. Students participate in the program because they want to learn to practice law—not because they want to avoid the bar exam. Supervisors and peers of alumni perceive DWS graduates as a better investment than other new graduates because they require fewer training resources in their first years as associates.

For example, one supervisor of a DWS graduate stated that, “the selling point for her firm was they needed someone who could start practicing law immediately.” Furthermore, judges appreciated the competence of recent DWS graduates arguing cases in front of them. Judges expressed that DWS graduates “argue ably” and research and write at a level superior to other new lawyers.

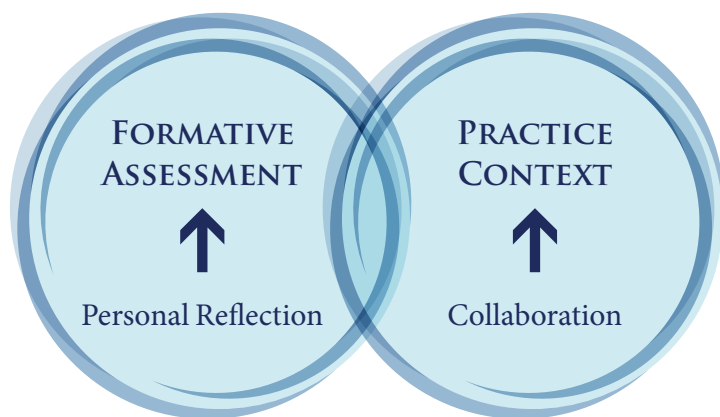
Overwhelmingly, focus group participants attributed DWS graduates' accelerated competence to their level of confidence in their skills. It is not sufficient for a lawyer to be competent—they must also know that they are competent. Supervisors and peers of alumni reported that because DWS graduates have real world experience, they are comfortable in practice settings and not easily flustered when things go differently than planned. The

“ Compared with new lawyers who spend their first few years learning to practice, DWS graduates are able to hit the ground running, working with clients and taking a lead role on cases immediately. ”

confidence of DWS graduates translates to clients feeling more confident with their representation. Judges agreed that a significant part of the success of DWS graduates is their confidence from having two years of practical exposure prior to beginning practice. Finally, students and faculty reflected on the development of DWS graduates' confidence throughout the program. They agreed that as DWS scholars have the opportunity to practice real world skills, their confidence in their abilities increases.

WHAT DRIVES ACCELERATED COMPETENCE

Focus group participants identify two factors driving the accelerated competence of DWS scholars: formative assessment and practice context. Although participants perceive that integrating aspects of formative assessment or practice context would be valuable for non-DWS courses, they are most effective in tandem. Furthermore, formative assessment in the DWS program is strengthened by opportunities for personal reflection, and practice context is strengthened by peer collaboration.



FORMATIVE ASSESSMENT

The focus groups with participants who had direct experience with the DWS program (alumni, students, bar examiners, and faculty) extensively discussed the formative assessment students receive. Participants identified this as a key factor that differentiates the DWS program from other law curricula. Students and alumni

“Supervisors and peers of alumni perceive DWS graduates as a better investment than other new graduates because they require fewer training resources in their first years as associates.”

expressed that the feedback was extremely constructive and the constant nature of the feedback encouraged reflection and improvement. Individualized attention over an extended period of time was particularly valuable. Because the same bar examiner repeatedly assesses students, improvement is commended and positive feedback is perceived as more credible because students have previously received criticism from the same source. Furthermore, students receive feedback from their peers, and the DWS program director keeps careful track of each student's progression. Focus group participants, especially the alumni, expressed that incorporating formative assessment into non-DWS courses could improve those courses even in the absence of altering the curriculum content. Specifically, alumni, judges, and supervisors and peers of alumni felt that formative assessment is crucial for a student to become a good legal writer—an important skill where many non-DWS lawyers remain weak. Instead of grading writing assignments as pass/fail, suggestions for improvement could be provided on all written assignments.

PRACTICE CONTEXT

However, the combination of formative assessment and a practice context provides a particularly strong foundation for DWS graduates. For example, alumni, bar examiners, faculty, and supervisors and peers of alumni discuss the benefits of DWS graduates having had the opportunity to “fail in a simulated setting.” Students participate in simulations and engage with live clients and real judges throughout the program, in addition to formal externships during their third year. The DWS simulations create fact-based settings embedded with ethical issues to help students learn to make decisions and solve problems while also developing ethical and moral judgment that can be applied in their real client experiences. By the time DWS scholars graduate, they have made—and corrected—numerous real world mistakes. As a result, they know where and how mistakes are made and how to avoid them as practicing lawyers. But learning from these experiences requires that the context reflects settings lawyers might encounter in practice (e.g., communicating with clients, writing briefs, trying a criminal or civil case, mediation) and that students are supported in understanding what went wrong and reflecting on how to improve next time. Though alumni believe that a “learn by doing,” “see one, do one, teach one” approach would be helpful in many courses, applying it appropriately requires formative assessment during and after each step. Formative assessment helps maximize the benefits of a practice-based curriculum.

Students and alumni expressed that being able to apply what they are learning and process the material in context facilitated a deeper level of understanding. But beyond altering the structure of courses, DWS scholars and alumni value the expertise of the faculty—many DWS professors were/are practicing lawyers. These professors are able to provide a practical perspective on the substantive law that students do not receive in non-DWS courses. Thus, some benefits of a practice context could be transferable to other law schools by recruiting faculty with practical experience and encouraging them to incorporate practical perspectives into their courses.

COLLABORATION

The collaborative interactions between DWS scholars were identified as another important aspect by groups with direct experience with the program (alumni, students, bar examiners, and faculty). Courses are designed to mirror the collaboration characteristic of real law firms. Participants reported that in these courses, DWS scholars do not compete with one another. Instead, they “support each other and push each other to do well.” The program facilitates a collaborative environment by having the same students working together over two years, in small courses, on projects that one could not complete alone. For example, students are split into two mock law firms and develop a case over the term, sometimes given three weeks to write 50-60 pages of briefs. This experience helps students realize “that you come up with a better product when you collaborate, which is better for the client.” And because students may work in many different groups over the two years, being a good team player is highly valued. There is an incentive not to “burn bridges” and students “learn to lean on each other and are encouraged to share cases and ideas,” which “teaches them how to interact with each other.”

PERSONAL REFLECTION

All eight focus groups discussed the importance of DWS scholars reflecting on their own performance. Initially, personal reflection is driven by formative assessment, because students are expected to improve based on the feedback they receive. However, students are also encouraged to critique their own work. As a result, they learn continuously to reflect on their performance, fostering self-awareness and contributing to professional practice once they graduate. DWS graduates are able to identify their own strengths and weaknesses—and seek help when needed—rather than relying on others to provide this feedback. Specifically, participants discussed the benefits of students' opportunity to watch recorded videos of their performance in a practice context and to write reflective papers throughout the program, sometimes as frequently as weekly. Personal reflection magnifies formative assessment by sustaining its benefits once formal assessment is unavailable. This is particularly beneficial for DWS graduates practicing in small firms where the partners may have a limited capacity to provide ongoing feedback.

WHAT MAKES REPLICATION CHALLENGING

CAPACITY AND COMMUNITY SUPPORT

Participants identified various key elements of the DWS program that they believe account for its success and raised some questions about whether those elements are all replicable. For example, individualized formative assessment is resource intensive and, together with a collaborative environment, is hard to execute with a larger group of students. Bar examiners, judges, faculty, and administrators expressed that the maximum capacity for this type of program was one examiner for every five students and only 24 students in each course, sometimes taught by two professors (one for each side of a case). Students did not provide exact numbers, but agreed that small course size is critical to maintain. Expanding or replicating the program would require additional bar examiners and professors with practical experience.

The voluntary time commitment from the legal community, especially bar examiners, is substantial, and garnering buy-in to implement DWS-style components requires extensive relationship-building work and, perhaps, changes to accreditation/tuition structure. To expand/replicate the key ingredients of the program, a law school would need participation of local judges (to participate in simulations) and bar examiners (to provide feedback), school administration commitment to small course sizes (to facilitate collaboration and individualized feedback), and faculty with practical experience (to support a practice-based curriculum). Participants wondered whether this could be accomplished without a charismatic, credible, and persistent program leader with “political weight” (“a John Garvey person”). A related question raised by students and administrators is whether this degree of community participation is feasible in a community larger than New Hampshire, with fewer small law firms and more than one law school. For example, how much of the community engagement in the DWS program is driven by self-interest “because they know these lawyers are coming into the practice in the state, maybe even in their town?”

SELECTION PROCESS

Focus group participants disagreed about the degree to which a DWS-style program would succeed if the selection criteria were broader. DWS scholars are not selected randomly. As one administrator described, “the students need to be motivated, responsible and willing to work hard and cooperatively together.” Students, faculty, and judges felt that the program can and should be expanded to lower performing students without diluting the program's success, but other groups disagreed. The bar examiners (and some administrators) were concerned that much of the DWS program's success was attributable to taking “smart people who may not have the skills needed to succeed and mak[ing] them ready.” They felt that DWS graduates “are much better prepared because of the program, but they are people who probably would have been successful anyway.” Supervisors and peers of alumni expressed that the practice-based approach of the DWS program may not be suited to all learning styles, and administrators conceded that the program is best designed for a subset of students who want to practice in New Hampshire.

ANALYSIS OF STANDARDIZED CLIENT INTERVIEWS BY CURRENT DWS SCHOLARS AND NON-DWS LAWYERS

During focus groups with stakeholders of the DWS program (alumni, students, bar examiners, faculty, administrators, supervisors and peers of alumni, and judges) participants expressed that new DWS graduates perform at a level comparable to associates with a few years of experience. To test this theory, we compared performance on a standardized client interview by current DWS scholars to performance by lawyers admitted to practice within the last two years who did not participate in the DWS program. These lawyers volunteered for this study at the request of the Chief Justice of the New Hampshire Supreme Court and participated during the New Hampshire Bar Association's practical skills course. Participants represented a range of LSAT scores, law school class ranks, and past client interviewing experience. Performance was measured by two factors:

1

The actors specially trained to play the client in these interviews scored participants from 1-5 on eight items representing an overall assessment of their performance. The items assessed the lawyer/student's interactions with the client, and included:

- The greeting and introduction was appropriate
- I felt the lawyer listened to me
- The lawyer's approach to questioning was helpful
- The lawyer accurately summarized my situation
- I understood what the lawyer was saying
- I felt comfortable with the lawyer
- I would feel confident with the lawyer dealing with my situation
- If I had a new legal problem, I would come back to this lawyer

2

The percentage of relevant information points that the participant learned. On assessments prior to April 2011, there were eight items the lawyer/student was expected to have learned; beginning in April 2011, an additional two items were added. The items included:

- My brother died without a will
- My brother and I were never formally adopted
- The equity in my brother's house is \$60,000
- My brother had \$5,000 in a savings account
- My brother owned Coke stock worth \$40,000
- I receive \$50,000 from life insurance
- I paid funeral costs of \$5,000
- My brother died with \$10,000 of outstanding debts
- The "sister's" name is Elizabeth McVey (added April 2011)
- Elizabeth McVey is the only other known "sibling" (added April 2011)

One hundred and ninety-two total standardized client interviews were included in this study, 69 by DWS scholars and 123 by non-DWS lawyers. The DWS scholars were examined in April 2009, 2010, 2011, and 2012 and the non-DWS lawyers were examined in December 2009, 2010, and 2012 and June 2010, 2011, and 2012.

