PREPARING LAW STUDENTS TO BECOME BETTER LAWYERS, QUICKER: FRANKLIN PIERCE'S WEBSTER SCHOLARS PROGRAM

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THIS is the tale of a long odyssey that will ultimately serve to improve considerably the quality of lawyering in New Hampshire. Several years ago, one of the justices on the New Hampshire Supreme Court, Linda Dalainis, and I had a conversation about devising a better way to license new lawyers. We simply were not convinced that the traditional bar exam was the best way to go. Indeed, I wasn't even entirely sure what purpose it achieved. Several maybe, none for sure.

We wanted to brainstorm new and different possibilities in the hope of creating a licensing device that had inherent value and actually improved the quality of new lawyers in the state. There were several themes that we wanted to weave through whatever we devised. First and foremost, this was not intended to be an easier way to be admitted to the bar. Indeed, what we finally devised, as I shall describe below, will certainly require more work and it may well be more difficult. Another consideration was that it had to be a real improvement; not merely different or an alternative. Third, we wanted to ensure we incorporated the McCrate factors at every step along the way. Finally, we needed the support of various constituencies—the practicing bar, bar examiners, New Hampshire Supreme Court, faculty, public, and, of course, the students.

We also talked about partnering with our neighbor states, Vermont and Maine. We wanted to try to create a tri-state arrangement with reciprocity among the partners. (That part hasn't worked thus far. More on that below.)

Let me begin by describing the setting in New Hampshire. Franklin Pierce Law Center is the only law school in the state. We send more graduates out of the state than almost any other law school (last year we had only 24 graduates take the New Hampshire bar). On the other hand, because the New Hampshire bar is relatively small (about 4000 members) our graduates make up over one third of the lawyers in the state. So although Pierce Law is private and independent, we bear a considerable responsibility to the citizens of New Hampshire.

Many and perhaps most of our graduates who stay in New Hampshire go into small firms or solo practice. Even the largest firms in the state are small by big city standards; small-firm practice is a venerable tradition in the Granite State.

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The small-firm tradition makes it all the more important that young lawyers be well prepared to practice law. The present bar exam may measure preparation for practice in some way, but it doesn't add to the preparation itself. Indeed, the right or wrong nature of the bar exam answers, the necessary emphasis on responding without research or even reflection, and the limitation on the lawyerlike skills tested, all combine to make studying for and taking the bar exam a potentially negative experience. That's what we wanted to change. We wanted preparation for the bar exam to be a worthwhile learning experience.

We started to meet regularly with representatives from various segments of the Maine and Vermont legal communities. Each state created a core committee to represent it. At the table were Bar Association presidents, members of our respective Supreme Courts, Bar Examiners, and the deans from the three law schools along with some faculty and prominent lawyers in the states. The law school representation was facilitated by the fact that both Maine and Vermont also have only one law school each. (We refer to ourselves as the deans from the "upper tier" schools, preferring geography to the *U.S. News and World Report*.) The core committees from each state met separately and then, less frequently, together.

Cooperation and shared vision both between the states and among the various constituencies within each state were absolutely critical to the effort. Unfortunately, for a variety of reasons, neither Maine nor Vermont was able to proceed to the end. During the course of the discussions, some of the people changed. Kinvin Wroth at Vermont Law School and Colleen Khoury at Maine were in the process of winding down their deanships. I think there may also have been disagreement, or perhaps just lack of enthusiasm, within the Maine and Vermont delegations or their constituencies.

We learned while we were working together that achieving agreement among all the stakeholders in three states was a very, very difficult thing to do. The original idea was that the programs would be identical or at least look very much alike in each state, but that proved to be virtually impossible. The fallback goal was that the programs may be different but there would still be mutual acceptance and therefore reciprocity. Before we could really flesh that out, Maine and Vermont withdrew.

The New Hampshire contingent then set out on our own in the hope (still) that one or both of the other states will eventually join us. Someone suggested the name of "Webster Scholars" and the "Webster Scholar Program" as the working titles. (As you probably know, Daniel Webster is a favorite son of New Hampshire and generally held in higher regard than the eponymous Franklin Pierce.)

