

**JOURNAL OF THE
NEW YORK STATE
JUDICIAL INSTITUTE
ON PROFESSIONALISM
IN THE LAW**



A CONVOCATION

FROM LAW SCHOOL TO PRACTICE:
INSTILLING SKILLS, COMPETENCIES AND
PROFESSIONAL VALUES

*A DIALOGUE WITH THE ACADEMY,
BENCH AND BAR*

WHITE PLAINS, NEW YORK

APRIL 1, 2019

RECORD OF PROCEEDINGS

**JOURNAL OF THE
NEW YORK STATE
JUDICIAL INSTITUTE
ON PROFESSIONALISM
IN THE LAW**



**VOLUME 6, NUMBER 7
SPRING 2019**

©2019 New York State Judicial Institute on Professionalism in the Law
25 Beaver Street, New York, New York 10004
Internet Address: <<http://www.courts.state.ny.us/jipl/>>
Cite the Journal of the New York State Judicial Institute on Professionalism in the Law as:
J.N.Y.S. JUD. INST. PROF. LAW

JUDGES OF THE
NEW YORK STATE COURT OF APPEALS

HON. JANET DIFIORE, CHIEF JUDGE

HON. JENNY RIVERA

HON. ROWAN D. WILSON

HON. EUGENE M. FAHEY

HON. LESLIE STEIN

HON. MICHAEL GARCIA

HON. PAUL G. FEINMAN

**New York State Judicial Institute
on Professionalism in the Law**

PAUL C. SAUNDERS, CHAIR
CRAVATH, SWAINE & MOORE LLP (RET.)
DISTINGUISHED VISITOR FROM PRACTICE, GEORGETOWN UNIVERSITY LAW CENTER

CATHERINE O'HAGAN WOLFE, VICE CHAIR
CLERK OF COURT, US COURT OF APPEALS FOR THE SECOND CIRCUIT

LOUIS A. CRACO, CHAIR EMERITUS
CRACO & ELLSWORTH (OF COUNSEL)
WILLKIE FARR & GALLAGHER, LLP (RET.)
PAST PRESIDENT, NEW YORK CITY BAR

CRAIG M. BOISE
DEAN, SYRACUSE UNIVERSITY
COLLEGE OF LAW

MICHAEL A. CARDOZO
PROSKAUER ROSE LLP
FORMER CORPORATION COUNSEL,
CITY OF NEW YORK

CHRISTOPHER E. CHANG
LAW OFFICES OF CHRISTOPHER E. CHANG
FORMER MEMBER, GRIEVANCE COMMITTEE, FIRST DEPARTMENT

HON. CARMEN BEAUCHAMP CIPARICK, MEMBER EMERITUS
GREENBERG TRAUIG, LLP
ASSOCIATE JUDGE, NEW YORK STATE COURT OF APPEALS (RET.)

MATTHEW DILLER
DEAN, FORDHAM UNIVERSITY
SCHOOL OF LAW

FLOR M. COLON
OFFICE OF GENERAL COUNSEL,
XEROX CORP.

HON. RANDALL T. ENG
MEYER, SUOZZI, ENGLISH & KLEIN LLP
PRESIDING JUSTICE, APPELLATE DIVISION, SECOND DEPARTMENT (RET.)

SOPHIA J. GIANACOPLOS
EXECUTIVE DIRECTOR, NEW YORK COUNTY LAWYERS' ASSOCIATION

HENRY M. GREENBERG

GREENBERG TRAUIG LLP
PRESIDENT, NEW YORK STATE BAR ASSOCIATION

JOHN H. GROSS
INGERMAN SMITH, LLP
PAST PRESIDENT, NEW YORK STATE BAR FOUNDATION

HON. PRISCILLA HALL
ASSOCIATE JUSTICE, APPELLATE DIVISION, SECOND DEPARTMENT (RET.)

ARTHUR J. KREMER
RUSKIN MOSCOU FALTICHEK P.C.
FORMER MEMBER, NEW YORK STATE ASSEMBLY CHAIR, COUNCIL OF INDEPENDENT
COLLEGE AND UNIVERSITIES GOVERNING BOARD

HON. RACHEL KRETZER
ADJUNCT PROFESSOR,
ALBANY LAW SCHOOL
ALBANY CITY COURT (RET.)

M. CATHERINE RICHARDSON
BOND, SCHOENECK & KING, PLLC (RET.)
PAST PRESIDENT, NEW YORK STATE BAR ASSOCIATION

HON. JENNY RIVERA
ASSOCIATE JUDGE, NEW YORK STATE COURT OF APPEALS

SETH ROSNER
FORMER CHAIR, ABA STANDING COMMITTEE ON LAWYER COMPETENCE
FORMER CHAIR, ABA STANDING COMMITTEE ON PROFESSIONALISM
ADJUNCT PROFESSOR, NYU SCHOOL OF LAW (1961-1989)

HON. TERRY JANE RUDERMAN
JUSTICE, NY SUPREME COURT, NINTH JUDICIAL DISTRICT

MARC WALDAUER
COURT ATTORNEY, SYRACUSE CITY COURT

STEPHEN A. WEINER
SENIOR COUNSEL, PILLSBURY WINTHROP SHAW PITTMAN LLP
ADJUNCT PROFESSOR, BROOKLYN LAW SCHOOL
ADJUNCT PROFESSOR, CARDOZO SCHOOL OF LAW

JAMES M. WICKS
FARRELL FRITZ P. C.
ADJUNCT PROFESSOR, ST. JOHN'S LAW SCHOOL

G. ROBERT WITMER, JR.
SENIOR COUNSEL, NIXON PEABODY LLP
PAS PRESIDENT, NEW YORK STATE BAR ASSOCIATION

* * *

LAUREN KANFER, COUNSEL
OFFICE OF COURT ADMINISTRATION
STATE OF NEW YORK

JOURNAL OF THE NEW YORK STATE JUDICIAL INSTITUTE ON PROFESSIONALISM IN THE LAW

Volume 6, No. 7

Spring 2019

TABLE OF CONTENTS

Opening Remarks	1
Plenary I Session	31
Luncheon Discussion.....	59
Introduction to Plenary II Session: A Dean's Perspective.....	71
Plenary II Session: Where Do We Go From Here?.....	75
Closing Remarks	96

**A CONVOCATION
FROM LAW SCHOOL TO PRACTICE: INSTILLING
SKILLS, COMPETENCIES AND PROFESSIONAL
VALUES
*A DIALOGUE WITH THE ACADEMY,
BENCH AND BAR***

OPENING REMARKS

PAUL C. SAUNDERS

RETIRED PARTNER, CRAVATH, SWAINE & MOORE LLP;
CHAIR, NEW YORK STATE JUDICIAL INSTITUTE ON PROFESSIONALISM IN THE LAW:

Good morning. My name is Paul Saunders and I'm the Chair of the New York State Judicial Institute on Professionalism in the Law and we are the sponsor of today's convocation program.

I would like to welcome all of you to this magnificent facility which I refer to as the other Judicial Institute, the one that has a building, which we don't have and I want to thank you all for coming to today's convocation on a topic that we think is very important and deserves some robust discussion and debate.

Let me just say a word, a very brief word about our Judicial Institute and John Gross, who is going to speak to you in a few minutes, will give you a little bit more details about the work that our Judicial Institute has been engaged in over the past few years.

This is our 20th anniversary as a Judicial Institute. We were created by Chief Judge Kaye for the purpose of examining the legal profession, keeping an eye on it while trying to understand how the legal profession was being perceived by the population in general and relevant to today's meeting to promote a discussion and dialogue between the judiciary, the academy and the practicing bar. That's something that we have tried to do throughout our entire existence as a Judicial Institute.

We are especially pleased to have with us today for the first time we think in our history all of the judges of the New York State Court of Appeals and our great thanks go to Chief Judge DeFiore and her colleagues for attending today's meeting.

This convocation has been in the works for about a year and-a-half. Some of you have participated in some of our focus groups and working sessions as far back as a year ago last October, so this is a topic that we've been thinking about for a long time.

The principal subject of today's convocation is the implementation of the new York State Court of Appeals rules for admission to the bar. I'm not talking specifically about the new bar exam, although that topic may come up, but I'm talking rather about the requirement that applicants for admission to the bar be able to demonstrate that they have received the necessary instruction in skills that are essential for practicing lawyers and also professional values. We are delighted that Judge Rivera, as a member of our Judicial Institute, is here. You're going to hear from her in a few minutes. She was one of the principal architects of the new rule and the task force that led to the new rule and was under her direction.

Our perception, again, leading to this convocation is that there hasn't really been a good forum in New York State for a discussion of exactly how these new rules were intended to work and how they were working. Our perception was that the law schools weren't really talking to each other as much as we thought they could or should.

And it's also our perception that the rules were deliberately written in a way to permit the law schools to experiment so that the idea of how you inculcate professional skills and values could be something that would grow from the ground up, that the schools, themselves, would decide for themselves how they wished to do that and I think that that actually has happened and one of the things that we are going to talk about today is exactly how the law schools have gone about trying to inculcate professional skills and values.

And my perception, and this is just my perception, certainly not Judge Rivera's or the other members of the Court of Appeals, but my perception is that these rules are a work in progress and I think that, at least I hope, that the discussion and debate that we are going to have today will help those who are charged with writing the rules and interpreting the rules to bring them to the next step. This is, in part, what I refer to as "MacCrate redux". In 1992, the MacCrate report was written for the American Bar Association and was one of the very first efforts to bridge the gap between the academy and the practicing bar. The MacCrate report listed certain skills that were perceived to be essential for practicing lawyers and articulated professional values that those of us who are members of the legal profession ought to embrace and adopt.

Unfortunately, the discussion of the MacCrate report of professional values was not as robust as I thought it should be and so if you look at the back page of your program, you will see that we in the Judicial Institute have tried to articulate our own description of the professional values that we think ought to obtain in the legal profession.

That statement is not meant to be final in any sense, rather it's meant to promote and encourage discussion and dialogue about exactly what these professional values are that we are asking the academy to inculcate in their graduates. So please let us have your comments on that statement of professional values either today or in the days ahead.

Let me say just a word about how we propose to proceed today. First of all, these proceedings are being transcribed and in due course we will follow our normal practice of distributing as far and as wide as we can the proceedings of today's convocation.

In fairness, we will give those who are speaking today an opportunity to edit their comments, unlike the kind of work the court reporters normally engage in, but we've learned that if we make those opportunities available it's better for everybody. So you will in due course receive an edited copy of today's proceedings.

As far as next steps are concerned, one of the issues that we've been talking about in the Institute is how we can assist those in the academy to inculcate professional skills and values in their students and one of the things that we are thinking about with the assistance of those in the academy, and there are two law school deans who are members of the Judicial Institute, we are thinking about creating a syllabus that could be used by law schools to help them in their programs to inculcate professional skills and values in their students.

So, again, that is a work in progress, but that is one of the things that we are certainly thinking about and, again, we encourage your comments and thoughts in that regard.

Today's program is going to proceed as follows. I will make some additional introductions of people who would like to welcome you to this convocation. We are going to have a discussion or a dialogue between John Gross, who is a member of the Institute and Judge Rivera, who is also a member, to talk about the new rules, how they were created, what they were intended to accomplish and how they are actually working in practice.

The purpose of that discussion is, in effect, to level set so that we all have the same basic level of understanding of what the requirements are.

Again, this is meant to be a dialogue and discussion as the day proceeds and so we thought that would be the right way to start the discussion and, again, there will be opportunity for comments from those of you who wish to ask questions or make comments during the course of the day.

Then we are going to hear from a representative from the Institute for the Advancement of the American Legal System in Denver, Colorado.

They have done really tremendous work. Those of you in the academy will recognize that they run a program called Educating Tomorrow's Lawyers. Many of the law schools in New York State, maybe even all of them as far as I know, are members of that project and in connection with that project, they have done some work that no one else has actually done. The MacGrate report tried to do it, but there is nothing remotely as robust as what the Institute in Denver, Colorado has done.

What they did was to do an empirical study of what the practicing lawyers thought the requisite skills were for practicing lawyers and they put

them in several different categories. One category was what skills should lawyers have within the first few years of their practice.

Judge Rivera admonishes us not to use the phrase “practice ready” when law students graduate from law school because we all understand that that’s simply not possible. The study done by IAALS tried to identify the skills that practicing lawyers thought lawyers should obtain in the first few years of their practice and then there was another set of the skills that they should obtain at some point during their practice and you’re going to hear a description of what those answers were. The survey, the questionnaire was very, very robust, statistically significant.

There were a lot of New York lawyers who participated in the project and answered the questionnaire, so we thought rather than talking about professional skills in the abstract, we would let you see what at least practicing lawyers thought these professional skills were, not so much professional values, but professional skills. So we are going to have that presentation first before our first panel discussion.

Then the first panel discussion, chaired by a member of the Judicial Institute, Chris Chang, will discuss where we are today, what has happened in the academy, how have the law schools tried to comply with the new rules for admission to the bar and one aspect of that that you’re going to hear has to do with grievance committees. You’ll see in the first panel we have some representatives from grievance committees and one of the things that we discovered as we were working on this program was that a very, very high percentage of grievance committee complaints against practicing lawyers were being made against young lawyers who practiced either as solo practitioners or in firms of five or fewer lawyers. We thought that that is a perspective that those in the academy who are here would like to hear because if, in fact, young lawyers are being subjected to disciplinary committee complaints against them, that’s something that the law schools ought to know about and ought to think about how to address in their training.

I would be remiss if I didn’t also mention that an effort by the New York City Bar Association to encourage law schools to teach their students how to be efficient and economic practitioners of law, that is how not unduly to spend their client’s money in their practice. That’s an aspect of legal education that probably is not addressed as much as it should be and so we may hear a little bit more about that.

Then we are going to break for a luncheon discussion. We are going to have a luncheon discussion between Julie North, who is a partner of mine at the Cravath firm and Dean Craig Boise, who’s the Dean of Syracuse Law School, who is also a member of the Judicial Institute. The purpose of that discussion is in general terms to ask the question what is it that the bar, the practicing bar expects from the academy and how is the academy going about delivering what the practicing bar expects?

We will then have our afternoon panel discussion, the title of which is *Where Do We Go From Here?* That is going to be introduced by another member of the Judicial Institute, Dean Matthew Diller from Fordham and the purpose of that discussion is to talk about where these rules ought to go in the future. If their perception is that the rules need to be tweaked a little bit, how would that happen, what is it that we in the academy and the practicing bar could do to help the judiciary articulate these rules and what is it that we, the Judicial Institute, could do to facilitate that perception and that discussion?

So that being said, let me make just a few introductions. The first person I'd like to introduce is Michael Miller, who is the current President of the New York State Bar Association. We are delighted to have President Miller with us today.

We've asked him to make a few introductory remarks.

And I should note that we also have with us today the President Elect of the New York State Bar Association, Hank Greenberg, who is also a member of the Judicial Institute. We are delighted to have Hank Greenberg with us today.

So without further ado, President Michael Miller.

MICHAEL MILLER

PRESIDENT, NEW YORK STATE BAR ASSOCIATION

Good morning. Thank you, Paul, for the introduction. It is truly my honor to be here this morning to speak with you briefly on behalf of the New York State Bar Association and it's 72,000 members.

The topic of today's Judicial Institute convocation is, in essence, about the heart, the soul and the future of our noble profession. I can think of few subjects more important for a thoughtful dialogue about our profession's future than today's theme, *From Law School to Practice, Instilling Skills, Competencies and Professional Values*.

Our profession has changed rapidly in recent years. Aside from new tools and technology, our changing world has also brought new realizations that go to the very core of client representation and client service and what it means to make the transition from law student to practicing attorney.

And while the phrase *practice ready* has been used in the past to describe our aspirations for law school graduates, we now use the phrase *profession ready* and *professional values* that Paul mentioned. I think that this represents a shift in thinking to ensure that every new lawyer understands that being a lawyer means a lifetime of learning both to keep up with statutory changes and to continue to grow with our profession as it evolves and adapts.

As part of the State bar's continuing interest in and commitment to legal education, we have recently established a task force on the New York bar exam because the bar exam plays a role in measuring the adequacy of law school education and has a secondary influence in choices made both by law

students and law schools regarding curriculum. The bar exam is a piece of the puzzle of how we can best prepare new attorneys for entry into the profession and to ensure that preparation is adequate.

You may have read this morning an article that was posted in the New York Law Journal about this important task force and its mission. I'm pleased to acknowledge the co-chair of this task force, the Honorable Alan Scheinkman, presiding Justice of the Appellate Division Second Department, who's a member of the State Bar's House of Delegates and will be a panelist at the afternoon plenary session.

This convocation has brought together a thoughtful mix of people representing the bench, the bar, academia and law students. I'm excited about hearing the wisdom and insights of the distinguished panelists on these vital issues.

I have time to acknowledge only a few of the panelists and speakers with whom the State Bar has a special relationship. Of course first and foremost, our absolutely remarkable Chief Judge, the Honorable Janet DiFiore, who will give opening remarks; the Honorable Jenny Rivera from the Court of Appeals; retired Presiding Justice of the Second Department Randall Eng and as I mentioned the current PJ of the Second Department Alan Scheinkman.

Also participating in the program, as you heard, is the Fordham Law Dean Matthew Diller who conducted an absolutely extraordinary discussion with Preet Bharara at our Judicial section's luncheon in connection with our annual meeting in January. Those who missed it really missed an amazing discussion. And of course the always thoughtful and I might add impeccably attired Syracuse Law Dean Craig Boise.

I would be remiss if I did not recognize some exceptional members of the New York State Bar Association who are serving on today's panel. John Gross, who has made invaluable contributions to our association and our foundation and is just a wonderful friend and I can't say enough about John. And Scott Karson will be on one of the afternoon discussions. He's our current Treasurer and even more importantly he is the President Elect Designee and will follow Hank Greenberg, who although Hank is not on the panel, I have to acknowledge he's a very dear friend, valued friend whose support and solid judgment have served my association and our profession very well and who has been an enormous help to me personally during my time as President. Hank, I appreciate all of your sound judgment, solid sound judgment which has kept me from making a fool of myself more than once.

My friends, the New York State Bar Association is proud to be a part of any dialogue at the Judicial Institute and I'm now pleased to turn the microphone back to Paul to introduce our host, the Dean of the New York State Judicial Institute and also a very, very dear and long-time friend, the Honorable Juanita Bing Newton.

Thank you.

MR. SAUNDERS

Thank you, Michael. Thank you very much.

It's always a pleasure for me to introduce our host in this facility and a person who has been as supportive of the work of the Judicial Institute on professionalism as anybody I know. I guess it's appropriate to refer to her as Dean, although I call her Judge, but I'm pleased to introduce our host in this facility, Dean Judge Juanita Bing Newton.

HON. JUANITA BING NEWTON

DEAN, NEW YORK STATE JUDICIAL INSTITUTE

Good morning. It's wonderful to welcome you to this magnificent facility where we do a tremendous amount of education.

I think I want a picture of the Court of Appeals as students, look at this, sitting in the audience as students, right.

So that I've been given three minutes and because I know that time is a made up thing and we can never recover it, I'm going to be probably even more brief than three minutes.

First, I said welcome and that's what, how many seconds have I got?

The next thing I am going to go completely off script and pitch our summertime LEO program. It is a program for minorities and economically disadvantaged New Yorkers who have been accepted into law school or wait listed. It is a six week boot camp. We have absolutely fantastic faculty, including our friend Judge Rivera who spends her summer teaching these young people and preparing them, along with others, for law school.

So if you come across in your work and your colleagues or if you have friends in the law school and are people that fit that criteria, we have some brochures outside, please send them to them and encourage them.

We are funded, interestingly enough, by a grant from the Assembly that's sponsored by a young Assembly woman, Latoya Joyner, who in 2010 was a LEO grad and she told her friends go to LEO and when she discovered we no longer had funding for LEO, she got herself elected to the New York State Assembly and went in January with two things, one, for her constituents and said you have to give me money for LEO. Isn't that a remarkable pay it forward story? So if you have candidates who may be eligible, please let us know.

And then thirdly my remarks that are edited will be much longer and quite brilliant. Since we have that opportunity, why not? That's not the way it works?

MR. SAUNDERS

For you it is.

HON. NEWTON

Thank you very much, Paul.

I asked the Chief Judge, my friend, what can I say about her and she said don't say anything, so of course I have to say something, but it's not by way of introducing you to her. We of course all know who you are. I just wanted to spend a few minutes to say that this St. John's graduate, you have to have a plug for your alma mater, has been engaged as a private lawyer, a public service lawyer, the District Attorney of Westchester, a County Court Judge where you sat in Family Court for a little while. We know she's intrepid that way. She was a supervising Judge and now she is our Chief Judge and then the last three years she has made some fundamental judges. You know it's the final four, so our focus is on fundamental basketball. There's fundamental lawyering and fundamental judging.

And in addition to her decisional law, she's also made some return to fundamentals and how we run our courts and through her excellent initiative, she has done a remarkable job. We are now focused not only on decisional excellence, but also operational excellence so that we can ensure that people who come to our courts have access, but it's also timely, that justice delay really is not what we can do and we can do better.

If you want to know more, read the State of the Judiciary. It's a wonderful document. It talks about all the wonderful things, the Court of Appeals and what the Chief Judge has done, but in the meantime await my brilliant comments that are going to be in the edited version, read the State of the Judiciary and welcome our friend, the Honorable Janet DiFiore.

HON. JANET DiFIORE

CHIEF JUDGE OF THE STATE OF NEW YORK:

Good morning, everyone.

So welcome and thank you all for being here today and devoting your time to the important topics that we will discuss over the course of today that Paul has already outlined for you. You know, in thinking about today's convocation, I went back to the original administrative order signed by Chief Judge Kaye in 1999 that created this other Institute, as Paul and Judith used to refer to this as, and the order starts by saying, and I'm going to read this for you, "The legal profession enjoys the privilege of self regulation and the responsible exercise of that privilege requires continuous attention to the condition of the professionalism of lawyers practicing in New York and to the needs of the clients whom they serve."

