



**John B. Garvey:** *Professor of Law*

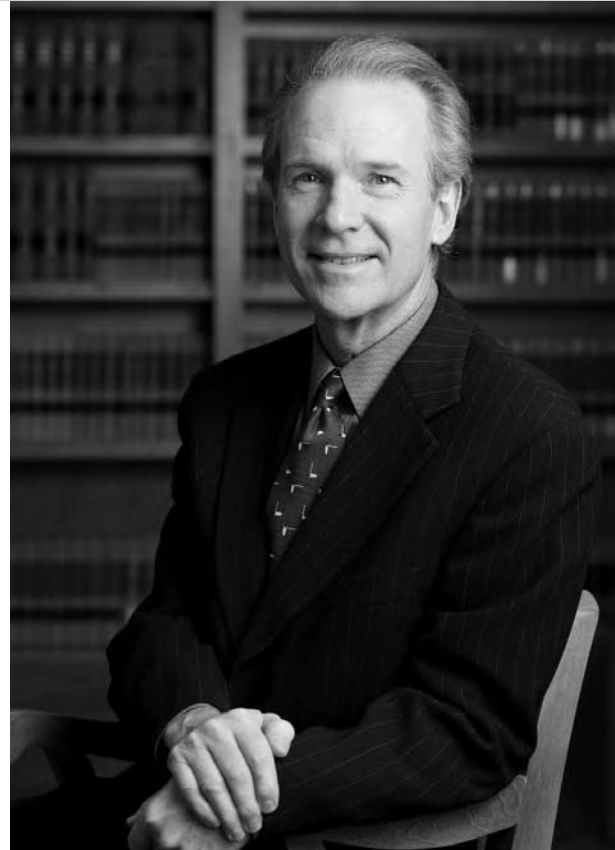
## Making Law Students Client-Ready The Daniel Webster Scholars Honors Program

“We agree with those who have opined that “[l]aw schools have a moral and ethical obligation to society — and, to an even greater degree, to their students — to adequately prepare the students to succeed as professionals.”<sup>1</sup> After many thousands of hours of analysis from different interest groups, the overwhelming consensus is that law schools can and should do much better in this regard.<sup>2</sup> Law schools are training students who will represent clients and become fiduciaries. As such, law schools are the fiduciaries of the future fiduciaries. Change is not only necessary, but, as the Daniel Webster Scholar Honors Program and other initiatives around the country demonstrate, possible. — Professor John B. Garvey, from “*Making Law Students Client-Ready: A New Model in Legal Education*,” Duke University Press

The first program of its kind in the nation, the Daniel Webster Scholar Honors Program provides students an alternative to the traditional bar examination. It focuses on preparing law students to be client-ready. Initiated by the New Hampshire Supreme Court, it is a comprehensive, practice-based, teaching and bar licensing honors program which takes place during the last two years of law school. The program, launched in 2008, is a collaborative effort of the New Hampshire Supreme Court, the New Hampshire Board of Bar Examiners, the New Hampshire Bar Association, and Pierce Law. Two classes have successfully completed the program, and nearly all received job offers prior to graduation.

**Q: Lawyers have called for reform in legal education for over a century. Can you give us some background on the primary issues?**

**JBG:** During the 1870s, numerous groups of lawyers with elite practices were distressed by the lack of standards and the low estate to which the bar had fallen in their local communities. The ABA was created in 1878, and established a committee to develop a unified legal profession with common admission and educational requirements for the entire country. In 1881, this committee began efforts to “wrest legal education from the local control of the practicing profession during the early years of the 20th century and to place it increasingly in the law schools, “by passing a resolution recommending attendance at law school for three years and that all states give credit toward required apprenticeship, for time spent in law school.” At the



end of the 19th century, it was common for a Board of Bar Examiners to require either a two-year apprenticeship along with one year of law school or three years of law school. Over time, the apprenticeship option was eliminated and three years of law school became the nearly universal requirement. Today, all but seven states require all applicants for admission to have graduated from a three-year law school program or its part-time equivalent.

