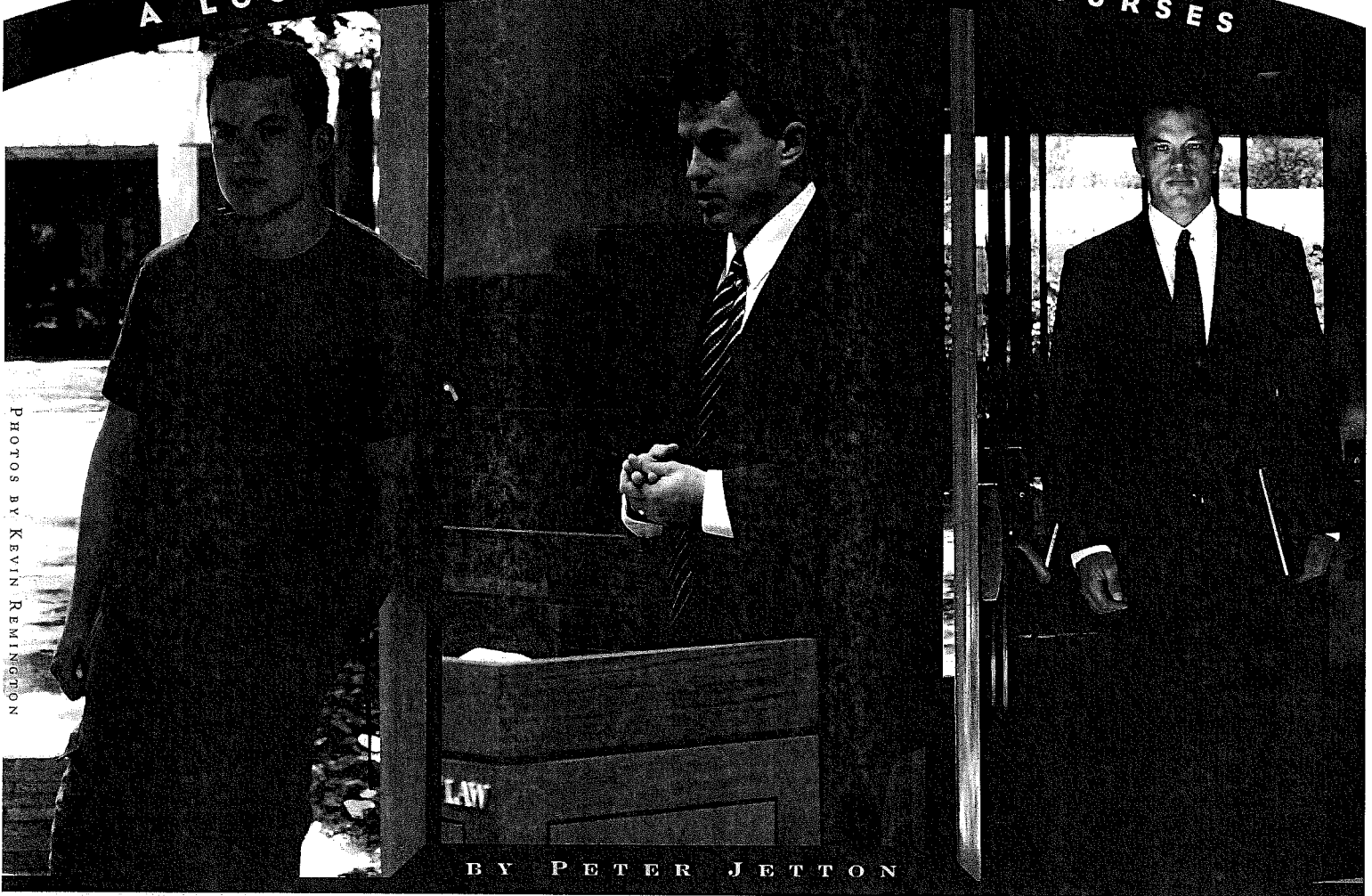


ADVANTAGE: STUDENTS

Gene Hamilton '10 opted into the new third-year curriculum and gained a year of practical, experiential learning.

