



WASHINGTON AND LEE
UNIVERSITY

SCHOOL OF LAW

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*Washington and Lee's
New Third Year of Law School*

Message from Dean Rod Smolla:

The Washington and Lee University School of Law is embarking on a dramatic revision of its law school curriculum, entirely reinventing the third year to make it a year of professional development through simulated and actual practice experiences.

This is one of the boldest reforms in American legal education since Dean Christopher Columbus Langdell pioneered the new curriculum at Harvard Law School in the late 19th century. For the next 100 years, American law schools largely followed the Harvard model, and in many respects it has worked remarkably well.

We are at a turning point in the history of the legal profession and the history of legal education. As the Carnegie Foundation's influential 2007 report, *Educating Lawyers: Preparation for the Profession of Law*, forcefully explained, while the Langdell model works extremely well in the first year to teach students the essential building blocks of legal theory, reasoning, and doctrine, it is an incomplete vision of what it should mean to prepare a lawyer for the profession.

There is a need to be met in our service to the public and the profession. Many law schools from across the spectrum of legal education are responding to these forces with innovations and reforms. Five years from now, legal education will have changed. At Washington and Lee, we are proud to be a leader in this national movement. We believe it is incumbent on our Law School to be more ambitious in our mission and innovative in our approach to education.

As Chief Justice Marshall chided in *McCulloch v. Maryland*, "We must never forget that it is a *constitution* we are expounding." For our purposes now, let us never forget that it is a *curriculum* we are expounding, a curriculum for professional legal education—an education that should meet the evolving needs of the public, the profession, and the international rule of law.

The materials that follow describe this new, exciting third year curriculum. It is a creative blend of intellectually rigorous study of legal theory and doctrine—the traditional focus of law schools in the United States—with the development of professional identity, ethical sensibilities, problem-solving, and the exercise of judgment in action. In the wisdom of a Chinese proverb: “Tell me, I will forget. Show me, I will remember. Involve me, I will understand.”

Our purpose is to transform law school into a three year progression from the purely academic study of law to the development of the lawyer’s professional role as counselor and advocate in the highest ethical traditions of the profession.

Washington and Lee's New Third Year At a Glance

- The new third year curriculum will be entirely experiential, comprised of law practice simulations, real-client experiences, the development of professionalism, and development of law practice skills.
- Each semester will begin with a two week immersion course in practice skills, one focusing on office and transactional practice skills, the other on litigation and conflict resolution skills.
- All students will participate in a year-long professionalism program that will include the participation of practicing lawyers and judges and assist students in the development of professionalism in all its aspects, including legal ethics, civility in practice, civic engagement and leadership, and pro bono service.
- The core intellectual experiences in the third year will be presented entirely through a mix of practicum courses that simulate legal practice environments, legal clinics, and internships.
- The practicum courses will be taught by members of the permanent law faculty, adjunct faculty, and visiting “professors of practice” drawn from the bar and bench.
- Students will not study law from books or sit in classrooms engaging in dialogue with a professor at a podium. The demanding intellectual content of the third year will instead be presented in realistic settings that simulate actual client experiences, requiring students to exercise professional judgment, work in teams, solve problems, counsel clients, negotiate solutions, serve as advocates and counselors—the full complement of professional activity that engages practicing lawyers as they apply legal theory and legal doctrines to the real-world issues of serving clients ethically and honorably within the highest traditions of the profession.
- Practicum courses will span the array of traditional legal subject matter: antitrust, banking, corporate finance, securities law, tax, family law, environmental law, criminal law, employment law, intellectual property, estate planning, media law, civil rights and civil liberties practice—in short, anything and everything that might be offered in a traditional law school course.

Washington and Lee's New Third Year In Detail

I. The Values and Educational Theories that Animate the Program

A. Integrative Learning

The new Washington and Lee third year curriculum is grounded in the assumption that the Law School should embrace an identity and mission that creatively and constructively blends classic academic and professional values. The overarching goal of the new third year curriculum is to distinguish the learning process in the final year of law school from that in the first and second years, with a view toward deliberately preparing students for the transition to a professional practice.

The new third year curriculum is designed to integrate legal theory, legal doctrine, and the development of professional judgment, ethical sensibilities and a sense of professional identity. The program will engage students in a full range of broader professional and life skills that contribute to a life in the law that is meaningful and fulfilling.