So I want to commend Paul Saunders and the members of the Institute and the staff for organizing a convocation that is very much in keeping with Chief Judge Kaye's and our continuing vision in this regard and so thank you all for organizing the convocation and, again, for all of you being here.

So why did we all make time in our very busy schedules to be here? I think we made time because all of us know and understand that we are living in times of great change, not only in society and around the country, but also in our legal profession. And for many, myself included, change can at times be very unsettling and today's convocation will address important changes in law school education and the bar exam format and these are all very important influences on how lawyers gain essential skills and competencies, how we absorb professional values and how we learn to practice law and interact with both clients and colleagues, exactly the kinds of issues that we as a self regulating profession should be focused on.

And as you know in New York it is the high court that is empowered by the judiciary law to promulgate rules prescribing the qualifications for admission of attorneys to the bar and to oversee the work of the State Board of Law Examiners which prepares and administers the bar exam each year.

This is a responsibility that we take very seriously and I hope that is made clear to you today and it's evidenced by the presence of our entire Court, the first time in the history of the Institute and this responsibility is one that we know requires our Court ultimately to provide the framework that ensures that every candidate for admission to the bar is qualified to practice in our state.

So there is certainly a lot for us to talk about today, including the fact that, as you all know well, in May 2015 we amended our rules to make New York the 16th state at the time to adopt the UBE and the following year the Court adopted rule 520.18, which we will talk about today, the pathway's requirement.

So we are hoping that this convocation provides us with the opportunity to have a very frank dialogue on how these changes are playing out for all of us and our new lawyers, how are the law schools intergrading the new skills and competency requirements into their curriculum, what has been the impact of the UBE on law schools as they prepare students to pass the bar exam and practice law in our state and critically important, how can we measure the success of our efforts to get to the ultimate question are we collectively achieving the intended and desired outcome of strengthening competency and professionalism. We are looking forward to that discussion that will take place around these important questions and to any findings or recommendations that may emerge from this convocation.

And as many of you are aware, our State Board of Law Examiners and the National Conference of Bar Examiners conducted a study of the impact of the UBE on bar passage rates and minority candidates. The results of that study are now being finalized and those results, together with what we learn from today's convocation and the work from our newly created State Bar Task Force, I expect that we will soon have a much clearer picture of whether or not we are indeed moving in the right direction and getting closer to our shared goals and if we are, kudos to all of us and if we are not, we will work to make the necessary adjustments.

New York has long been a national leader in legal education and lawyer formation and the judiciary of the organized bar and the law school community have a long history of successful collaboration and a shared commitment to promoting the highest level of lawyer competency and ethics. It is critical that we stay together and that we continue to collaborate and make progress on these issues in order to reinforce public trust and confidence in our legal system and in the courts.

And if we ever needed a reminder of the urgency of our efforts, the recent college admissions scandal in which several high profile lawyers played prominent roles that scandal has certainly underscored how much work remains to be done. The strength in ethical values will make sure that our profession remains worthy of the public's trust and confidence.

I believe that today's convocation will bring us closer to our shared goal of preparing skilled, competent and ethical law graduates, lawyers who understand that being a good lawyer requires more than being an effective advocate and trusted counselor to clients. Being a good lawyer requires an understanding and appreciation that we are members of a privileged profession, that we are officers of the court and of the legal system and that we are public citizens as the model rules remind us, public citizens with special responsibilities to serve others, promote justice and promote and defend the rule of law.

I want to thank each and every one of you for taking the time from your busy schedules to be here today to participate in this important conversation. Thank you all for being here today.

MR. SAUNDERS

Thank you so much, Chief Judge DiFiore. We very much appreciate your comments and more than that, we in the Judicial Institute very much appreciate your support for the work that we have been trying to do. Thank you so much and thank you to your colleagues on the Court of Appeals, as well.

We are now going to hear from Judge Rivera and John Gross, both of whom are members of our Judicial Institute, who are going to set the stage for a discussion of the new rules on inculcating professional skills and values.

So John and Judge Rivera, if you would please step forward and take your seats here. We look forward to your discussion.

**AN OVERVIEW OF NEW YORK'S BAR ADMISSION
REQUIREMENTS: A Framework for Law Schools to Certify Students
With Skills, Competencies and Professional Values Essential to Practice
Law.**

JOHN H. GROSS

PARTNER, INGERMAN SMITH LLP; MEMBER,
NEW YORK STATE JUDICIAL INSTITUTE ON PROFESSIONALISM IN THE LAW:

Before we begin, I do want to also recognize the presence of our Chief Administrative Judge, Judge Lawrence Marks, who's with us today and we thank you for your participation.

Paul indicated that this is the 20th anniversary of the creation of the Institute by Judge Kaye and he asked me just to briefly try to fold in the efforts that the Institute has made over the years in discussing issues of professionalism and basic competency for lawyers that practice in our great state.

I can certainly share the full support and frankly excitement of the Institute for the Court of Appeals' recognition that critical skills, basic skills and the inculcation of professional values are critically important in the education of our lawyers in this state. It's been a relatively long journey.

Judge Kaye founded or set up a committee on the professions in the courts that was led by the Institute's soon to be Chair Lou Craco in 1995. She had recognized that there was a conspicuous rise in public animosity, disparagement of lawyers and the judicial process.

She focused on the notion raised in the original MacCrate report in 1992, which of course is the seminal study on issues of professionalism and basic attorney competency and recognized that the legal education is really a continuum beginning from the very first day that we walk into a law school to the day before we retire.

In doing so, she charged the Institute, as Paul reflected, with creating a colloquial relationship with the academy, with the practicing bar and the judiciary on these critical issues. She specifically tasked the Institute with the study of professionalism and lawyer competency, which we have been doing literally for 20 years.

In 2001, our very first convocation on this topic, actually our very first convocation, we honored Robert MacCrate who attended and did make the following statement, which I think is critical, really does set the stage for what we are doing. He said "The survival of professional values depends upon law schools beginning the process during the most informative and intensive stage of a lawyer's professional development, as well as upon the courts and all segments of society holding fast to a value, to a value centered concept of law and to the common enterprise transmitting from one generation of lawyers to the next those acquired skills and professional values of our beloved profession." That was in 2001.

Our first convocation was entitled the Face of the Profession and it was our first foray into these issues. We dealt predominantly with trying to define professionalism, I must indicate, unsuccessfully. We certainly have over the years and as Paul indicated on the back of the agenda is our articulation of professional values, but we were unable and I think it still eludes us, all of us, to come up with a concise definition of professionalism which may be a task of the academy in the process of defining the Court of Appeals' rules.

David Becker who spoke at that first convocation, who's the former general counsel to the SEC, reflected that it's easy for practicing lawyers to take for granted what they do. They should remind themselves that they help protect individuals against the power of the state or help people resolve their disputes in a civilized manner. Certainly an articulation of the value of what our practice produces.

Lou Craco, our Chair, spoke and identified something that I've lived with my entire, I shouldn't say my entire career, since I heard it 20 years ago. He said fundamentally law is a public calling. Whether we defend somebody accused of a crime, write a will, try a commercial case, all of that goes and contributes to our ultimate goal of the maintenance and vitality of the rule of law.

Identifying that, it doesn't matter that -- I mean certainly the performance of pro bono services, volunteer activities of attorneys is critically important, but what we do at a court Lou identified as a public calling, which is reflected and will be reflected in hopefully our determination under these rules of professional values.

In 2004, we held our first convocation specifically on the issue of inculcation of professional values in law schools. Again, we struggled. We had speakers from across the country from the academy and from the courts. We conducted a nationwide survey of all law schools asking for what efforts were made in their curriculum for the inculcation of professional values.

This convocation did not focus on basic competency, but predominantly on professionalism. Again, we spent a fair amount of time discussing what professionalism is, how it can be defined.

An interesting response of many of the law schools that we surveyed and we literally sent requests and got back about a 60 percent response from the law schools in the country, some law schools simply indicated that ethics, professionalism are inculcated in the doctrinal law and crosses what they teach in school and that was the extent of their response. That challenge has now been taken up I think very artfully by the Court of Appeals with a direction that the individual law schools will identify the values, will identify the skills and must certify compliance with them. So I think that is a very artful way to overcome what was clearly an academic freedom, a defensive response, not by all law schools, but by several of the law schools that we surveyed.

Also with that convocation, Judge Battaglia, who was a New York City Civil Court Judge, but very interested in issues of professionalism came up with

I thought a very interesting dichotomy in how professional values ought to be developed and described. He looked at and spoke to us about ends oriented values, justice, fairness, equality and access to justice, adherence to the rule of law and then he talked about means oriented values, confidentiality, candor, loyalty, client fidelity, strenuous advocacy and he suggested that perhaps we should look at the issue of professional values in that bifurcated manner.

Ten years passed from 2004 to 2014 during which clinical programs, as we know, have flourished and began to flourish in our schools. Certainly were present prior to 2004, but during this 10 year period there was a substantial growth and right here at this wonderful auditorium we conducted our 2014 convocation, *Coming Changes to Legal Education*.

We revisited the 2001 and 2004 discussions and there was a clear noticeable shift from the judiciary in terms of articulating what has now been set forth in the Court of Appeals rules.

Judge Lippman, who began the discussions, he said law schools have to focus by all means on the values of our great profession and provide practical experience combined with that value training so that the next generation of lawyers can play a vital role in the pursuit of justice for all.

The key note speaker who Paul mentioned, Judge Rebecca Kourlis, the former Chief Judge of the Colorado Supreme Court, at the time Executive Director of the Institute for the Advancement of the American Legal System, said it very simplistically, figure out what law students need in order to be a successful lawyer, what they need to learn in law school and what they need to know when they graduate. She set forth that as the task which now has been embodied in the Court of Appeals rules that we are discussing today.

We had a return visit from a Professor Partrick Longan from the George Law School at Mercer University in Georgia, which has had and continues to have one of the most robust professionalism programs in the country with courses specifically on professionalism and with the assignment of faculty members teamed with practicing attorneys with monthly sessions with small groups of law students for each of the three years discussing issues of professionalism.

He spoke at our 2004 convocation and again at 2014 and shared with us their definition of professionalism, what they lived by: professionalism is the acquisition of practical skills necessary to succeed as a lawyer, including professional competence, fidelity to the client, obligations to the court and and civility.

In 2017 Paul conducted a very interesting convocation of most all of the deans in most all of the law schools in New York State discussing the very issues that we will be looking at today. We have a transcript of that and that also is available for review.

So we come to today to discuss and examine the endorsement by the Court of Appeals, truly a watershed moment. It took us 20 years to get here to articulate these issues and to have our Court of Appeals underscore how

critically important it is that the law schools embrace inculcation of professional values and measure and certify professional conduct.

MR. GROSS

We are going to endeavor to end by about 10:50. We are running a little bit behind. Judge Rivera will now talk about the actual rules we will be looking at today.

HON. JENNY RIVERA

SENIOR ASSOCIATE JUDGE, NEW YORK COURT OF APPEALS; MEMBER, NEW YORK STATE JUDICIAL INSTITUTE ON PROFESSIONALISM IN THE LAW

Good morning, everyone. So happy to be here on this beautiful day discussing a very complex, but important topic to our profession.

I want to first thank Paul and my colleagues on this panel, John, and all the members of the Judicial Institute for the work that they have been doing for quite a period of time and for agreeing to go down this road today and moving forward to help the Court and the profession to ensure that we have compliance with the rules. We are very grateful for all the expertise that you bring to this work and your commitment. Of course, thank you to the Chief Judge and my colleagues for being here today considering we just ended a session, I'm very grateful to all of them for staying here with us today. Thank you so much.

Of course, I usually don't always speak for all of my colleagues, but I know they're all looking forward to this conversation, the thoughts and comments and the critique that you bring to this dialogue; it's really important that we hear concerns as we move forward.

My task today is to describe, the rule and then we'll discuss what is going on in the real world, and the intent of the rule.

But let me just by way of the history, back up a moment. The Task Force engaged in this process, to formulate a particular rule on experiential learning of lawyering skills and on professional values acquisition. We met regularly. First thrashing out the questions whether we have such a rule, should we even do this, was it important for the licensing entity to say we need to put this down in a rule and then hold the law schools to the fire. That's the first question.

The Task Force consisted of people from the various law schools who have been at these schools for some period of time and then people who were new to the academy and people who were clinicians, trial instructors and administrators and people who helped draft the MacCrate report and others who were less familiar with the struggles around the MacCrate report and it was a very interesting dialogue. Not everyone agreed at all times, which means it was a robust and very productive conversation.

But the answer to that first question was yes, there is really a benefit for the Court of Appeals to issue a rule. So having gotten that far, the next questions were, what should this rule look like? Should it be a rule that applies to everyone equally, or should it be a two track rule? Should people getting a JD and seeking admission through the JD process be treated differently or should we have different expectations from those people who had LLM degrees or who were coming from other countries who were trying to come in through a waiver of some of the rules? Should we have a different process, what should the rules specifically say, which is more the conversation we are having today. What should the rule be focused on? What should be the expectations for someone who is seeking admission to the bar of the State of New York?

And as we worked through, each of those questions it became clearer and clearer that although many people somehow knew what the skills generally were, the specific skills were hard to articulate. And what one person might say is obviously important, for example, of course you need to be ethical, well, all right, what does that mean in the day-to-day practice and what does that mean for a junior lawyer versus someone who's been in practice for 20 years and has had different kinds of professional experiences.

And as we worked through each of those questions, we realized the complexities of the enterprise. The revelation that came out of that conversation was that the law schools, as John has already described, had been engaging in this internal dialogue figuring out where the pedagogy and the practice could meet and determining what was best for themselves because each law school has its own identity. They had already begun a long-term process for trying to make sure the skills that are taught in the schools are the kind of skills that are useful to students and balancing that with great demands of also having a doctrinal curriculum.

So it was clear very quickly that the schools have been doing this for some time and I will say that I'm very proud of the way the New York schools have lead the way. It is something for our state to be proud of.

We came to realize that although we should have some parameters, that we also had to create the opportunity for innovation, the opportunity to create not only because as I think has already been mentioned and I'm sure we will continue to discuss throughout the day, there is a real evolution in the way we think about skills, maybe not so much the professional values, but certainly the skills side of the practice and we may have different ideas again about someone who's just graduated -- competence for admission versus what might be the continuing development and honing of those kinds of skills.

But really the schools have been working very hard on this. They had this, I agree with you, revolution in clinical teaching. That was certainly true when I attended law school. Schools were then beginning to embark on this road and have come a very long way.

So we realized that what we wanted to do was allow for innovation and creativity, as the Chief Judge has said, things change, things sometimes change quickly and unexpectedly and we wanted the schools to be the first line of response to that. At the same time, the Task Force members acknowledged that while there might be some skills we could quickly point to and about which we could reach a broad consensus, we needed to further explore and study the area. We knew that there was research in progress or completed studies in addition to the MacCrate report. We also recognized that the American Bar Association, as the accrediting body had already set out certain minimum requirements and we did not want in any way to create confusion or to adopt a rule at odds with those requirements. That would have been unworkable.

So those were the kinds of conversations that engaged the Task Force, trying to figure out the best way to do this and recognizing that New York had made great strides but acknowledging that identifying skills and values is quite a challenge. We recognized that New York State has thousands of applicants and the diversity of the pool may not present the same issues for other jurisdictions. For example, we have many applicants who are trained outside of this country. We have many applicants who are trained outside of our borders in a school that's not a New York school and so we had to recognize that applicants for admission come from different places with different experiences and we did not want a rule that was an insurmountable obstacle to admissions. We identified our goal as ensuring that applicants had minimum competence not only in the doctrine, that's one focus of the state bar exam-but also in the practical skills and exposure and understanding to the values of the profession to help them develop as they move on through their career, and develop their professional identity.

So in that vein the Task Force came up with what we called pathways to achieve compliance with the rule, which is really what we viewed as five pathways to establish that an applicant has basic skills preparation and exposure to professional values and that we could feel comfortable saying that the applicant could be admitted to the bar of New York State, if they satisfied the rule and the other admissions criteria.

So the first thing to recognize is that this is an admissions requirement. It's not a requirement that applies after admission to the bar. There are obviously CLE programs for post admissions education. That is the way the rule is structured. It is part of the threshold criteria for entry to the bar.

The five pathways are constructed to deal with our state's diverse pool of applicants. So the first pathway is one that the schools I think have worked very, very hard on for the last couple of years and I know we are going to hear more about this during today's programming. The first pathway allows the school, to certify satisfaction of the rule, meaning the school certifies that the applicant has obtained competence in these skills and been exposed to and understands our professional values. The law schools must come up with a

plan and the plan has to satisfy the ABA rules and the school can do whatever else the faculty, identifies as relevant to its academic purposes, recognizing what would be the minimum level of understanding and competence that their graduates need to have achieved to be effective and ethical lawyers when they first graduate. The school also has to make public on its website the way it will satisfy the rule. So we wanted to make sure that students and applicants could have this information easily.

And once they had that in place, then all that's left for the school to do is complete the certification process, which is an administrative process which I'm happy to talk about in more detail if anyone wants during the Q and A. We wanted the administrative process to be straight forward and not be overly burdensome and the Task Force was of the mind that we did not want the various Appellate Division departments to have to figure out anybody's curriculum.

So, again, the idea was to support the law schools, to try and get the law schools to be innovative, but to have a minimum standard to satisfy the pathway one certification process.

The second pathway is available to applicants who do not have a pathway one certification. We wanted to allow for that applicant to be able to satisfy the rule so we considered the purpose and goals of the rule and that schools outside of New York might not want to engage in this kind of certification process even if they had a significant number of applicants to the New York State Bar.

So the second pathway, we'll just call it the 15-credit pathway, requires completion of 15 credit hours in accordance with ABA requirements for practice-based experiential coursework that is designed to foster the development of professional competencies. The reality is that law schools are already engaged in this particular enterprise for purposes of satisfaction of various ABA requirements.

So the point was to allow for 15 credits during law school for those students who would work during the summer, who might not get credit for that work, nevertheless to use that experience which we considered as very important- outside the classroom experience, working with lawyers, working in a law office. Whether it be public interest, public service, a private office, it didn't matter so long as a supervising attorney could certify the student had for a certain period of time over the summer had a practice-type experience. We wanted to allow for enough credits that if a student did that for two summers they could get a good amount of the 15 credits satisfied. The second pathway is satisfied if a student completes a clinic or does work during the summer. The student satisfies this pathway because clinics are for the most part an experiential learning enterprise. So we thought students could satisfy this pathway rather easily.

Pathway three is satisfied by anyone who goes through the pro bono scholars program because the program requires that the student work in a law

office for a significant period of time during that semester. You may already realize, especially for those who are very well versed in legal education, that the rule is intended to be satisfied during law school, in other words this is an experience that's provided in the school, not once someone has graduated.

So it's really set up for the JD candidates to do this in school. In part, a recognition again of this evolution in clinical training and experiential learning and what goes on in the schools and really these crucibles of pedagogy that prepare students to become lawyers.

Nevertheless, pathways four and five address the needs of those applicants who would not be able to meet this rule through a classroom experience or during law school. Pathway four is an apprenticeship pathway which allows a graduate to work for six months in a law office. Could be state side, could be outside the states if it's an American or U.S. recognized office. It could be work in a foreign country. So, again, we were looking broadly at the nature of practice and recognized that someone would have enough time to be able to do this before they go through the admissions process, that is to say if you didn't do this in school for whatever reason, you could have a job after you take the bar exam, if you've taken it right after you graduate, and complete the requirements of the rule in time for when you submit all your documentation to get admitted to the bar.

So, we created an opportunity to satisfy one rule outside of the law school setting in a way that would not to delay admission. There would be enough time to complete both the requirements of the rule and the admissions application within a few months. The fifth pathway counts practice in another jurisdiction. This responds to the reality that New York has many applicants who are coming from LLM programs, or who are lawyers from other countries. So if an applicant has one year of full-time practice or two years of part-time practice before or after they start their LLM programs that would satisfy the rule.

And, again, there are various administrative ways that an applicant can certify that they have done these things and we have tried to figure out ways to accommodate everyone in the process and to not make it an obstacle, to make it easier for the applicant, the law schools, and the lawyers who have to certify that someone has worked in their office, as well as for the Appellate Division departments.

So that's the way the rule works. There are many opportunities to satisfy its requirements. We have attempted to recognize what law schools are doing, hoping to encourage innovation, but encouraging satisfaction of the requirements by experiential learning in the law schools where there is real supervision and feedback, which is the best way to learn.

MR. GROSS

I have a question.

HON. RIVERA

Yes.

MR. GROSS

Does pathway two and its reference to 15 credits of practice based –

HON. RIVERA

Yes.

MR. GROSS

-- experiential coursework –

HON. RIVERA

Yes.

MR. GROSS

-- inform pathway one's requirement that the school, that the law school has to incorporate into its curriculum the skills and professional values that in the school's judgment are required for its graduates' basic competency and ethical participation? In other words, we have this second pathway that does give us a little bit more articulation of what the content of the coursework is.

HON. RIVERA

Yes.

MR. GROSS

Does that inform pathway one as well?

HON. RIVERA

I think it does and the other thing to remember is that under pathway one, there are certain first year courses and credit hours that don't count. The rule intends this to be a learning process in law school. It's not supposed to be loaded up in your first year and you never do – you never are exposed to professional values or experiential learning in the future. It's also a recognition that although we could focus on credit hours, we wanted the law schools -- because pathway one doesn't have a minimum credit hour at all but we wanted the law schools, to innovate, recognizing that for some schools, and I think this is actually true for most schools in New York, experiential learning is treated the same way that writing is viewed as a component throughout the three years. They want to embed this throughout the curriculum.

So the intent is to recognize the doctrinal or lecture format or socratic methods or whatever the schools are doing, but at the same time recognize law schools are trying to experiment with ways that students can more effectively learn skills. Those new ways might very well be a positive pedagogical approach, so even if we are not checking off boxes on the credit hours, the focus is how do you get the students to do more than just absorb purely what's being said, so that they are engaged. I think for the educators in the room, they recognize the more a student is really engaged with the material the more they learn the material.