THE TRANSFORMATION OF THE THIRD YEAR

A LOOK INSIDE THE PRACTICUM COURSES



PHOTOS BY KEVIN REMINGTON

BY PETER JETTON

From student to polished lawyer. "W&L prepared me well," said Gene Hamilton '10L, who has a job with the Department of Homeland Security, General Counsel's Honor Program. "I'm not as nervous starting my job because I had the chance to practice my craft through the third-year curriculum." In the center photo, Hamilton argued for summary judgment before Judge Morgan Scott in moot court.

Practicum courses are one of the primary, and distinguishing, components of W&L's new third-year program. Students are immersed in a variety of legal-practice simulations, both litigation- and transaction-based. Of the third-year reforms occurring around the country, many funnel students into a single practice environment or into expanded externship programs, where students are on their own. But the Law School's program offers simulations that span the array of legal subject matter. At the same time, it reinforces the School's commitment to excellent teaching by creating environments where students are encouraged to try new things and work independently, but still receive significant feedback.

MY NETWORK BEATS YOUR EXPERT

Professor Josh Fairfield wants the students in his E-Commerce Practicum to fail. “In the technology industry, innovation means accepting failure,” said Fairfield, an expert on the law of social contracts and virtual worlds and a former research and development director for the language software giant Rosetta Stone. “You have to try new things to reach that next big discovery. This class teaches students to innovate and collaborate through a new set of tools, in a legal environment.”

In this case, that environment is e-commerce. Fairfield describes it as the nexus of commercial law and intellectual property, a relatively new kind of practice area that involves much more than simply purchasing something online.

“The iPad or Kindle both exemplify the current paradigm,” he said. “You have an electronic device that you purchase, as well as closely tied electronic content that is locked to that device. There are a host of licensing contracts and end-user agreements that enable this new model, and that is work lawyers have to do.”

The simulations involve researching and developing contracts for these kinds of products and services, both real and imagined. Much of the work occurs outside any set meeting time, and students use social networking tools to discuss legal and technical developments in real time. The class also maintains a wiki, a group-written and edited website, to build a repository of the reference material.

He noted, “When one student finds something of interest in his or her area of responsibility, the student makes that content available to the others through the wiki, and the class immediately becomes smarter together than any one individual. A network of informed people can outthink even the smartest person in a given field.”

Fairfield believes he’s teaching his students what good lawyers already know: that the more contacts they have with people in different areas of expertise, the more effective they will be as lawyers.

For Guy Sereff ’10L, the collaboration tools had the desired effect on the students’ work product. “We were able to produce documents together that were so much better than anything we could produce on our own,” he said. “Working collaboratively also helped get rid of the individual mindset that drives you for most of law school. But at the same time, you don’t want to be the student that doesn’t have something to offer.”

TEACH A STUDENT TO FISH

The best piece of advice Professor Adam Scales ever received was that if you can write, you won’t go hungry. But in a world of texts and tweets, he worries that legal writing is becoming a lost art.

THIRD-YEAR PROGRAM IN REVIEW

BY THE NUMBERS

- ◆ Two-thirds of the third-year class opted into the program.
- ◆ Chose from among 20 simulation (practicum) courses, numerous externship opportunities and five live-client clinics. Clinics require a yearlong commitment.
- ◆ Completed two 80-hour skills-immersion courses, one focused on transactional skills and the other on litigation skills.
- ◆ The Class of 2010 completed more than 6,200 hours of pro bono work as part of the law-related service requirement.

FEEDBACK AND THE FUTURE

- ◆ Conducting focus groups (with both opt-ins and opt-outs) and exit interviews with third-year students for student perspectives about what is working and what needs to be improved.
- ◆ Challenges include need to standardize workload for practicum courses.
- ◆ 83 students, 74 percent of rising 3L class, have opted in for next year.
- ◆ Program mandatory starting with the Class of 2012.

Learn more at law.wlu.edu/thirdyear.