B. Balancing Theory, Intellectual Rigor, Professional Judgment in Action, and Ethical Values

The new third year curriculum is not a simplistic and mundane substitution of practical study of law for intellectual study. Quite the contrary, the new curriculum draws on an increasing body of persuasive literature to advance a bold integration of cognitive learning, practical skills, and development of professional identity. The new curriculum will upgrade the quality of the third-year experience in every respect, including intellectual content and rigor, intensity of evaluation and feedback, and professional development. The Law School considered the thoughtful reflections of distinguished legal educators, lawyers, and judges in reaching its conclusions. Sources of insight that were particularly influential included:

- *Educating Lawyers: Preparation for the Profession of Law*, The Carnegie Foundation for the Advancement of Teaching: Preparation for the Professions (2007) (co-authored by William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, Lee S. Schulman)
- *Best Practices for Legal Education*, CLEA, Roy Stuckey (2007)
- *New Skills, New Learning: Legal Education and the Promise of Technology*, Harvard Law School Berkman Center for Internet and Society, Gene Koo (2007)
- *Legal Education and Professional Development—An Educational Continuum*, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, American Bar Association Section on Legal Education and Admissions to the Bar (1992) (the “MacCrate Report”)

C. The Principal Ambitions of the New Third Year

Drawing from the insights of our colleagues throughout legal education and the profession, the new program will be animated by two driving ambitions.

First, a third year student should be expected to more systematically exercise and express professional judgment in a variety of contexts. To be sure, the *acquisition* of essential legal knowledge will continue (as it does over a lifetime), but the purposeful *expression* of considered judgment and counsel to solve client problems will receive greater prominence. In short, third year students will, with guidance and supervision, engage in the craft of lawyering.

Second, a third year law student should be expected to reflect more systematically on what it means to live one's life in the law. Students should recurrently consider and receive guidance on the admirable qualities, dispositions, attitudes, concerns, and habits—moral and intellectual—of good lawyers. They should reflect on the obligations associated with membership in a learned profession and on their personal responsibility for law and its purposes, including a commitment to service and appreciating the myriad ways a lawyer can and should exercise civic leadership. In short, professional values in the best sense, not just competence, should be inculcated and transmitted as our students move toward practice.

D. Student-Centered Learning Methodologies

Studies researching the experiences of law students indicate that students often voice frustration with regard to many elements of the traditional law school model. Students sense a “lack of control” over their course of study. They often feel lost, not knowing exactly what is expected of them, “what they are supposed to be getting out of it,” or whether “they are getting it.” Feedback and evaluation in the traditional law school model typically comes at the end of a semester, often simply in the form of a stark letter grade. Moreover, many students feel that have “much more to offer” as future legal counselors and advocates than they are invited to show in the classroom settings and exams that dominate the traditional model.

W&L's program will respond to these needs. Drawing on a growing body of literature describing a richer array of teaching possibilities, including methods that are often used in other disciplines, such as in business and medical schools, our new third year program will place the student at the center of the educational enterprise.

Students will bear greater responsibility for learning. They will, with close supervision and guidance, organize and produce the assigned work. Students will receive immediate and ongoing feedback, and they will be expected to revise their work to improve it. They will do some work collaboratively, as lawyers frequently do. They will draw on a variety of courses already completed—even as they continue to learn additional law in a more realistic and meaningful fashion—i.e., as part of their quest to solve specific problems. Legal doctrine largely will be learned to help complete a particular project, not as a

standalone endeavor, devoid of context. In this respect, the third year experience, by being more integrative, will at once be more practical and more intellectually demanding.

Students will have a greater sense of ownership of their education as they assume greater responsibility for learning by doing, something they will do the rest of their professional lives. This will encourage a healthy transformation of a student's sensibility and identity from one of student to one of lawyer. It will in turn lead to more sustained intellectual engagement throughout the third year.

Professionalism will be a unifying theme of the third year experience. Students will confront recurrently a broad range of professional and ethical dilemmas in more realistic settings. This will heighten student sensitivity to the identification of such issues and encourage extended reflection on approaches to the resolution of problems.

II. The Structure and Substance of the New Third Year

A. Elimination of the Traditional Academic Schedule and Coursework

In understanding Washington and Lee's new third year program, it is helpful to understand at the outset what it is *not*. The traditional approach to the third year of law school, as a continuation of a menu of courses, will be eliminated.

B. Structural Elements of the New Third Year

In lieu of traditional coursework conducted in a classroom setting, the third year curriculum will be conducted entirely through the following programs:

- ***Professionalism Program.*** This is an entirely new, year-long program that will be ongoing for all students throughout the third year.
- ***Practicum Courses.*** The largest single component of the third year experience will consist of practicum courses. These will be principally simulated practice experiences but may in some instances include real-client experiences.
- ***Clinics.*** Washington and Lee currently has four legal clinics, and we have plans to expand the Law School's clinical offerings.
- ***Externships.*** These are placements in external practice and judicial settings. These already exist and will be modestly expanded.
- ***Law Related Service Program.*** All students will be required to engage in extra-curricular law-related service, which may include traditional programs internal to the Law School, such as participation in law reviews and journals, moot court competitions, or student organizations; or in external community service and pro bono activities.