So, yes, I think the presumptions of pathway one and two do inform each other. But I think pathway two has very instrumentalist goals and is intended to address the situation when the student is trying to find credits that satisfy this rule. We did not want this to be an obstacle to learning.

We didn't want this to appear like the Court of Appeals is adopting a regulatory obstacle that means nothing. We wanted people to see this as tied to that educational work in preparing students and graduates to be lawyers.

MR. GROSS

Certainly it is reflective of the respect for the concept of academic freedom.

HON. RIVERA

Yes.

MR. GROSS

Any questions before we depart the bench? Yes, sir.

A SPEAKER

How does the -- I think it was the fourth pathway you mentioned differ in practice from what I did about eight or nine decades ago, which is get out of law school, go to work as a tax associate, well I clerked for a year, but after that go to work as a tax associate for a law firm and it's, you know, several months before you actually get admitted to the bar?

HON. RIVERA

Yes. Well, in part it's almost the same except that legal education has changed for me, as it has for you, in the time since we graduated. So it is less possible, let me just say it that way, less possible not to have already done a lot of skills work experientially, been exposed to experiential learning, have been exposed to professional values outside of a professional responsibilities course and so there is that understanding that we hoped the student would have been or the applicant here would have done some of this work, but it may not be easy to certify.

So we wanted the opportunity for the student to find a way to apply to New York. We certainly would never want to discourage someone from applying and practicing here as long as they meet the criteria, so we wanted to create a pathway where they could get the experience necessary to satisfy the rule requirements. It's six months full-time, which is different from the ways an applicant might satisfy the other pathways. It also is tied to when the applicant might actually be admitted. We did not want to slow down that admissions process. And one other thing, your supervisor is going to have to certify completion of the rule requirements for that time period to count.

A SPEAKER

When I took the bar, I did New York and New Jersey at the same time and in those days New Jersey had a requirement called skills –

HON. RIVERA

Yes.

A SPEAKER

-- very similar to CLE, but it was an eight or nine week course that everyone had to take.

HON. RIVERA

Yes, yes and as I recall, they were also doing portfolios. You had to take material home –

A SPEAKER

Yes.

HON. RIVERA

-- in a portfolio, I remember that well because I was interning for a judge who had come up with that particular requirement.

I just want to add one thing. At that time, though, the bar was also somewhat different, which is one of the changes in the UBE and as the Chief Judge has already alluded to, there's a report on New York State's transition to the UBE. So over time we have tried to figure out ways to test not just substance on the bar.

So for example, the MPT has two essays that are skills based essays. This reflects a movement towards trying to, as you say, not only recognize the importance of it, but figure out a way that we can really access skills acquisition at the point of entry into the profession versus two, five, ten years down the road, which I know will be the next part of the conversation.

MR. GROSS

Any other questions? Yes, sir.

A SPEAKER

There was mention of complaints made by clients against their attorneys. Have they been broken out and in other words -- I mean, most of the cases I've seen were where attorneys have absconded with client funds, but I mean what percentage would that be of the complaints that were made for example?

MR. GROSS

I don't know offhand, but I know there's a wealth of information from the various disciplinary committees throughout New York State that do categorize the nature of complaints and I would suspect that felonious conduct is probably the smallest portion. I shouldn't say smallest portion, a small portion of things like failure to return phone calls, feelings of inattention consume an awful big part of the disciplinary committee's work, but I don't have it off the top of my memory, but certainly there are -- you can reach out to the different disciplinary committees in the different Appellate Divisions.

A SPEAKER

Wouldn't that influence you in coming up with this plan that you have though?

MR. GROSS

I suppose.

HON. RIVERA

Well, I will say that the task force did, yes, think about the fact that one of the reasons it's important to be able to assess and have some way that we can agree on whatever these skills are is to set up a system by which an admitted attorney could avoid that very kind of problem.

And law schools are aware of that problem, which is why by the mid 1990s, if not earlier, law schools had already been thinking about how to respond to their graduates who were admitted, they're taking the bar, passed the bar, gone through the character and fitness process and who now as we already mentioned hung out a shingle. They're not -- right, they're not going to be in an office where they have a supervisor overseeing them for several months or are in an office which is going to pay for consultants to come in and train them.

What do we do? They're going to represent clients and we don't want them to commit malpractice. It's not good for the public, it's not good for the

law school and certainly the Court of Appeals doesn't want that person practicing without proper training and support.

So the law schools have responded in different ways to that and some of them may talk about that today.

MR. GROSS

I would also, you know, suggest that what we are discussing today affects the curriculum and instruction of law schools.

Independent of that, there have been all sorts of studies and efforts by bar associations, among other groups, to set up mentoring programs for young attorneys who find themselves in the position that the Judge indicated of hanging out a shingle with no training.

However, hopefully the prophylactic measures of having a curriculum that treats these issues before they become a problem will dissipate those issues in the future.

A SPEAKER

Was there any thought about specialization? In other words, to practice in certain areas of the law you have to be qualified in some way.

With the doctors today, you go to five, six different doctors for -- depending upon what your problem is, whereas 20, 30 years ago you went to a general practitioner.

HON. RIVERA

Yes. Well, some law schools focus on a specialization and so I think they're trying to address that market need and the client need that you're referring to.

But, no, we came to this focused on what is necessary to ensure a minimum level of competence to permit admission to the bar so that they are able to adequately practice in New York State.

There are sometimes other ways that the specialists are prepared and so we were not looking at that.

MR. GROSS

I think it's a different issue in terms of advertising oneself as a specialist. That has been the subject of a lot of debate, I know the state bar, among other bars and very few states permit that because there's issues of certification and assessing in terms of skills.

HON. RIVERA

Thank you.

MR. SAUNDERS

Thank you very much, Judge and John.

Just to answer maybe a little bit further the comment that was made a moment ago about grievance committees, one of the things that we are hoping to stimulate by this discussion is some dialogue between the academy and the grievance committees so that the academy has some better idea of the kinds of complaints that are being made against relatively recent law school graduates to help inform the academy, the law schools about whether additional instruction would be in order in order to avoid those kinds of complaints.

And at the risk of being unduly disputatious, there's an unspoken issue here when we talk about professional skills and values and the question is whether there is a minimum substantive level of knowledge that ought to be required before one is entitled to a license to practice law.

Many of you in this room have heard me say this in the past, I'll repeat it again at the risk of being too repetitious, but you can graduate from law school in New York State without ever having seen a will, not drafting a will, seeing a will, but yet you can be licensed to practice law with no limitations, no substantive limitations.

That is not true of medicine, for example. That's a discussion probably for another day, but it's a discussion that I think is one that should be undertaken at some point. Maybe the response is "that's what the bar exam was supposed to monitor," that if you pass the bar exam you have demonstrated a certain level of substantive knowledge, but I think that that question is still an open question especially when we are reconsidering or looking at bar exam rules in the State of New York.

That said, let me ask Zack DeMeola to come up and to give us an overview of the results of the survey conducted by the Institute for the Advancement of the American Legal System in Denver, Colorado and this will be our first attempt today to articulate what these professional skills actually are.

ZACHARIA DeMEOLA

MANAGER, INSTITUTE FOR THE ADVANCEMENT OF
THE AMERICAN LEGAL SYSTEM (IAALS)

Thank you for having me here today. I saw the agenda and what would be talked about today and I was very excited to be able to attend. I'm Zack DeMeola. I'm a manager at IAALS.

If you see me click a little quickly through some of these slides, it is because, in the interest of time, I may just be highlighting some of the most important parts of this study as we move forward.

Before I joined IAALS I was a litigation associate for about six years. Today I am more of a project manager. My focus is in legal education and in

the regulation of the profession and I look critically at where legal education can meet the needs of the profession.

IAALS, the Institute for the Advancement of the American Legal System, exists and operates to improve the American legal system as much as we can. We do that in a lot of different ways. First and foremost, we are very much a data-driven organization. We are looking for evidence to help us solve the problems that we definitely notice. So when an issue floats up, we pay attention to it, we look to see what sort of research has been done in the past and, in any case, if there is research or not, we always conduct our own, we look deeply into the issue. So that data is a very important part of what we do but we are also very collaborative. We understand that to solve issues within the American legal system it takes a lot of different perspectives. So we bring people together, often from the academy, experts, regulators, judges, practitioners and others, to discuss potential solutions and clearly identify what it is we are looking at, and then we are very action oriented. We take all of that information, we develop a plan. Part of developing a plan is also developing a clear way to articulate what we are trying to do but also to measure the success of whatever it is we want to implement and we are very much involved in implementing what we do. Once we develop that plan, we either work with partners to make sure that action takes place or sometimes we marshal that action our own in collaboration with our partners. A lot of our partners are actually from New York. Paul and many others, Lauren, has worked with us in the past, and we are proud of those partnerships.

So one of the issues that has come up that we've noticed, and I'm sure you've also noticed too, is according to the ABA, about 34 percent of 2017 law class did not land full-time, long-term employment requiring bar passage. Twenty-five percent of that same class did not land full-time, long-term employment. But most concerning of all is this figure here: Twenty-two percent of the 2017 graduating class did not land full-time, long-term employment at all, right, professional and nonprofessional work. So a lot of things drive these numbers. They concern us in IAALS, and our focus when we see these numbers is the potential gap between what employers need from graduates and what new graduates are bringing to employment. So when we looked a little bit more into that issue, this is what we noticed. According to BAR-BRI, about 71 percent of third-year law students believed they have the skill it takes to practice. That may be a little optimistic for them. Forty-five percent of professors agree. Now, it may not surprise you that that number is also a little optimistic. Twenty-three percent of practitioners shared the same view.

So that gap between what new lawyers have and what they need is what we are focusing on here and it's what we focused on when we developed the project I'm talking about today. The perceived skill gap suggests that law schools are falling short when they are preparing their students for practice, but it may also suggest that legal employers are falling short when it comes to

developing hiring practices to meet their actual needs. So we want to address that problem but there is a larger problem at issue here, too. When new lawyers enter the work force unprepared or under prepared, that undermines the public trust in our legal system and it fails to meet the expectations of our clients.

So what can we do about this? Our first job was to understand exactly what we needed to fill that gap between what new lawyers have and what they need, what are they missing - what are new lawyers missing and how can law schools and employers help new grads hit the ground running? So we created the Foundations For Practice project and we had three goals from the outset. The first was we wanted to identify the foundations that entry level lawyers need, and when I say foundations I'm talking about the abilities that any new lawyer might need when entering the profession.

Our second goal was to develop a measurable model of legal education to support those foundations that we identify. If they are important, we want to make sure that they are being taught.

And finally, we want to align the market needs with hiring practices to incentivize those positive improvements in education. In other words, we want employers to hire based on what they say they need. So the first thing we did was we surveyed lawyers all over the country. In 37 different states, we had help distributing our survey to bar associations and courts. Judge Jonathan Lippman and Lauren Kanfer also helped us. Thank you very much for that. We had an outstanding response. We had over 24,000 lawyers across the country respond to our survey and those responses represented demographics from all over the profession. In New York in particular we had 1508 survey respondents. A very robust reply from the New York Bar, disproportionate in relation to other states, and we appreciate it. So as I said, those responses reflected just about everything we know about the legal profession today in terms of demographics. When they all came back we saw a good representation of different types of people with different types of practices and in New York that response was very consistent with the overall response. You can see here, for instance, overall we had over half of our respondents were in private practice. You see a little bit of difference around here, but generally I point this out just to show that our New York responses tracked fairly consistently with what the overall response rate was.

So we asked all of these attorneys about 147 different foundations. Those 147 foundations that we put together were -- they came from previous studies like, for instance, from the MacCrate report. We very much relied on the MacCrate report to come up with an idea of what new lawyers might need. We also talked to regulators, judges and lawyers and people in the academy to put this list together, and what we asked our respondents was to tell us -- well, actually before I get into that, there were three different types of foundations in these 147. The first here that you'll notice are traditional legal skills, right, so for example, critically evaluating arguments. The second type of foundation

was professional competencies. So these are abilities that are not limited to the legal context, so things like working as part of a team. And the third category that we have were characteristics, things like diligence. So what we asked our respondents to do with these three different categories of foundations was tell us whether and when they were important to the practice of law and they had four options. A foundation could be important right out of law school in the short term, it could be important over time, necessary over time but maybe not necessary immediately upon graduation, and then there were a couple other opportunities here that are advantageous perhaps but not necessary, and maybe even not relevant to the practice of law. Today, of course, we are focusing on all of those foundations that our respondents told us were necessary within the short term, those are what of course are most relevant to law schools and employers hiring new grads.

Seventy-seven. That was a total number of foundations identified as necessary in the short term by at least half of our respondents. And this is what the list of those top 20 of those 77 looked like and these are actually ranked. In reality, a lot of this, they are very, very close in importance so there is almost no distinction between the importance of number one, for instance, and number ten, but there are some interesting things on here. We'd like to point out "arrive on time." It seems to surprise students when we show them it's number two. It never surprises employers. But there's one thing to note about this, and the first thing that we noticed, only one traditional legal skill in the top 20: "researching the law." So what are the rest of these? A lot of professional competencies: "listen attentively and respectfully," "responding promptly." And finally, characteristics: "common sense," "conscientiousness." Things like "honoring commitments" are very high at the top. So what we determined was that it takes a lot more than just legal skills to be a good lawyer right out of law school. It takes a blend of professional competencies, characteristics and skills, and we call that blend a "whole lawyer." A lawyer who can possess all 77 is the "whole lawyer."

Now, the one thing we noticed about these results, which really struck us deeply, is the emphasis on characteristics that our respondents placed. So there are two types here. I just want to show you that of the 77, 31 foundations were characteristics, right, so that makes them the most any of the three categories. Now, professional competency is not far behind with 30, but what is important about this is that there is a disproportionate emphasis on characteristics when you look at the composition of the 147 foundations that they had to choose from. Only 28 percent of those 147 were actually characteristics. Most of them, almost half, were professional competencies. So you see that respondents were actively choosing more characteristics than they were any of the other types of foundations. This is another way of showing that respondents actually selected 76 percent of all characteristics available to them.

We called that phenomenon the “character quotient.” So what we say is the whole lawyer needs to satisfy a “character quotient” requirement to be a successful lawyer out of law school. Now, that emphasis on characteristics is consistent across all the demographics that we had responses from so, for instance, you see here we break out the different practice settings into private practice, business in-house, government, other -- other includes things like public defenders, legal aide or academics. Pretty consistently across the board, about 40 percent of those 77 foundations are characteristics, right? Same goes for size of law firms. With the break down of private practice a little further you see it hovers around 40 percent.

Now, we know that there’s consistent emphasis of characteristics in the 77 foundations but what about the individual foundations themselves? One of the things we expected was that we’d see that, for instance, lawyers in private practice may need different types of foundation than in-house lawyers, but what we actually found is that’s not really the case. Seventy-seven foundations are fairly consistent across demographics and practice areas. This is the way we represent that here. So if there were 77 foundations overall, private practice chose also 77, 74 of which overlap exactly with what the overall results were. And they removed three and added three of their own and you can see in-house, 73 overlap, government 72. So it’s also true when you break down firm size.

Now, as firms get larger you see a little more difference but even then, 69 out of 77 foundations are completely overlapping for those attorneys in the largest law firms when compared to overall results.

So what do these differences look like when you actually examine the individual foundations? It turns out they are much the same as you would expect. This is a good example: In private practice one of the things that private practice valued over the other practice settings was adhering to proper collection practices. They thought that was important right out of law school. It makes sense perhaps that in-house counsel didn’t share the same value, or maybe government attorneys, right? They are not typically billing clients. And conversely, business in-house, they didn’t find drafting pleadings, motions or briefs or requesting and producing discovery, as important as overall results suggest, and we think that reflects the practical reality that a lot of those lawyers are probably doing transactional or regulatory work and are relying on outside counsel for litigation skills. So you do see differences but they are not significant. The overlapping foundations selected, we think, showed consistency across the board.

Now, we wanted to break out New York, too, and show you what that looks like. When we look at the percentages you see some statistical differences that suggest that New York attorneys might want to add one foundation and remove nine others. But the issue we have with this though, is that if you look at the differences they are statistically there but we don’t think they are practically significant. So many of these, the outcomes for these

foundations are hovering around 50 percent. So as a matter of integrity for research, we don't think these differences actually have a practical significance to the outcome. Which would mean, of course, that New York is very consistent with overall results. Even if you did take the most pessimistic or skeptical view of this and you said, well, let's just assume that these are all practically significant differences, this is what it looks like. In New York, less of an emphasis on legal skills and, again, even more of an emphasis on characteristics. And furthermore, 68 foundations exactly overlapping what the 77 were for overall results. So we think these differences are all on the margins but, in fact, it's our belief that New York results are very consistent with our overall results.

So with all this information we learned what it takes to be a good lawyer. We also wanted to ask, okay, how might this affect hiring practices if we concretely identified these things and so we asked our respondents about that. One thing I actually want to tell you is that if you think legal skills don't matter, that's not true. As it turns out, legal skills are mostly in that category of necessary over time, right? So it looks like our lawyers are looking for characteristics and competencies and they are looking for that in new graduates because they believe that once those things are in place, they can develop those specific legal skills that a lawyer needs, so they are foundational, hence "Foundations for Practice."

So we asked employers what criteria would be useful to them to find the foundations they told us they needed. We came up with this list of 17. We had a scale. Respondents would decide whether something was helpful, or unhelpful, and this is what it looked like when we got the results back. Nothing was unhelpful. Everything was relatively more helpful than not. At the very top, you see legal employment, and journal experience was the only thing that only 50 percent of respondents said was less helpful, I suppose, they didn't say it was unhelpful, but there were a lot more neutral responses to that.

I apologize I'm going a little fast here, but I do want to highlight the important part of this aspect of the study: Experience matters. So what do I mean by that? Here's the same graph of results with the achievements, the hiring criteria that are based in practical experience as opposed to academic achievement or personal experience highlighted in red. Of course you see here, these are all the top criteria. Similar to our foundations themselves, this criteria is consistent. In big firms class rank pops up a little more importantly but you can still see in the top 10 criteria, all that practical experience shows up.

I'm going to cruise through this a little bit but the same is true for mid-size firms, practical experience being emphasized as the most useful hiring criteria. Similarly, solo practitioners, governments, and legal service as in public defenders.

So will employers really hire based on these things now that we know what they are? And can schools actually measure and teach these things? And,

of course, from our perspective, it's a resounding yes. We believe that this information can absolutely be used to improve the law school experience and to improve hiring on the employer side. So we actually are doing a second phase of this project. We are taking this information and trying to put it to use. We partnered with four different law schools, one of which is Columbia Law School, and they have helped us to identify employers so we work with employers who work directly with these schools to develop learning outcomes based on these foundations and hiring.

So before I wrap up, I have a couple of requests for educators in the room, please read this report when it comes out. We just finished doing these workshops with the schools and the employers. Take a look at the model we developed based on the foundations we have identified. See if you can apply it to what you are doing in your school. And of course for employers, consider whether your hiring process is actually meeting your needs. We actually are going to publish at the same time a hiring guide based on the same work that you can use to identify opportunities where there may be improvement, also based on our foundations work.

I've gone a little fast today in the interest of time but I do want to say I'm going to be here all day. If anybody has any question about this, I'm happy to talk to you about the work. If you're not on our distribution list or you don't know if you are on our distribution list, let me know so when these reports get published, in fact later this month, we can ensure that we get a copy to you. But thank you again for your time.

MR. SAUNDERS

Thank you. First we want to bring forward our first panel. Panelists, come forward to be seated. Let me say again that if you have any interest in looking at the details behind what Zack just presented, I know it was too much to take in all at once, but you can look for his publication *Foundation for Practice* on the website of the IAALS, Institution for the Advancement of the American Legal System.

* * * *

PLENARY I SESSION

MR. SAUNDERS

Let me now introduce Chris Chang who is going to briefly introduce and moderate our first panel discussion.

CHRISTOPHER E. CHANG

LAW OFFICES OF CHRISTOPHER E. CHANG;
MEMBER, NEW YORK STATE JUDICIAL INSTITUTE ON PROFESSIONALISM IN THE LAW

Why don't we get started. I'm Chris Chang. This is plenary session 1, From the Classroom to the Practice. What we thought would be best for presentation purposes is to present it in three segments. The first segment will be from the academic side, really boots on the ground in terms of the implementation of the rule. For that we will be hearing from Leah Hill, Associate Dean for experiential education and clinical associate professor at Fordham Law School and Susan Kraham, Director of externships and field based learning at Columbia Law School.

The second segment will be what we thought is important and that is the segment or the perspective of the student and for that we have a real live student. Katherine Brisson has agreed to take time out from her studies. She is I believe a 2L from Syracuse Law School.

We, I in particular, have encouraged Katherine to give her unvarnished and direct reaction on behalf of students with the promise that there will be no repercussions from any future employers.

The third and final perspective will be from the bar and for that you'll be hearing from Justice Randy Eng, former PJ Second Department.

And to address some questions here about disciplinary complaints and so forth that were posed from the audience we have Monica Duffy who is Chief Attorney of the Grievance Committee Third Department.

So with that let's get right into it. I'm going to warn the panelists that I've been charged with trying to get us back on schedule, so I've got a shot clock going.

So we are going to start with Leah.

LEAH A. HILL

ASSOCIATE DEAN FOR EXPERIENTIAL EDUCATION AND
CLINICAL ASSOCIATE PROFESSOR, FORDHAM UNIVERSITY SCHOOL OF LAW

So thank you, Chris, and good morning to everyone. Thank you to the Institute for inviting us to speak and thank you to all of you for being here.

I want to give a special shout out to my colleagues at Fordham, Dean Matthew Diller and Leah Horowitz. Thank you for coming.

So I was asked to start us off by defining what experiential education is and talking a little bit about its values in five minutes or less. Every time I'm asked to define experiential learning I'm challenged to do it without using those two words because as I can imagine that anybody in this audience who is asked to define experiential learning would say well, it's learning from experience, right?