FINDINGS

The findings corroborate the focus group participants' impression that DWS scholars are as competent—or more competent—in client interactions than lawyers with up to two years of experience.²⁹ DWS scholars significantly outperform non-DWS lawyers on both the overall assessment and the percentage of relevant information learned.

OVERALL ASSESSMENT

DWS scholars' overall performance was rated an average of 3.76 out of 5, compared to non-DWS lawyers whose overall performance was rated an average of 3.11. This difference is large and statistically significant.³⁰ Figure 1 displays the distribution of overall assessment scores for the two groups: the DWS scholars tend to score higher than non-DWS lawyers. Only 3% of DWS scholars (two students) were rated below a three, compared to 40% of non-DWS lawyers (55 lawyers). Finally, looking at only the final item on the overall assessment, "If I had a new legal problem, I would come back to this lawyer," 56% of DWS scholars were rated a 4 or 5 compared to only 25% of non-DWS lawyers.

INFORMATION LEARNED

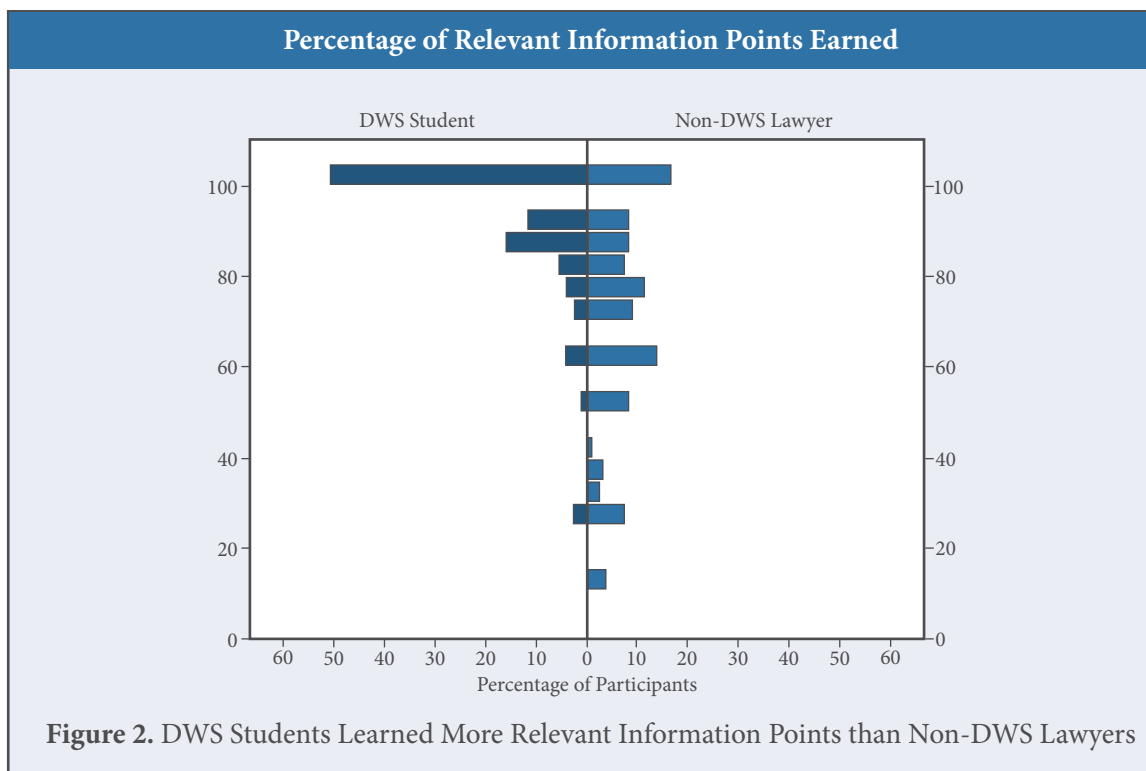
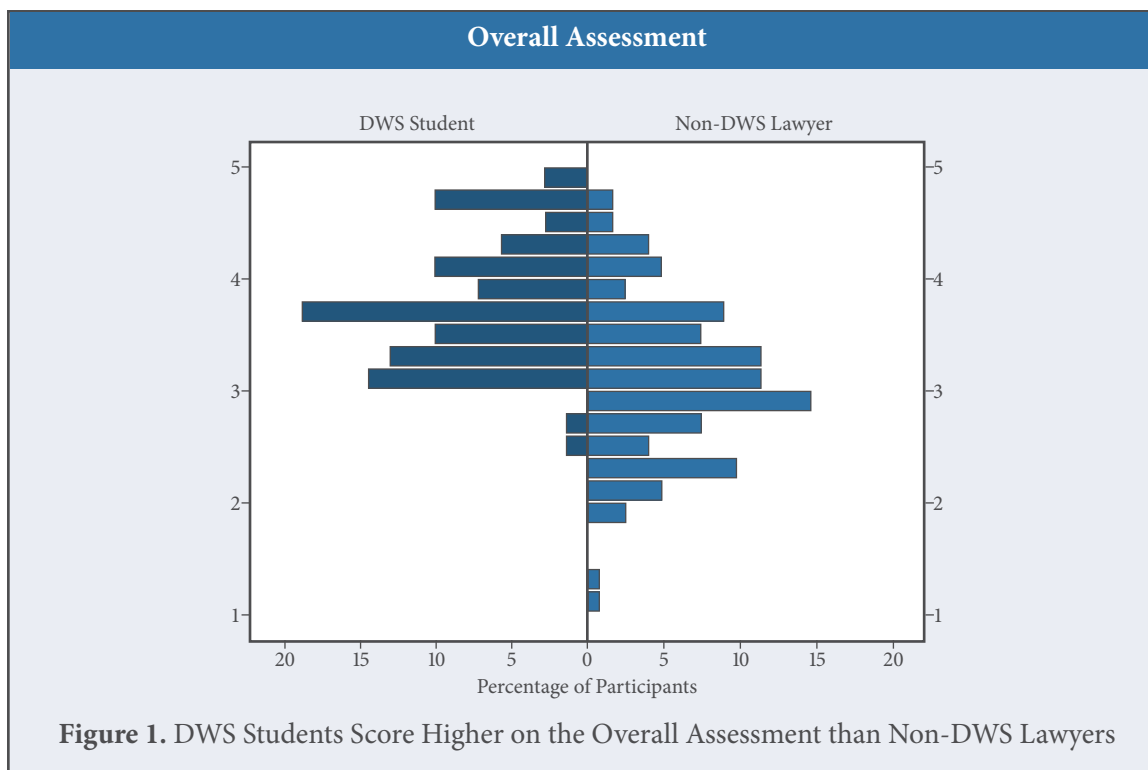
Similarly, DWS scholars on average learned 89% of relevant information points, compared to non-DWS lawyers who on average learned 69% of relevant information points. This difference is large and statistically significant.³¹ Figure 2 displays the distribution of the percentage of relevant

“DWS scholars significantly outperform non-DWS lawyers on both the overall assessment and the percentage of relevant information learned.”

29 Given the design of the study, we do not have data to test observations from the focus groups about performance levels beyond two years.

30 $t(190) = 6.187, p < .001$; effect size (d) = .90 (greater than .60 is considered a large effect in the social sciences).

31 $t(190) = 6.174, p < .001$; robust to non-normality of distribution, difference is also significant using a non-parametric Mann-Whitney U Test. Effect size (d) = .90 (greater than .60 is considered a large effect in the social sciences).



information points learned by the two groups: DWS scholars tend to learn more than non-DWS lawyers.³² Fifty-one percent of DWS scholars learned all relevant information points compared to only 16% of non-DWS lawyers.³³

ANALYSIS OF IMPACT OF LSAT SCORES AND CLASS RANK ON PERFORMANCE IN STANDARDIZED CLIENT INTERVIEWS

Initial evidence about the DWS program from qualitative and quantitative data sources suggests that DWS scholars are more prepared for practice than non-DWS students with up to two years of experience. However, focus group participants postulated that the success of the DWS program might be attributable to the selection process: Perhaps DWS takes already high performing students and gives them additional tools to be successful. Participants wondered if the success of the DWS program could be replicated with lower performing students. While data was not available on all factors used for program selection decisions (e.g. motivation, responsibility, cooperation), we were able to test whether performance on a standardized client interview by current DWS scholars and non-DWS lawyers was associated with LSAT scores and class rank. We know from the first quantitative analysis that DWS

“ [T]he only significant predictor of standardized client interview performance is whether or not the interviewer participated in the DWS program. ”

32 The analyst thought the switch from an eight-item assessment of relevant information learned to a ten-item assessment might be problematic for the validity of these results. Among both DWS scholars and non-DWS lawyers, participants learned a greater percentage of relevant information on the ten-item version (DWS scholars: 94% compared to 83%; non-DWS lawyers: 78% compared to 61%). And a greater percentage of DWS scholars were assessed using the ten-item version (55% of DWS scholars compared to 42% of non-DWS lawyers), thus biasing the results in favor of DWS scholars. However, when the analysis was conducted on the eight-item and ten-item versions separately, the result held: DWS scholars learn a greater percentage of relevant information than non-DWS lawyers on both the eight-item test ($t(101) = 4.053, p < .001$) and the ten-item test ($t(87) = 4.651, p < .001$). Thus, the analyst is confident in this finding despite the change in testing instrument.