We drafted the following mission statement:

> The Daniel Webster Scholar Program shall be established as an honors program at Franklin Pierce Law Center. The Program will significantly increase practical experience, supplementing learning in law school to reflect the reality of today's practice. Upon completion, Webster scholars will: know how to advise clients; know how to use existing resources; be well versed in the substantive law; and, have insights and judgment that usually develop after being in practice for some

> years. The Webster Program seeks to add value and bridge the gap between education and practice by focusing upon the ten fundamental skills and four fundamental values described in the MacCrate report. The goal is to make new lawyers better, sooner. Because students who have successfully completed the Webster Program will have demonstrated core competencies required to practice law, Webster Scholars will not be required to take the MPRE or the State Bar Examination in order to be admitted to the Bar in New Hampshire.

Now, all we had to do was figure out how to do that.

Our first concept was to decide what the Bar Examiners would like to see added to the present curriculum at Pierce. For example, if in Tax I the students were not required to complete an income tax form or if in Trusts and Estates they didn't draft a trust, perhaps these exercises should be required in the Webster Scholar Program. Essentially, the Program would be designed to be a parallel universe to the traditional law school. We would look at what we were doing, and not doing, and then design the Program to fill in the gaps considered to be necessary to qualify someone to pass the bar in this alternative way. Again, the emphasis would always be on the MacCrate factors and, of course, New Hampshire law.

The bar examiners might also require Webster Scholars to take some courses Pierce offers but doesn't require. Or, perhaps, a menu of, say, three of four courses might be required to complete the Program. Certainly, clinics and externships would play prominent roles.

In a way, figuring it out became too much fun. We were like kids in a candy store. We were perhaps guilty of "piling on." Upon reflection and analysis, our concern became that we would be asking too much of law students on top of what the law school already demands of them. This is especially true because they would be required to choose to begin the Program at the worst possible time: during or just after the first year. The bar exam would seem like eons away and they would be beaten down by the stress of the first year. Taking on even more responsibility might appear be too daunting. So then we started to think in terms of offering credit for the Program's courses. Even though credit might make the Program more attractive to students, it raised huge curriculum, ABA, and faculty red flags.

Credit means the courses must be regular law school courses, deconflicted with existing courses, and otherwise legitimately fitted into the curriculum in all respects. It also means that Pierce would bear a responsibility to ensure the courses were academically rigorous, well taught, appropriately examined and so forth. We just brought the faculty into the equation.

We had always had a faculty member on the committee, our Director of Legal Skills, Sophie Sparrow, and the faculty generally was aware of what was going on, but we hadn't officially and thoroughly briefed the faculty. That process began.

Additionally, we conducted a student focus group to get their input before we went too far in a wrong direction. Of course, none of the students we invited would be eligible to participate in the program … so we served pizza. Their

reaction to the program, and the pizza, was very, very positive. We knew we were on to something good.

They had one major suggestion. We had originally planned in the first years of the program to limit it to no more than 25 students and to the top half of the class. This was to ensure success and to ward off potential concern by hiring partners who might balk at hiring a graduate who hadn't passed the same bar exam they had passed. The theory was that if the students came from the top half of the 1L class, it would eliminate that concern.

The students at the focus group convinced us to automatically admit students in the top half who applied and to admit those in the bottom half who applied and who were specifically granted permission to participate. We were susceptible to that suggestion, I suppose, because in many ways it was those in the bottom half that we were most concerned about anyway. Graduates from the bottom half, who struggle through BarBri and the bar exam before striking out on a solo practice are walking, talking candidates for malpractice.

The touchstone will be to make the graduates as capable as they can possibly be to practice law in a solo or small firm setting. We believe that if we can do that, they will also be highly attractive to large firms, government or corporations as well. Because of the economics of law practice these days, even the big firms can't devote as much time as they did years ago to mentoring junior associates. The Webster Scholar Program will thus meet an important need.

We will accomplish our 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, we might offer as options practice courses in such areas as bankruptcy, employment/workers comp, insurance and tax.

The practice courses would be small and focused, and would emphasize the MacCrate skills. They would incorporate ethics, professionalism, analysis, and writing. They would be taught in the context of real legal life. For example, any subject may implicate tax considerations which the students will have to consider. The students would be required to produce at least one product of the practice area such as a complex real estate document. They might also be required to produce a process assignment in which they may list resources, sources of forms, and outline how to solve a problem in the practice area.

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, direct and cross examinations, conducting a mediation, or interviewing a client. In the end, there will be a two day "exam" in which the Webster Scholars will be required to defend their portfolios to the bar examiners, who will determine whether they "pass" for admission to the New Hampshire bar.