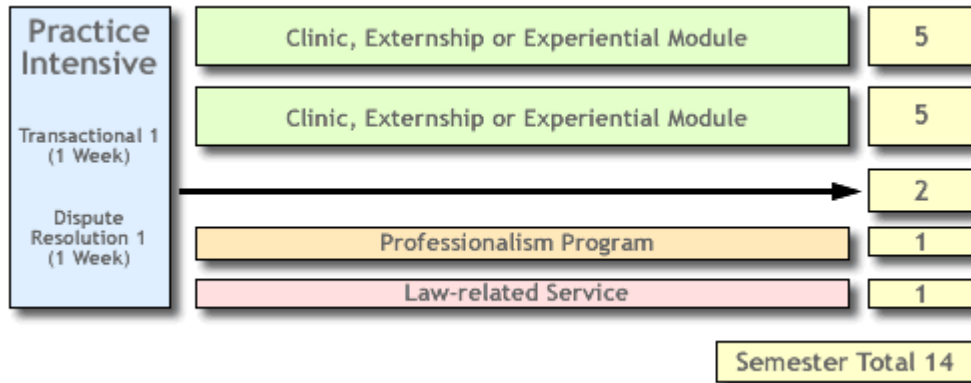
- **Transactional Practice Intensive.** A two-week, intensive course in transactional practice will be required of all students.
- **Dispute Resolution Practice Intensive.** A two-week, intensive course in dispute resolution practice (emphasizing litigation, mediation, arbitration, and negotiation skills) will be required of all students.

Fall Semester

2 Weeks

12 Weeks

Credit Equiv.

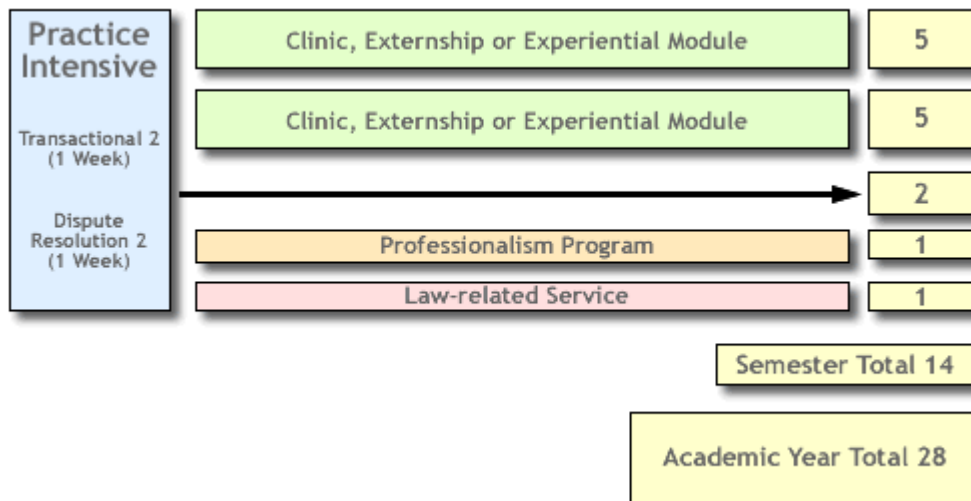


Spring Semester

2 Weeks

12 Weeks

Credit Equiv.



C. Subject Matter Offerings

Washington and Lee is convinced that *any* course subjects currently available to third year law students as part of a traditional law school curriculum may be offered through a practicum course with no fall off in breadth of coverage or intellectual depth and rigor. Because the new third year curriculum will engage a creative mix of traditional law faculty, new “professors of practice,” and adjunct faculty drawn from the bench and bar,

there will be a proliferation of courses available to students, thereby expanding the range of subjects that may be taught.

Whatever the specific subject matter of a practicum may be—antitrust, banking, corporate finance, securities law, tax, family law, environmental law, criminal law, employment law, intellectual property, estate planning, media law, or civil rights and civil liberties law—the teaching method must conform to the faculty guidelines for practicum courses. These guidelines, however, will have ample flexibility, allowing for the exercise of a wide array of legal skills and generation of many different forms of student work products. By way of illustration, here are a number of sample practicum courses taught by members of the Washington and Lee faculty:

International Law Practicum
Professor Speedy Rice

Currently operating in Cambodia and in Liberia, the International Law Practicum enables students to work directly with practicing lawyers on cutting-edge international law issues.