33 While the results are quite positive for DWS, it is important to bear in mind that this is a secondary analysis of the data—the analyst had no role in designing the study, and thus caution must be employed when concluding that the differences between DWS scholars and non-DWS lawyers are attributable to the DWS program.

scholars significantly outperform non-DWS lawyers on both measures of standardized client interview performance. The present analysis addresses the following question: Do LSAT scores and class rank account for the remaining variation in performance on standardized client interviews? Performance was measured by two factors (See Analysis of Standardized Client Interviews by Current DWS Scholars and Non-DWS Lawyers, page 17).

One hundred and sixty total standardized client interviews were included in this analysis, sixty-seven by DWS scholars and ninety-three by non-DWS lawyers. Only cases reporting both LSAT score and class rank were included. The DWS scholars were examined in April 2009, 2010, 2011, and 2012 and the non-DWS lawyers were examined in December 2009, 2010, and 2012 and June 2010, 2011, and 2012.

FINDINGS

The findings provide no evidence to support the focus group participants' postulation that DWS scholars are only successful because they are initially high performing students. Neither LSAT score nor class rank is significantly predictive of overall assessment and the percentage of relevant information learned. Rather, the only significant predictor of standardized client interview performance is whether or not the interviewer participated in the DWS program. However, among DWS scholars, those with higher LSAT scores performed better on the overall assessment and the percentage of relevant information learned than DWS scholars with lower LSAT scores.

OVERALL ASSESSMENT

LSAT score³⁴ and class rank³⁵ are not significantly predictive of overall assessment scores when all 160 cases are analyzed. Together, these two variables account for only 2% of the variability in overall assessment scores. In contrast, whether or not the interviewer was a DWS student is a significant predictor of overall assessment scores, accounting for 18% of score variability.³⁶ A DWS student can be expected to score on average 0.626 points higher on the overall assessment (a 1 to 5 scale) than a non-DWS lawyer with the same LSAT score and class rank. However, when looking at only DWS scholars, LSAT score is significantly predictive of overall assessment scores, accounting for 14% of score variability.³⁷ A DWS student who scored between 150 and 159 on the LSAT can be expected to score on average 0.381 points higher on the overall assessment (a 1 to 5 scale) than a DWS student who scored between 140 and 149 on the LSAT. Class rank remains non-significant.³⁸ These results indicate that participation in DWS, not LSAT score or class rank, accounts for the increased competence of DWS scholars compared to non-DWS lawyers. However, among DWS scholars, those who scored higher on the LSAT scored higher on the overall assessment.

INFORMATION LEARNED

Similarly, LSAT score³⁹ and class rank⁴⁰ are not significantly predictive of relevant information points learned when all 160 cases are analyzed. Together, these two variables account for only 2% of the variability in relevant information points learned. In contrast, whether or not the interviewer was a DWS student is a significant predictor of relevant information points learned, accounting for 21% of score variability.⁴¹ A DWS student can be expected to learn on

34 $t(156) = 0.805, p = .422.$

35 $t(156) = -0.002, p = .998.$

36 $t(156) = -5.501, p < .001.$

37 $t(66) = 3.275, p < .01.$

38 $t(65) = -0.171, p = .153.$

39 $t(156) = 0.072, p = .943.$

40 $t(156) = 0.852, p = .395.$

41 $t(156) = -6.139, p < .001.$

average 23% more relevant information points than a non-DWS lawyer with the same LSAT score and class rank. However, when looking at only DWS scholars, LSAT score is significantly predictive of relevant information points learned, accounting for 7% of score variability.⁴² A DWS student who scored between 150 and 159 on the LSAT can be expected to learn on average 7.4% more relevant information points than a DWS student who scored between 140 and 149 on the LSAT. Class rank remains non-significant.⁴³ These results indicate that participation in DWS, not LSAT score or class rank, accounts for the increased competence of DWS scholars compared to non-DWS lawyers. However, among DWS scholars, those who scored higher on the LSAT learned more relevant information points.

OPPORTUNITIES FOR PROGRAM REPLICATION

In 2013, New Hampshire had 3,507 resident and active lawyers.⁴⁴ Only seven states have fewer lawyers.⁴⁵ University of New Hampshire School of Law is the state's only law school and more than a third of the lawyers in New Hampshire graduated from the school. That said, it still sends more graduates out of state than almost any other law school. In 2005, only 24 graduates from the school sat for the New Hampshire bar examination.⁴⁶ The school's entering class in 2013 had 77 students, while the entire school had only 305 students.⁴⁷

New Hampshire is not typical, nor is the University of New Hampshire School of Law. The DWS program is a small program in a small school in a small state with a bench and bar motivated to collaborate with the school and committed—on a long-term basis—to the program. Beyond that, its program director, John Garvey, is extraordinary. Across the Bond/Sullivan focus groups, Garvey's commitment to the program was cited as a key component of the program's success. One alumnus questioned whether the program could be replicated or scaled up without the drive of a Garvey-like director.

Can the full DWS program be scaled up to serve the needs of a larger jurisdiction in a different academic setting? The answer to that is unclear, but we encourage schools and jurisdictions with different circumstances to attempt to answer it. John Garvey and Anne Zinkin, permanent law clerk to Justice Dalianis, outlined suggestions for replication in 2009.⁴⁸ Full-scale replication is not, however, the only way to learn from the success of the DWS program. We believe the program can be unbundled into the key elements that foster success in the DWS curriculum—and that can foster success in courses, programs, and schools across the country.

42 $t(66) = 3.680, p < .05$.

43 $t(65) = 0.524, p = .602$.

44 American Bar Association National Lawyer Population by State, available at http://www.americanbar.org/content/dam/aba/administrative/market_research/2013_natl_lawyer_by_state.authcheckdam.pdf (last visited Dec. 2, 2014).

45 *Id.* Alaska (2,442), Delaware (2,888), Montana (3,046), North Dakota (1,560), South Dakota (1,905), Vermont (2,300), and Wyoming (1,681).

46 John D. Hutson, *Preparing Law Students to Become Better Lawyers, Quicker: Franklin Pierce's Webster Scholars Program*, 37 U. Tol. L. Rev. 103, 103 (2005), available at http://heinonline.org/HOL/Page?handle=hein.journals/utol37&div=18&g_sent=1&collection=journals#115.

47 American Bar Association Section of Legal Education and Admissions to the Bar – ABA Required Disclosures, available at <http://www.abarequireddisclosures.org/> (drop down menu: select University of New Hampshire, 2013) (last visited Dec. 2, 2014).

48 Garvey, *A New Model in Legal Education*, *supra* note 9, at 127-129.

RECOMMENDATION

PROVIDE A LEARNING ENVIRONMENT WITH FORMATIVE AND REFLECTIVE ASSESSMENT IN A PRACTICE-BASED CONTEXT

- Identify learning outcomes and benchmarks
- Identify multiple sources of feedback (professors, lawyers, judges, other students, bar examiners)
- Create simulated practice environments and involve the student in real-life practice settings
- Build in ongoing feedback checkpoints
- Require students to gather feedback and capture personal reflections in portfolios
- Review personal reflections and provide feedback on student's development
- Use the full student portfolio for summative assessment

PROVIDE A LEARNING ENVIRONMENT WITH FORMATIVE AND REFLECTIVE ASSESSMENT IN A PRACTICE-BASED CONTEXT

As discussed above, the focus groups with participants who had direct experience with the DWS program identified formative assessment as a key factor that differentiates DWS from other law curricula. They discussed the benefits of receiving regular feedback by the same person over time, as well as the benefits of receiving feedback from multiple sources, including faculty, members of the profession, other students and, of course, bar examiners. The students perceive the quality of feedback as “high,” in large part because of the involvement of key people from the legal community. Examiners evaluating portfolios provide feedback not only on content, but also on the mannerisms and characteristics of students. Notably for those interested in replicating limited aspects of the DWS program, focus group participants expressed the belief that formative assessment would have a positive effect on non-DWS courses, as well.

Similarly, focus group participants spoke at length of the reflective papers. The level of personal reflection by DWS scholars contributes to the culture of feedback and improvement the program creates, and it leaves a mark on students. Everything is assessed by identifying strengths, weaknesses, and areas for improvement. Through the reflective papers, students track both what they are learning and what they still need to learn and, in doing so, they begin to drive their own professional development. Personal reflection institutionalizes an improvement-focused approach that allows students to continue to develop after leaving the structured formative assessments provided by the DWS program. Focus group participants believe that self-reflection and ongoing development give DWS graduates a head start when they encounter challenges they have not before faced. One law school administrator said the real value of the program was its ability to help students manage failure, identify what caused it, learn from it, and work through it. After all, new lawyers may never again sit for a final exam, but they most certainly will encounter lessons that test them throughout their careers. Understanding how to assess and correct themselves will be immeasurably valuable throughout the course of their careers.

Finally, students and alumni said that being able to apply what they are learning and process the material in context facilitated a deeper level of understanding. While they acknowledged that it is common for law students to observe a court case, it is less common, they believed, for them to participate in a simulated court case. They believe that observing a case provides students very little if they lack context. Similarly, students expressed that in traditional lectures it is not always clear how to apply what one has learned. The practical aspects of a case are, however, apparent when you are operating in a simulation. Those practical aspects are magnified when students interact with real judges, who bring significant experience to bear on the process.

These elements of the program—formative and reflective assessment in a practice-based context—were repeatedly identified by focus group participants as the keys to the success of the DWS program. The closer the formative assessment relates to tasks graduates will actually be undertaking, the more valuable the feedback. Feedback in a traditional classroom would likely improve the students' performance in that class, but may or may not be relevant in a practice setting. Similarly, a practice context may expose students to real-life setting, but without formative assessment, they may not learn to distinguish the right lessons from the wrong lessons, or to distinguish their strengths from their weaknesses.

We believe “Formative Assessment + Reflective Assessment + Practice Context” is a winning equation for courses and programs, big and small.

BUILD COLLABORATIONS BETWEEN THE ACADEMY AND THE PROFESSION

One of the most remarkable things about the DWS program might just be its origins: it was instigated by the profession and it was developed through a rich collaboration between the University of New Hampshire School of Law and the New Hampshire legal community—most notably, the New Hampshire Supreme Court and the New Hampshire Board of Bar Examiners. The DWS program would not exist in its current form without the initial and ongoing support and involvement of New Hampshire's legal community. Great innovation requires great collaboration. In some ways this is a challenge, but perhaps the time is right for more collaboration.

