

Washington and Lee School of Law Third Year Reform

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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.

Driving Forces

For many, many decades practicing lawyers and judges have said that law schools need to do more to help students make the transition from the theoretical and academic study of law to the actual practice of law, to the serving of clients, to the solving of people's problems, to the exercise of judgment, to understanding the traditions of the profession and the ideals of professionalism.

This, combined with recent publications and debate focused on best practices and legal education reform, drove the faculty at Washington and Lee to think not just about what it means intellectually to become a lawyer, but what it means professionally to become a lawyer. We felt we could be more ambitious and more rigorous in our efforts to help novice lawyers enter the profession with a complete sense of how to engage in the actual craft of lawyering.

Ambitions of the Third Year

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.

Through a blend of, simulated and actual practice experiences and instruction in professionalism, we will help our students learn the craft of law by actually doing it.

- The overarching goal of the third-year program 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.
- A third-year student is expected to more systematically exercise and express professional judgment in a variety of contexts. In short, third-year students will, with guidance and supervision, engage in the craft of lawyering.
- A third-year law student is expected to reflect more systematically on what it means to live one's life in the law. Students will consider and receive guidance on the admirable qualities, dispositions, attitudes, concerns, and habits of good lawyers.

- Lawyers increasingly require conversance with international, foreign, and extraterritorial law in all aspects of their legal work. Students have opportunities in the third year to pursue advanced applications of transnational legal education through practicum courses that are internationally focused and involve travel and legal practice experience in other nations.
- 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 will counter this historic bias, and offer a substantial mix of transactional experiences, including simulated, real-practice, and CLE experiences that are transactional in nature.

The Third Year At a Glance

- The third-year program is entirely experiential, comprised of law practice simulations, real-client experiences, and the development of professional and practice skills.
- Each semester includes a two-week immersion course in practice skills; one focusing on office skills and transactional practice and the other on litigation and conflict resolution.
- All students participate in a year-long professionalism program that will involve practicing lawyers and judges and will promote the development of professionalism in all aspects, including legal ethics, client management and the economics of law practice.
- The rigorous third year, presented entirely through a mix of legal clinics and experiential courses, builds upon the lessons and law of the first- and second-year curriculum and serves as a true capstone of the three-year legal education.
- The third-year courses are taught by members of the permanent law faculty, adjunct faculty, and visiting “professors of practice” drawn from the bench and bar.
- Washington and Lee has invited a distinguished group of external advisors to assist in the planning of this new curriculum. These advisors come from the highest levels of the judiciary, practicing bar, business world, journalism, and the academy.

Structural Elements of the Third Year

- ***Practicum Courses.*** The largest single component of the third year experience consists of practicum courses, primarily simulated practice experiences that will span the array of traditional legal subject matter.

Example: 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.

- ***Practice Intensive.*** Two-week, intensive courses at the beginning of each semester covering transactional and dispute resolution practice emphasizing litigation, mediation, arbitration, drafting and negotiation skills.
- ***Clinic and Externships.*** Students will participate in one of the many existing or developing clinics or externship programs so that each will graduate with a real law practice experience.
- ***Law Related Service Program.*** All students will participate in extra-curricular law-related service, including external community service activities or internal programs such as law reviews, moot court competitions or student organizations.

- ***Professionalism Program.*** Running throughout the year, this program engages students in the study of the legal profession as a profession structured by unique principles, institutions and challenges.

The Study of the Profession as a Profession

Many intense challenges face 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.

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.