That's why he loaded up his Advanced Torts and Insurance practicum with nearly 100 pages of writing assignments. At almost every step, students produced a document for the court, opposing counsel, the senior partner or a client.

"Effective letter writing is surprisingly tricky," said Scales, who thinks he will begin addressing that with 1Ls in his small section courses next year. "I want to make sure our students don't starve."

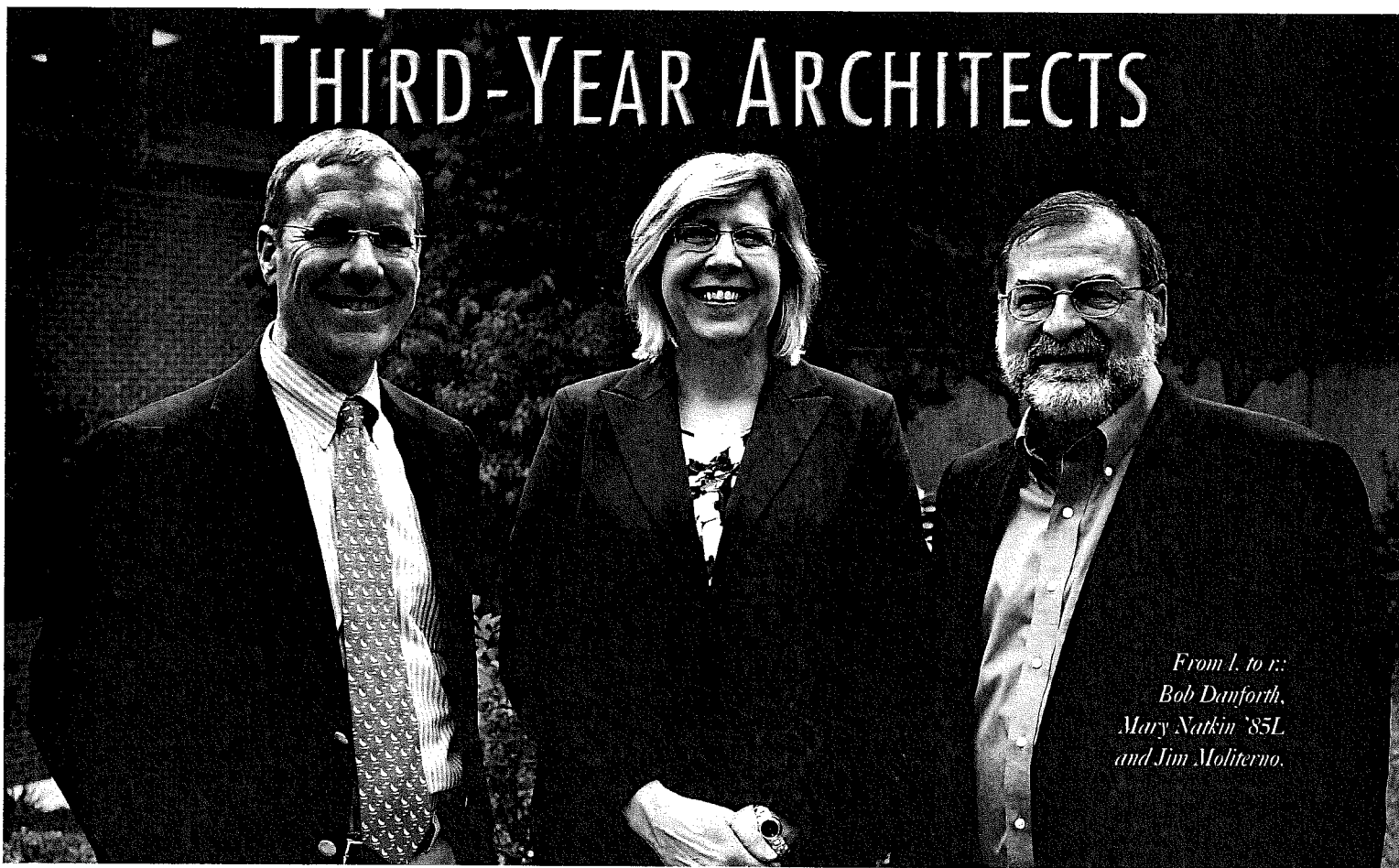
The class, which dealt with insurance, products liability and relational harms, was structured in several phases. Students began with research projects, including the task of reading an entire insurance policy, which, Scales admitted, "some people don't find all that interesting. Still, there's no substitute for it." After exploring the policy and researching issues as varied as the causes of and treatments for beryllium poisoning, students