RECOMMENDATION

BUILD COLLABORATIONS BETWEEN THE ACADEMY AND THE PROFESSION

- Proactively seek out opportunities to collaborate
- Recognize and explicitly state common goals related to the development of new lawyers
- Work together to identify ways to meet these goals
- Commit to an ongoing relationship that lasts beyond recommendations and into implementation
- Be willing to look beyond what is currently possible to what *might be possible*

Across the country, the profession—through state bar organizations and the courts—is taking an active interest in the training and development of lawyers. Driven by concerns about whether law students are adequately prepared to find and excel in legal employment, lawyers and judges have established task forces and committees to evaluate solutions. These committees and task forces will be stronger with the active involvement of legal educators. Similarly, legal education will be stronger with the active involvement of the profession.

CONCLUSION

The DWS program gives us a glimpse into what is possible tomorrow if we are willing to look beyond the limitations of today. Through ongoing and extensive collaboration between the New Hampshire legal community and the University of New Hampshire School of Law, and through a commitment to thoughtful integration of formative and reflective assessment in a practice-based context, the DWS program gives us a guide to creating robust and effective law school courses, programs, and curricula that will better prepare lawyers for the realities of today's profession. We believe that any law schools and bar or bench initiatives taking a critical look at lawyer training should know about the establishment, structure, and success the program has had in positioning its scholars to be ahead of the curve.

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APPENDIX A

BENCHMARKS FOR PRETRIAL ADVOCACY COURSE

| NATURE OF TASK AND PERFORMANCE GOAL | EXCEEDS | MEETS | APPROACHES |
|---|---|--|--|
| <p>Answers to Discovery Requests / Interrogatories</p> <p>Collaborative work of all P's or all D's</p> <p>Goal – exposure and demonstration of adequate evaluative and writing skills for first year associate</p> <p>MacCrate 1,2,3,4,5,6,8,9,10</p> | <p><i>Answers clearly comply with the rules; appropriately identify documents; identify privilege log if appropriate, and; are stated in such a way that would almost certainly avoid sanctions.</i></p> | <p><i>For the most part, answers comply with the rules; identify documents (although some clarification may be required); identify privilege log if appropriate, and; are stated in such a way that would likely avoid sanctions.</i></p> | <p><i>Answers often fail to comply with rules and are stated in such a way that could justify sanctions</i></p> |
| <p>Class Participation</p> <p>(Not every aspect implicated in every class)</p> <p>Individual Work</p> <p>Goal – instill importance of professionalism, timeliness, preparation, ability to work with others, oral communication skills</p> <p>MacCrate 1,2,3,4,5,7</p> | <p><i>Routinely arrives to class on time, is settled, has any books and accessories at hand and is fully ready to engage.</i></p> <p><i>Actively and respectfully listens to peers and professor.</i></p> <p><i>Comments are routinely relevant and reflect understanding of: a) assigned reading; b) previous remarks of other students, and c) insights about the topic under discussion.</i></p> <p><i>Comments routinely help move group conversation forward.</i></p> <p><i>Actively participates and is consistently engaged at appropriate times.</i></p> <p><i>Is routinely able to admit when he or she does not know something or is wrong and takes appropriate action.</i></p> <p><i>Is routinely a team player, able to work collaboratively with others, peers and supervisors included, and demonstrates appreciation for the contributions of others towards a common goal.</i></p> | <p><i>Routinely arrives to class on time.</i></p> <p><i>For the most part, actively and respectfully listens to peers and professor.</i></p> <p><i>For the most part, comments are relevant and reflect understanding of: a) assigned reading; b) previous remarks of other students, and c) insights about the topic under discussion.</i></p> <p><i>For the most part comments help move group conversation forward.</i></p> <p><i>For the most part, actively participates and is engaged at appropriate times.</i></p> <p><i>For the most part, is able to admit when he or she does not know something or is wrong and takes appropriate action.</i></p> <p><i>For the most part is a team player, able to work collaboratively with others, peers and supervisors included, and demonstrates appreciation for the contributions of others towards a common goal.</i></p> | <p><i>Repeatedly fails to arrive to class on time.</i></p> <p><i>Often fails to actively and respectfully listen to peers and professor.</i></p> <p><i>Comments often irrelevant, betray lack of preparation, or indicate lack of attention to previous remarks of other students.</i></p> <p><i>Comments often do little to advance conversation or are disruptive to it.</i></p> <p><i>Often fails to participate and is generally not engaged.</i></p> <p><i>Often fails to admit when he or she does not know something or is wrong and fails to take appropriate action.</i></p> <p><i>Fails to generally be a team player, to work collaboratively with others, peers and supervisors included, and demonstrate appreciation for the contributions of others towards a common goal.</i></p> |

| NATURE OF TASK AND PERFORMANCE GOAL | EXCEEDS | MEETS | APPROACHES |
|--|--|---|--|
| Deposition – Conducting or Defending Day: Depo of: URL LOG and Transcripts Individual Work Goal – exposure and demonstration of adequate deposition skills for first year associate MacCrate 1,2,3,4,5,6,8,9,10 | Questioner asks clear questions which are understandable to outside observer. Questioner covers significant subject matter. Questioner appears calm and in control and uses effective body language and eye contact. | <i>For the most part,</i> questioner asks clear questions which are understandable to outside observer. <i>For the most part,</i> questioner covers significant subject matter. <i>For the most part,</i> questioner appears calm and in control and uses effective body language and eye contact. | Questioner <i>often fails</i> to ask clear questions which are understandable to outside observer. Questioner <i>fails</i> to cover significant subject matter. Questioner generally <i>fails</i> to appear calm and in control and to use effective body language and eye contact. |
| Deposition Summary Of: Name Individual Work Goal – exposure, first attempt at summarizing facts from deposition, and providing coherent and concise written analysis for partner and client MacCrate 1,2,3,4,5,6,9 | Summary follows template, is well-organized, coherent, and concise. Summary clearly identifies the important facts from the deposition. Summary clearly explains how the important facts from the deposition impact the key issues of the case. Summary clearly identifies any follow-up needed based upon what transpired at the deposition. | <i>For the most part,</i> summary follows template, is well-organized, coherent, and concise. <i>For the most part,</i> summary clearly identifies the important facts from the deposition <i>For the most part,</i> summary clearly explains how the important facts from the deposition impact the key issues of the case. <i>For the most part,</i> summary clearly identifies any follow-up needed based upon what transpired at the deposition. | Summary <i>generally fails</i> to follow template, <i>and generally lacks clear organization, coherence or conciseness.</i> Summary <i>generally fails</i> to clearly identify the important facts from the deposition Summary <i>generally fails</i> to clearly explain how the important facts from the deposition impact the key issues of the case. Summary <i>generally fails</i> to clearly identify any follow-up needed based upon what transpired at the deposition. |
| Discovery Requests/ Interrogatories Collaborative work of all P's or all D's Goal – exposure and demonstration of adequate evaluative and writing skills for first year associate MacCrate 1,2,3,4,8,9 | Document requests/ interrogatories are written <i>with sufficient specificity so that a failure to produce could justify sanctions.</i> | <i>Most</i> document requests/ interrogatories are written <i>with sufficient specificity to require production.</i> | Document requests/ interrogatories <i>lack sufficient specificity for response</i> without need for substantial clarification. |

| NATURE OF TASK AND PERFORMANCE GOAL | EXCEEDS | MEETS | APPROACHES |
|--|--|--|--|
| <p>DRAFT Evaluation Memo to Partner</p> <p>Individual Work</p> <p>Goal – exposure, first attempt at receiving facts from client interview, researching law and providing coherent and concise written analysis for partner</p> <p>MacCrate 1,2,3,4,5,6,9</p> | <p>Memo includes facts and law and is well-organized, coherent, and concise. Supervising attorney would <i>be confident that writer understood and appropriately analyzed issues.</i></p> | <p>Memo includes facts and law and is <i>generally</i> well-organized, coherent, and concise. Supervising attorney would <i>require some additional clarification, reorganization, and/or analysis.</i></p> | <p>Memo <i>lacks clear organization, coherence or conciseness.</i> Supervising attorney would require significant clarification, reorganization, and/or analysis.</p> |
| <p>FINAL Evaluation Memo to Partner</p> <p>Review FINAL memo in conjunction with initial memo and comments</p> <p>Individual Work</p> <p>Goal – demonstration of adequate evaluative and writing skills for first year associate</p> <p>MacCrate 1,2,3,4,5,6,9</p> | <p>Memo includes facts and law and is well-organized, coherent, and concise. Supervising attorney would <i>be confident that writer understood and appropriately analyzed issues.</i></p> <p>Incorporates feedback from initial memo and improves quality.</p> | <p>Memo includes facts and law and is <i>generally</i> well-organized, coherent, and concise. Supervising attorney would <i>require some additional clarification, reorganization, and/or analysis.</i></p> <p><i>For the most part,</i> incorporates feedback from initial memo and improves quality.</p> | <p>Memo <i>lacks clear organization, coherence or conciseness.</i> Supervising attorney would require significant additional clarification, reorganization, and/or analysis.</p> <p><i>Fails to incorporate feedback from initial memo and improve quality.</i></p> |
| <p>Motion for Summary Judgment w/Memo (Defendants) OR Objection to Motion for Summary</p> <p>Judgment w/Memo (Plaintiffs)</p> <p>Individual Work</p> <p>Goal – exposure and demonstration of adequate evaluative and writing skills for first year associate and ability to comply with filing requirements</p> <p>MacCrate 1,2,3,5,8,9</p> | <p>Memo is well-organized, coherent, and concise. Supervising attorney would <i>be confident that writer understood and appropriately analyzed issues.</i></p> <p><i>Complies with Local Rules and FRCP and would be accepted by Clerk of Court.</i></p> <p>Supervising attorney would feel comfortable signing and submitting document to court <i>with only minor revisions.</i></p> | <p>Memo is <i>generally</i> well-organized, coherent, and concise. Supervising attorney would <i>require some additional clarification, reorganization, and/or analysis.</i></p> <p><i>Complies with Local Rules and FRCP and would be accepted by Clerk of Court.</i></p> <p>Supervising attorney would feel comfortable signing and submitting document to court <i>with some revisions.</i></p> | <p>Memo <i>lacks clear organization, coherence or conciseness.</i> Supervising attorney would <i>require significant additional clarification, reorganization, and/or analysis.</i></p> <p><i>Fails to comply with Local Rules or FRCP and would be rejected by Clerk of Court.</i></p> <p>Supervising attorney would <i>not</i> feel comfortable signing and submitting document to court <i>without significant revisions.</i></p> |