The calls for change have accumulated rapidly since the 1970s. Since then, leaders have concluded that most law school graduates lack the minimum competencies required to provide effective and responsible legal services and that the now-traditional Langdellian (case study) method of education is only one aspect of legal training, and must be integrated with appropriate training in professional skills and values.

The 1992 MacCrate Report was commissioned by the ABA and resulted in multiple recommendations for ‘improving and integrating the process by which lawyers acquire skills and values,’ and emphasized the importance of clinical legal educa-

tion. This report was followed by the Carnegie Foundation's 2007 report called "Educating Lawyers," and a publication from the Clinical Legal Education Association, entitled "Best Practices for Legal Education," which made recommendations for legal education reform.

**Q: How does the DWS program address these issues?**

**JBG:** According to Robert MacCrate, the central message is that law schools should do three things: one, broaden the range of lessons they teach, reducing doctrinal instruction that uses the Socratic dialogue and the case method; two, integrate the teaching of knowledge, skills and values, and not treat them as separate subjects addressed in separate courses; and three, give a much greater attention to instruction in professionalism. The DWS program achieves all three goals.

**Q: How did Pierce Law become the first law school in the nation to offer such a program?**

**JBG:** The Daniel Webster Scholar Honors Program was the brainchild of Senior Associate Justice Linda S. Dalianis of the New Hampshire Supreme Court. She believed, after serving as a trial judge for more than twenty years and a state Supreme Court justice for several additional years, that "there must be a better way to prepare students to practice law." Justice Dalianis led an effort to improve legal education coordinated between the New Hampshire Supreme Court (which is the state's only appellate court), the New Hampshire Board of Bar Examiners, and the dean and other faculty from the state's only law school, Pierce Law.

**Q: Could you describe the initial structure of the program and how it was designed?**

**JBG:** When deciding how to make the program a reality, the committee began by examining what courses Pierce Law offered, what courses it did not, and what courses might be necessary to qualify someone to pass the bar. Ultimately, the committee determined that it could accomplish its "goals by requiring certain courses that are already offered but have not previously been required, and by adding practice courses such as: Advanced Civil Procedure/Civil Litigation Practice; Contracts and Commercial Transactions Practice (Articles 3 and 9); Criminal Law Practice; Family Law Practice; Real Estate Practice; Wills, Trusts and Estate Practice." Additionally, the committee decided to offer program participants practice courses that would be small, emphasize the MacCrate skills and values, and be taught in the context of real life.

Because the program was also intended to be an alternative bar exam, methods of assessment were a primary consideration. The committee determined that each scholar would 'maintain a portfolio that would contain all of the practice exercises as

well as other materials, such as a video of the scholar doing an opening statement, direct and cross examinations, conducting a mediation, or interviewing.'

**Q: The mission of the program is to make students client-ready by providing a practice-based, client-oriented education. Can you describe how this is done in greater detail?**

**JBG:** In addition to traditional law school courses, Webster Scholars take a series of courses that involve simulation and they are required to participate as externs and/or in a clinic. They create portfolios of their work, which is reviewed at the end of each semester by a bar examiner. They meet with a bar examiner each year to discuss their portfolio and talk about their development. Where traditional courses usually involve a midterm and a final, with limited feedback along the way, Webster Scholar courses involve a hands-on learning environment. As one example, in the pretrial advocacy course, the students are divided into two law firms and serve as "junior associates." There is a professor who serves as the "senior partner" for each firm. The TAs are students who took the course the year before, and they serve as "senior associates."

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

The "junior associates" receive constructive feedback from their "senior partners," "senior associates," and from each other, as well as from court reporters, judges, attorneys, standardized clients and witnesses.<sup>3</sup> They are also able to observe and critique their taped deposition and oral argument performances. At the end of the course, each scholar prepares a reflective paper in which, using the MacCrate skills and values as a guide, the student identifies those skills and values that were addressed in the course, reflects upon the student's own perceived strengths and weaknesses, and discusses how the student plans to cultivate strengths and improve weaknesses.