drafted a brief outlining what they would do when different events activated the policy.

Although the focus on writing was decidedly old school, the simulated disputes were ripped from the headlines. One involved a defamation lawsuit instigated by an unflattering post on the plaintiff's Facebook page. Another dealt with a car accident allegedly caused by unintended acceleration. The car in question: a Toyota.

Scales was surprised by how relatively simple torts and insurance problems could reveal a facet or approach to the case he had not considered. "It's unusual to be surprised by a student's take on a case in a first-year torts class, but it was an almost daily occurrence," he said. "Because they were not supplied with nearly as much information about a problem, students were free to go in directions that quickly exhausted some

THIRD-YEAR ARCHITECTS



*From l. to r.:
Bob Danforth,
Mary Natkin '85L
and Jim Moliterno.*

Robert T. Danforth

ASSOCIATE DEAN FOR ACADEMIC AFFAIRS

Danforth, who has taught tax law at W&L since 1997, has been on the front lines of the implementation of the third-year program since it was announced two years ago.

My principal role in implementing the new third-year curriculum has been to facilitate the development of practicum courses. During the 2010-2011 academic year, the Law School will offer approximately 20 practicum courses, covering a broad range of practice areas; we expect to offer an even greater

number of these courses in 2011-2012, the first year in which the new curriculum will be mandatory. The instructors include members of our permanent faculty, practicing lawyers, teams of lawyers from firms in Richmond and Roanoke and a justice of the Supreme Court of Virginia.

Teaching a practicum poses some significant challenges. First, there are generally no textbooks for this type of course. Thus, in most cases, the instructor must create his or her own materials. Second, unlike in the case of traditional law school courses, students are evaluated on the basis of lawyer-like work product,

of my preconceptions of the technical expertise required for the dispute, which means everybody learned something.”

Scales also identifies this as one of the chief challenges, and the great promise, of the new curriculum. After two years of class work, students are accustomed to getting all the cases and legal issues pre-digested, with no sense of how a case evolved. “It is challenging to help students re-orient themselves to the process of active lawyering,” he said. “They have no idea that some lawyer, just by chance, thought to ask, ‘Were you wearing your glasses at the time of the accident?’, and that made the case.”

Lauren Fisher '10L sometimes felt she was flying blind. It took her a while to discover that her client, the driver of the out-of-control Toyota, had been drinking and was trying to send a text message when the crash occurred.

“There was so much information I wanted but couldn't

which is produced and evaluated throughout the semester, rather than on the basis of a single exam administered at the end of the semester. Criticism of students' work thus occurs regularly, frequently and often in person, as compared with the generally anonymous process of assigning a grade to an exam.

For these and other reasons, teaching a practicum course is substantially more labor intensive than teaching a traditional law school course. The Law School is fortunate that its faculty, alumni and other dedicated professionals have been willing to undertake this challenge.

Mary Z. Natkin '85L

ASSISTANT DEAN FOR CLINICAL EDUCATION
AND PUBLIC SERVICE

A longtime clinical professor, Natkin oversees all the clinical and externship programs. She also manages the public-service component of the third-year experience, developing opportunities for students to serve the legal profession or in communities throughout the region.

The strength of clinical and externships programs is that they blur—or erase—the distinctions between substantive law, procedure, ethics and skills. Instead, students focus on the blending of these elements into the entire process of advising and representing a client. Further, they allow students to shoulder the responsibility for self-directed learning and engage them in the imperfect world of clients who exist beyond the corners of a hypothetical.