| NATURE OF TASK AND PERFORMANCE GOAL | EXCEEDS | MEETS | APPROACHES |
|--|---|--|---|
| Oral Argument on Motion for Summary Judgment Day: Individual Work Goal – exposure, demonstration of basic advocacy skills, ability to distill brief and answer questions from the bench MacCrate 1,2,3,4,5,9 | Organizes key arguments in <i>coherent and fluent</i> manner. Demonstrates <i>mastery</i> of facts in response to judge's questions. Demonstrates <i>mastery</i> of law in response to judge's questions. <i>Consistently</i> provides responsive answers to judge's questions. <i>Consistently</i> appears calm and in control and uses effective body language and eye contact. | Organizes key arguments in <i>coherent</i> manner. Demonstrates <i>basic</i> grasp of facts in response to judge's questions. Demonstrates <i>basic</i> grasp of law in response to judge's questions. <i>Usually</i> provides responsive answers to judge's questions. <i>For the most part</i> , appears calm and in control and uses effective body language and eye contact. | <i>Fails</i> to organize key arguments in <i>coherent</i> manner. <i>Fails</i> to demonstrate <i>basic</i> grasp of facts in response to judge's questions. <i>Fails</i> to demonstrate <i>basic</i> grasp of law in response to judge's questions. <i>Often Fails</i> to provide responsive answers to judge's questions. Generally <i>fails</i> to appear calm and in control and to use effective body language and eye contact. |
| Reflective Paper Self-Assessment Individual Work Goal - using MacCrate analysis, demonstration of ability to reflect upon lessons learned in course as appropriate building blocks for ongoing development MacCrate 1,2,3,4,5,6,7,8,9,10 | Shows <i>sophisticated insights</i> about areas of strength and areas in need of continued development; formulates concrete appropriate action plan to build strengths and address weaknesses. <i>Consistently</i> correlates insights with appropriate MacCrate Skills and Values. | <i>Identifies</i> areas of strength; identifies areas in need of continued development; formulates appropriate action plan to build strengths and address weaknesses. <i>For the most part</i> , correlates insights with appropriate MacCrate Skills and Values. | <i>Fails</i> to adequately identify areas of strength or areas in need of continued development or <i>fails</i> to formulate plan to build strengths and address weaknesses. Generally <i>fails</i> to correlate insights with appropriate MacCrate Skills and Values. |

| NATURE OF TASK AND PERFORMANCE GOAL | EXCEEDS | MEETS | APPROACHES |
|---|--|---|--|
| <p>Revised Motion for Summary Judgment Memo w/track changes (Defendants) OR Revised Objection to Motion for Summary Judgment Memo w/track changes (Plaintiffs)</p> <p>Review revised memo in conjunction with original memo and comments</p> <p>Individual Work</p> <p>Goal – exposure and demonstration of adequate evaluative and writing skills for first year associate and ability to comply with filing requirements</p> <p>MacCrate 1,2,3,4,5,8,9</p> | <p>Memo is well-organized, coherent, and concise. Supervising attorney would <i>be confident that writer understood and appropriately analyzed issues.</i></p> <p><i>Incorporates</i> feedback from initial memo and improves quality.</p> <p>Supervising attorney would feel comfortable signing and submitting document to court <i>with only minor revisions.</i></p> <p><i>Complies</i> with Local Rules and FRCP and would be accepted by Clerk of Court.</p> | <p>Memo is <i>generally</i> well-organized, coherent, and concise. Supervising attorney would <i>require some additional clarification, reorganization, and/ or analysis.</i></p> <p><i>Incorporates</i> feedback from initial memo and improves quality.</p> <p>Supervising attorney would feel comfortable signing and submitting document to court <i>with some revisions.</i></p> <p><i>Generally complies</i> with Local Rules and FRCP and would be accepted by Clerk of Court.</p> | <p>Memo <i>lacks clear organization, coherence or conciseness.</i> Supervising attorney would <i>require significant additional clarification, reorganization, and/ or analysis.</i></p> <p><i>Fails</i> to incorporate feedback from initial memo and improve quality.</p> <p>Supervising attorney would <i>not</i> feel comfortable signing and submitting document to court <i>without significant revisions.</i></p> <p><i>Fails</i> to comply with Local Rules or FRCP and would be rejected by Clerk of Court.</p> |
| <p>Timesheets - 1st Review</p> <p>Individual Work</p> <p>Goal – exposure, and demonstration of basic understanding</p> <p>MacCrate 5,9</p> | <p>Weekly records of time spent <i>sufficiently documented to generate a bill</i> without much editing.</p> <p>Submissions <i>always</i> made and are <i>timely.</i></p> | <p>Weekly records of time spent demonstrate <i>basic understanding</i> of requirements of time keeping (may lack sufficient details to generate a bill without editing).</p> <p>Submissions <i>always</i> made. <i>Not late more than 3 times nor by more than 3 days</i> without prior permission.</p> | <p>Weekly records <i>fail to demonstrate basic understanding</i> – could not be used as the basic information necessary to generate a bill.</p> <p><i>Failure</i> to submit one or more weekly time sheet(s), or <i>failure</i> to submit on a timely basis <i>more than 3 times or by more than 3 days</i> without prior permission.</p> |
| <p>Timesheets - 2nd Review</p> <p>Individual Work</p> <p>Goal – exposure, and demonstration of basic understanding</p> <p>MacCrate 5,9</p> | <p>Weekly records of time spent <i>sufficiently documented to generate a bill</i> without much editing.</p> <p>Submissions <i>always</i> made and are <i>timely.</i></p> | <p>Weekly records of time spent demonstrate <i>basic understanding</i> of requirements of time keeping (may lack sufficient details to generate a bill without editing).</p> <p>Submissions <i>always</i> made. <i>Not late more than 3 times or by more than 3 days</i> without prior permission.</p> | <p>Weekly records <i>fail to demonstrate basic understanding</i> – could not be used as the basic information necessary to generate a bill.</p> <p><i>Failure</i> to submit one or more weekly time sheet(s), or <i>failure</i> to submit on a timely basis <i>more than 3 times or by more than 3 days</i> without prior permission.</p> |

The background of the page features a series of overlapping, flowing, curved lines in various shades of blue, ranging from light sky blue to a deeper cerulean. These lines sweep across the page from the top left towards the bottom right, creating a sense of movement and depth. The lines are semi-transparent, allowing the white background to show through.

APPENDIX B

INTERVIEW EVALUATION FORM

DWS PROGRAM: INTERVIEW EVALUATION FORM

Part A (Circle the appropriate # from “1” — strongly disagree to “5” — strongly agree)

1. The greeting and introduction were appropriate. 1 2 3 4 5

Comment:

2. I felt the lawyer listened to me. 1 2 3 4 5

Comment:

3. The lawyer’s approach to questioning was helpful. 1 2 3 4 5

Comment:

4. The lawyer accurately summarized my situation. 1 2 3 4 5

Comment:

5. I understood what the lawyer was saying. 1 2 3 4 5

Comment:

6. I felt comfortable with the lawyer. 1 2 3 4 5

Comment:

7. I would feel confident with the lawyer dealing with my situation. 1 2 3 4 5

Comment:

8. If I had a new legal problem, I would come back to this lawyer. 1 2 3 4 5

Comment:

Part B

The lawyer learned that If “yes”, enter 1. If “no”, enter 0

1. My brother died without a will. _____

2. My brother and I were never formally adopted. _____

3. The equity in my brother’s house is \$60,000, _____

4. My brother has \$5000 in a savings account _____

5. My brother owned Coke stock worth \$40,000. _____

6. I receive \$50,000 from life insurance. _____

7. I paid funeral cost of \$5,000. _____

8. My brother died with \$10,000 of outstanding debts. _____

9. The “sister’s” name is Elizabeth McVey. _____

10. Elizabeth McVey is the only other known sibling. _____

The background of the page features a series of overlapping, curved, translucent blue lines that sweep from the top left towards the bottom right, creating a sense of motion and depth. The lines vary in opacity, with some appearing as solid dark blue and others as lighter, ethereal washes of color. The overall effect is modern and dynamic.

APPENDIX C

DWS PROGRAM PARTICIPANTS

DWS PROGRAM PARTICIPANTS

BAR EXAMINERS (PAST AND PRESENT)

William (Bill) Ardinger

Rath, Young & Pignatelli, PC

Fred Coolbroth

Devine Millimet & Branch (Retired)

Bruce Felmly

McLane, Graf, Raulerson & Middleton

Melinda Gehris

Hess Gehris Solutions

Andrea Johnstone (now Magistrate Judge)

United States District Court

Willard (Bud) Martin

Martin, Lord & Osman, P.A.

Jennifer Shea Moeckel

Cook, Little, Rosenblatt & Manson

Evan J. Mulholland

Legal Counsel

Office of the Executive Director

New Hampshire Fish and Game Department

Matt Serge

Upton & Hatfield, LLP

Martha Van Oot

Jackson Lewis

Larry Vogelman

Nixon, Vogelman, Barry, Slawsky & Simoneau, P.A.

JUDGES AND COURT PERSONNEL

The Honorable Gillian L. Abramson

New Hampshire Superior Court

The Honorable Paul J. Barbadoro

United States District Court

The Honorable Thomas T. Barry

New Hampshire Circuit Court

The Honorable Kenneth Brown

New Hampshire Superior Court

The Honorable Carol Ann Conboy

Associate Justice

New Hampshire Supreme Court

Chief Justice Linda Dalianis

New Hampshire Supreme Court

The Honorable Joseph A. DiClerico, Jr.