So I'm going to try to do something a little bit different and pull from a number of reports that have come out over the decades in best practices for legal education, the MacCrate report and others.

So I see experiential learning as providing students with opportunities in a law school context to perform in the role of attorney and guiding them in extracting lessons, skills and tools that they can then use to develop over the course of their professional careers.

The faculty use a number of teaching methods to help students in developing those tools, skills competencies and lessons and the primary tool is the clinical teaching methodology which requires students to plan an activity, actually conduct that activity and then reflect on that activity and, once again, repeat it and so the learning comes about in the reflecting piece most significantly because students are asked to self assess their performance of whatever activity they perform in the role of lawyer and they're given feedback in assessment from the individual faculty member to help them build those competencies and incorporate for themselves a method of self reflection that they can then use outside of the classroom and so that's a basic foundation of what experiential learning is.

The next question is why is it valuable? I think the first thing that makes it valuable is it's grounded in adult learning theory and that comes from the premise that students, adult students learn best when they are in context, when they are doing something in context. They are more interested because there's an outcome, they are more motivated to learn and they deepen their understanding of some of the doctrine, theory and ethics that they learn in the classroom by actually having to grapple with the reality of the performance in the role.

It's also valuable because it allows you to teach across the spectrum. It's integrated in that sense in that we are teaching in experiential learning, you're integrating doctrine, you're integrating theory, you're integrating skills.

And so in the classic case, for example, of teaching client interviewing, you might be learning about active listening for example and it seems like, you know, a very basic concept, that when someone is giving you information, one of the active listening tools is to repeat back what they say to confirm that you've heard it and that sounds like in the abstract something that would be easy to incorporate into, for example, a client interview.

But students learn very quickly the first time they're doing either an exercise in a skills based simulation course or in reality interviewing a client. It's not so easy to be able to repeat back the first time a difficult subject comes back and I've observed hundreds of students in interviews, there's no repeating back, there's a pivoting away from the topic and when you're reflecting with students on something like that, they're able to appreciate more the challenges of something like active listening. So they deepen their understanding and there are many, many examples that we can talk about.

I just want to close by saying that when we talk about experiential learning in isolation, I don't think we do justice to what modern law schools look like today. I'd like to say that it's just not my law school. So the current law school, experiential learning is sprinkled throughout the curriculum, so students are learning from experience. For example, at Fordham we have a public interest resource center where student groups actually handle their own matters. For example, they're doing volunteer service in immigration advocacy. So a group of students from Fordham went down to Dilley, Texas to work with immigrants on the border in detention centers. They're deepening their understanding of what it means to serve by doing that work. That's experiential learning.

Experiential learning is happening in the traditional first year of classroom, for example, where students in a contract class are actually drafting a contract in some classes. We have a one credit writing requirement for one of our traditional first year classes and then some contract classes, students are looking at and drafting a contract and there are many, many other examples.

This generation of faculty is innovative and creative and they're incorporating different methods and they're using technology and so it doesn't really do justice to sort of have experiential learning and to speak about it in isolation as if there's experiential learning and then there's everything else.

And so with that I want to pass it on to my colleague, Susan, who's going to talk a little bit about how pathways are being implemented.

SUSAN J. KRAHAM

DIRECTOR OF EXTERNSHIPS AND FILED-BASED LEARNING, COLUMBIA LAW SCHOOL

So I'm going to talk about two things this morning. The first is just to pick up a little bit on what Leah has talked about and talk about some of the categories where we are seeing a lot of this experiential learning across law schools and then I'm going to talk a little bit about the pathways and what the New York law schools are doing with respect to those various pathways.

So I think as Leah said, it's really important to recognize that we are moving away from purely doctrinal classrooms. We are also moving away from law schools that are divided in terms of experiential learning and doctrinal learning and we are moving more and more towards our doctrinal teachers incorporating experiential learning into the classrooms and the

experiential learning opportunities delving deeper and deeper into substantive and doctrinal law.

The way we see that at Columbia and I think instances mostly consistent across law schools in New York are three general categories, we have clinics, we have externships and we have simulation.

We've heard a little bit about clinics here today already, but the clinics some would describe as the gold standard in experiential learning because they are intensive opportunities that usually take up at least half of a student's credit load for a particular semester. Students represent clients or partner with organizations or work on projects and they're primarily responsible for those representations. They're supervised closely by full-time faculty. There's opportunity for feedback, for supervision and very close development of many of the foundations that we heard Zack talking about.

The second piece is externships and various schools have a different way of doing externships, but for the most part they reflect a model where there's a seminar component that addresses many of the skills issues that we've been talking about and then a field placement where students are working in a legal practice. It could be a government practice, a public service practice. In some schools they permit business practices, law firm practice. So it's really a range and there are different characteristics and different requirements depending on the law schools.

Those differ from clinics because primarily they are fewer credit hours, they can be less intense, but more importantly the students are working in an existing legal practice and becoming part of a legal organization, a corporation or a law firm and they are learning from a lot of different lawyers at the same time. They may be assigned to one of more supervising attorneys who have different perspectives on how to mentor students and they're learning a lot of different skills in practice and decision-making and responsibility, again, many of the foundations that Zack has talked about.

And I think it's not a surprise to me, and I guess maybe this is because we've been working with IAALS on this project, that many of the foundations that we heard about, many of the 77 are characteristics and those are characteristics that we focus on in experiential learning. We are looking at decision-making. We are looking at client communication. We are looking at professionalism in experiential learning and many of those foundations are seen in those experiential classrooms.

The last piece in terms of identifying buckets, if you will, of experiential learning are simulation and these are practice situations that are carefully developed by various teachers. They're in a classroom, they are not a live client, but they are real issues, they are real tests of practice skills, they are real opportunities to learn to do lawyering in a carefully and closely supervised way that also I should say satisfies the ABA's requirements for experiential learning, which are quite specific and govern both the type of experience, the type of supervision, the type of feedback that has to happen.

And so all of these, the clinics, the externships, the simulation, some of the innovations we are seeing at various law schools that we refer to as policy labs or practicums, all of these will meet those standards that are very carefully laid out in the ABA rules for what constitutes experiential learning.

So let me just move on quickly to the pathways. We heard a great description from Judge Rivera about the various pathways. I think it's fair to say that almost all of the New York schools are primarily certifying students along pathway one and what we have all done is taken a hard look at our curricula and identified those skills and practice competencies that are being taught in the various classes and identified what constitutes satisfaction of those pathways along the way.

Many of those skills and practices are identified for the first time for students in first year, whether it's in the legal practice workshops or in the court and then we move to the experiential opportunities in the upper years. Columbia, itself, has changed how we do some of those legal practices. We've introduced a January term where students have an opportunity for an intensive experiential and practice oriented course that is part of the development of the pathways and, again, different schools are doing different things.

We are all participating in the Pro Bono Scholars program. Professor Spinak, who is here today, is going to be teaching that beginning next year. Columbia has been doing that for a long time, working with various organizations and our Pro Bono Scholars have been competitively successful.

We use the social pathways as well for students who want to do a postgrad opportunity. So if there are any questions about that, I'm happy to answer them.

I just want to go back to the question that was raised earlier about pathway two and the 15 experiential credits. The one issue that I want to flag for different schools, that occurs for different schools is some of the schools do not give credit for students who are employed for pay over the summer.

So at Columbia students can't work for credit and so those experiences are not supervised in the same way some of our experiential learning would be supervised. So because the 15 credits refer specifically to the ABA definition of experiential learning, students at our school would not be able to use those summer experiences and I'm not sure at this point whether that's the case for other schools, but I just want to flag it as one variation that we've encountered because of different schools.

MR. CHANG

With respect to this segment, do we have any questions because within the Institute I'm going to pose some questions that have come up during the course of our conversation?

So are there any questions from the audience first?

One of the things that has come up in our discussion in planning for this convocation is whether or not with respect to, say, pathway one there

should be some sort of minimum best practices amongst the law schools, bearing in mind I think there are 15 law schools in the State of New York.

Would you care, Sue, do you; want to talk about that or does any panelist want to talk about that?

MS. KRAHAM

Sure. I'm happy to start.

I think we all have best practices within our own law schools and somebody said earlier today the law schools have different student bodies, different characteristics, different philosophies and cultures and so the idea of the best practice I think really comes out of the commitment to the highest standards of academic rigor and pedagogy and I don't necessarily think that it would be helpful to try to dictate to all of the law schools that they do the same thing or a collection of things.

I think we are all committed to educating our students consistent with the new rule and with the ABA standards and I think we've been pretty successful in moving into this new era, but I'm not sure that going another step in requiring that certain courses or certain things be taught more explicitly would be helpful.

HON. ENG

What's occurred to me as I was thinking about our program and that is that in New York where we have 15 law schools, one size certainly doesn't fit all. We have many, many institutions that are devoted to national and international practice. We have strong regional schools. We have schools dedicated essentially to public interests and I'm wondering if one size can possibly fit all when you look at the emphasis in various schools.

Can we do that? Can we really have a syllabus that addresses all of that considering, you know, the various focuses in the schools?

MR. CHANG

Well, let's pick up on a point that Paul has made earlier on and bearing in mind I was one of the original members of the Craco committee where we were vetting what the dissatisfaction was the public had with lawyers. This goes back to the '80s and '90s.

In vetting, doing that vetting we found that generally the public came to lawyers in the context of maybe four or five situations. They were buying a house, so they needed a real estate attorney; they were getting divorced, so they needed a divorce attorney; they had the misfortune of being hit by a car, fell on a sidewalk, so they needed a personal injury attorney and when they get a little further on in their age they needed a trust and estates attorney to prepare a will.

So Paul asked the question, you know, is there -- I mean implicit in this question is should there be some minimum standards in these courses that

teach somebody how to prepare a will, how to prepare a real estate contract, how to at least understand what the litigation process is.

MS. HILL

So those courses actually exist. I know Fordham has at least 40 drafting courses, if we are talking about drafting particular documents, that focus on topical areas like trusts and estates or family law drafting and so those courses are available.

Whether to make them mandatory is a separate question and one that I would echo my colleague and say that I think we want to push back against that kind of sameness throughout law schools just because of the needs of students and student autonomy because schools have different approaches, philosophies, missions and I think there are many, many other forces beyond the real commitment to teaching that I see across the country, not just at Fordham, you know, the ABA, the accreditation process.

There are so many other forces that keep law schools pushing forward in terms of their curriculum, in terms of what students need and want that I wouldn't go -- again with my colleague's comments about imposing specific requirements.

MS. KRAHAM

I also just want to pick up one thing. I think when you think about it from the perspective of the public complaints, the public isn't necessarily, if we dig down into that, are they concerned about the quality of the document that was drafted or are they concerned about the professionalism and competency of the particular lawyer?

And if we are teaching skills and if we are teaching professionalism and focusing on those foundations, what we are doing is we are teaching law students who are about to become lawyers habits of mind to be aware of how they're communicating with their clients, when they need to identify a mentor to help them substantively, when they need to be doing more legal research, when they need to be reviewing their work more carefully.

And if we focus on the consistency of those basic professionalism skills that Rule 520 and the ABA is looking to achieve, I think we will have the impact of improving some of the delivery of the substantive documents and representation that our clients are concerned about as well.

MR. CHANG

All right. Let me play the devil's advocate here. Shouldn't there be some uniformity though amongst everybody who graduates, let's just deal with New York State, should there be some uniformity in terms of the practice experience when they go out in the legal profession?

And the reason I say this is this, Paul's got a son who's a cardiologist, I have a son who's somewhat younger, just graduated from medical school last

May. He's in the first year of a bridge residency. His training at the end of four years of medical school was virtually identical to any other medical school that you could cite here in the United States, here in the United States. They knew what something had to do with the eye was that I don't understand, but when you hear them talk, whatever school they were in, they understood and it's almost kind of like code speak when they spoke to each other.

Shouldn't there be some of that kind of uniformity in training.

MS. KRAHAM

I would suggest there is and that's what the buyer is testing and I think Judge Rivera addressed that when asked a similar question. But what we are teaching is systems. Medical school may be teaching ophthalmology. We are teaching judicial systems. We are teaching how to navigate the justice system. There are a lot of basic substantive skills that all of our students come out of law school with.

Whether or not those law school skills and content show themselves specifically in the drafting of a real estate contract or the taking of a deposition is a different question and I don't think that we want to be an academic institution or a type of academic institution or a practice where every single one of our lawyers who graduates from law school does the same thing or necessarily is trained to do the same thing.

We can't train every lawyer to do everything they might ever do in law school and so our job is to train our law grads to be able to learn how to do everything they need to do and to have the experience and the skills and the availability to research and find colleagues who can help them learn that. That's what our mission is, that's what our goal is and I think that's what we need to focus on.

MR. CHANG

Yes. Question?

JUDGE EUGENE FAHEY

I'm Judge Fahey. I'm on the Court of Appeals.

My colleagues, one of the areas where we get feedback all the time from practitioners and I think it reflects the perception that only 23 percent of the law students appear to be ready to practice is the request for a requirement that there be a couple of mandatory courses. Usually that takes the form of either New York Practice or New York Criminal Procedure. Those are the two areas of the law where people, I get feedback all the time, why aren't these mandatory for all law students and from an academic point of view I can certainly see why you would think it's restraining, but from a practitioner's point of view, it seems to be a valid point.

I'd like you to address that as a group because it's the kind of thing that we hear all the time and I need to hear your side of it.

KATHERINE E. BRISSON

SYRACUSE UNIVERSITY COLLEGE OF LAW, J.D. CANDIDATE, MAY 2020

So from the student's perspective, I know that in previous years when New York State was not on the UBE, New York Civil Practice was a much larger course at Syracuse University College of Law. A lot more students took the course. Since the shift has been made to the UBE, there's been less of an emphasis on students to take New York Civil Practice.

Yes, it is seen as a very important course, however with that no longer being a required course and tested for the bar exam in particular, people are seeing that more as an elective and maybe instead of taking New York Civil Practice you would take Advanced Criminal Evidence if you're more interested in criminal law.

And so I think that the switch to the UBE has impacted student's course choices, maybe not necessarily from what we are getting from the administration, but among students and what students think that we need to do to ultimately pass the bar.

JUDGE FAHEY

I think you're right. I say this as someone who has a daughter who's in her first year of law school, so I think you're right. I think your experience is accurate.

I guess my concern is from the practitioner's point of view, our practices in New York, are they prepared with the basics to open up the book and to find the answer? I guess that's what we want, right, that's what we are aiming for?

MS. HILL

So I want to say a couple of things. It strikes me that question about whether or not a student should be required to take Criminal Procedure and New York Civil Practice within the law school context is context specific, right? I think students come out of school going into a lot of different arenas and so it's not clear to me whether all students would necessarily need both those courses in order to practice. So mandating that on top of the other mandates is also something we want to think about, right?

I think the other piece of it is identifying a problem that I don't know what the etiology is, right. Is it about not having been prepared in law school, is it about socialization and practice?

Having been in the practice of starting out my career in Housing Court, there are a lot of things that I learned in law school that weren't happening in Housing Court, so the question for me was whether or not I would, you know, participate in the socialization that said, you know, put aside the rules or, you know, no, you don't have to do that here or whether I was going to take for myself what I learned in law school and apply it and stick to

those laws and I think that's hard for a lot of students who are coming into practice and not necessarily feel empowered necessarily to push back against what's happening in that particular practice world.

So I think there are a lot of -- I mean, I think there's still a fundamental question of what the problem is and where the problem emerges from.

MS. HILL

And I think it's also true that there's a real range across law schools about what students are doing on graduation and whether --

JUDGE FAHEY

That's true and that's I think a larger question, but as the people who address -- the panel who addresses the question of mandatory courses and mandatory education, basic requirements, we have two problems. Number one is teaching for the test, which is what you talked about. That's just reality, right, that's what a student's reality is.

But the other side of it is teaching for the test does not produce a practitioner ready young lawyer and I don't think you're going to have a perfect one, but the question is to how to make it better and so I think it's something that we have to grapple with that idea and that's why you seem to be the ideal people for me to ask this question because you know much more about it than I do and your experience is different and you're dealing with the law in a different place than I am, so that's why I wanted to know.

HON. RANDALL ENG

FORMER PRESIDING JUSTICE, APPELLATE DIVISION SECOND DEPARTMENT;
MEMBER, JUDICIAL INSTITUTE ON PROFESSIONALISM IN THE LAW

I've heard many of the comments that have been articulated by Judge Fahey from other practitioners, from academics, from various sources and it's a reality in that the Uniform Bar Exam now has been adopted by 34 jurisdictions. I'm not sure if everyone is up to speed on that. The big outliers now seem to be California, Florida and Pennsylvania. So obviously it's the wave of the future and it's the present. But also there's a different view, as well. There are jurisdictions that exercise a diploma privilege. Wisconsin and New Hampshire don't require a bar exam at all for graduates of certain schools that they have identified.

I know that certain practitioners have mentioned to me that the New York bar admission used to be the gold standard, was considered the gold standard of bar admissions, that's why so many people sought it and of course the need for understanding New York practice is something that was deeply engrained in me in my legal education and experience and for those of you who are not familiar with it now, the requirement now regarding the New York

portion of the examination is 50 multiple choice questions given in an open book format online.

Now, when you think about the rigor that's behind that as opposed to the rigor of practice courses and all, we see how different this is, so it is a concern. These concerns of course are very real to me and should be real to all of us.

MR. CHANG

We have one more question and then we will move on to the student perspective.

A SPEAKER

I think it's very important for any law student to take the CPLR course and probably the criminal procedure course only because even if you -- many law students do not know what they're going to be practicing after law school and sometimes it's -- you end up in a situation where you get a job with a law firm and you're told what to do, this is what you're going to practice now and sometimes when that area dries up, you're told to do something else. So the point is to say that you shouldn't take these courses only because you're never going to use them is nonsense. You may use them.

And I found in the practice of law that a person who is not a litigator, but has some litigation background and doing transactional work, the fact that he has the litigation background is going to help him in problems that he sees transactionally. They depend upon each other. They're not separate and apart.

MR. CHANG

Okay. Katherine, unvarnished.

MS. BRISSON

Hi, everybody. Thank you for allowing me to represent not only Syracuse University College of Law, but also all law students in New York. It is a privilege to be here and sharing the stage with all of these distinguished panelists.

So first of all I will share a little bit of my qualifications for being here since I am a student. After my 1L year I summered with the Honorable David Peebles in the United States District Court for the Northern District of New York and throughout my 2L year through both semesters I had done an extern with the United States Attorney's office, again, in the Northern District of New York.

I have also been a teaching assistant for an undergraduate course called Elements of Law. I am currently a research assistant for two professors at the College of Law, as well. I am an academic success fellow, which means that I tutor 1L students.

And so I've had a lot of these experiences outside of the classroom that get me talking with current law students, practitioners and also prospective law students who are undergraduates in college.

I think overall the biggest change that I have seen in myself has been through experiential opportunities. So working with Judge Peebles this summer and working in the United States Attorney's office, I have found that being in a professional environment and seeing how the office culture works and understanding just the dynamics between attorneys and legal assistants and secretaries and the interns has been truly transformative.

My research in my writing skills have improved exponentially. Currently, just this past weekend, I was reading some of my writing samples from my first year. I was kind of embarrassed. I was like oh, my goodness. It's like you don't realize how much you improve when you've been in practice and you're getting routine feedback from practitioners who do this every day of course.

And I think that at Syracuse University our externship program is fantastic. We also have a seminar portion with your placement and the seminar is focused on really talking about those professional skills that you need in practice and seeing how can you improve on them, what can you take from what we've learned and what we've talked about in seminar and how can you go apply that in your externship.

So a couple of things. You know, when you go to talk to your supervisor, you should always have like a pen and paper. Just those basic things that some people may not -- like it seems obvious when you say it out loud, but some people need to be told those things.

Or always dressing professionally. You know, even though you're an intern, you still have to dress like you're an attorney because you're doing legal work and you have the privilege of working for these organizations or firms or whatever it may be.

So I think that in those seminars, speaking about the professional skills that you need is something that's really important and it's a place where you're not on the curve, so you're not worried about fighting with the person next to you for the good grade. You're really there so you can learn, so you can become a better like person in the professional world when you eventually reach that point.

Also speaking to what we have been talking about, creating a sort of syllabus. I think that there is uniformity across law schools, not just across New York, but across the nation. Your first year courses are going to be more or less the same anywhere you go, maybe with the exception of an elective during the second semester or maybe your writing courses are a little bit different, however you're always going to be taking property, you're going to be taking crim law, all of those foundational classes.

Once you move on beyond that first year, each law student needs different things and I think it's really important to focus on what each law

student needs, identifying those individual needs and then working to improve on them.

Something that I think I'm generally pretty good at is writing, but I wanted to improve on my writing so I knew I needed to choose an externship placement where I can continually improve my writing and research skills because that's something that I knew I wanted to improve upon.

Other people may think that they're fantastic writers and researchers and maybe they want to get better at their client interviewing skills or working with clients, so maybe they will work in a firm.

And so I think being able to identify mentors within your law school or even within the bar, itself, practitioners who can help you really figure out what do you need as a law student to help you become practice ready and I think that once you shift to a more uniformed standard, you lose that individuality amongst law students and being able to choose their own path to a certain extent.

You know, this goes back to what Justice O'Connor said in her concurrence and I believe it was either *United States versus Lopez* or *Gonzalez*. States have to be laboratories of experimentation and to a certain degree law schools need to be laboratories of experimentation for their students and I think that Syracuse University has done a fantastic job of that and I found, mentors within the law school who have really helped me come into my own as a professional, you know, moving away from the student side of things because I'm one of those KJDs. I went straight from kindergarten all the way through law school and so I don't know what it's like –

MR. CHANG

I've never heard that term.

MS. BRISSON

Yes, KJD. I don't necessarily know what it's like to not be a student, but throughout my 2L year I have grown more comfortable with identifying myself more as a professional than a student, which is something that I really needed, but other people don't. Some people practice for five years or, you know, are working or something and they're in the work force and they don't necessarily need help moving away from that student identity.