For 2009-2010, 97 students participated in our clinical, externship and transnational programs, of whom 71 were participants in the revised curriculum, and 27 were students enrolled in the traditional curriculum but who desired a client-based experiential course. We continue to build these real experiences for our students, as we will need 140 or so placements once the third year is fully implemented.

Service is ingrained in the character of the legal profession and is a core value of W&L Law. Our students have always had a great commitment to service in the School and community

have,” she said. “But Professor Scales made the point that sometimes your clients won't give you the information that you need, and you have to rely on the information you do have and your own creativity to come up with a good argument.”

Fisher appreciated the practicum's focus on writing, especially during the discovery phase of her case. She had to file and answer many interrogatories, and in the process learned the strategy and ethics implicated when determining how much information to share with opposing counsel.

Fisher also spent the year as a student attorney in the Community Legal Practice Clinic and took the Labor and Employment Practicum, the practice area she intends to pursue after graduation. “I believe I've gained a strong competence in both oral and written lawyering,” she said. “I feel so much better prepared now.”

well beyond their academic responsibilities. Last year, our students completed 6,240 hours of law-related service, including serving as advocates for victims of domestic abuse, teaching Rule of Law classes in local schools, restoring voting rights for ex-felons who have paid their debt to society and researching how the Virginia court system treats the poor.

James E. Moliterno

VINCENT BRADFORD PROFESSOR OF LAW

*Moliterno, who joined the School of Law in 2009, is one of the nation's leading educators in experiential learning and legal professionalism. Moliterno plays a key role in the third-year professionalism class, called *The Legal Profession*, and in the design of the two-week litigation and transaction skills immersions that begin each semester.*

Students come to law school as adults. While some may believe that they have already formed their sense of how to behave and live life, the distinctive role of a lawyer is new to students on their first day in law school. During any three-year period, a person changes through their experiences. Law students change and grow as well, and their professional character is born in law school.

The professionalism course exposes students to issues critical to the future of the legal profession, such as the economic system of law firm practice, the effect of the economic downturn on the delivery of legal services, multidisciplinary and multi-jurisdictional practice and the globalization of the legal profession. This exposure prepares students to adopt the lawyer's role and be leaders in their communities.

People learn and become by adopting role-sensitive behaviors, by observing role models. That is how students learn their professional role, becoming lawyers in the process. In the practicum courses, in the immersions and in the clinics, students try on and learn to live in the role of lawyer. The new curriculum gives students this opportunity in ways unavailable in traditional classroom study. ♣

THE WORST DAY OF YOUR LIFE

Kristina Joyner '10L has a big heart, and she hopes it doesn't get her into trouble. She initially planned a career as a prosecutor, but after a summer clerkship with a Baltimore judge and a year in W&L's Virginia Capital Case Clearinghouse (VC3), she now intends to work in death penalty defense.

"In Baltimore, many of the defendants were so young, and I saw some pretty bad lawyers," she said. "The system seemed unfair, and that's when I started to think that is where I could be the most help."

Her work in the VC3 exposed her to some messy situations, and she likes being part of the solution as defendants and their families try to figure out what's next. But she also knows there are at least two sides to every story, and that's why she asked to be a prosecutor this spring in the Criminal Practice Practicum, taught by criminal defense attorneys Judy Clarke and Jon Shapiro.

During the class, 12 students worked in teams of two on a primary case involving either a who-done-it-murder, an immigrant smuggling case resulting in death, or a crack-cocaine conspiracy case. Using the federal rules of criminal procedure and local court rules developed for the class, prosecutors like Joyner had to decide what to indict on, as well as file the indictment, a document most of them had never seen. Then they litigated the case through discovery motions, pre-trial

motions, motions in limine, plea negotiations, a trial and, if necessary, a sentencing hearing.

The primary goal of the class was to teach students to exercise professional judgment. "We want them to learn to think about a case strategically from beginning to end," Clarke said, "to think about the events in the life of a case as more than a checklist."