United States District Court

The Honorable James Duggan

Associate Justice (retired)

New Hampshire Supreme Court

Eileen Fox

Clerk of Courts

New Hampshire Supreme Court

The Honorable Gary E. Hicks

Senior Associate Justice

New Hampshire Supreme Court

The Honorable Andrea K. Johnston

Magistrate Judge

United States District Court

The Honorable Joseph N. LaPlante

United States District Court

Daniel F. Lynch

Clerk of Court

United States District Court

The Honorable Steven J. McAuliffe

United States District Court

The Honorable Landya McCafferty

United States District Court

William McGraw

Clerk of Court

Merrimack County Superior Court

The Honorable Kathleen A. McGuire

New Hampshire Superior Court

The Honorable James R. Muirhead (retired)

United States District Court

Anne F. Zinkin

Permanent Law Clerk to Chief Justice Dalianis

New Hampshire Supreme Court

ADJUNCTS PAST NOT ALREADY MENTIONED IN REPORT

Arthur G. Greene

Greene Lombardi Law Group, PLLC

Marilyn McNamara

Upton & Hatfield, LLP

David William Plant

Alan L. Reische

Sheehan, Phinney, Bass & Green, PA

Arpiar G. Saunders

Shaheen & Gordon, PA (retired)

William P. Wall

Counsel and Director
Abrams Capital

SIMULATION WITNESSES (PAST AND PRESENT)

Jean Marie Bolger

Matthew V. Burrows (DWS Graduate)

New Hampshire Superior Court Clerk

Conrad Cascadden (DWS Graduate)

Shaheen & Gordon, PA

David Cleveland

Robert Jensen

Lucy J. Karl, Esquire

Shaheen & Gordon, PA

Jay & Linda Lambert

The Computer Tutors

Petar Leonard (DWS Graduate)

R. Stein and Associates

Peter Meyer

Sulloway & Hollis, PLLC

Christopher Paul (DWS Graduate)

McLane, Graf, Raulerson & Middleton

Lynne Sabeau (DWS Graduate)

Boutin and Altieri, PLLC

PROFESSIONAL FACILITATORS

Jamie Batson

Mather Associates

Cotton M. Cleveland

Mather Associates

LAWYERS

Charles G. Douglas, III, Esq.

Douglas, Leonard & Garvey, PC

Steven M. Gordon

Shaheen & Gordon, PA

Lucy J. Karl, Esquire

Shaheen & Gordon, PA

Michael M. Lonergan, Esq.

Sulloway & Hollis, PLLC

Bryan J. Townsend, II (DWS Graduate)

Gottesman & Hollis, PA

DOVE (DOMESTIC VIOLENCE EMERGENCY) LAWYER TRAINERS

The Honorable Thomas T. Barry

Nixon, Vogelmann, Barry, Slawsky & Simoneau, PA

Pamela Dodge

DOVE Project Coordinator

Bianca Monroe

Crisis Center of Central New Hampshire

David L. Nixon

Nixon, Vogelmann, Barry, Slawsky & Simoneau, PA

Kirk Simoneau

Nixon, Vogelmann, Barry, Slawsky & Simoneau, PA

Officer Christy Spaulding

Concord Police Department

Eric M. Sommers

Sommers Law, PLLC

MEDIATORS

Charles P. Bauer

Gallagher, Callahan & Gartrell, PC

Dennis T. Duscharme

Melinda Gehris

Hess Gehris Solutions

Emily Gray Rice

COURT REPORTERS (PAST AND PRESENT)

Jim & Leslie Connelly

Connelly Reporting

Alix Godbout

Connelly Reporting

Liza Dubois

Connelly Reporting

Deanna Dean

Connelly Reporting

Kevin C. Mielke

Avicore Reporting & Videoconferencing

Michelle Perrier Cole

Avicore Reporting & Videoconferencing

Michele Allison

Avicore Reporting & Videoconferencing

Lynda Vetter

Avicore Reporting & Videoconferencing

Michele R. York

Susan J. Robidas

STANDARDIZED CLIENTS (PAST AND PRESENT)

David Cleveland

Alice F. Field

Jay & Linda Lambert

The Computer Tutors

Adele Warner

Ellen Wassell



CONSORTIUM SCHOOLS

Educating Tomorrow's Lawyers partners with a Consortium of law schools committed to innovation in legal education. The Consortium has grown steadily since Educating Tomorrow's Lawyers launched in 2011. This list represents member schools as of January 2015.

| | |
|--|--|
| Albany Law School | New York University School of Law |
| American University Washington College of Law | Northeastern University School of Law |
| Benjamin N. Cardozo School of Law | University of Oklahoma College of Law |
| Cornell University Law School | University of the Pacific McGeorge School of Law |
| University of Denver Sturm College of Law | Pepperdine University School of Law |
| Georgetown University Law Center | University of Pittsburgh School of Law |
| Georgia State University College of Law | Regent University School of Law |
| Golden Gate University School of Law | Seattle University School of Law |
| Hamline University School of Law | University of Southern California Gould School of Law |
| Hofstra University Maurice A. Deane School of Law | Southwestern Law School |
| Indiana University Maurer School of Law | University of St. Thomas School of Law |
| Loyola University Chicago School of Law | Stanford Law School |
| Loyola University New Orleans College of Law | Suffolk University Law School |
| Mercer University Walter F. George School of Law | Texas Southern University Thurgood Marshall School of Law |
| University of Miami School of Law | Touro College Jacob D. Fuchsberg Law Center |
| University of New Hampshire School of Law | Washington and Lee University School of Law |
| University of New Mexico School of Law | |







INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM



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

by John Burwell Garvey

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

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

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

prepares law students for the tremendous responsibility of representing others.²

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

HOW WAS THE PROGRAM CREATED?

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

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THE 10 MACCRATE SKILLS AND 4 MACCRATE VALUES

Fundamental Lawyering Skills

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

Fundamental Values of the Profession

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

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

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

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

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

Because the program was intended to be an alternative to the bar exam, methods of assessment were a primary consideration. The committee determined that each Webster Scholar would “maintain a ‘portfolio’ that would contain all of the practice exercises as well as other materials, such as a video of the Scholar doing an opening statement, [leading] direct and cross examinations, conducting a mediation, or interviewing a client.”¹³ 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.¹⁴ In May 2005, I was named the program’s first director.¹⁵ As recommended by the MacCrate Report, the program is a collaborative effort, which involves the New Hampshire Supreme Court, the New Hampshire Board of Bar Examiners, the New Hampshire Bar Association, and Franklin Pierce Law Center. The program opened to students in January 2006 and graduated its first class of 13 students in May 2008.¹⁶

WHAT ARE THE PROGRAM REQUIREMENTS?

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

graduation in addition to requirements that are specific to the DWS Program (see the Requirements and Sequencing sidebar on this page). During each semester, in addition to electives, Webster Scholars must take specifically designed DWS courses, which generally involve substantial simulation, including Pretrial Advocacy, Trial Advocacy, Negotiations, and Business Transactions. They also take a miniseries that exposes them to Client Counseling, Commercial Paper (Articles 3 and 9), Conflict of Laws, and Family Law (including eight hours of training to be qualified as pro bono domestic violence attorneys who then volunteer¹⁷ in New Hampshire's DOVE Project).¹⁸

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

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

and/or externship experience, including related course work.

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

DANIEL WEBSTER SCHOLAR HONORS PROGRAM

"Making Law Students Client-Ready"

REQUIREMENTS AND SEQUENCING (As of July 2010)

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

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

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

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

Administrative Process (3)
Criminal Procedure (3)
Professional Responsibility (3)
Writing Requirement (3)
Subtotal: 12

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

Evidence (3)
Personal Income Tax (3)
Business Associations (3)
Wills, Trusts, and Estates (3)
Clinic/Externship (6)
Subtotal: 18

DWS Required Courses:

DWS Pretrial Advocacy (also satisfies 3-credit upper-level writing requirement) (4)
DWS Miniseries (2)
DWS Negotiations (2)
DWS Trial Advocacy (3)
DWS Business Transactions (3)
DWS Capstone—Advanced Problem Solving and Client Counseling (3)
Subtotal: 17

Total Required Credits: 77

Minimum Additional Elective Credits to Graduate: 8

Required Sequencing:*

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

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

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

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

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

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

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

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

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

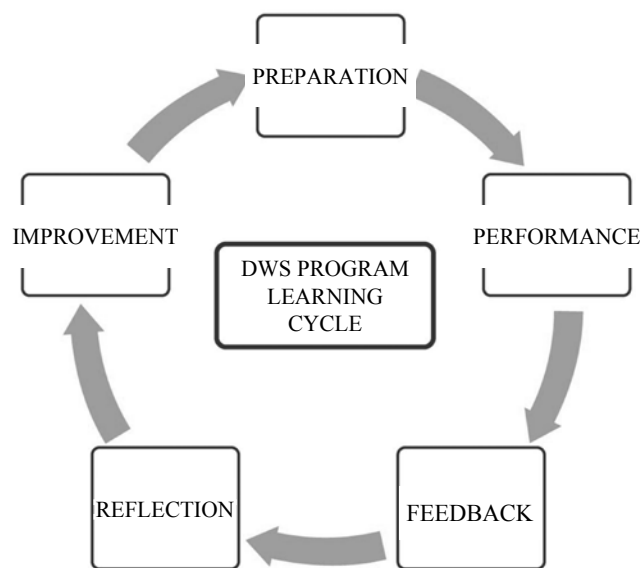
HOW ARE STUDENTS SELECTED FOR THE PROGRAM?

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

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

HOW WERE METHODS OF ASSESSMENT DEVELOPED?

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



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

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

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

WHAT ASSESSMENT METHODS ARE USED IN THE PROGRAM?

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

Portfolios

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

ASSESSMENT TYPES

Formative Assessment

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

Reflective Assessment

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

Summative Assessment

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

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

Implicated MacCrate Skills

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

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

MacCrate Benchmarks

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

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

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

Additional Assessments

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

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

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

| Fundamental Lawyering Skill (MacCrate) | Examples of Performances Showing that Student Is Client-Ready <i>(Language primarily based upon other work performed on a grant to the principal investigators, Marjorie M. Shultz and Sheldon Zedeck, from the Law School Admission Council.)</i> | Project(s) Demonstrating Skill |
|---|--|---|
| 1. Problem Solving 1.1 Identifies and diagnoses legal problems 1.2 Generates alternative solutions and strategies 1.3 Develops a plan of action 1.4 Implements a plan of action 1.5 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 & 9: Depositions</p> <p>Weeks 10 & 11: Summary judgment motion drafted by defense firm attorneys</p> <p>Week 12: Opposition to summary judgment motion drafted by plaintiff's firm attorneys</p> <p>Week 13: Oral argument</p> <p>Week 14: Post-discovery memorandum to partner</p> <p>Week 15: Reflective paper</p> <p>Summative evaluation by professor</p> |

PRETRIAL ADVOCACY BENCHMARKS (ABILITY-BASED OUTCOMES)

Assessing Performance of Webster Scholars According to MacCrate Skills

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

Standardized Clients

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

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

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

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

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

IN WHAT WAYS ARE WEBSTER SCHOLARS BEING STUDIED?