I think just overall I have really taken advantage of all the opportunities that have been available to me in law school and to a certain extent the law school can only do so much. Students have to take the initiative and they have to be engaged in their own learning. You have to take ownership of your own education. There comes a certain point where, you know, you can bring a horse to the water, but you can't make it drink.

You can't force students to do something that they don't want to do and it's really unfortunate that there are some students across all law schools across the nation that just aren't going to want to do things or aren't going to

be engaged in the material and maybe law isn't the right profession for them or maybe they're there for the wrong reasons, but I would say overall students generally take ownership for their education because they know that their legal education will become their career and so they want to take it seriously and they want to engage in meaningful experiences that will help them become the best professionals that they can be and so I think that overall maintaining a bit of individuality is really important throughout legal education as a whole.

MR. CHANG

Let me ask you this question. Can you just describe for the audience the range of the types of externships that were available to you in terms of experience, without naming any particular names?

MS. BRISSON

Definitely. So, as I said, I'm currently at the U.S. Attorneys office, but there are placements with federal judges, with state level judges, public defenders, there are a couple smaller to mid sized firms in the Syracuse area and then a lot of Legal Aid Societies, public interest placements.

But also at Syracuse we have programs where you could spend a semester in New York City, in DC, in Philadelphia and there are a few other cities that are going to be popping up in the next couple of years where you can work full-time. So you're working 40 hours a week and that's your whole course load is you working full-time and you can be maybe with the SEC or you can be somewhere like with the New York County District Attorney's office in Manhattan. So there is a wide range of opportunities and you can pretty much find something for anybody.

It's something that I worked very closely with the externship director at Syracuse University in figuring out what the right placement for me would be. I talked to her about what my career goals were and I explained, you know, this is what I want, how do I achieve this and she helped me figure out well, the District Attorney's office, maybe that's not the best placement for you, but the U.S. Attorney's office is and she was 100 percent right.

But I have had friends who were placed somewhere in an externship and it just did not work out at all and so within the first month, they kind of figured that out and then working with the externship director they got moved to a different externship and so that's something where, you know, as long as you keep open lines of communication you can truly make your externship experience work for you and you can get whatever you want out of it throughout your time there.

MR. CHANG

Any questions? Yes, sir?

A SPEAKER

Younger people like yourself and law students, when I interview people they're very bad listeners and sometimes I have to keep reeducating my staff, too, on listening, not only pretending to listen, but following up when a person says something, relinquishing your own agenda and adopting their agenda and following the following, it's better for the clients just by listening.

Your generation, do you go over that, do you role play? How do you do that?

MS. BRISSON

Yes. We do actually.

A SPEAKER

In law school, as part of the training programs, do you go through all of that?

MS. BRISSON

Yes. So in our legal communication and writing classes, we do different client exercises and role play, so that is an important part of the legal education and also within the seminar portion of the externship.

My externship director brings in or tries to bring in a practitioner almost every week, sometimes it's every other week, to talk about exactly what you meant, like you need to be listening to your supervisor and your client and then like let's do an exercise and so these are things that are brought up throughout. So far for me it's been every single semester these skills have been taught, emphasized and really hit home.

And I think another thing that I have found that's helped me realize how important listening is is I remember my torts professor first semester, we were -- I don't remember what case it was, but it was kind of funny whatever case it was, the fact pattern of it and then she's like why are you guys laughing, you know, this is a -- this is a real client and this person has a real problem that's coming to you.

And realizing that, you know, okay, there's a person behind the client. That's something that has really made an impression on me to realize that these are people's lives and yes, it's our job, but nobody wakes up one day hoping to have a legal claim and so truly serving the client in this profession is not about the lawyer, the profession is about the client, whoever that client may be and so that is taught in law school. At least in my experience it has been, yes.

MS. HILL

I want to add that many 1L legal research and writing courses now include simulating activities about interviewing, client interviewing, client counseling or advocacy, so students are exposed early on in most schools to

some kind of being in the role of lawyer, playing the role in the context of communicating with clients.

We also have, and a number of law schools have this, mini semesters during the winter term in January, two weeks, where intensive courses are offered, many of them around experiential education. And so, for example, Fordham has a communication skills boot camp. It's just two weeks, four hours a day of exercises designed to teach communication skills, lots of feedback and assessments. Students are assessing themselves and so there are lots of opportunities now for students to develop the skills.

And I would add that law schools are constantly sort of weighing, you know, and balancing the need to meet all the needs of all the students and then do the kinds of things that are required, mandatory courses and fitting them into a schedule. And so I mean we have right now over 68 unique experiential education courses and I can't even count how many classes we have overall and so there is always a balance going on as well.

But I would say, again, I reiterate that I think the move towards integration, too, is going to help in response to a lot of what people are concerned about, integration meaning experiential education. Other methods of teaching are infused throughout the curriculum. Fordham has instituted a professional excellence program. It's focused on teaching five competencies and making it clear to students where those competencies are taught throughout the curriculum. From day one in orientation, here's what you're learning with respect to communication, here's how you can build on that, here's what you are learning with respect to collaboration.

So I think there's a lot more going on in law schools that isn't getting to the public.

MR. CHANG

One question here.

A SPEAKER

Thank you. I have a question for the law student. I apologize, I can't see your name from this angle.

MS. BRISSON

My name is Katherine.

A SPEAKER

Thank you. Your awareness of the world beyond the classroom and your participation in it is very impressive I'm sure to everyone here.

Have you had any opportunity to participate with your local bar association and develop any thoughts about the value of law student participation with the organized bar, the bar association?

MR. CHANG

Good question. Good question.

MS. BRISSON

Yes. That's actually a great question and something that I've been working with a few of my professors to figure out how we make law students more aware of the bar association, not necessarily more aware, but get them more involved and let them realize how many opportunities are available with the bar association.

So the answer is yes, I have been working to try to figure out how we get the Federal Court Bar Association more involved with Syracuse University of Law, the Women's Bar Association. There are all of these different bar associations that are -- they're a constant presence in the College of Law in my opinion. Just this week we have an event with the Women's Law Bar Association that will be happening I believe on Wednesday that I'll be attending and there are a lot of opportunities.

I think that what could be better is maybe having student representatives from each of the three classes, 1L, 2L and 3L reps for bar associations just to make students more aware of everything that's out there and the possibilities because if you're not engaged with your community as an attorney, I feel like you're doing something wrong.

This is a service profession, right and so we always have to be constantly serving our communities and the best way to do that is to become engaged with the bar association and so with my professors, Professor Lauryn Gouldin and Professor Kim Wolf Price, they have begun -- it's called Syracuse Civics Initiative and so I'm working with them on that and part of that is getting more involved with the bar associations and really making them become a bigger presence at the law schools.

But I don't know if that exactly answers your question but, yes, I have been involved in bar associations and I've been trying to drag my friends along with me.

MR. CHANG

Let me take one more question on this segment because we have the last word.

A SPEAKER

This is for Judge Eng, now that you're out of the judicial world and you're in the private practice world, what's been your reaction to some of the younger lawyers who you've come across as to their, if you will, skill development, you know, your reaction to the things that you would expect of these young lawyers?

MR. CHANG

That's a good question because it segues to the third segment.

HON. ENG

The most striking thing that I've come across is the reliance upon and the use of social media, which I scrupulously have avoided, but it is a very effective tool of course in communication, in getting the word out, in learning, in educating.

What I've noticed among the newer lawyers that I've run into is the lack of, I can't generalize, but the lack of civility that you see occur more frequently among some of the newer lawyers than you do among persons who have been a bit more experienced and that is the way they address each other in court, the way they respond to each other in e-mails as though e-mails are not preserved, as though e-mails disappear, they don't. They live with you, they haunt you, they're with you forever in that cloud and it's embarrassing to see some of these e-mail stream or strings that I've seen over there.

I'll say this about them, though, they are smart. The new crop and Ms. Brisson is a splendid example. The profession is in good hands with persons like Ms. Brisson.

MS. BRISSON

Thank you.

HON. ENG

And I've also seen a little less mentoring, but then again I've only been in the private sector just briefly, a year and-a-half or so and I see too many newer lawyers trying to get it on their own, which is not the easiest of things. I understand also there's clan resistance now to paying for the training of newer associates in that regard. So more people are having to rely on their own skill sets and their own wits in order to learn. It is a different game.

MR. CHANG

Any questions? No.

MONICA A. DUFFY

CHIEF ATTORNEY, ATTORNEY GRIEVANCE COMMITTEE,
NEW YORK STATE APPELLATE DIVISION, THIRD DEPARTMENT

Hello. My name is Monica Duffy. I'm the Chief Attorney for the Attorney Grievance Committee for the Third Department. All my remarks today are going to be limited to the Third Department because I do not practice in the First, Second or Fourth Department.

So first of all, I want to thank everybody for the opportunity for allowing me to be present today and being part of the focus group that was last year. One thing that I've learned through my career is to listen and I think that develops as you practice and from listening you gain perspective and I have gained an enormous amount of perspective with respect to the challenges and the issues that are represented today.

I have to say, I have to confess as Chief Attorney I was not aware that what we do would actually have some effect on, what we do on a day-to-day basis, would have some effect and/or some connection to the admissions process and what they're teaching in law school, so I'm happy to be here.

For those of you who aren't familiar with the Grievance Committee, I received a phone call more than 10 years ago asking me if I wanted to be on at that time the Committee on Professional Standards as it was known and it was from a judge and I said of course I would because you always say yes to a judge, but I had no idea what I was getting myself into on that Committee. I didn't know what the Committee did. The Committee was kind of this dark place that you never wanted to receive notification or a letter from the Attorney Grievance Committee.

I was a Committee member for six years and I found the area of practice, ethics, the rules, the Grievance Committee, itself, to be fascinating and I was fortunate enough to have been appointed Chief Attorney around six years ago for the Third Department and so every day, day in and day out, I'm involved with ethics and I absolutely, absolutely love it, but not everybody is.

And I'm sure a lot of the newly admitted attorneys are not as familiar with the rules of professional conduct, the procedures and the like, so I was asked today to just give a short overview as to exactly what an Attorney Grievance Committee, at least for the Third Department, what it does.

The Appellate Division for the Third Department oversees basically the operation of the Attorney Grievance Committee, but we are in itself, we are really an island of our own in the sense that there's this confidentiality with respect to what we do day in and day out because everything we do is confidential and I think that -- I mean, there's a positive for that. I think there's a drawback to that because a lot of people don't -- a lot of attorneys, a lot of the public don't understand what we do day in and day out.

With the onset of the rules for attorney disciplinary matters, for few that aren't familiar with those, they were implemented in October of 2016 and basically provided uniform rules, procedural rules for all four departments. So prior to that, we were all kind of doing our own thing with respect to the receipt of complaints and the processing of complaints for professional misconduct. As of October of 2016, we all for the most part, when I saw all, all four of the Grievance Committees, basically do the same thing procedurally.

Our Committee is made up of 21 members, 3 of whom are non-lawyers, the rest are attorneys from each of the judicial districts within the Third Department and as staff what we do for the Committee, we in essence

serve the Committee on a day-to-day basis. We basically accept and file any complaints for professional misconduct and we receive anywhere from 1,000 to 1,200 complaints on an annual basis. We process those.

A chief attorney determines which ones we are going to decline to investigate because obviously all the complaints are not investigated. Those that we do not decline to investigate are assigned to an attorney and the attorneys in our office, along with the investigators and our staff basically review, investigate, gather information. I don't like the word investigate. We gather information, we try to find out what the facts are with respect to the underlying complaint of professional misconduct and then we ultimately make presentations to -- we give all the information to the Committee because the Committee ultimately determines if an attorney has engaged in professional misconduct.

If they have engaged in professional misconduct, what rules have been violated and then what's the appropriate penalty. I should say the appropriate discipline because discipline is not necessarily -- can be seen as a penalty, but it's also an educational component in our office with respect to that.

Just so that you know, cases that go before the Committee can be dismissed. The Committee has the power to dismiss. They have the power to issue what's known as a letter of advisement and that basically means there's no finding of professional misconduct, but the attorney's conduct needs some type of comment and that's a letter of advisement. It's not considered to be discipline, although it is part of your disciplinary history and that's considered to be private.

Above that there's an admonition. That was a big change for the Third Department because they had several levels of private discipline, but with the rule change in 2016, we now only have -- there's one form of private discipline and that's the admonition and that's basically an attorney has engaged in professional misconduct not warranting the imposition of public discipline.

And then the Committee can also, the third and final, would be to authorize formal disciplinary proceeding and that's when a respondent has engaged in professional misconduct warranting the imposition of public discipline and such discipline is appropriate to protect the public, maintain the integrity the intent and honor of the profession and/or to deter others from conducting similar misconduct.

So that's basically what we do. The majority of the work that we do in our office is attributable both processing complaints and presenting them to the Committee for its determination, but the other --

HON. ENG

I just thought I might want to jump in for a moment --

MS. DUFFY

Sure.

HON. ENG

-- only because this has been a very comprehensive overview of the process.

However, I want to also make a point right now that there is a separate committee on character and fitness which deals with issues separate and apart from the grievance committee and that is that the committee on character and fitness. It evaluates the fitness of candidates for admission to the bar and that's been an issue of some controversy regarding what can be examined and how thoroughly.

In the Second Department, for example, we had occasion to admit an undocumented immigrant who was here in a DACA status, a rather unique departure from the precedent of the Court, but we found that this person had the character and fitness to be admitted to the bar.

The character and fitness also comes into play when an attorney who has been suspended or disbarred seeks readmission and this requires a review of their fitness to be readmitted to the bar, but that process is separate from that of the grievance committee. –

MR. CHANG

I have a question that is relevant to something Paul raised, is there a trend—something that I saw as being a member of the disciplinary committee for 12 years in the First Department—and the question, Monica, is that without violating any rules of confidentiality, over the last few years have you seen any trends, disciplinary trends which would be unique to newly-admitted attorneys who are practicing on their own, bearing in mind the given changes in the economic terrain and the legal business, that more attorneys are going out and hanging a shingle so to speak.

MS. DUFFY

That's a really good question and I can't say that I necessarily see trends. I mean, one thing that our office has the ability to do and our office in particular is going to be doing more of, we have a lot of data available to us and speaking to that point, we look at what are the most common complaints that we receive and I have to say that in my six years of being Chief Attorney, I think the two most common that we find, and I'm not sure this is a trend, but this is across the board for both newly-admitted attorneys and all attorneys regardless of the years that they have been admitted is the failure to communicate and a failure to move or respond promptly. There's another one, neglect of cases where attorneys just aren't being attentive to their clients and

aren't being attentive to the legal matters that are entrusted to them. So those are the two.

I don't necessarily see any specific trends with respect to newly-admitted attorneys and because of the economy at this point, although I have to say when we had the recession and I was a Committee member at that time, we seem to have more complaints involving misappropriation of client funds during that time period following the recession, so like 2010. That has seemed to have subsided since then.

HON. ENG

If I can supplement that observation, which is very valid, so much of course involves abuses involving other people's money. And regarding newer attorneys, I saw maybe not a trend, but I saw a fair number of cases involving newer lawyers who had left larger firms and larger practices and went out on their own and without any idea of the responsibility that they had regarding holding on to other people's money.

The invasion of escrow funds, the uses in IOLA accounts is just amazing what, you know, what you saw. Sometimes it was driven by financial necessity and the temptation just to be able to write a check and get funds that aren't yours must be sometimes very overwhelming.

Education certainly is required in that area regarding other people's money. It's a matter of common sense. It's a matter of instilling the fiduciary responsibilities that the lawyers have over these monies and also just writing a bad check, insufficient funds on an IOLA account will get you, if I'm not mistaken, before the Committee. You're going to have to bring your bank statements and everything else and explain why you wrote this check and could not cover it. Now, the answer in most cases is it didn't clear in time or I mixed it up and put it into my operating account, you know, things like that.

But the awareness of this would certainly help many law students and new lawyers in avoiding these distractions which cost time, money and emotional strain.

MS. DUFFY

I would have to agree with you that one of the -- I think there is a basic lack of understanding with the attorney escrow accounts and the fact that any attorney who's a signatory on an escrow account is, in essence, held to a higher standard because with the Court of Appeals decision in Galasso, they are held to be fiduciaries in addition to being attorneys and I think that's a basic.

And if you're looking at the values and the skills, it's a combination of both where a lot of attorneys, especially newly-admitted attorneys, but not just newly-admitted attorneys, attorneys that go to a smaller firm or become solo practitioners, they don't understand what their duties are with the fiduciary responsibilities with respect to maintaining an attorney escrow account.

If you want to talk about a trend, we can talk about the fact that everything's done online. It makes it even easier nowadays for people, for attorneys to basically do more inappropriate things or to misappropriate funds or commingle funds because most of these accounts are now online.

I mean, how many of you here today actually bring out your checkbook and balance your checkbook on a monthly basis? I do, but there's not really a need to do that.

HON. ENG

I do.

MS. DUFFY

I don't think newly-admitted attorneys are necessarily even taught how to balance a checkbook, let alone how to balance an escrow account and what the responsibilities are that are associated with that.

MR. CHANG

We have a question here.

A SPEAKER

I'm sorry. I'm going to keep it short.

MR. CHANG

You're OK on time. I'm getting the green light here.

A SPEAKER

I have two questions, one for Ms. Brisson. Your externships, if one goes, who pays for that, when you go abroad? I'm just very concerned about the cost –

MS. BRISSON

That would be me.

A SPEAKER

-- when you go abroad.

MS. BRISSON

Yes. So there is a significant cost barrier of course –

A SPEAKER

Okay.

MS. BRISSON

-- but if you are doing a full-time externship in either New York City, DC or any of these other places -- your scholarship will cover it or financial aid can apply to it.

A SPEAKER

And then to Ms. Duffy, I have a question, are there any statistics on an issue a student may have had in college, then they get admitted to law school, but then they can't pass character and fitness?

MS. DUFFY

Statistically I can't speak to that because I don't see that from the character and fitness. That's a separate committee from our committee so I can't answer your question.

HON. ENG

But I can, I can and that is because I, and Justice Scheinkman will corroborate, we have responsibility over all those pieces there.

At least in the Second Department there's been a trend to be more forgiving, so to speak and that is we've had persons that have been convicted of crimes, some even felonies who have gotten themselves admitted after being duly vetted. We've had some extreme cases that were still under consideration in my time with rejections, there may have been one or two rejections, but they're still on the table regarding someone that had several felony convictions for drugs, misappropriated money, everything, a whole list, but there are very few candidates who are not admitted eventually, but a lot of that of course, there are those who obfuscate and conceal their backgrounds. Those are persons that are going to have their past held against them.

A SPEAKER

I want to just follow up. Do the law schools address this with the students? I guess the concern is that these students are in law school incurring enormous debt, paying for an education and then they cannot even get admitted.

MS. BRISSON

So I think the issue of whether you can get admitted, that's like a much more personal question that I wouldn't say is typically covered as much in law school, however it is made known that if you think that or if you have concerns about your ability to become admitted to the bar, there are people you can go talk to go see like is law school even a good idea for me to incur all this debt if I'm not going to be able to practice.

There is a huge emphasis on if you are going to be in law school for three years, you should be able to pass the bar essentially, like why incur all this if you can't pass the bar.

But I think that student loan debt is a huge issue and a lot of my educational decisions post-high school even have been informed by student debt and so that's a bigger question that needs to be addressed by many other people that aren't in this room right now I would say, yeah.

MR. CHANG

Any other questions? Yes.

A SPEAKER

Ms. Duffy, if I can I follow up, I'm on a state board in Massachusetts looking at mental health and how it effects grievances.

Do you see any or do you have any statistics on especially failure to communicate, or to neglect cases, but that it's actually tied more to, unfortunately, the stigma we have around self-care and mental health that leads to law being such a difficult profession?

MS. DUFFY

If someone suffers from some type of mental illness, someone -- the one that we see a lot of are the substance abuse addictions and the like.

A SPEAKER

Yes.

MS. DUFFY

And our Committee and I think the Court for the Third Department takes that under consideration, that can be a mitigating factor.

I think we see more of an issue where people are suffering, attorneys are suffering from some type of mental illness and/or some type of substance addiction and they're not willing to come forward and make it a mitigating factor with respect to their particular case.

At least in our office if we sent out a complaint for misconduct and we don't get a response in our first letter that goes out to say that we've received a notice of -- we received a complaint of professional misconduct, we do put in there the language in the uniform rules now that addresses if you have a mitigating circumstance, if you suffer from an addiction, there's a chance for diversion. You can make application to the Court under 1240.9 of the rules and we try to let the attorneys be aware that there's help for them.

We also, with respect to matters that are going before the Committee, we recommend some type of private discipline. A lot of times there are DWIs that come before the Committee. We'll reach out to the attorney and say okay,

you can make application for diversion versus going before the Committee if you choose to do that.

So it's definitely always a factor, it's always something that I think is considered and it becomes a mitigating factor. Like I said, I think the problem is trying to get people to offer up that.

MR. CHANG

In this regard I'll add something that when I was asked by the First Department Disciplinary Committee to speak on occasion to younger attorneys, incoming attorneys, for those deciding whether they wanted to go to law school, one of the first things I told them is guys, girls, if you've had drugs in your past, put it in your past. Don't get locked up for drugs while you're in law school because it's not worth it going through three years of law school, taking an arrest for whatever you're taking an arrest for and having to explain that to character and fitness and that should be like 101 for law students to stay out of trouble.

So what we are going to do now is we are going to try and have just one more question and we are going to a little bit earlier on this segment so that everybody can make their phone calls, then go to lunch and then do the luncheon discussion.

Yes, ma'am.

A SPEAKER

To bring it back to the very beginning when, you know, you've heard from the audience people about what employers are looking for are new lawyers who have either a certain skill set or a knowledge base on things that they think are practically applicable to a lawyer coming into the world.