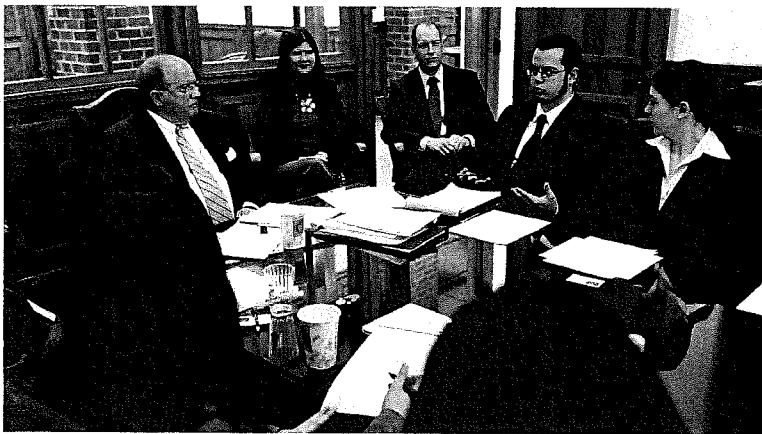
Clarke also required students to summarize criminal cases decided in a variety of jurisdictions, including those on appeal to the U.S. Supreme Court, to remind the students "that the law actually connects to their practice—the law changes and evolves, and they need to stay current."

Although Clarke admitted it is difficult to capture the twists and turns of an actual criminal practice, that's not the point. "Touch a hot stove and you will not do it again," she said. "Practicum classes help students learn the impact of various litigation strategies and to consider what steps should be taken in the best interests of their client and their cause. It also lets them learn on the job with no consequences to a real client."

Clarke derives much of her teaching philosophy from her own experience training new lawyers during long stints as director of the San Diego and Spokane federal public defender offices. As well as representing "many ordinary citizens accused of ordinary crimes," she has also served as defense counsel in some of the most high-profile criminal cases in the last 15 years, including those of Susan Smith, Eric Rudolph and Ted Kaczynski.

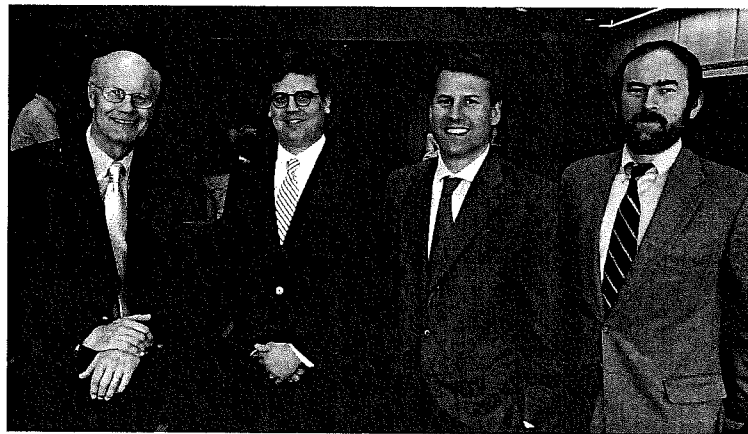
Clarke believes there is no higher calling for a lawyer than to stand for an individual accused of crime. "The idea is that we stand between the power of the state and the individual, and in

PRACTICE MAKES PERFECT



Students participated in a mock mediation session with retired judge John C. Morrison '59, '61L (far left).

The scenario: A tycoon was dead, and surviving kin and their lawyers haggled over the eight-figure estate.



Professor Lyman Johnson (far left) drew on the expertise of alumni for his Business Planning practicum. From l. to r.: Wyatt Deal '08L, Jim SeEVERS '97L and David Freed '04L. Not pictured: Brian Hager '04L. SeEVERS is a partner, and the other three are associates at Hunton and Williams. The alumni, who had all taken Johnson's BP practicum themselves, spent three days working with students on issues arising in the acquisition and sale of a corporation.

doing so, defend the core values of what makes this country great,” she said. “None of us, including those accused of crime, wants to be defined by the worst moment, or worst day of our lives.”