The focus of the Cambodia Practicum is defense work with the lawyers at the Extraordinary Chambers in the Courts of Cambodia (ECCC). The ECCC is a hybrid institution established by the UN and the government of Cambodia to prosecute the Khmer Rouge leadership for genocide, crimes against humanity, and war crimes committed from 1975-1979. Insofar as a vigorous defense is essential to the quality and credibility of any war crimes proceeding, students play an invaluable function in the machinery of justice by preparing research, memos, and trial materials for the assigned counsel in Cambodia. Several students enrolled in the Practicum have traveled to Cambodia.

The Liberia Practicum accords W&L students the opportunity to help develop and implement a legal assistance program in Liberia, West Africa, to provide legal aid for persons in communities, including victims, defendants, and suspects at all critical stages in domestic criminal cases. One aspect of this practicum is travel to Liberia to assist in training. This practicum offers insights on policy matters and on the role of law in development.

Climate Change Litigation Practicum
Professor Hari Osofsky

As the 4th IPCC report highlights the dangers of human-induced climate change, traditional international legal mechanisms are failing to address the problem. Numerous civil society efforts have emerged in response, one of which is litigation in state, federal, and international tribunals. In April 2007, the potential significance of this litigation as a regulatory tool became clearer when the U.S. Supreme Court held that the U.S. Environmental Protection Agency had abused its discretion in denying a petition to regulate greenhouse gas emissions from motor vehicles. Numerous cases—some targeted at government regulation and others at

major emitters—under various substantive areas of law are pending in tribunals around the world.

Climate change litigation is rapidly emerging as a practice area, with major firms and nonprofits around the country establishing climate change specialty groups. This course aims to prepare students to be competitive in that cutting-edge practice environment. This type of litigation simultaneously engages domestic and international law, as well as a wide range of legal theories. Local, state, national, regional, and international governmental entities are involved, as well as a myriad of nongovernmental organizations and business interests.

This course will survey the range of climate change litigation taking place and its significance. It will examine lawsuits and petitions filed in state, national, and international tribunals to explore how this type of litigation fits into transnational regulatory governance of climate change. Students will then build from that background to engage in practical research projects on climate change litigation that will assist nongovernmental organizations with their work in this area.

In the past, climate change litigation students have prepared memoranda for the Western Environmental Law Center to help it develop its climate change litigation strategy. This combination of a thorough overview of the existing jurisprudence and practical experience will help to prepare students for practice in this area.

Business Planning Practicum **Professor Lyman Johnson**

This course is aimed at students who expect to be legal advisors to business leaders. The principles of law learned in the corporate, tax, and other commercial courses are drawn together as students perform lawyer-like work on common, but complex and intellectually-demanding, business transactions. All work is closely supervised and carefully evaluated.

Students, for example, advise two entrepreneurs as to the best organizational form for a start-up biotech venture, writing a six-page analytical memo detailing and supporting their views. They then prepare an actual operating agreement for an L.L.C. for the proposed deal. They do this work, however, only after engaging in an in-depth analysis of state statutory provisions and federal income tax rules governing unincorporated business entities. They also confront intellectual property topics, professional responsibility concerns, and a host of other business and finance issues as they design the optimal business arrangement for the venture.

Students next confront a challenging financing issue. Drawing on their understanding of securities regulation—covering both public offerings and private capital formation—they analyze and express views on the choice between conducting an IPO or entering a corporate joint venture to finance a growing business. They then negotiate and prepare a detailed letter of intent, addressing all pertinent issues, for a proposed Delaware corporate joint venture between the L.L.C. they earlier formed and an unrelated public corporation.

Finally, students handle selected issues associated with the purchase and sale of a business. They work with an Asset Purchase Agreement and ancillary documents and see how a broad range of legal subjects must be thoroughly understood and addressed in order to handle a complex sale and purchase transaction.

Campus and the Constitution Practicum **Dean Rodney Smolla**

In this practicum course students learn and apply advanced legal doctrines, principally constitutional law doctrines, as they apply in the context of a university. The course will consist of three cycles, each focusing on a different collection of issues, each emphasizing a different set of professional skills, and each using a different set of oral and written work products for evaluation and grading. The subject matter of the course will be divided into three broad areas, each covered in one of the three course cycles. Those areas are (1) Freedom of Expression and Academic Freedom on Campus; (2) Identity: Race, Religion, Gender, Sexual Orientation; and (3) Property, Process, and Structure of University Governance.