When I was in law school, the perception among law students, not the reality, but the perception was that the strongest indicator for your employment prospects were your rank and your grades and I am wondering if your perception in law school now is that students who undertake experiential learning and pick up those skills, that these people are saying are the most important things they want to hire are being rewarded with employment prospects over students who defer that for a course that allows them to get awesome grades.

MR. CHANG

Good question.

MS. BRISSON

I think it very much depends on where you're applying. So the job I have lined up for this coming summer I can say with 100 percent confidence I would have not even gotten an interview or a screener if I wasn't on Law

Review, if I wasn't in the top whatever percent of my class and that's just the way it is for certain big firms and I don't think that bigger firms reward these experiential opportunities or even a student who maybe isn't as strong academically, but they're fantastic in every other regard.

But once you get into the smaller or mid-level firms and government placements, I think absolutely that experiential opportunities are rewarded. So once you get your foot in the door, I would say, at some of the bigger firms or the more prestigious placements, like clerkships, that is when your experiential history plays a much bigger role, but it's really, really difficult to get your foot in the door if you aren't in the top five percent of your class, if you're not from an ivy league school, if you're not on Law Review, so I would say it's a little bit mixed.

MS. HILL

I will just add that the foundations for practice study, the next iteration of the study, really is to try to align for employers what they say they want with what their hiring practices are but I really do think that employers are saying one thing and not necessarily doing the same thing when they're hiring.

A SPEAKER

I've graduated law school 25 years ago and my experience is identical to yours. It's not changed in 25 years.

MR. CHANG

Judge, one more and that's it.

HON. ENG

There's one piece that I want to address very briefly and that is that much admiration has been given to the training of barristers, that is that barristers are court lawyers, so to speak and solicitors are office lawyers, but when you look at the model, it's interesting and I did some very basic research, there's a movement in the United Kingdom now to have fusion and that is to move toward a modern rule like ours where you have one license and you take it from there, but it's not an easily transplanted phenomenon.

In training barristers, there's an academic degree required. There's vocational training taken at one of four inns of court. They have a monopoly on access to the high courts. You as a barrister cannot argue a case before a high court unless you are a member of an inn of court.

And the vocational aspect of it, at the end of it is a pupillage, which is a term that I didn't have a lot of familiarity with, but a pupillage requires an apprenticeship with an experienced barrister for one year and you follow the barrister. You do their research. You prepare their papers. You are going to court with them. It is an unpaid experience.

I don't know if such an unpaid experience would go over very well with students now that are absorbing enormous amounts of debt. It's just incomprehensible to me what they're doing.

So again before we jump into a new modality over here, we have to take a good look at the experiences of those who have tried it and I know that from this session and from our other efforts, we are going to advance in this very worthy purpose. Thank you.

MR. CHANG

Thank you very. Let's break for lunch.

* * * *

LUNCHEON DISCUSSION

Defining a Profession-Ready Graduate: A Conversation about Law School Education and the Expectation of the Practicing Bar.

MR. SAUNDERS

Leading this discussion are Dean Craig Boise from the Syracuse Law School and Julie North who is a partner at the firm of Cravath, Swaine & Moore. They are going to conduct a dialogue about the very same topics that we have been talking about this morning and we are going to talk about this afternoon, on the one hand from the perspective of an academic and on the other hand from the perspective of a practicing lawyer. So we look forward to this conversation. Thank you very much.

JULIE A. NORTH

PARTNER, CRAVATH, SWAINE & MOORE LLP

Thank you, Paul. Let's dive right in. We've had a robust discussion this morning about a number of topics, including whether and where new lawyers should expect to find experiential training during their education. And at the heart of that we are talking about how best to mold lawyers who will become committed, ethical and effective members of a professional community that at least all of us in this room value and certainly want to protect. And I'm honored to be joined here by somebody who is on the front lines of that issue every day, Craig Boise, dean of Syracuse University College of Law, which coincidentally is my alma mater.

CRAIG M. BOISE

DEAN, SYRACUSE UNIVERSITY COLLEGE OF LAW; MEMBER, NEW YORK STATE
JUDICIAL INSTITUTE ON PROFESSIONALISM IN THE LAW

And I'm honored to be here and share this conversation with you, Julie. She is a partner at one of the nation's premier law firms. She has had a highly successful career as a litigator with high profile matters in various anti-trust, securities and commercial litigation, and is the second person to make me proud here today. You heard from one of our students earlier today, Katherine. Please enjoy your lunch while we speak. We are going to try to keep this discussion informal as we offer our perspectives from the world of legal education and from the world of practice. We only have a short time allotted to us, though we are going to try and reserve a little time to take some questions at the end, if you have those.

So to kick things off, a question for you, Julie: As an attorney who has been successful in private practice, do you see a lack of experiential training in law schools for students as a problem?

MS. NORTH

Let me make two preliminary comments before I address that. First, I want to acknowledge that I have not thought about this issue for as long as I suspect most you in the room have thought about it. And one of the things that I did start to think this morning is that it is a complicated issue and there are a number of stakeholders and there is likely going to have to be a nuanced solution to the extent that there is a consensus that experiential training is important. And the second is, I have been at Cravath, which is a large office, for 30 years. I didn't summer there, but I've spent my entire legal career there and we don't hire lateral associates, we only hire students from law school, sometimes from clerkships, and that has clearly shaded my view as to whether or not I think experiential learning is missing in the group of young associates that come in year in and year out and to be honest my answer is no, it is not something that I think is lacking today nor is it something that I thought was lacking 23 years ago when I became a partner, and I didn't think it was lacking when I started, by the way. But I think that is because I am at a very large law firm that has an infrastructure that allows for training and training is as important a job for me as representing my clients. I take that seriously. And when young lawyers come into my office to start working with me, I would prefer, frankly, that they don't think that they know how to take a deposition or to draft a motion to dismiss or a summary judgement motion. It's my job to teach them how to do that and at my firm we have an approach to those sorts of things. So no, I don't see it as something that is missing. That said, I also understand that probably a small percentage of students who are graduating from law schools in New York or across the country are going to end up at big law firms. There are other things that people do with their diplomas and so I think that for some people experiential training may be valuable.

DEAN BOISE

So you described with your own experience what was the traditional deal, I guess, the grand bargain that was struck, and it goes back decades. Experiential education was really the norm, the way that people learned how to practice law at the end of the 19th Century. And moving into the 20th Century, law became more of a higher educational discipline and so then for many decades we shifted away from the apprenticeship, from reading law in a law office, to attending law school. And as that went on there was much more focus on doctrinal learning. And I want to clarify when I say doctrinal learning in law school, what we are talking about is the stuff that's really important. I think there's a notion that law schools today just teach legal theory.

I'm not sure what that is. I think it's more legal philosophy, jurisprudence, that kind of thing. Every law school, I think, has a few courses like that. But what dominates our curriculum is really the doctrinal stuff, it's property, constitutional law, evidence, commercial transactions, those kinds of things, and that has been the focus of law school education for several decades and only in the last couple of decades have we really started to think about experiential education in a very sort of purposeful way. In thinking about whether there is a deficit in experiential education, I think that's an interesting question that depends on the perspective from which you're viewing it. So the first question is, do we have a national deficit of experiential education; a deficit in New York; or a deficit at my law school? And is it a deficit from the perspective of judges who sees lawyers in the courtroom; or from the perspective of firms like yours? So I think that to the extent that there is a deficit, we can always do better.

I think there's a perception that's been driven by a change in the business model of the delivery of legal services. So the grand bargain that was struck—that we educate in doctrinal law and then send our students off to practicing lawyers and law firms to sort of hone their practice skill—has come under pressure, as has been mentioned this morning by changes in clients' views about funding the training of new associates. So I think that certainly the MacCrate report in 1992, and the 2007 Carnegie report highlighted the importance of experiential education.

I also know the law schools are very good at the doctrinal, thinking like a lawyer part, but it is difficult for law schools to effectively turn out the equivalent of third-year associates as law school graduates.

MS. NORTH

Do you to hear more from students today that they need experiential training in order to be poised to enter the market?

DEAN BOISE

I think what we hear is that students really want experiential learning. Students would love to jump into the courtroom in the first week they are in law school. I know some of you experienced that. There's a lot of enthusiasm. What is difficult is helping them realize that there is this huge body of stuff they've got to learn. It's not easy and it's kind of a grind but I'm a very big believer myself in experiential education for the value that it brings to the learning process. Because I think one of the things, for example, that we do in our orientation is that we have an exercise where students are paired with our alumni and peer mentors in the 2L and 3L years during orientation week where they are exposed to an actual legal problem. The goal of that isn't necessarily to teach them substantive law in that but to teach them how little they know and how things can pop up and surprise them. And I think once you understand how little you really know, that can drive the learning. So if you

had to sit and work through a problem that involves sale of property, let's say, and you discover that you can't do it on a handshake deal with cash because of something like the statute of frauds, then that's going to key students into the idea that they're going to have a lot to learn and I think the experiential piece can really drive learning.

We don't hear a lot from practitioners about the need for our students to have more experiential learning. What we do hear is they need to write better, they need to communicate better and some of the things I heard this morning about managing social media presence and being appropriate about e-mail and that kind of thing.

MS. NORTH

I think one of the topics that came up during the course of this morning is, who is best placed to find or fix the solution for lack of experiential training? Should it be -- should bar associations have stronger guidelines, should law schools develop their own approaches or do law firms have a responsibility to push for changes? And from my perspective, and I think it was something that was expressed by a number of people this morning is, it's not a one-size-fits-all solution is going to work because not all students who enter law school have the same path. And frankly, to be completely honest, I had no idea what I wanted to do when I went to law school and I didn't really think that much about what the practice of law meant. Turned out that I did well and I managed to get some good guidance and ended up loving where I was and I stayed there, but not everybody is going to practice law. Some people want to specialize and I don't think that imposing or dictating guidelines is necessarily going to address the deficit that clearly people are seeing and want to address. So I think that there are a number of different ways that you can probably address the issue.

DEAN BOISE

I agree. I think one of the things that came out this morning in the IAALS discussion is the set of things that practitioners say they are looking for they feel there is a deficit in in terms of students coming out of law school. Some of those are things that we could be good at and are good at training students in, others I think are sorts of personal character issues, things like work ethic, integrity, stick-to-itiveness, resiliency, those kind of things are very much more difficult to sort of incorporate into a law school curriculum. And I'll make an observation about, as we are talking about increasing the amount of experiential learning that students get in law school, you have to bear in mind that they still have to have the core law stuff that we teach and I've heard a little bit of conflation of, well, we can still teach the same doctrinal stuff, we'll just throw in a little bit of experiential stuff. You can do things like simulations, you can do problems, but that will take more time out of the curriculum.

Those of you who have taught as adjuncts, you now how difficult it is to get the material that you've got to convey into those 13 or 14 weeks. And so we are really talking about adding another layer of things onto what it is that our students are learning in law school. It's not as though you can just slide that in seamlessly without additional time.

MS. NORTH

One observation that I want to make about some of the characteristics that appeared to be important to the legal profession are likely characteristics that are important across a lot of professions, you know, showing up on time, being prepared, having a pad and pen, are things that to me are a little bit old school, but maybe because things have shifted some and I've become a dinosaur, that are less obvious because things change and there are skills and characteristics and just basic manners that somehow get lost in the shuffle that you have to reinforce early on, is just an observation that I wanted to make. You want to talk a little bit about bar associations and what sort of role they might be able to play in terms of a solution to experiential training. From my perspective, I think that particularly for folks that don't end up at large firms or mid-size firms or places that have an infrastructure where an investment in training is going to be made, and if you sort of step back and think about smaller firms or solo practitioners, any time you spend training somebody is time away from potentially a business opportunity. And although we are a service industry, we are also businesses and being able to pay our bills is something that generally those who are engaged in the practice of law are concerned about. And the smaller you are, I think the harder it is to have an infrastructure and be able to take the time to train and I do think that bar associations have a good opportunity there to connect with law school students in a way that certainly they didn't, or I wasn't aware that they were doing it, when I was in law school, and there is a win-win there because in addition to getting training you can be exposed to folks who do a myriad of things with their legal license and degrees that you might not have otherwise thought about, so it's an enriching experience for a number of reasons.

DEAN BOISE

I think that's right. I think there is an opportunity here for the bar, for firms and for law schools to work together, at least communicate with one another, about their perceptions of what is going on. I think there is a sense that law schools don't do a lot in the experiential realm and we actually do a lot. And we have for, as I said before, a couple of decades really been focused on how we can bring a broader set of skills to our students. There are a number of ways we do this. We do this through clinics, as has been mentioned. I don't have any hard data on this, but my sense is that clinics may have tapered off a little bit. There may be fewer clinics than there were pre-great recession.

Part of the challenge of clinics is there is no question about how valuable they are in terms of the sets of skills students develop in clinics actually working with clients and with feeling the importance of those matters. There is nothing that simulation can do that is the same as a working with a real client. The problem for law schools is that clinics are very expensive. The rule of thumb is that a clinician will work with eight students per semester or so and so that requires a lot of clinicians. And then you multiply that by whatever areas you want to have a clinic in. So if you want to have a bankruptcy law clinic you've got to have a bankruptcy person. If you want to have a family law clinic, you've got to have a family law professor who is essentially a practitioner. So you are really building a law firm within the law school and that's a very difficult and expensive proposition and it's led us to focus more on externships. And so this is pushing the ball a little bit back into your court. You mentioned you are running a business, you are trying to take care of your client's needs, but externships offers the opportunity for us to sort of create a framework of instruction that you can -- you have a structure in place so that you can provide students with that experience in the firm. And Katherine mentioned this earlier, we've got an expanded externship program that allows our students to spend a semester at a time in DC, New York, Philly. We are working on expanding that to the West Coast. They can do the same thing in London during the summer. But the idea here is that we are putting them in an actual work environment and there is nothing like that real work environment. And we see this when students go down, they spend a semester in DC, they come back, we see a change in the way they carry themselves, they shake your hand more firmly, they look you in the eye because they have been surrounded by people in that workplace for a semester and they begin to model behavior that they see in the workplace. And there are some, like Katherine, who are KJDs, who haven't had the opportunity to be in a workplace and just sort of see how a workplace functions. So I think there is an opportunity for us there. We do hire, I know people talk about practitioners being in the law school and we do hire them -- we couldn't possibly do what we do if it weren't for adjuncts who are almost always practicing attorneys. We could not offer the range of courses that we do, particularly in the specialized areas that are areas that our faculty may not have ever practiced in or certainly would not be current on, so adjuncts are a huge part of our faculty, as are our clinicians, and we do have some professors that practice as well.

MS. NORTH

Let me shift gears a bit, and I don't mean to throw you under the bus by asking this question when we have so many judges from the Court of Appeals with us, but how do you feel about the idea of the Court of Appeals adopting legal education mandates tied to the admission to the bar that you as a law school dean are responsible for implementing.

DEAN BOISE

So I believe that the Court can do whatever it likes. They have the right, certainly, to impose whatever restrictions or requirements, mandates, they like for admission to the bar. I was mentioning earlier there is an interesting difference between legal education and other kinds of education in that there is this licensing piece, the profession piece, this title to legal education you don't see in the other parts of the academy and that creates an interesting challenge for legal education. So often when mandates are imposed by the courts, first of all, the Court is free to do that, and some of those mandates might well apply to law schools, we might be required as we are, for example, to provide experiential learning and new pathways to practice. We are actually one of a couple of schools that does Pathway II. We did Pathway II because we read Pathway I as just sort of rubber-stamping our existing curriculum rather than identifying experiential courses and developing new experiential courses that we could identify and that would fit within the 15 credit-hour requirement. So we are a Pathway II school and that's made us really think how about how to expand and go beyond what we did before. But certainly when a mandate like that comes into place it has impacts, it has impacts in terms of cost and administrative time that law schools have to expend in administering it. Which is not to say that it shouldn't be done, you know, experiential learning happens to be something I'm very enthusiastic about so I don't mind that, but the limitations in terms of what the court can do with law schools, they are both financial and there are limitations in terms of time. So one of the biggest mandates from the court for law schools is the imposition of the bar exam. So the bar exam consumes almost two-thirds of our curriculum. Preparing students to take the bar exam is almost two-thirds of our curriculum. The first year is prescribed. By the time we get done with commercial transactions and evidence and professional responsibility and a half dozen other things that you really have to have to be successful on the bar, that our students feel they need to take in order to be successful in the bar, you've eaten up two-thirds of the three years, the 90 credit hours that we have. So it makes it very difficult for us then to add on new things. And of course the law is not -- it's constantly expanding in different areas. There's healthcare law. There's this emerging area of cyber and AI and things that we don't have any handle on in terms of law and policy, so we are squeezed by those kinds of mandates. But that's not to say that everything the court wants to do in terms of mandates would necessarily involve law schools. So it could be the court could impose a mandate like it has with the New York civil practice piece. That's something that people who want to be admitted to the bar in New York do on their own. So there is always a possibility of doing that kind of thing. But we as law schools are just emerged from a crisis, you know, that was devastating. Between 2010 and 2015, as many of you know, there was a 41 percent decline in applications to law schools across the country. We've seen law schools close; a half dozen in the last three years. We are really pinched in

terms of resources and we have not yet, despite the fact that applications leveled off, we still have not returned to pre-2009 levels of employment for graduates coming out of law school and this is following ten years of economic expansion, the second largest economic expansion in the history of the country and we still haven't gotten back to where we were in 2009. So we are still challenged financially and so those mandates do impact us and our ability to function as law schools. And then sometimes I think mandates can be expensive for students. I'll go back to the bar exam. When I was the dean at Cleveland-Marshall in Ohio, I was asked to chair a task force of the nine Ohio law school deans to reexamine the bar in the State of Ohio and it really was a mandate to think very broadly, from going the waiver route, the Wisconsin-New Hampshire route, to a mini bar of some sort for the first year. My idea was that we should allow students the option of taking the bar after their second year of law school. I left to come to Syracuse before we got very far on that project, but one of the things that was highlighted is the timing of the bar exam creates a real burden for our students financially. They have to spend another year really after they graduate, unless they are one of the eight to ten percent of graduates of law schools that go to big law firms that will carry them through the bar exam prep, the time they are waiting for the bar results to come back in November, they've got the holidays, they only get started on the job search until the first of the next year and that's really an issue for us in terms of the way we've decided to time this bar exam. So those are the things that I think are considerations.

MS. NORTH

It brings me back to something I said earlier, maybe the first thing I said, maybe the second, it doesn't matter, that is that my perspective is really skewed here because of the fact I am at a large firm. I have been my entire career, so when you say things like maybe students should be taking the bar exam at the end of their second year or when I hear people say that law school is expensive and it's too long and maybe students ought to be able to enter the workforce sooner, it gives me pause because I much prefer to have somebody, no offense Katherine, who is not a KJD because there is a certain amount of judgment and life experience that's important when you are practicing law and so I think sometimes the rush is not a good thing although I appreciate that it's complicated and there are nuanced issues.

I think there is one other question that we were going to address that was going to be addressed to me but maybe I'll open it up to the group here and that is are there practitioners in the room who have had students who have had experiential training that they think has been particularly creative or useful in terms of allowing the students to come more ready to engage in the practice of law?

DEAN BOISE

Julie, I just want to clarify when I said take the bar exam after the second year, they would still finish three years of law school, it's just that that piece would be out of the way –

MS. NORTH

But I have heard a lot of people, in fact some of my partners, say the last year of law school is a waste of time. And, you know, I don't think that any year that you have to learn, to the extent that you can afford to do it, is a waste of time, but I'm just making the observation that I think people are younger -- maybe it's just because I'm getting older -- but people are younger when they are graduating than they were when I was graduating and so I do think that there is value in taking the time to season a bit before you engage in the practice of law.

DEAN BOISE

So are there things you've seen, particularly things that might involve the practice?

SPEAKER

Not so much related directly to law practice but related to the students who go into finance because a lot of the same skills are applicable, how to handle numbers, how to handle the written and spoken English word, how to relate to people, how to pick what is important and what is not important, and the truth of the matter is the more experience people have before getting job X or before going to school Y, the better it is, the more effective they are going to be at job X, the more useful the education at the school is going to be. However, there is a huge economic disincentive. You graduate college and if you are fortunate enough to get a good job and then you say now I'm going to take three years out of my life, no money coming in from a job, 2- or \$300,000 from my parents or my own treasure to go to law school, not many people want to do that.

DEAN BOISE

That's why we created the JDinteractive Program online at Syracuse, a hybrid online program that addresses that issue. I'm happy to talk about it. You're right. It's interesting because in creating this program we realized there is no real a path into law if you don't jump in in your early 20s and I think that is a challenge. I think that affects the access to justice issue because there are people, particularly in rural areas, that don't have access to education, where there is an opportunity there.

SPEAKER

To answer your question, to the extent that I've had law students come in on a project -- I'm a sole practitioner -- I found that law students who took legal writing, a designated course, legal writing in law school, that their writing ability was better. Even in just research memos, it was just better and more succinct, direct, lucid.

MS. NORTH

One thing I will say is that anyone who I have had work with me, and I'm not saying this because there are judges in the room, who have clerked with a judge does approach things differently because that person understands the importance of getting to your point quickly, having a brief that's well-organized, everything there in one place because they've been on the receiving end of things that you can't make your way through. So that aspect of experiential learning I would say, I can tell the difference and I welcome.

DEAN BOISE

And they understand that they are writing for posterity and the importance of the writing is evident.

MS. NORTH

Do we have time for another question?

SPEAKER

I want to say something about the description of experiential learning. I think there are a lot of different ways to think about it and some of what I'm hearing is the idea that experiential learning is to teach students how to do a particular thing and I'm not sure that's really what we're talking about. When we are talking about experiential learning we are talking about contextualized learning. We are talking about students learning in a specific practice situation but that doesn't mean that the goal of that teaching is for them to learn how to take a deposition; it's for them to learn how to be a lawyer, how to act professionally, how to figure out what you need to do. So the idea of experiential learning is it's a way of learning and it has a value in and of itself that isn't -- the measurement of the success of experiential learning isn't this student can take a deposition or this student can conduct an interview, it's this student has had the experience of learning in a context that connects practice and doctrine together. So if they think about that as the measure, I think it makes us think a little bit differently about what we mean when we say experiential learning.