Those people in the near future who find themselves in their worst moment will want someone like Kristina Joyner by their side. Even as the Criminal Practice practicum was ongoing, she found that she was able to feed her experience as prosecutor back to her capital defense work in the VC3.

“It’s so easy to turn your back after reading about the horrible things people have done,” she said. “But I always ask myself, ‘What about now? This can’t be the entire story.’ And it never is. There are victims all around the board.”

SHOW ME THE MONEY

Nothing inflames the passions quite like disputes over money. Whether dissolving a 20-year marriage or re-organizing a business that has operated for generations, it takes a special kind of lawyer to negotiate a solution.

Chip Magee '79L is one of those special lawyers, and he pours all of his 30 years of experience as a bankruptcy lawyer into the Failing Business practicum, a class that explores the remedies that state law and the U.S. Bankruptcy Code provide to debtors and creditors for failing, or troubled, businesses.

Magee’s goal is realism, so the matter he chose for his students is an ongoing bankruptcy case involving a failing Virginia auto dealership that he represents. Between January and April,

students took the matter from the pre-petition stage all the way to a confirmation of a plan of reorganization.

“It’s quite common for even a complex bankruptcy case to be dealt with in four months,” said Magee, who has taught as an adjunct professor at W&L for several years, commuting from his Roanoke-based practice. “But these are serious, real-time issues. I treat the students like associates in a law firm. If associates don’t perform, they get fired.”

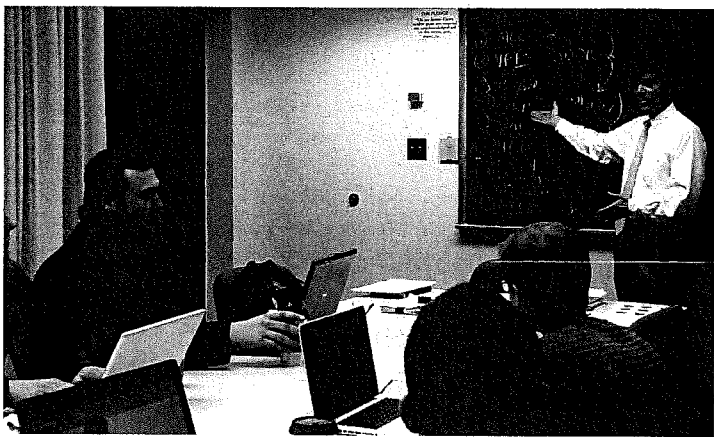
Luckily he didn’t have to take such drastic measures with the students, who he thinks were energized and thoughtful about the process. “Of course, not everybody got it right the first time. But with a little feedback, they got it right the second time, just like good associates will.”

The class split into two teams, each representing different stakeholders. Together, they analyzed the merits of dozens of claims to resolve both secured and unsecured debts. The ultimate goal is to establish the “waterfall of payments,” a mutually agreed-upon map articulating who gets paid, how much and in what order.

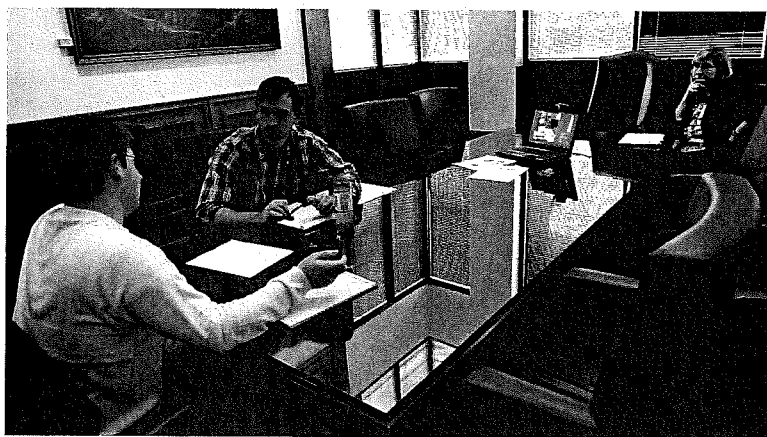
Magee thinks bankruptcy cases are useful for students because they require knowledge of many different areas of the law, including personal property, real estate, tax and state law, as well as certain UCC articles. In addition, bankruptcy cases expose students to both negotiation and litigation.