At the beginning of each cycle, each student team will be assigned a realistic task of moderate factual complexity requiring application of legal theory and doctrine to a realistic problem-solving effort involving skills such as counseling, advocacy, negotiation, and policy drafting. The problems will be distributed at the opening class of each of the three course cycles. Not all teams will work on the same problem during each cycle. For example, in the Cycle I, there will be several different cases relating to different free speech and academic freedom issues assigned among the various teams. Each “cycle” will be coupled with a focus on a particular type of professional skill. Those three skill areas are: (1) Client Counseling; (2) Advocacy; and (3) Negotiation and Policy Drafting

Students will work in teams, which will be randomly assigned. Teams will be re-constituted in each cycle so that students will have different partners for each cycle. Captains will be randomly assigned for each team. The role of the Captain is to be final arbiter and decision-maker on all matters facing the team, including assignment of duties, when necessary and appropriate. Beyond this leadership role, the Captain will not have any disproportionately heavy work load. All work responsibilities for the entire team will be equitably assigned and shared, and teams will be penalized for failure to economically and equitably distribute and manage work loads.

Grading will be based entirely on the combination of team-presented written and oral submissions. All students on a team will receive the same team-based grade for each cycle. The class will be graded on a 300 point grading scale, with 100 points available during each cycle. The points will be assigned by Dean Smolla to the team as a whole based upon: (1) the level of engagement of the students in the consultation and preparation phases of the cycle; (2) the quality of the written work product submitted; and (3) the quality of the oral presentation.

Wealth Transfer Planning Practicum

Professor Robert Danforth

This course considers the principal tax and asset-management issues encountered in a sophisticated estate planning practice. The emphasis is on planning and drafting to accomplish tax-efficient inter-generational transfers of wealth. The course also considers asset-management issues, including such topics as planning for incapacity, devising strategies to protect assets from creditors' claims, planning for business succession, and estate and trust administration.

Students will acquire a solid grounding in estate, gift, and generation-skipping transfer taxation, as well as the special income tax rules that apply to trusts and estates and their beneficiaries. Students will also be exposed to the law of wills and the laws governing executors and trustees.

All topics will be approached through simulated live-client experiences, in which students will interview and advise clients concerning wealth transmission issues, draft estate planning documents, counsel executors and trustees, counsel trust and estate beneficiaries, negotiate with the Internal Revenue Service, and the like. There will no final examination, and grades will be based entirely on students' performance in the various mock exercises.

Advanced Family Law

Professor Robin F. Wilson

Advanced law students learn better when asked to resolve real problems drawn from real life, just as they will be asked to do in practice. To mirror the real world, the experiences and problems in Advanced Family Law roughly parallel the progression of a relationship that begins with marriage and ends in divorce, from drafting an initial prenuptial agreement to filing of a divorce petition through post-trial proceedings to settle the couple's financial and custody arrangements. Thus students:

- Negotiate a prenuptial agreement, representing intended husband or intended wife;
- Represent the intended father in a surrogate parenting arrangement;
- Do oral argument in a contested custody proceeding between the natural father and a surrogate mother;
- Argue on behalf of surviving family members before the federal fund established for victims of 9/11;
- Prepare a legal memorandum in support of the characterization of stock funds as marital property;
- Prepare an affidavit in support of a motion for pendente lite support;
- Negotiate a settlement agreement resolving all matters arising out of a marriage, including child support, child custody, equitable distribution of property and spousal maintenance, and prepare the supporting documentation.

Together these exercises are intended to convey the broad range of skills and values that a lawyer must possess to provide competent counsel.

Students in Advanced Family Law consider the potential effects of procedural rules and ethical rules, as well as the unwritten customs and practices of lawyers. For instance, will a prenuptial agreement that takes every gain imaginable for one side while giving very little in return, be likely to be enforced? If information known only to one side must be disclosed in the course of negotiation, should the attorney or the client disclose that information?

While teaching substantive legal doctrines, the course also emphasizes the art of lawyering. Students explore the roles and relationships between attorneys and clients—and between attorneys, senior partners, judges and opposing counsel. Students bill for their time. They consider how ethical doctrines like confidentiality that constrain their choices in representing a client. For example, how should an attorney approach the negotiation of a prenuptial agreement with opposing counsel? How does an attorney manage the client's own expectations?

The experience of hands-on lawyering instills a deep appreciation of the importance of high quality work and of integrity in the legal profession. It also drives home how difficult it can be to practice law properly and illustrates the need to do the best work possible for every client.