DEAN BOISE

The unique thing is that it does require them doing as opposed to simply absorbing, I think in different ways than you would in a traditional doctrinal classroom.

SPEAKER

Yes, but we also know a lot about adult learning now that tells us that without that context or scaffolding to hang that information on, we don't absorb that information as well. So even in the experiential learning context, we're giving students an opportunity to learn material even more deeply because of the way it's being presented.

DEAN BOISE

I agree.

MS. NORTH

In the back?

MS. SILVER

I'm Marjorie Silver. I am the director of externships at Touro Law School where we do allow externships in private law offices, and for us, a lower -- I think the second lowest ranked law school in New York, the externships are frequently an excellent extended performance interview and increasingly, more so than years ago, our students are getting positions having proven themselves through the work they've done in their externships with lawyers and firms throughout Long Island and elsewhere so it's incredibly valuable able for our students.

DEAN BOISE

We find that's the case for our students as well, they are more often connecting with jobs. And I think that's why it was important for the ABA to permit externships, paid externships, because to avoid some of the FLSA issues because we know an externship is not supposed to be something that's -- the six rules, FLSA is not something that's supposed to lead to employment but that's increasingly what we are seeing happening. So we may be coming full circle back to the days of apprenticeships.

MS. NORTH

Time for one more?

MR. SAUNDERS

One more.

SPEAKER

I just want to raise an issue that I haven't heard discussed. Clinics often traditionally were a way to train students to go into public interests and public service practice because the public interest and government offices were unable to fully train them in the way that law firms could. And one of the challenges, I think, in the broader development of experiential learning, which I'm all in favor of having done it for a long time is, are we conflating overall experiential learning, which I think all of our students need, in a way that is diminishing attention to the students who are going to go into public interest or public service and need the extensive clinical training or are we in sending it throughout somehow losing out in that aspect of legal education.

DEAN BOISE

I think that's a really good question. One outcome of broader set of experiential offerings in law school is that students who might be jumping into a clinic for experiential opportunity or training to satisfy a requirement, like New York's or the ABA's, might do that and the students who really do have a passion for public interest work and want to do that are then -- have better opportunity to be in those clinics. I think we've seen that in our school. But it is a very good point. We certainly will always have clinics. I don't think that you can replace clinics with externships.

* * * *

INTRODUCTION TO PLENARY II SESSION: A DEAN'S PERSPECTIVE

MATTHEW DILLER

DEAN AND PAUL FULLER PROFESSOR OF LAW,
FORDHAM UNIVERSITY LAW SCHOOL; MEMBER, NEW YORK STATE JUDICIAL
INSTITUTE ON PROFESSIONALISM IN THE LAW

My name is Matthew Diller and I am the dean of Fordham University School of Law and I am happy to be here to talk to you today and I want to say on behalf of all my colleagues from the New York law schools how pleased we are to be included and participate in this conversation with the practicing bar and with the judiciary about an important set of topics.

I also want to acknowledge a number of my colleague Deans who are here, Mary Lu Bilek from CUNY Law School, Mike Simons from St. John's. I want to give a few of my own thoughts and my perspective from over 25 years of teaching and through the years as a Dean. The dialogue between academia and the bar is I think one that stretches way back in time. I know in many settings I've had many people say to me, "you in law school, you should do X, Y and Z." And I know the feeling of everyone believing they know how to do what we are trying to do in a better way. To a certain extent I feel like the manager of a baseball team, with people asking "why didn't you take out the pitcher in the sixth inning." On the other hand, the dialogue is incredibly important because we are in fact educating lawyers to serve the bar and serve the public and it is important that we accept and listen to the feedback that we get. So I think I and my colleagues that are here take it all extremely seriously and I am grateful to the Institute and thank you so much, Paul, for this opportunity to have sustained conversations and not just today but throughout the institute's work over the past 20 years.

One of my favorite things to do when I meet with groups of lawyers, which is constantly, is to ask them what is their biggest gripe about new lawyers coming out of law school and what do you wish we did better on our side? And there was a period, I would say, quite a while ago where people would say new lawyers should know how to write complaints and take depositions and those things. I get very little of that at this point. What I hear consistently across groups is a list of requests that track – that map on to the Denver results incredibly precisely – they want people they can trust, people who are reliable, people they can depend on who will communicate professionally, who work well in teams, who can be responsive to clients, who are responsive to supervision, who take initiative but don't go overboard, and the list goes on. I take a couple of larger truths out of that. One is, we are engaged in a larger task of inculcating our students into a service profession. And by service I mean the idea of understanding the world where your role is about serving

others, your role is about enabling other people to accomplish their ends within a certain set of constraints and rules and practicalities and offering advice and skills that enable them to do so. That is a very different enterprise than people get in the KJD, to use Katherine's analogy. When you are in school, everything is all about you. Everything is all about how do you actualize yourself from this educational experience, what can you get out of it, the whole institution is there to serve you, the student. So that is a major reorientation of world view and it's a process. We play a major role in helping students to undertake that process and a couple of things flow from that. One is this: professional competencies and characteristics are incredibly important and I believe are teachable. That's the first question is, are these things teachable or are they beyond the scope of law school? I firmly believe they are teachable and that we already do a tremendous amount to teach people these qualities and that we can do more. So I'm excited about that challenge and I think it's a part of the great enterprise.

Second is public service. Public servicer enters this not as a periphery but at the core because it's part of the core of understanding that you are there as a professional to serve others as if you are serving your clients, you are serving the public, you are trying to reorient to a world view where the individual is not the sun but is rather one of the planets and part of that is understanding that the public is all part of a larger enterprise. And another thing that I think goes with that is getting students to understand that they operate in an organization and institutional setting so they need to be attentive to that setting and the responsibilities that come with it and what it means to be a good colleague, what it means to be ultimately a mentor and to support others, and what it means to contribute to the enterprise as a whole. And the feedback I get from the field, and you can talk about whether I'm right or wrong, is that those things are vitally important to success in our profession and if we can do a better job getting that across to our students we will place them in a better position. So that is very high on my agenda. And the challenge to it, and frankly the thing to me that's exciting about it is, it's hard to do. It's not like you can just sit students in a room and say be good people, show up on time, be responsible and trustworthy, be the person that others want to go to in a time of trouble, you can't just tell them that. And so I draw on my experience, such as it is, as a parent. I have all sorts of wisdom that I can tell my two very fine sons and they will nod their heads but it doesn't mean they will do a single thing differently than if I hadn't spoken. And so I'm impressing this upon you because so often I hear prescriptions for law schools and ideas about how we should be doing things that are essentially we should sit students down in a room and tell them what to do and then believe we've done something. This brings me to what it is that we do do. By the way, as a former professor of civil procedure I need to say no one has ever said to me in any of these sessions, I wish new lawyers knew more civil procedure. It doesn't mean those things are unimportant, it means they assume them, right?

It means they assume students have the knowledge. What differentiates people are these other skills.

We do a lot when it comes to all of these other skills. We've already talked about experiential education so I won't go through that again, but at every opportunity we offer students -- journals, moot courts, public service opportunities, research positions for faculty -- they all provide opportunities for students to learn and grow in these ways. Other things, mentoring. Mentoring is incredibly important. It's important for us to do it on the academic side and it is a critical way that the bar and the bench help us on the law school side.

My larger message to you is that this is a complicated task; it unfolds over time. We in legal academia, we need your help with it. We cannot do it ourselves. And historically we have received that help. And so some many settings particularly in the court system, government offices and on the public interest side, undertake this kind of training and mentorship role with great alacrity. It occurs in the private sector too, of course. I still think there are sectors where this ethos of training and mentorship has not fully penetrated. I would call out in-house counsel which can do a lot more than they do at the moment. Another point which I think has already been made, but it's worth emphasizing is that one of the big transitions that we have seen on the law school side is a big transition from students coming straight out of college to the point where now for us more than two-thirds of our students will have had two or more years of work experience. They are coming to us with more life experience, more work experience, more professional experience, I think it's hugely helpful and makes a huge difference.

Those are the tasks that I am centered on. It's great to teach individual lawyer skills, they're important, they're valuable. But I see them as a way of getting across a larger set of messages that we need to be consistent about from day one. When I look at the world around us, there's a shortage of role models out there, people who are really exemplars of what it means to embody the values that we want in our society and in our profession. When you look at the public life, I think you see that so many public officials disappoint in different ways and yet there are so many great members of the bar and so many great members of the judiciary who do in fact embody those values and that needs to get across to students. All of you have a key role to play in helping to bring the next generation of lawyers into reality and into fruition.

So I'll just say a couple of words about some challenges that I see and issues that we'll need to focus on. There's a lot of talk about different course requirements and mandates from the courts here in New York. I won't speak to the details but I would urge a recognition that we are part of a national system and of course that so many New York lawyers do not go to law school in New York State and so many students who educate in New York law schools don't practice here in New York. So whatever rules that are set up

need to work for the nation as a whole. And frankly, that's why the ABA is the accrediting body for legal education – to prevent a nightmarish tangle of different requirements for different states.

Second, there is a challenge in thinking through online education. So increasingly online education is becoming important higher education. What role will that play in the legal education generally and in the JD degree? There will be a set of challenges in inculcating professional values and skills in programs that are reliant in whole or in large part on online methods of education. Another challenge which is how will technology change what we think of as key legal skills, because I think it will. There is already a set of legal skills out there that I was taught in law school that are now completely irrelevant and I think there will be new skills that emerge as artificial intelligence and other forms of technology become so important. And another point, and as much as I hear the feedback consistently, I too do not see employer practices as tracking onto what people say is important. And the whole system, and this is really on the big firm side, the rest of the market I think gets it, but on the big firm side the idea that all the basic hiring decisions are made after a student's 1-L year is ridiculous and devalues and sends a negative message towards all the things we are trying to do in law school today which emphasizes that we teach in the second and third year is pretty important and it's not just adding on knowledge, it is adding on basic skills, and competencies that you might want to take into consideration when you make your hiring decisions. I understand that it's not something that any one firm or market specifically can change but I do think it's a fundamental part of the structure that cuts against the message that we are trying to send here today. And I will stop talking because there is a great panel lined up. Thank you.

PLENARY II SESSION: WHERE DO WE GO FROM HERE?

Professional Values, Skills and Cultural Competencies in Practice.

JAMES M. WICKS

PARTNER, FARRELL FRITZ, P.C.;

MEMBER, NEW YORK STATE JUDICIAL INSTITUTE ON PROFESSIONALISM IN THE LAW

Good afternoon. I'm Jim Wicks. I am a member of the Institute. I am also a partner at Farrell Fritz and I am also privileged to be an adjunct at St. John's. And I thank Dean Simons for being here today. He too is an impeccably dressed dean.

The panel this afternoon is going to be discussing where we go from here. What can and should we expect in the future from the academy, the practicing bar, and the judiciary in this process? How can we make newly admitted lawyers profession ready, not practice ready, but profession ready? And there is a big distinction. In the discussion sometimes it gets blurred, but there is a difference. We are certainly not expecting practice-ready graduates but we do expect basic skills, competencies and professional values. Zack from the Institute spoke this morning and I love the phrase they use, foundation. I think that's a great, great phrase, foundation is great phrase because it embodies not only skills and competencies but these, I think you used the phrase characteristics, which also includes values and a whole host of things, I thought that was terrific.

So I would like to introduce our speakers before we get going. They have been carefully selected and they really come from very diverse legal backgrounds and each, we've had many calls, each has strong views on where we are, where we should go, and what we should do to try to move the ball forward. So it should be interesting. We encourage discussion. If you have any questions, comments, raise your hand and certainly in part of the discussion we want this to be a discussion. So the good news is we are going to take a break halfway through so you can stretch your legs and go to the bathroom. So half way through we'll take a quick ten-minute break.

So three areas we are really going to cover are skills and values, one; New York Law, two; and mentoring, three. So our panel, to my left all the way down, Cynthia Domingo-Foraste, she is Executive Director of The Court Square Law Project and if you don't know anything about it, it's worth going on their website. They have this sliding scale approach. It's a not-for-profit with a sliding scale approach to legal fees and I think it's just a great concept.

To her left is Justice Iannacci, Associate Justice of the Appellate Division, Second Department. To her left, Scott Karson, partner at Lam and Barnosky on Long Island. Scott is the current Treasurer -- do I have that right

-- and President-Elect nominee -- designee of the New York State Bar. And then Steven Leventhal, to Scott's left, Steven is in private practice, he does a lot of attorney ethics professionalism issues and represents firms and lawyers among other things. Ricja Rice-Ghyll, hearing officer with the New York State Department of Health so she sees many lawyers come before her on many levels presenting arguments. And at the very end, but certainly not the least, Presiding Justice Alan Scheinkman, very varied background, and also my torts professor many years ago at St. John's.

So let's get started. The New York State rule and probably the ABA accreditation as well, requires certification as we've talked about this morning, of skills and values to be certified before you become admitted to the bar. And it appears that it was sort of deliberately ambiguous and vague and not specifically or particularized as they say in document requests, particularized type of skills.

Justice Scheinkman, let me start with you, so a good friend reaches out to you, knows your extensive background, you've been in private practice, you've been in academia, you've been a municipal lawyer, you've been a judge in several courts and values your opinion so this friend says can you speak with my daughter who is about to head into law school and can you tell her what skills and values can she expect to learn coming out of law school. What is the conversation, Judge?

HON. ALAN D. SCHEINKMAN

PRESIDING JUSTICE, NEW YORK STATE APPELLATE DIVISION, SECOND DEPARTMENT

Well, I think it really is -- I'll answer it with the great legal answer to all questions which is, it depends. And the trick, of course, is knowing what does it depend on. So, if you're talking to somebody who is interested in going to law school, the first thing I would like to know is why are they going? Is that because they really have an interest in practicing law? Is that because they couldn't get a job in finance? Or couldn't get into med school? What is it they want to do? I think that really informs the decision. The other thing that's interesting about the question is from the point of view of the student. They want to know what is it that I'm going to learn. And part of it, my answer is, there is a gap between teaching and learning. Teaching is really passive in a sense; learning is much more interactive. That requires engagement. It requires a desire to grasp a concept and work through them. And this point has been made, not all of us think and learn at the same rate, at the same time, and in the same way. For so many people reading cases, which was originally supposed to be the experiential component of it, you were supposed to see not just the legal principle that was being applied by the court, but learning how the court was applying that given the state of facts has become even more practically based. So part of what is it you expect to learn as a law student is, what is it that you expect to get out of it. Now, I've had the opportunity over a

number of times to actually speak to the folks over here at Pace to the entry class about law school and what is it like on the first day of law school and one of the things I always tell them is I give them Pound's definition, classic definition of law as a learned profession, no less a learned profession because it happens to be a way of making a livelihood although that's incidental to the overall concept of a public service, so commitment to justice, commitment to fairness, commitment to due process, commitment to persons that you don't know who are ahead of you, the idea of commitment to the client, commitment to the client within bounds, those are all very important concepts that at some point we all need to learn. I find it sort of amusing to hear the study results and the question I should have asked, and maybe he can't really answer, are the people who respond to that question responding because they perceive those characteristics that they want, timeliness, responsiveness, is that because they see themselves as having those abilities and they strive to have others who would follow them have those same qualities, or it that because they see their own failures? Because we know that not every lawyer is on time. We know that not every lawyer is responsible. And so is it because they see their shortcomings in that or do they see it because they want to set an example for others to emulate. Those values, whether it comes through a lawyering class, whether it comes through a professional responsibility class, whether it comes through a torts class or a practice class, that has to be a constant it seems to me. That's not just one class. All of these classes are interrelated. Really, where is the fine line between the torts class and a contracts class? We all know some things can be contracts and torts and some things cannot be. So because we draw a line here when we say we are going to teach that in contracts but not in torts, that doesn't mean from the point of view from the student trying to learn this, that that line really should be there.

Secondly, are they reviewing, or is the perspective student viewing, law school as a trade school? Are they there to learn a specific subject or subject matter, or so they think? I would try to disabuse them of that. I think for most of us, not all, but some are very fortunate to have picked a subject matter that we liked and stuck with it all the way through our careers. Others have been more of a zig zag and I cannot tell you the number of times that I thought how great it was that they made me at St. John's, the original Dean Simon, take courses that in a million years I never thought I wanted to take because I never thought this would have relevance but then you find out ten, fifteen or twenty years later that there is something that you need to know about everything. All right, you want to be litigator? That's great. But that means you got to find a court house, you have to know the rules of evidence, but you also have to know something about the subject matter that you are disputing, whether that's a contract or a tort or something about criminal law, all of these things cross lines and none of our careers, for the most part, go in a zig zag. And people, when they ask me questions, well, I only came to law school to study environmental law so don't ask me a question about something else. But even

when people talk about environmental law, which is something I never studied in law school, but did I bring and defend Article 78 proceedings or when I need SECRA? Did you go before local zoning boards and deal with obtaining approvals?

Aren't these water permits, Clean Water Act, representing a municipal government and need to deal with the EPA on what is polluting the Hudson River or Long Island Sound? These are all things that are interactive. So to a prospective law student I would say you need to know something about the values of our profession and that's a constant that you are going to hear about and should hear about. I also think you need to know skills. They used to say to us in law school -- and I'll end on this -- well, by the end of law school you should be able to think like a lawyer. Well, what does that really mean? And I think what it really means is the ability to perform a legal analysis of any sort of problem that you may be confronted and even if you don't know the substance of answer, you should have a sense of being able to figure it out and being able to divine what the answer is by doing some additional work.

That's the skill set that you should be able to come out of law school with, not necessarily the ability to say, okay, now I'm going to try a criminal case, but the ability to figure out, if somebody asked you to, how to do it by knowing the language, by knowing the lingo, by being able to analyze a set of problems and then analytical skill carries forwards.

MR. WICKS

Scott Karson, is your conversation any different to the person who wants to enter law school but not quite sure what they are going to learn?

SCOTT M. KARSON

PARTNER, LAMB AND BARNOSKY, LLP

So in other words, you are asking me if I disagree with Presiding Justice Scheinkman?

HON. SCHEINKMAN

That's okay Scott, you only have two or three cases coming up.

MR. KARSON

I'm going to begin by saying there are obviously no -- these are tough questions and there are no easy answers and I would be surprised if we reached some collective epiphany today on the ideal means of providing a legal education. But that having been said, to me the elements of a legal education and the way this question is framed, you are talking about law school plus whatever else may happen before the person is admitted to practice. But what I see is, what I would hope to be provided would be some education on substantive law, because I think that's necessary. Ask the question of what

substantive areas, I think you need to retain some flexibility because one never knows where one is heading in terms of the law, and frankly, my first job out of law school was as a prosecutor but I certainly didn't go into law school planning to be a prosecutor. The vagaries of the job market were such that three years later, there I was. But I wasn't sure I would even be in the State of New York. I wasn't committed to any of those things.

So I believe substantive law is an important element of a legal education. And I would certainly counsel the young woman to take substantive law training in whatever areas might interest her. The second one, and again, I agree thoroughly with Presiding Justice Scheinkman, is the notion of critical thinking or learning how to think like a lawyer. And very often that means to me, and this is what I say to this prospective law student, not so much that you know all the answers but you are able to look at a problem and identify what the issues are and you can always open up the law books later on and say, well, here's the answer to that, here's the answer to that.

But even, I remember going back to my bar review training, and when they trained us on answering the essay questions it was all about issue identification. I thought, oh, wait a minute, there's an issue of intent here, there's an issue of statute of limitations, whatever the case may be, and I think that that kind of critical analysis, that kind of thinking like a lawyer, is something that should be provided, must be provided, it's indispensable, and I think that law schools can and should go a long way in providing that kind of education.

The third area that I would counsel this prospective law student to involve herself in is professional ethics and conduct. And this to me is kind of a hybrid because I think that much of it is properly taught at the law school, particularly the rule of ethics, and you know, it's like going through the Uniform Commercial Code, instead of the Uniform Commercial Code you're going through the New York Rules of Professional Conduct and I think that that needs to be done and think law school is an ideal place to do that.

But there is also, in addition to the substantive rules and ethics, there is the conduct itself. And I think that lends itself to experiential learning, that is learning how to interact with clients, interact with adversaries, interact with the courts in litigated matters. These are things I think you can talk about in a classroom setting but you really need to involve yourself in them and learn by doing in order to come up with a reasonable ability to conduct yourself in a civil manner with the people you deal with –

MR. WICKS

Is that teachable? Dean Diller says all of this is teachable.

MR. KARSON

And I agree that it's -- the substantive rules of ethics, as I said, the New York Rules for Professional Conduct, that's teachable. But the other stuff --

MR. WICKS

How about client communications and how to conduct yourself --

MR. KARSON

Yes, it's teachable but it comes with experience, not so much as what you hear in a classroom from a professor, but from what you hear by dealing with these other parties that you come in contact with. And I think ideally you would do that, if you are lucky enough to be in a firm, you would be doing that as a young associate. You would be doing that under the tutelage of a partner or a senior associate. The problem that you run into with that is in those instances where you are a sole practitioner and you get your license and you go out and you hang up your shingle, who do you turn to then? That's a problem that I haven't heard a satisfactory answer to.

MR. WICKS

Is it the problem also that not all firms have the culture that yours does? And for a graduate coming out of school who doesn't have a lot of opportunities, they go to the first job. Maybe it's a small firm with a great culture, maybe it's not. How do they know?

MR. KARSON

Well, that's a good question. I'm not sure that they do except that during the interview process I don't see any harm for the prospective employee to say what training opportunities will you provide to me? I'm a good lawyer, I learned a lot in law school, I got good grades, passed the bar exam, but I think we all agree that while I may be professionally ready, I'm not practice ready. What will you do as my employer to make me practice ready? And I want to hear the answer to that question.

MR. WICKS

Ricja, so you're a hearing officer, right, so we know you don't have any cases pending before Justice Scheinkman, so is your conversation any different?