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

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

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

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

WHAT ARE THE COSTS OF THE PROGRAM?

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

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

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

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

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

CAN THE PROGRAM BE REPLICATED IN OTHER STATES?

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


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

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

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

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

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

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

NOTES

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

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

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



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New Hampshire's Daniel Webster Scholar Honors Program: Placing Law School Graduates Ahead of the Curve

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By Anne F. Zinkin and John Burwell Garvey

The calls for change in legal education are not new. In the 2007 publication *Best Practices for Legal Education: A Vision and a Road Map*, authors Roy Stuckey and others stated that “since the 1970, 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.”¹ The Daniel Webster Scholar (DWS) Honors Program at the University of New Hampshire (UNH) School of Law, a collaborative effort of the New Hampshire Supreme Court, the New Hampshire Board of Bar Examiners, the New Hampshire Bar Association, and UNH School of Law, was created in 2005 as an effort in New Hampshire to close the gap between legal education and legal practice by providing a practice-based, client-oriented education.² Students who participate in the program do not take the traditional bar examination but rather are evaluated for bar admission based on their performance during the two-year program—the program itself serving as a variant of the bar examination.³

The program is now in its tenth year, and its effectiveness has been independently verified by a recent study conducted by the Educating Tomorrow's Lawyers Initiative of the Institute for the Advancement of the American Legal System (IAALS) at the University of Denver, which sought to evaluate the program and its role in developing lawyers.⁴ The findings of the study are published

in *Ahead of the Curve: Turning Law Students into Lawyers: A Study of the Daniel Webster Scholar Honors Program at the University of New Hampshire School of Law*.⁵ This article summarizes the study and its findings.

Overview of the DWS Program

When the DWS program opened to students in January 2006 as part of a three-year pilot phase, it was limited to 15 students in each graduating class. Now, with the program having become a permanent fixture at the law school, that number has increased to 24 students in each graduating class.⁶ Students are selected for the program by a committee composed of professors and DWS graduates, who conduct a holistic assessment of each applicant based on the applicant's professional, interpersonal, and academic skills, with the goal of creating a balanced group from the pool of qualified applicants. Students apply in March of their first year and are selected in June, participating in the DWS program during their last two years of law school.

As stated above, the DWS program is truly a collaborative effort. The program has a Supreme Court Oversight Committee, which includes two justices of the New Hampshire Supreme Court, the dean and associate dean of UNH School of Law (New Hampshire's only law school), and the chair and eight members of the Board of Bar Examiners. (Article co-author Anne F. Zinkin is also a member of the Committee.) The Committee meets regularly to evaluate the program and make any necessary improvements and adjustments. The eight members of the Board of Bar Examiners are involved in evaluating the students' work and progress on an ongoing basis throughout the students' participation in the program.

The DWS program immerses participating students in experiential learning complemented by ongoing assessment and feedback.⁷ Through the program, students essentially complete a two-year, instead of a two-day, bar exam in which they take special courses, complete at least six credit hours of a clinic or externship, conduct three standardized client interviews, and meet annually with an assigned bar examiner who reviews their cumulative portfolio of work each semester. (The portfolio includes papers, exams, and legal documents drafted by the student; videos of student performances in simulated settings; student self-reflective analysis; and evaluations from professors and peers.)

The six special DWS courses generally involve substantial simulation as well as formative, reflective, and summative assessments. ([See the sidebar #1](#) for an explanation of the three different types of assessments.) Those courses are Pretrial Advocacy; Trial Advocacy;

Negotiations; Business Transactions; a miniseries covering six areas, including Client Counseling, Family Law, and Conflict of Laws; and a capstone course that integrates and builds upon the skills the students have already learned through the program. The capstone course, titled Advanced Problem Solving and Client Counseling, is taken during the student's third year of law school and integrates lessons learned throughout the DWS program, with particular emphasis on the skills and values pertaining to a lawyer's relationship with the client, including interview skills. The additional four required courses for DWS students (in addition to the four upper-level courses required for all UNH law students) are Business Associations; Evidence; Wills, Trusts, and Estates; and Personal Income Tax.

Assessment Types

Formative Assessment

Through formative assessment, students receive frequent and constructive feedback on their performance as they advance through the courses and the program. The feedback is provided by professors, lawyers, judges, other scholars, and bar examiners. It is delivered before the student has completed the course or program; this allows the student to reflect on the feedback and apply it to future exercises.

Reflective Assessment

Reflective assessment complements formative assessment. Through frequent reflection exercises, students consider the formative feedback they have received, evaluate their own performance, contemplate what they are learning about their performance, and develop a plan to address any weaknesses. Reflection allows them to better understand the lessons they are learning, how those lessons are intended to help them improve, and how those lessons are related to the practice of law and their roles as lawyers.

Summative Assessment

At the conclusion of each course, the professor evaluates the student's performance and progress throughout the course. These evaluations are shared with the bar examiners, who also review the student's performance for the semester. The DWS program is unique in its use of summative assessment to evaluate student performance in the full, two-year program, in addition to student performance in each DWS required course.

Source: Institute for the Advancement of the American Legal System (IAALS), *Ahead of the Curve: Turning Law Students into Lawyers: A Study of the Daniel Webster Scholar Honors Program at the University of New Hampshire School of Law 23–24* (January 2015), available at http://educatingtomorrowlawyers.du.edu/images/wygwam/pdf_resources/Ahead_of_the_Curve_Turning_Law_Students_into_Lawyers.pdf (last visited June 8, 2015).

The standardized client interview became part of the DWS curriculum in 2008. It is based upon a model from the Glasgow Graduate School of Law, which itself based the standardized client on the standardized patient model used in medical education.⁸ Standardized clients are actors who are trained to act as new clients and who evaluate DWS students on their interviewing skills using two criteria: 1) the student's interpersonal and professional interaction with the client, and 2) the extent to which the student obtains relevant information during the interview. Students are evaluated on a scale of 1 to 5 according to standardized criteria designed to evaluate eight effectiveness categories. Students must receive a total of 24 to pass each interview. All interviews are videotaped for later review and reflection.

To remain eligible for the program, DWS students must achieve at least a B– in all of their DWS courses and at least a B cumulative overall grade point average. Students who successfully complete the DWS program and who pass the Multistate Professional Responsibility Examination and character and fitness check are then certified by the New Hampshire Board of Bar Examiners as having passed the New Hampshire bar exam and are admitted to the New Hampshire Bar upon graduation.⁹ Thus, the DWS program “replaces a two-day bar examination with a two-year course path and assessment of each student.”¹⁰

Since its inception, the DWS program has captured the attention of legal education experts.¹¹ In 2008, Lloyd Bond, Ph.D., one of the authors of the Carnegie Foundation for the Advancement of Teaching's report *Educating Lawyers: Preparing for the Profession of Law* (hereinafter the Carnegie Report),¹² said that the program “fuses instruction and assessment in the most intimate and integrated way that [he has] ever seen.”¹³

Findings of the IAALS Study

The stated mission of the DWS program is “Making Law Students Client-Ready.” The IAALS study examined whether the program lived up to its mission. To determine whether DWS students are actually better prepared to practice law than their non-DWS counterparts, IAALS worked with an

evaluation consulting firm to “conduct quantitative and qualitative analysis of existing research to evaluate outcomes of the DWS program.”¹⁴ IAALS learned that (1) in focus groups, members of the legal profession and DWS alumni said that they believe that DWS graduates “are a step ahead of new law school graduates”; (2) based upon standardized client interviews, DWS students “outperformed lawyers who had been admitted to practice within the last two years”; and (3) “[t]he only significant predictor of standardized client interview performance was whether or not the interviewer participated in the [DWS] Program.”¹⁵ Based upon its study, IAALS believes that the DWS program “is ahead of the curve in graduating new lawyers ready to venture into the profession—and others can learn from its success.”¹⁶

The specific qualitative data that IAALS examined was a non-verbatim transcript of eight focus groups that were conducted at UNH School of Law in April 2013 by Lloyd Bond, Ph.D., and William M. Sullivan, Ph.D., the co-authors of the Carnegie Report.¹⁷ Focus group participants were placed in groups based upon their roles: New Hampshire judges, lawyer supervisors of DWS alumni, peers of DWS alumni, DWS alumni, current DWS students, UNH School of Law administrators, UNH School of Law faculty, and members of the New Hampshire Board of Bar Examiners.¹⁸ All eight focus groups perceived DWS graduates to be “a step ahead of new law school graduates” because they “are able to hit the ground running, working with clients and taking a lead role on cases immediately.”¹⁹

Focus group participants identified four interrelated factors that drive “the accelerated competence of DWS scholars”: formative assessment, practice context (the opportunity to participate in simulations with live clients), collaboration, and personal reflection.²⁰ Focus group participants noted that the “constant nature of the feedback” from a bar examiner, peers, professors, and the DWS program director “encouraged reflection and improvement” and was particularly valuable in enabling students to become good legal writers.²¹ Focus group participants opined that the “combination of formative assessment and a practice context provides a particularly strong foundation for DWS graduates.”²² Certain focus groups identified “[t]he collaborative interactions between DWS scholars ... as another important aspect.”²³ Additionally, “[a]ll eight focus groups discussed the importance of DWS scholars reflecting on their own performance.”²⁴

The specific quantitative data that IAALS examined were standardized client interview assessments administered to 69 DWS students and to 123 non-DWS new lawyers (lawyers with

two or fewer years of practice) in 2009–2012.²⁵ The non-DWS lawyers volunteered for the study at the request of the Chief Justice of the New Hampshire Supreme Court and participated during the New Hampshire Bar Association's practical skills course (a course that newly admitted lawyers must complete during the first two years of practice).²⁶ Performance on the standardized client interview was measured by two factors: (1) an overall assessment by the standardized client of the participant's performance and (2) the percentage of relevant information points that the participant learned from the standardized client during the course of the interview.²⁷

IAALS found that "DWS scholars significantly outperform[ed] non-DWS lawyers on both the overall assessment and the percentage of relevant information learned."²⁸ The overall performance of the DWS students was rated an average of 3.76 out of 5 compared to the overall performance of the non-DWS lawyers, which was rated an average of 3.11.²⁹ IAALS concluded that the difference between 3.11 and 3.76 is "large and statistically significant."³⁰ Similarly, DWS students, on average, learned 89% of the relevant information points compared to non-DWS lawyers who, on average, learned 69% of the relevant information points, a difference also described as "large and statistically significant."³¹

Although focus group participants postulated that DWS students were more successful than their non-DWS counterparts because they are higher-performing students, IAALS found that, at least with regard to the standardized client interviews, there was no evidence to support that hypothesis.³² IAALS discovered that "[n]either LSAT score nor class rank" was "significantly predictive" of how a participant would perform on the standardized client interview.³³ IAALS found that participation in the DWS program accounted for the superior performance of the DWS students as compared to the non-DWS lawyers in the standardized client interviews.³⁴

Suggestions for Replicating the DWS Program

In an article that we wrote in 2009, we outlined 12 suggestions for replicating the DWS program in its entirety.³⁵ ([See the sidebar #2](#) for these 12 suggestions.) We recognize, however, that replicating the DWS program is not necessarily feasible in many jurisdictions, as each state has its own unique needs and challenges and must tailor initiatives that are realistic and cost-effective for that state. In New Hampshire—because the program is a collaborative effort between the New Hampshire Supreme Court, the New Hampshire Board of Bar Examiners, the New Hampshire Bar Association, and UNH School of Law—the program has received strong volunteer support in several capacities from the New Hampshire Bar, active judges, clerks of court, court reporters, and

lawyers—and from DWS graduates themselves. This has helped keep the costs of the program relatively modest, as has the use of adjunct faculty to teach certain courses, and the use of software to run and assess simulations and maintain online portfolios. Such an experience may not be within reach in other jurisdictions, particularly larger ones.