D. Presenting a Balance of Transactional and Litigation Experiences

By tradition, law school has been heavily weighted in favor of litigation experiences. Even in subject-matter areas that are in actual practice overwhelmingly transactional, law school courses often present the subject matter through the prism of litigation, using cases (in which by definition the transaction has in some sense failed) as the medium of study. The new third year should counter this historic bias, and offer a substantial mix of transactional experiences, including simulated, real-practice, and CLE experiences that are transactional in nature.

E. Globalization and Transnational Legal Practice

Washington and Lee is strongly committed to the notion that every law student should be exposed to educational experiences that introduce students to the globalization of law practice. Through the Washington and Lee Transnational Law Institute and the substantial number of law faculty who offer courses in private and public international and comparative law subjects, the Law School has already devoted substantial resources to the internationalization of our educational curriculum.

Students will have opportunities in the new third year program to pursue advanced applications of transnational legal education through practicum courses that are internationally focused, including the opportunity to participate in practicum courses that involve elements of travel and legal practice experience in other nations.

F. The Professionalism Program

The professionalism program will feature multiple components:

The Study of the Profession as a Profession

A significant premise of the Professionalism Program is that law schools should engage students not simply in the study of law as such but in the study of the legal profession as a profession. There are many intense challenges facing the legal profession, including the intense pressures created by the modern competitive legal business environment, the stresses of trans-jurisdictional practice, the pressures of globalization, the struggle to provide legal services to the indigent, the challenges domestically and internationally to the rule of law, the challenges of addressing issues of racial, ethnic, and religious diversity, the role of lawyers in civil engagement and leadership, stresses on leading a good and decent and healthy life, balancing family or health or spiritual needs with the pressures of fast-paced practice, the breakneck pace of technological innovation, the perceived decline of civility, mentoring, and ethical sensitivity within some elements of the profession, the high debt load of graduating law students, the poor salary structures for judges, government lawyers, and public interest lawyers, and the perceived assault on the independence of courts. These issues are often studied by law students in the context of substantive course offerings. In the Washington and Lee third year program, they will also be studied in a disciplined manner as part of a coherent exploration of the legal profession itself.

The Development of Ethical Judgment in Context and in Action

Law Students will have already taken a course in Professional Responsibility during their second year of law school. The Professionalism Program will build on that course by presenting students with simulated practice conundrums in which ethical judgment must be exercised in simulated, real-world environments.

The Development of Professional Identity beyond Mere Adherence to Disciplinary Ethics Rules

Professionalism means a great deal more than minimal adherence to the legal profession's disciplinary rules. Lawyers are members of a self-governing profession, and their actions and demeanor reflect on the profession. Integrity; the avoidance of bigotry, discrimination, and prejudice; the treatment of others with respect, civility, and courtesy; the mentoring of less experienced lawyers; engagement in civil society; and community service are among the hallmarks of such professionalism.

Managing One's Life as a Lawyer

The professionalism program will include exploration of the challenges that arise in managing of one's life as a lawyer, including everything from time management to lifestyle balance issues to mental and physical health.

G. Alumni Mentors

Every third year student will be assigned to one alumni mentor. The mentor will be a volunteer, from anywhere in the country, who will agree to review regularly a student's progress through the third year curriculum, providing the student with feedback and guidance and generally serving as a professional friend and mentor.

H. Third Year Practice Certificate

All third year students at Washington and Lee will be required to obtain a Virginia third year practice certificate, providing an important solemnization and seriousness to the third year experience. The certificate allows students to handle real client matters and makes students provisional officers of the court and members of the profession, with all the obligations of ethical and diligent professional conduct that such status entails.

I. External Advisory Committee

Washington and Lee is inviting a distinguished group of external advisors to assist in the planning of this new curriculum. These advisors will be drawn from the highest levels of the judiciary, practicing bar, business world, journalism, and the academy.

Washington and Lee's New Third Year Frequently Asked Questions

Background

Q. What was the motivation for undertaking this change?

A. Our principal motivation was the desire to meet a need that exists in the legal profession and legal education. Responding to the growing critique of the traditional law school model, we have undertaken this change with the conviction that it is the right thing to do in fulfilling our duties to the public consumers of legal services, to the profession, and to the system of justice.

Q. Is Washington and Lee the only law school engaged in such a program?

A. We are in a period in which many law schools are responding to the needs of the public and the profession, engaging in significant programmatic changes. In that sense, Washington and Lee is not alone. Different schools will have different approaches and responses. At Washington and Lee we are proud of our forceful leadership. We are confident the result of these changes will be a richer array of choices to incoming students and a new generation of graduating law students who will be better able to serve their future employers and clients.