“Of course, it’s in everyone’s interest to avoid litigation and for the reorganization plan to be approved,” he said. “If the business is simply liquidated, 95 percent of the creditors get nothing.” He added, “Good lawyers will negotiate all the conflicts and present the plan to a judge all wrapped up with a bow.”

The third year’s practicums and two-week immersion course in practice skills required 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 real-world issues of serving clients ethically and honorably.



Chip Magee '79L goes over a waterfall payment setup in his Bankruptcy Practicum. Magee, who founded Magee, Foster, Goldstein & Sayers in Roanoke, chose an ongoing bankruptcy case involving a failing Virginia auto dealership that he represents. The students took the matter from the pre-petition stage to a confirmation of a plan of reorganization.



From l. to r.: John LaMont '10L and Bryan Hoynak '10L take part in the two-week immersion course in practice skills under the guidance of Mary Natkin '85L, assistant dean for Clinical Education and Public Service. Students are required to take one immersion course each semester, one focusing on office skills and transactional practice and the other on litigation and conflict resolution.

THE DETAILS

law.wlu.edu/thirdyear

W&L Law's rigorous third year expands upon the first- and second-year curriculum, moving students out of the classroom and into the real world of legal practice.

The four components of the third year:

- A two-week-long skills immersion course, one focusing on litigation and conflict resolution, the other on transactional practice
- Four elective courses, one real-client experience and three additional electives taught in a problems-based, practicum style
- At least 65 hours of law-related service

- A semester-long professionalism program, The Legal Profession

The program allows students to explore topics more deeply and engage in the most professionally relevant work of their law-school careers. While working with faculty and practicing attorneys on a diverse range of legal topics, students will cultivate the skills essential for professional success. As a result, W&L graduates will have a more realistic sense of the day-to-day functioning of a lawyer, and a more focused notion of their own professional interests and ambitions.

KEY OUTCOMES

- **Strategic Thinking.** Students learn to move beyond simply solving a specific academic problem to embracing the multi-faceted nature of effective legal practice. Students exercise judgment, take initiative and determine what questions to ask, how to engage a client's problems, and how best to proceed in light of the relevant law, the client's goals and competing ethical considerations.

Students learn to move beyond simply solving a specific academic problem to embracing the multi-faceted nature of effective legal practice.

- **Project Management.** Students will operate within the fluid deadline regime of the legal profession, juggling competing assignments. With each class requiring at least 20 to 25 hours of work per week, students' schedules take on a more professional cast.
- **Writing.** Students will draft a wide variety of documents, ranging from memoranda and motions to letters and contracts.
- **Interpersonal Skills.** The curriculum places a premium on a student's ability to effectively communicate with lawyers and non-lawyers alike. In their elective courses, students regularly work in teams. They also routinely report to professors who function as senior-level attorneys. Furthermore, through their

real-client experiences, they learn how to manage client expectations, address ethical complications and deal with the messy and often unpredictable nature of legal practice.

- **Maturity.** As a result of the third year, students have already begun the transition from law student to lawyer. They have encountered many of the challenges and frustrations regularly experienced by first-year associates but within the context of law school, where faculty and practitioners serve as mentors, providing students with focused feedback.
- **Values.** The third year emphasizes that a lawyer's role in society is to serve. Students perform at least 65 hours of law-related service and often work in the public interest in their clinical or externship experiences. In addition, through the professionalism program, students investigate and discuss a variety of current issues confronting the legal profession, including the legal economic model, ethical challenges and client management. Building upon the core principles of the W&L educational experience, the third year promotes critical engagement with the central values of the legal profession, the nature of effective legal practice and the development of professional identity.