Twelve Suggestions for Replicating the DWS Program

1. Draft a mission statement.
2. Review your school's current curriculum to assess the extent to which it addresses the goals identified in the mission statement.
3. Consider what you would like to teach in the new program, and how you would like to integrate it into the overall curriculum.
4. Identify all available resources in your law school, legal community, and community at large.
5. Design your courses, intentionally weaving them together so that they create a seamless fabric.
6. Select your faculty.
7. Communicate clearly and constantly with the faculty as you develop the program.
8. Communicate with the students.
9. Create an application.
10. Have a selection committee—not just an individual.
11. At least initially, limit enrollment.
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.

Note: For elaboration on each of these 12 suggestions, see John Burwell Garvey & Anne F. Zinkin, *Making Law Students Client-Ready: A New Model in Legal Education*, 1 Duke Forum for Law and Social Change 127–129 (2009), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1477391 (last visited June 8, 2015).

IAALS observed, however, that “[f]ull-scale replication is not . . . the only way to learn from the success of the DWS program.”³⁶ IAALS believes that “the program can be unbundled into the key elements that foster [its] success . . . —and that can foster success in courses, programs, and schools across the country.”³⁷ The key elements that IAALS identified were (1) providing a

learning environment with formative and reflective assessment in a practice-based context and (2) building collaboration between the academy and the profession.³⁸ ([See the sidebar #3](#) for the IAALS recommendations regarding these key elements.)

IAALS Recommendations for Implementing the Key Elements of the DWS Program

To provide a learning environment with the requisite assessments in a practice-based - context, IAALS recommends that programs

- identify learning outcomes and benchmarks;
- identify multiple sources of feedback (professors, lawyers, judges, other students, bar examiners);
- create simulated practice environments and involve the student in real-life practice settings;
- build in ongoing feedback checkpoints;
- require students to gather feedback and capture personal reflections in portfolios;
- review personal reflections and provide feedback on students' development; and
- use the full student portfolio for summative assessment.

To build collaboration between law school academics and practicing lawyers, IAALS - recommends that the parties

- proactively seek out opportunities to collaborate;
- recognize and explicitly state common goals related to the development of new lawyers;
- work together to identify ways to meet these goals;
- commit to an ongoing relationship that lasts beyond recommendations and into implementation; and
- be willing to look beyond what is currently possible to what might be possible.

Source: Institute for the Advancement of the American Legal System (IAALS), [Ahead of the Curve: Turning Law Students into Lawyers: A Study of the Daniel Webster Scholar Honors Program at the University of New Hampshire School of Law](#) 23–24 (January 2015), available at

http://educatingtomorrowlawyers.du.edu/images/wygwam/pdf_resources/Ahead_of_the_Curve_Turning_Law_Students_into_Lawyers.pdf (last visited June 8, 2015).

IAALS concluded its study by stating its belief that the DWS program “gives us a glimpse into what is possible tomorrow if we are willing to look beyond the limitations of today.”³⁹ In IAALS’s view, the DWS program provides “a guide to creating robust and effective law school courses, programs, and curricula that will better prepare lawyers for the realities of today’s profession.”⁴⁰ To IAALS, the DWS program has truly and verifiably positioned its scholars to be “ahead of the curve.”⁴¹

Notes

1. Roy Stuckey and Others, *Best Practices for Legal Education: A Vision and a Road Map* (Clinical Legal Education Association, 2007), at 1. ([Go back](#))
2. *Editor’s Note*: The August 2010 issue of the *Bar Examiner* included an article written after the DWS program had completed its three-year pilot phase. That article delves into greater detail on such topics as how the program was created, the program requirements, and the assessment methods used. See John Burwell Garvey, [New Hampshire’s Performance-Based Variant of the Bar Examination: The Daniel Webster Scholar Honors Program Moves Beyond the Pilot Phase](#), 79(3) *The Bar Examiner* 13–23 (August 2010). ([Go back](#))
3. In 2014, New Hampshire admissions to the bar were as follows: 168 by examination, 74 on motion, 6 by transferred UBE score, and 22 by DWS program completion. ([Go back](#))
4. IAALS, located at the University of Denver, “is a national, independent research center dedicated to facilitating continuous improvement and advancing excellence in the American legal system.” Institute for the Advancement of the American Legal System, Our Mission, <http://iaals.du.edu/> (last visited June 8, 2015). It leverages “a unique blend of empirical and legal research, innovative solutions, broad-based collaboration, communications, and ongoing measurement in strategically selected, high-impact areas” to empower others “with the knowledge, models, and will to advance a more accessible, efficient, and accountable legal system.” *Id.* Educating Tomorrow’s Lawyers is one of IAALS’s four initiatives. It identifies “innovative models of legal education that ensure knowledgeable, ethical and practice-ready professionals.” ([Go back](#))
5. Institute for the Advancement of the American Legal System (IAALS), *Ahead of the Curve: Turning Law Students into Lawyers: A Study of the Daniel Webster Scholar Honors Program at the University of New Hampshire School of Law* (January 2015), available at http://educatingtomorrowlawyers.du.edu/images/wygwam/pdf_resources/Ahead_of_the_Curve_Turning_Law_Students_into_Lawyers.pdf (last visited June 8, 2015). ([Go back](#))
6. To date, there are 147 graduates from the program from the classes of 2008 to 2015. Forty-three students are currently enrolled for the classes of 2016 and 2017. (There are no current plans to expand

enrollment beyond the maximum of 24 students.) ([Go back](#))

7. See University of New Hampshire School of Law, "Evaluation Proves Webster Scholars Are 'Ahead of the Curve'" (Feb. 6, 2015). ([Go back](#))
8. 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). ([Go back](#))
9. N.H. Sup. Ct. R. 42. ([Go back](#))
10. IAALS, *supra* note 5, at 11. ([Go back](#))
11. IAALS, *supra* note 5, Foreword by Lloyd Bond, Ph.D., and William M. Sullivan, Ph.D.; John Burwell Garvey & Anne F. Zinkin, *Making Law Students Client-Ready: A New Model in Legal Education*, 1 *Duke Forum for Law and Social Change* 126 (2009), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1477391 (last visited June 8, 2015). ([Go back](#))
12. William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* (The Carnegie Foundation for the Advancement of Teaching 2007). ([Go back](#))
13. Garvey & Zinkin, *supra* note 11, at 126. Most recently, the program was selected for national recognition as one of three recipients of the 2015 E. Smythe Gambrell Professionalism Award (June 5, 2015, letter to John Burwell Garvey from the American Bar Association Standing Committee on Professionalism), an award bestowed by the Standing Committee on Professionalism of the American Bar Association (ABA) to "honor excellence and innovation in professionalism programs by law schools, bar associations, professionalism commissions and other law-related organizations." American Bar Association, Gambrell Professionalism Award. The Gambrell Award judges and the ABA Committee found that the DWS program "represents an exemplary and extraordinarily innovative approach to preparing qualified students for a life in the law by immersing them in experiential learning and exposing them to exceptional professional development resources and role models" and "offers a proven template for attacking fundamental challenges facing legal education today by focusing intently on experiential learning." (June 5, 2015, letter to John Burwell Garvey, *supra*. ([Go back](#))
14. IAALS, *supra* note 5, Executive Summary at 1. ([Go back](#))
15. *Id.* ([Go back](#))
16. *Id.* ([Go back](#))
17. IAALS, *supra* note 5, at 12, 13. ([Go back](#))
18. *Id.* at 12. ([Go back](#))
19. *Id.* at 13. ([Go back](#))
20. *Id.* at 14–16. ([Go back](#))
21. *Id.* at 15. ([Go back](#))
22. *Id.* ([Go back](#))
23. *Id.* ([Go back](#))
24. *Id.* at 16. ([Go back](#))
25. *Id.* at 12. ([Go back](#))
26. *Id.* at 17. The practical skills course focuses on New Hampshire-specific practice and procedures and basic lawyering skills and would not be expected to offer non-DWS lawyers who had taken the course

an advantage over those who did not in terms of performance in the standardized client interviews. ([Go back](#))

27. *Id.* ([Go back](#))

28. *Id.* at 18. ([Go back](#))

29. *Id.* ([Go back](#))

30. *Id.* The IAALS conclusion is based upon statistical norms in the social sciences pursuant to which a difference greater than .60 is considered to be large and statistically significant. ([Go back](#))

31. *Id.* ([Go back](#))

32. *Id.* at 20, 21. ([Go back](#))

33. *Id.* at 21. ([Go back](#))

34. *Id.* at 21, 22. ([Go back](#))

35. Garvey & Zinkin, *supra* note 11, at 127–29. ([Go back](#))

36. IAALS, *supra* note 5, at 22. ([Go back](#))

37. *Id.* ([Go back](#))

38. *Id.* at 23, 24. ([Go back](#))

39. *Id.* at 25. ([Go back](#))

40. *Id.* ([Go back](#))

41. *Id.* ([Go back](#))



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