Q. What was the process that Washington and Lee used to develop this new curriculum?

A. The new curriculum was initially proposed by the Dean of the Law School, Rod Smolla. A representative group of faculty members, administrators, and students intensely studied the idea for six months. The views of outside academics, members of the profession, and alumni were actively solicited. Many forums and town meetings with students and alumni were held. The committee issued a report and recommendation unanimously endorsing the reform. The committee emphasized that the proposal was consistent with the student-centered tradition at W&L and with the Law School's existing strategic plan. The full faculty considered the matter over the course of several formal meetings and informal discussions. The Proposal of the Committee and the Dean was ultimately approved in a unanimous faculty vote.

Q. How does the new third year differ from working experiences law students already have, such as working part-time in legal environments or summer legal employment?

A. There is no comparing the third year program with outside employment. The Washington and Lee third year program is education, not employment. While the

teaching methodology in the program will be centered on realistic practice simulations and real-client experiences, such as those provided in our legal clinics, these experiences are integrated with the learning of new intellectual subject matter (legal theory and doctrine), and constantly evaluated through mentoring, guidance, self-critique, and other feedback. Features such as the professionalism program, the transactional practice intensive and litigation practice intensive distinguish the new third year as a *bridge* to practice, but distinguish it from *actual* practice.

Q. Does the program have the support from the University administration?

A. Yes. It has the full support of the University President and Provost, and the University Board of Trustees.

Q. Does the program have the support of alumni?

A. Yes. Our alumni leaders have been quite passionately supportive of the proposal, and that support was instrumental in our resolve to push forward with the proposal and will be critical to our future success.

Perspectives

Q. From a student's perspective, will this make the third year harder?

A. Yes. The third year will certainly be a more rigorous and demanding experience than it currently is. By the same token, it will also be more rewarding and stimulating.

Q. How will the profession react to this change?

A. The initial response is extremely positive, and we are confident that the profession will embrace this as an idea whose time has come. Many voices in the profession have been calling on law schools to innovate, with greater emphasis on professionalism and learning in context, so that students learn not just how to think like a lawyer but be a lawyer. This program invites the profession to participate in the joint venture of mentoring novice lawyers, and we believe the profession will support the concept enthusiastically.

Q. How will other law schools and law professors react to this change?

A. This is a period of genuine ferment and creativity in the history of legal education. Many other law schools are engaged in new approaches that reform the traditional curriculum. We respect and admire those efforts, and do not believe that one size fits all or that there is only one best approach to the challenges that face all law schools. This is a process that has been evolving for many years and appears now to be reaching greater intensity. Washington and Lee hopes to be a leader in these efforts, and the proposal here is, in our view, truly transformative and not simply incremental. We hope it will encourage other schools to continue to approach their missions with robust creativity and ambition.

Details

Q. Will the new curriculum be optional or required?

A. It will ultimately become mandatory for all third year students. During the phase-in period over the next three to four years, it will be optional.

Q. What types of skills will be emphasized?

A. The content of the third year will be presented in realistic settings that simulate actual client experiences, requiring students to exercise professional judgment, work in teams, solve problems, counsel clients, negotiate solutions, serve as advocates and counselors—the full complement of professional activity that engages practicing lawyers. This activity includes interviewing and counseling of clients, negotiation, mediation, arbitration, understanding financial statements, principles of financial valuation, and other skills of the kind identified in the MacCrate Report and in Professor Roy Stuckey’s recent BEST PRACTICES FOR LEGAL EDUCATION (2007). The development of strong writing and communication skills will be a prominent feature of the entire program.

Q. Will there still be grades?

A. Yes. The new third year program will continue to use grades. The modes of evaluation, however, will be much more meaningful than the traditional law school exam or research paper. A far wider range of professional skills will be engaged and evaluated. While we will continue to assign grades, the truly meaningful evaluation will be ongoing, task by task, as faculty supervisors and mentors provide verbal and written feedback and critique on an ongoing basis.

Q. How quickly will the program be implemented?

A. We will begin to implement the program immediately. Our working timetable is to achieve a 25 percent phase-in by the 2008-09 academic year, 75 percent two years from now (2009-10), and 100 percent three years from now (2010-11).

Q. How will this be paid for?

A. We will redeploy existing law school resources combined with new resources developed in the coming Law School campaign, part of a broader University campaign, to finance the program.

Q. Will third year students be required to get a third-year practice certificate?

A. Yes. All of our students will qualify for such a certificate, which in Virginia allows a third year student to engage in certain prescribed forms of practice in state tribunals under the supervision of a licensed attorney upon certification that certain requirements set by the Supreme Court of Virginia are satisfied. Many federal courts have similar programs. We will require students to obtain the certificate and provide the appropriate counseling and support to facilitate their obtaining one.