At this point, many of these aspects of the Webster Scholars Program are still on the drawing board and are subject to change. Indeed, like any vibrant initiative, things will likely evolve forever as we get better and better at it. It should always be dynamic.

In New Hampshire, we met with those members of the Supreme Court who were not on our original committee, and gained their support for the Program. With the consent and cooperation of the New Hampshire Supreme Court, the Webster Scholars Program will initially be a three-year experiment. Franklin Pierce will keep the Court informed concerning the Program. At the end of the three years, the Program will be comprehensively evaluated, and then it may be continued or phased out.

I should also mention that in addition to Justice Dalainis, another member of the core committee from the outset was Justice Jim Duggan. Before being appointed to the Court, Justice Duggan was a longtime faculty member at Pierce and had been the interim dean for almost two years. His contributions were invaluable because he had a sublime understanding of both law school issues and the concerns of the Court and Bar. From his vantage point, he was able t explain law school issues to the Court, and the Court's concerns to us.

We have briefed the New Hampshire Bar Association Board of Governors and the Bar Foundation. We've done a well-oiled publicity roll out. We were fortunate to receive broad and positive press coverage.

We just hired a director for the Program who has been one of the most prominent lawyers in the state for a long time. He was the head of the litigation department of one of the major firms in New Hampshire. His hire added immeasurably to the positive feelings about the program in the state.

We were thrilled with the response we got to the ad seeking a director. We received applications from many highly qualified lawyers who were just the sort of people we had been looking for: prominent lawyers, good teachers, good colleagues, and persuasive salespersons for the program. It was almost an embarrassment of riches. We had to pass over some of the best lawyers in the state.

It was an unusual hire because the candidate had to be acceptable to the Supreme Court (and, by extension, the bar examiners) and to our faculty. From the law school perspective, we decided to handle it as we would any other hire except it was only a statewide search as opposed to a national search. (We had New Hampshire lawyers apply, however, who lived out-of-state and even overseas.) We then also had the core committee interview the candidates and watch their live presentations.

Not surprisingly, the three top candidates were all long-time and well-respected adjunct faculty members. Any of the three, as well as several others, would have been acceptable to everyone. Happily, the first choice was unanimous. The director is a nontenure track position, and he essentially serves on the faculty as a clinical faculty member.

The new director will draft the overall plan as well as the details. He'll be responsible for administering the Program and will teach in it.

The only criticism we have heard in making the rounds of briefings was that occasionally we heard the "rite of passage" and the related "if the old bar exam was good enough for me, it's good enough for everyone" arguments for retaining the traditional bar exam. Significantly, we did not hear anyone complain that we were dumbing down the bar exam. That's probably because we made a concerted effort to address that argument before it was raised.

There is some concern about reciprocity with other states. We'll just have to see how that works out. We have been careful to devise this as an alternative way to pass the bar exam, not a way to avoid it. I expect some Webster Scholars may take the MBE anyway, or even take a bar exam in another state.

The core committee will stay in place for as long as the director needs it to serve as support and a resource for him.

There will be several measures of success of the Webster Scholars Program. The first will be how many students headed for New Hampshire practice enter the Program. Another will be whether students headed for other states enter just because they realize it is a better education. We'll certainly watch the employment rate of Webster Scholars with special interest. And then, of course, we'll try to measure the Scholars' ability to practice law.

In the back of my mind, I have only two small concerns. One is whether students will be willing to enter this Program early in their law school careers. It's ambitious and rigorous. That is the strength of the Program but it may be a bit daunting for students in or just after their first year. The path of least resistance will be to worry about the bar exam later and take it the traditional way. Another concern is that the Program will require the active support of the bar examiners who will teach the courses essentially as adjuncts and then measure success at the end. If they don't step up in sufficient numbers, it will not work.

I am absolutely convinced that we have discovered a much better way to license new lawyers. Rather than cramming with a bar review course and then taking an exam which bears no real relationship to the practice of law, we will have infused a fair representation of that practice over two or two and a half years of law school. That will be accomplished in a manner that will satisfy the Supreme Court, bar examiners, practitioners, and clients. In the end, we will graduate students significantly more capable of practicing law and have a better, more accurate method of measuring that capability. And isn't that the goal?