This process is repeated in the five other DWS courses and themes from one course are often brought forward into another course. By working together and by reflecting upon their actions, Webster Scholars have an integrated learning process which allows them to grow and gives them experience that is relevant to practice.

**Q: What types of positions have Daniel Webster Scholars obtained following graduation?**

**JBG:** They have a wide variety of legal positions, including Supreme Court and Superior Court clerks, associates in large and small general practice firms, public defenders, patent prosecutors, IP litigators — just about everything that new law students do. About half of them are in New Hampshire, and the rest are all over, including Boston, Chicago, D.C., New York and New Jersey.

**Q: What type of feedback have you received from employers?**

**JBG:** The feedback has been universally outstanding. I have had unsolicited comments from various employers who have said that Webster Scholars come to work with poise, knowledge and maturity that greatly exceeds the typical law school graduate. I now get calls from employers asking me for Webster Scholars!

**Q: Did your experience differ greatly between the first class of scholars and the following classes?**

**JBG:** I think the experience has evolved each time. It has been a work in progress. The first time, I spoke to students about a program that didn't exist. I had to say 'trust me.' We all went through the first year together. With the second class, I was able to say, we have some 3Ls now, and I can tell you that you don't have to trust me, you can ask them about their experiences. Now we have students that have graduated and have been practicing law for a year. We have a pipeline and everything has become more real. I have a much better sense of the continuity. Its organic — things have just built on their own.

I would say the primary difference is that the first year was sometimes like live improvisational theatre — you are given a topic and told to run with it. With the benefit of the first year, the second year was more scripted. Now with three years of experience with the program, I am able to tune it up and offer it to more students. In fact, I'm pleased that we have been able to expand the incoming group from 15 to 20 for the class of 2011.

**Q: Have you received inquiries from other schools about the program?**

**JBG:** A lot of other schools have contacted me, but more significantly, the Society of American Law Teachers (SALT) has taken us on as a project and is going to try to get other jurisdictions to replicate our program or at least aspects of it. Others have asked us to promote our program in Massachusetts as well as nationally.

**Q: The faculty and the New Hampshire Supreme Court have recently finished a comprehensive review of the DWS Program, and have elected to make it a permanent, rather than a pilot program. Will any changes be made to the program next year?**

**JBG:** I'm very excited by the vote of confidence, but it won't change our approach. We are constantly working to improve and fine tune the program and we'll continue to do that. I will always consider the program as a work in progress. We are working to incorporate a new software platform, which is now being used in the UK, to help run the simulations, and we will be the first school in the United States to use the software. We have expanded to 20 students per class, and we will continue to look at ways to make the program available to as many students as possible without diluting its value. Since we are developing the program from scratch, it's important to grow at a pace that ensures that we maintain quality control and efficiency.

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<sup>1</sup> Trujillo, supra note 120, at 70; see also Garvey Podcast, supra note 144; ABA Standards for Approval of Law Schools 301(a) (2002) (law schools have an obligation to "prepare [their] graduates ... to participate effectively and responsibly in the legal profession").

<sup>2</sup> Best Practices, supra note 8, at 8.

<sup>3</sup> An added benefit is that by seeing practicing attorneys and sitting judges volunteer their time to the program, the Webster Scholars learn from their example the importance of giving back to the profession.

*Prior to joining Pierce Law as a full-time faculty member in 2005, Garvey was a member of the adjunct faculty. He first taught Evidence at Pierce Law in 1985, and continues to teach Evidence and other courses. Garvey began his legal career as a lieutenant in the United States Navy Judge Advocate General's Corps and received both the Navy Achievement Medal and the American Bar Association Award for Professional Merit. In 1981, Garvey joined Sulloway & Hollis in Concord, NH, where he devoted a 24-year career to a wide range of litigation matters, focusing primarily on commercial litigation, plaintiff's personal injury, class actions and medical malpractice defense. He has received numerous honors, including the New Hampshire Civil Liberties Union "Bill of Rights Award" and has been selected for Best Lawyers in America, Super Lawyers, Who's Who in America and Who's Who in American Law.*