Q. Will there still be time for extracurricular activity such as participation in law reviews, moot court competitions, and student organizations?

A. Yes. Once again, these activities will be subsumed into the law-related service requirement, which both makes space for such activity and actually requires such activity in some form as an element of the ethos of professionalism that drives the new program.

Effects

Q. Will students have fewer options to explore different areas of legal study?

A. No, to the contrary. The practicum courses may cover any subject matter that might be the subject of a traditional course. Because of the rich array of traditional faculty, new professors of practice, and adjunct faculty that we will use to staff the program, there are actually increased opportunities for diversity in subject matter areas and dramatically increased opportunities for exploring those subjects.

Q. Will the program adversely impact the ability to take liberal arts law courses such as research seminars?

A. This was a significant concern for us, and we have set out to address it in a number of ways. First, we have added a major research paper requirement to be taken in a liberal arts style law seminar in the second year of law school. Second, we are confident that many of the topics that would be covered in a traditional research seminar lend themselves easily, and in many respects more deeply, to presentation in the new third year practicum format.

Q. How will the changes in the third year impact the first and second years?

A. The new third year experience is part of a broader undertaking at Washington and Lee to improve all of our educational efforts, including the first and second year experiences. We are already looking at ways to bolster our first year legal research and writing program, which is at present one of the Law School's signature high-quality programs. We are considering the addition of an international course in the first year. We have already made the decision to make the second year more distinctive by requiring a research seminar and extended research paper. Our overall goal is to make the first, second, and third years distinctive, marking a progression from the academic study of law to strong competency and professionalism as a practicing novice lawyer.

Q. How will this impact the student/faculty ratio?

A. The student/faculty ratio will improve. Washington and Lee is already quite fortunate to have a relatively small student body size and an excellent student/faculty ratio, which is one of the features that allows the school to undertake such an ambitious program. The new third year will require some additional investment in faculty resources, enhancing our capacity to provide students with individualized attention.

Q. How will the program affect the ability of students to engage in community service and pro bono work?

A. The ability of ability of students to engage in community service and pro bono work will be enhanced. Engagement in law-related service of some kind will be required of all students and will be central to the ethos of professionalism that is a core value of the program.

Q. Will it affect American Bar Association accreditation?

A. The new curriculum, as currently planned, will fully conform to existing American Bar Association accreditation standards. Fortunately, the Law School will be undergoing its periodic seven-year ABA evaluation and accreditation process in the 2008-09 academic year, so there will be an opportunity during that process to ensure that the new program meets or exceeds ABA requirements in all respects. The ABA has been a strong voice within the legal profession urging law schools to place greater emphasis on professionalism in all its aspects. Our discussions with ABA leaders give us confidence that the ABA, as a prominent force in the shaping of the profession, will strongly endorse the values that drive the proposal.

Q. How will the program affect the ability of students to pass the bar exam?

A. We are confident the new program will have no adverse impact on the bar passage rates of Washington and Lee students. Our students already have superb bar passage rates. As a practical matter, most American law students take some form of commercial bar preparation course as a prelude to taking the bar exam. There will be no fall-off in the exposure of students to the legal doctrines and principles tested on bar exams. Because we are confident that students learn with greater breadth and depth through the integrative methods featured in the third year, we are confident the students will not be prejudiced in any way in their bar preparation.

Q. How will this affect the employment prospects for students?

A. It will only help. We are confident that prospective employers from all elements of the profession will value a student's exposure to the application of legal doctrine and theory in realistic contexts in which the student must work with others to apply professional judgment, address the realistic concerns and problems of clients, and provide informed counsel and vigorous advocacy.

Q. Will this adversely impact the ability of faculty to pursue research and scholarship?

A. We believe that the teaching, research, and service components of the professor's life should be complementary and mutually reinforcing. A central mission of a law faculty member is contribution to the marketplace of ideas through excellence in scholarly research and productivity. Law students also participate in such intellectual research and discourse. The creation of a new third-year experience should enhance, not diminish, the capacity of law faculty and students to produce excellent scholarship. Washington and Lee is fortunate to have a strong tradition of excellence in faculty scholarship. We are committed to constantly improve our scholarly productivity and are confident that this proposal will actually provide

faculty with greater flexibility in scheduling and course loads, thereby enhancing scholarly efforts. It will also provide faculty with a richer array of experiences placing faculty members in contact with the profession, thereby informing and enriching scholarship.