RICJA RICE-GHYLL

HEARING OFFICER, NEW YORK STATE DEPARTMENT OF HEALTH;
PRESIDENT, CAPITAL DISTRICT WOMEN'S BAR ASSOCIATION

It's a little different. I'll start with what Justice Scheinkman started with which is to ask why are you choosing law school. And then once you get that as a reference, public service or government or private practice, from there my second step is actually not to focus on -- the professors in the room are going to kill me -- but not to focus on the specific law school classes. That's a given. You are going to take the classes and you better do well or else why are you there? But my second step is actually to focus what you want to be, your self branding, if you will. So you research and you look for who was that attorney or judge or professional that made you or encouraged you to make the choice that you made and research them and learn about their path inside and out. And if you have the privilege of being in the same area where they are practicing, get to know them, introduce yourself to them.

Many students struggle with figuring out a way to network and it does not come to them organically but it is so important in terms of becoming the practitioner that you want to be. So my second recommendation or my second step for this young lady would be to learn about who you want to be. And then the third is to get ready to be afraid. And that is coming -- I too was a KJD and that comes along with being "the only" in the room when it's time to start practicing. So being the only woman or being the youngest, or being the only of color, it can be very intimidating. And so my advice to that young woman would be to be ready to be afraid, don't be afraid to ask questions and step out on a limb.

MR. WICKS

So Cynthia, it turns out Justice Scheinkman's friend is also a friend of yours and he is a doctor. So in asking you to speak with his daughter, he says when he went to med school, and we heard this morning from Chris' group, when I went to med school even though I knew I wanted to go into geriatric medicine, I had to learn how to deliver a baby. I knew then and there I would never deliver a baby but I came out of medical school knowing how to deliver a baby. Is that what we can expect in law school for her? Not to deliver a baby, but a house closing? A corporate deal? Will they know the basics of how to do this stuff?

CYNTHIA DOMINGO-FORASTE

EXECUTIVE DIRECTOR, COURT SQUARE LAW PROJECT

Is that what they are going to learn in law school? I think we all know the answer to that. So I should say that Court Square Law Project is a training ground for new attorneys who were recently admitted. All of my staff has

under two years of practice and we train them to launch their own solo practices. So what is interesting is I think I agree with this definitely: You learn to think like a lawyer in law school, but there are some things that they definitely don't come out of law school knowing that we see all the time which is simple things like how to bill, interaction with clients, things like that, and they don't -- they don't know how to do all the steps that would be involved in a home closing, but I don't need them to. I'm okay with that.

MR. WICKS

What is it that you are looking for if you don't care they don't know to do a house closing, never done a corporate transaction, never did a deposition, never examined a witness in a hearing, what is it that you want to see?

MS. DOMINGO-FORASTE

I think the thing we want to see is a willingness to learn but also an ability to look at the facts of the case and come up with the questions that need to be answered. That's law school 101, as I recall, from when I went --

MR. WICKS

Legal method.

MS. DOMINGO-FORASTE

Yes. So that's the most important thing. But also I think there has to be some things that we didn't talk about, learning to bill, learning kind of how to do the accounting, how to market your firm. Those things they don't learn in law school are also important. And also the interactions and professionalism that involve going to court is something you see the new attorneys not necessarily knowing how to do.

MR. WICKS

So Justice Iannacci, I'm going to leave you with the tough task with the Court of Appeals sitting here asking you, should the Court of Appeals be more specific in what skills and values should be inculcated? Should there be more specificity --

HON. ANGELA G. IANNACCI

ASSOCIATE JUSTICE, NEW YORK STATE APPELLATE DIVISION, SECOND DEPARTMENT

No. It really should be left up to the law schools. They are autonomous. They know what they need to teach, and with all due respect to the Court of Appeals, you've stated it clearly, the skills, professional values, are within the school's judgment. However I do think that the schools need to address the changing times. The legal profession has become a legal business.

There are legal buyers. Legal consumers. Law firms cannot absorb the costs for students graduating without some level of professional readiness. I'm hoping that these students don't get disillusioned. I want more students to go to law school. They have enormous debt, they have enormous debt with law school, and although the applications are on the rise, we still have a huge percentage that do not have jobs. So I would like to see more of a virtual learning. This is the Gen Z generation, right, they do virtual learning. I think a lot of how we can teach them to become better lawyers, expose them to various issues within -- as was said, land use, it can be environmental but then you can have Article 78, CPLR, ethic issues that come up with that, contracts, torts, you can combine this in a virtual reality-type of education that -- you are shaking your head -- I just want these students to really want to continue to go to law school and so that they can afford it when they graduate. I know we need to teach the basics but I just hope that law schools can go the next step at this point with this new generation of students where they learn differently.

MR. WICKS

Steve, you haven't said anything yet but I know you have a lot to say. Does the public expect lawyers to come out of law school with more specific skills?

STEVEN LEVENTHAL

PARTNER, LEVENTHAL, MULLANEY & BLINKOFF, LLP

Does the public expect lawyers to come out -- probably yes. Probably the public expects all lawyers to be able to handle all matters with varying degrees of ability.

MR. WICKS

Do they care whether it's a first year or tenth year handling that --

MR. LEVENTHAL

They care about the result they will achieve. And if that result can be best achieved with a first year graduate, that's who they want. If that result can be achieved with a senior veteran attorney, they want that one. And if it can be achieved with both equally well, they want the cheaper one.

MR. WICKS

Do you find yourself managing client expectations when you have a junior lawyer working on a matter?

MR. LEVENTHAL

I find myself managing client expectations all the time. I am a member of a three-lawyer firm. I spent my entire career either as a solo or a small firm practitioner and my clients have come to us because they want me and they expect to see me and they do not expect me to have me hand the case off to another attorney.

MR. WICKS

So you've gotten so busy, though, that you need help. And you don't need a senior lawyer, you need someone who can do research writing and help you in your cases. What is it that you look for in someone fresh out of school?

MR. LEVENTHAL

Well, I guess I am busy, so the first thing I'm looking for is a very strong work ethic. I want someone who can carry their weight. I want someone who has the capacity to learn because that's what we all must do. And I must be able to give my young associate a matter that I don't entirely know how to handle and have that young associate figure it out with my assistance. And finally, I'm going to be looking for interpersonal skills because I don't want to be embarrassed. I don't want to be embarrassed with any one of the three groups that make the practice of law difficult Adversaries, judges and clients. So that's what I'm looking for.

MR. WICKS

So the MacCrate report, and if you haven't read it, I mean, it's almost 400 pages but it really is a remarkable report, and in preparing for this it's been circulated among the groups, it does identify the seven skills, problem solving, legal analysis, legal research, factual investigations, communication, counseling and negotiation. Sounds a lot like what we are hearing up here.

Justice Scheinkman, these skills do seem pretty general, talking about the MacCrate report, are they too general?

HON. SCHEINKMAN

I'll answer the question but I want to get something off my chest that I was trying to say all day which is, I bridle a bit at the idea that I hear that law students are not what we call, quote, practice ready. It seems to me that if we are handling somebody a license to practice law, we shouldn't be saying, wait a minute, these folks aren't really practice ready. At least not without some mandatory follow up that's going to get them to a point where the public can have appropriate level of confidence. Now I say that recognizing that when I graduated law school a long time ago, if I thought that I could go out and actually represent a client, I did not. In fact, my first job out of law school was clerking for a judge on the Court of Appeals and my first assignment when I

went into private practice was, okay, you write a notice of appeal, and frankly, it took me about two days to figure that out after having looked at hundreds because I realized the consequence of what I was dealing with and I didn't want to make a mistake. And I have recognize that there's a big difference between somebody who is a novice and someone who has been practicing for many years, but there still should be a basic level of competence that we should be making sure that our graduates have. Frankly, if we are not doing that, I'm not sure why we even bother with the bar exam because in theory if you graduated from an ABA accredited law school, then okay, go do your thing. Presumably the licensing is to make sure that these folks wherever they went to law school, have the skill to be able to do a certain minimum job. Turning to your precise question, what's been outlined in terms of these skills is very general and there is a Plenary II Session lot of interconnection between them and I think we have to do some drilling down. For example, I see problem solving and communication, particularly with this rising generation, as being a problem. Why? I think Judge Eng mentioned before, you know, we have the internet, the social media generation, we are seeing people who are coming through law school who were very comfortable with communicating through a Tweet or an e-mail. That's a very different skill set than looking a client in the eye and being able to give them bad news. Or trying to convince them to pay the bill and why the bill is fair. That's communication.

The other part of it is problem solving. And I'll give you an example of something that came out of an oral argument we had some time ago. Two lawyers, they both agree on the legal principle involved in the case. What they couldn't agree on is whether the document as pled, one particular cause of action, was on this side or that side. And frankly, I didn't think they needed us to tell them what the answer was. So as the oral argument was winding down I said now that we have had this discussion and you agree with us as to the legal principle, what I'd like you to do is go outside and see if you can resolve it and let us know whether you have been able to resolve this issue. And I heard back from somebody who was watching from the clerk's office, that they met, they had a conversation, which was apparently unpleasant, lasted about 15 minutes and then they both left court in a huff. The implication is they never would have had that dialogue if we hadn't made them.

And so I looked at that and I said, well, that's part of problem solving. And this goes, maybe the client's frustration at times with why do things take so long, why do things cost so much, and some of it is we may train people to litigate, we may train people in principles of law, we don't necessarily train people in a compromise and the ability to comprehend the point of view of the other person. And I think e-mail has not helped us with that because when I was in trial court I used to ask people, did you talk to the other side about this? Oh, I sent them an e-mail. I'd say, well, you know, that's like an articulation of the maximalist's position, they may not realize that within all of those bold assertions stated with a high degree of confidence that they are going to

instinctively knee-jerk reject that there may actually have been a kernel of thought that they ought to be considering. And that is what we are missing in this generation –

MR. LEVENTHAL

I have to say, I'm going to change my name after this program, but I disagree with the presiding justice. The culture of the court house is that if you take these two difficult, irritable, uncooperative lawyers and you sit them down, they will work out the case, that you can have any -- chose any two adversaries, get them together, talk some sense into them, and they will resolve the case. That's just not true –

HON. SCHEINKMAN

You misunderstand me. If I can –

MR. LEVENTHAL

If the lawyers felt there was a value to speaking and they could resolve the case, most of them would do so. And the two lawyers that were sent in the hallway left in an huff –

HON. SCHEINKMAN

Excuse me. You misunderstood. I am not suggesting that every case should be settled. In fact, if every case would settle, it would be an incredibly bad thing for judges because then we would have nothing to do and we wouldn't be able to have our position. What I'm suggesting is, that people need to identify what it is they want to fight about and they don't have to fight about everything. And that there are things, and life would be better for their clients, and for those who are charging their clients, their clients would be better served, when the fight is confined to those things people ought to fight about and not fight about silly.

And if you could get that attitude in the court house, and I grant you that there are bad attitudes in various court houses and you can get grumpy judges, but sometimes grumpy judges happen because you get lawyers and you sit there and say why are these two people who went to law school and should be colleagues, they can't even agree whether today is Monday or Tuesday, let alone what the legal consequence of that is and that's the problem that we have, there is too much of an emphasis on the fight and not enough emphasis on what is the fight about and keeping that in perspective.

MR. WICKS

We are going to take a break, but one question. It's okay.

SPEAKER

I don't mean to hold up the room. I wanted to say something on the skills and the foundations talked about today. Is there any changes that law firms are making as far as welcoming in new associates? I'm in the private practice so I don't know.

MR. WICKS

I can tell you, my firm, we have a little over 90 lawyers now with offices throughout the state and it's funny, the social media aspect of it, I'll never forget, a couple of years ago, not that long ago, we had a new associates that had an office right next to mine and lo and behold I gave him something to draft and I'm getting e-mails all day back and forth and I'm sitting -- like I'm here -- get up. And part of it is they need to understand this is their professional development and it doesn't happen sitting in a seat sending texts and e-mails back and forth to the lawyers you're working with.

You have to communicate. So I can tell you in our firm we really are very serious about that and there is a whole thing about professional etiquette with your iPhone or whatnot, but we, as the older generation, have to be sensitive to that and have to figure out ways to teach them, in my view.

SPEAKER

We have a little bit of reverse ageism in here that I think we should be very aware of. I agree with what you just said, it's our responsibility as an older generation to do that mentoring and do that teaching. I've been teaching in law school for almost 40 years. I don't see any difference between my students' abilities 25 years ago and my students abilities today. Yes, they use some other devices and they need to learn when do you use those devices in a professional setting, and how do you learn them, but I think we do a disservice to them to lump them into some kind of category that says, oh, this is about how they use these various means of communication.

They are very different than what we learned or what we learned with, but I think really it is our responsibility to figure out how to help them become professionals by making this transition from being a student and a younger person, to being a lawyer. And I think it gets in the way sometimes if we characterize it in the way some of us have characterized it. Fortunately, I don't appear in the Second Department --

HON. SCHEINKMAN

I would just say to you that I've noticed that brief writing is not as good as it used to be in the main. You can see some very fine briefs now and they were very fine briefs years ago, but I would say in the main the quality of traditional brief writing in my view has declined.

SPEAKER

Does that come from students changing or does that come from lack of mentorship and training? I think we want to be careful that we are not assuming that our students now are different than they were 20 years ago. There are a lot of things that were different than they were 20 years ago. So I think we need to really acknowledge all of those changes if we are going to try to address the different practice-ready standards.

HON. SCHEINKMAN

I haven't taught in a number of years because of many of the things I have to do, but I would say my years of teaching, I thought I perceived a general decline in essay writing.

My classes generally had a significant essay component because I thought that gave the student an opportunity to show what they learned and how to apply it and I noticed that the ability to organize one's thought in a coherent way and make a rational based argument, generally was not as good as I had seen in earlier years.

Why that is, I can't say. Some of it also could be related to a law school admission practice there was a reference to the trouble that -- fiscal trouble that law schools had a few years ago so that could be part of it too, but I think it's a great unknown.

MR. WICKS

We are going to take a ten-minute break but before we do that I just want to thank our court reporters. Sandra, right? I've done many depositions and trials and you are working harder than anyone I've ever seen. Let's take ten minutes and we'll be back in our seats.

(Intermission.)

MR. WICKS

If you can find your seats we can get started. We have about 25 minutes left. So now that we've talked about the skills, let's talk the values real quick. Four were identified in the MacCrate report. Competent representation, instilling the priorities of justice, fairness and morality, striving to improve the profession, and self development. These are the four values identified by MacCrate. Scott, are these the right values? Are there more?

MR. KARSON

Let me start by saying that I was actually privileged to know Bob MacCrate and who am I to quarrel with his assessment of what the appropriate professional values are? These are, obviously yes, these are all important values. I would -- I think that competent representation is probably paramount in my mind. Striving to improve the profession, professional development, instilling

priorities of justice, fairness and morality. I'm not quite sure if I understand what that means. I'm not able to wrap my hands around it. I'm not sure how we do that consistent with zealously representing a client.

I don't mean to sound cut throat but it certainly is a lofty goal and one I'm not prepared to dispense with, but to me it kind of, as I said, is nebulous and I would like to hear from others perhaps what that really means in the day-to-day practice of law.

MR. WICKS

Ricja, are these values too difficult to even ascertain.

MS. RICE-GHYLL

No, not too difficult. Certainly not values that can be perfected at day one, but certainly not too difficult. I would like to speak to instilling priorities of justice as a person who went to law school for just that. I would think that if you are a presiding judge or if you are advocating on one side or the other, it's always important to -- for everyone in the room to feel as though they have their day in court.

So if you are a judge or in a room where, or you are an advocate where the stakes are high, whether it be in family court or city court or housing court where you are facing eviction or anything of that nature, it's always important in terms of justice to make sure that everyone in the room feels like they've had their day and whatever role you are playing in making sure that person feels like they had their day in court. Practitioners and judges alike and law schools, we should all be striving to perfect that craft.

MR. WICKS

So our Chief Judge this morning talked about promoting justice and the importance that new lawyers understand their obligations and duties as public citizens. Today in Law 360 on my way in on the train, if you get Law 360 sometimes some interesting stories, but today's story was, are law schools helping students who want to help others? And the gist of it was that fewer are going into public service. Fewer are going into public service. And before we switch topics, Justice Iannacci, do you have any views on that? Do you see that?

HON. IANNACCI

I actually think that law schools are doing a great job. And I mean that honestly. I know that Judge Scheinkman signs a lot of student practice orders. Law schools really should continue to be involved in providing services for the community, but what I would like to see is more local bar association involvement. What I think would happen with that is a situation where students are being mentored, I like to say trusted relationship with attorneys

through the local bar association that will give them some experience to really ask questions that they may not ask in a setting at school. Because they may not want to appear like they don't know something. So I do feel like they do a good job but the local bar association could really assist them.

MR. WICKS

We are going to get into mentoring in the last segment. I want to switch to -- do you have a question?

SPEAKER

I have a follow up comment --

MR. WICKS

One thing I want to throw out first, and please raise your hand again before we lose track, New York Law -- I'm going to shift for a second -- so we heard from Justice Eng this morning about UBE and the format. Judge Fahey alluded to New York required courses, and I remember when students were actually wait listed to get into New York oriented courses, now that appears to have diminished. We see less of them offered. We see students taking less of them. And is this acceptable?

HANK GREENBERG

I just wanted to comment on Dean Diller's wonderful presentation. I think we can all agree that we now have a national system of law schools overseen by the ABA. If you forgive me, however, I feel a bit parochial about the Empire State, New York. There is a reality that it's difficult to talk about but simply must be said because it's true. New York's 15 law schools are not teaching New York Law as they once did. Their professors are not writing about New York Law as they once did. Their deans are not as engaged in the profession as Bob McKay was at NYU, and the reality is that New York is the gold standard for American jurisprudence. It is the law of choice for the world.

International contracts all throughout the world incorporate by reference New York Law. That doesn't happen by accident. It happened over the course of decades with our law schools, writing about New York Law, teaching New York Law. Now we have a bar exam that really doesn't make any inquiry about New York Law. So my question to the dean: what is the responsibility of New York's 15 law schools to teach and exalt and elevate the status of New York Law?

MR. WICKS

You thought you'd get out in time.

DEAN DILLER

You notice I'm right here at the door. Let me answer that question to say I don't know that it's our status to exalt New York Law. I do think it's our role to serve the profession and serve the bar here in New York as elsewhere but New York is our particular home and I'm very proud of the engagement of our faculty and students, with the judicial system and the profession here in New York. I would disagree that leaders in law school are not engaged with the bar in the profession. I mean, I'm vice president of the City Bar but more generally our goal is to educate our students to give them the best footing that will carry them through their 40-year career, which in an increasingly global world means preparing them to deal with other jurisdictions and not focusing exclusively on one jurisdiction. Of course New York Law is important but that global reach is extraordinarily important, particularly for lawyers who practice in New York given New York's position as a global leader.

Just to answer your more specific question, so I think a lot of the frustration comes back to the treatment of the CPLR under the new bar system. This is a longer discussion. My nutshell on it is I think the move to the uniform bar exam is a very helpful one to our students and to the profession. I think we can do a better job and focusing on how we do that New York portion which I love the idea that they are separate now but I understand the New York portion is important and we need to test on it. So now we have a number of years experience on, I think we can look at what is the best way to do it. I don't know that makes you satisfied, but that's my answer. Thank you all.

SPEAKER

Just a follow up comment on lack of students choosing careers in public service compared to other areas and it really comes down to the money

—

HON. IANNACCI

It does come back to money. You can't afford to live here and do it.

SPEAKER

-- I'm not sure exactly if the data is available, but I'm sure law schools track by each year of their graduates to find out how much debt they are graduating with versus the starting salary at a public service firm. The numbers will prove that they just can't forward to do it.

HON. IANNACCI

You are correct.

MR. WICKS

I think there is probably no disagreement on that.

HON. IANNACCI

But the question wasn't the student, it was are the law schools doing what they should be doing? So they are. The next question is are the students going into it? The problem is they can't afford it.

MR. WICKS

I want to go back to the New York Law issue for a bit. Steve, New York Law, you heard Dean Diller's, his parting remarks, is this acceptable or should there be more New York based courses, more oriented courses, should there be more required New York based courses?

MR. LEVENTHAL

My view is three years of law school, someone described it as 90 credit hours, is enough only to give a law student a taste, an introduction to concepts and not really to meaningfully teach that person a body of knowledge. I think you learn the body of knowledge when you are engaged in practicing. I don't think that it is the best way to learn how to swim is through classroom instruction. I think there is a place for classroom instruction in the process, but I think eventually you need to get into the water and until you have, you don't know how to swim. So I'm afraid that's my answer.

MR. WICKS

Scott, New York Law, how important is it to the curriculum as opposed to learning it on the job.

MR. KARSON

I think it's very important and I echo, not surprisingly, what Hank said earlier, but it makes good sense to me. It's not a panacea if I understand that there are going to be students attending New York Law schools who will end up practicing outside of New York and I also understand that there are plenty of students going to law school outside of New York who will end up practicing law in New York and they will not have the benefit of New York practice courses. But that having been said, I think that a law school graduate who practices in New York, and even one who may not practice in New York, will have a tremendous benefit by being exposed to the intricacies of basic New York Law, and by that I mean the CPLR, CPL, whatever the case may be. I've heard this and frankly I can't understand. I'm not even sure that I heard it accurately, but when questioned, somebody from one of the law schools said, well, the students started moving away from attending New York type courses before UBE. Now we've always assumed that UBE caused law students to

chose not to take New York courses and as a result some of the New York courses were discontinued because of lack of interest. But I never understood how prior to UBE that could have been the case and I would love to hear somebody from one of the law schools, if that's the case, how that was possible?

MR. WICKS

He just left.

MR. KARSON

There are hands up.

MR. WICKS

Anybody want to weigh in on that?

MR. PENSKY

I'm Larry Pensky. I'm one of the co-chairs of the state bar committee on legal education. Our committee was the one that gathered that data that's reported in the Law Journal that there was a 77 percent drop in New York practice enrollment in the 15 New York Law schools. It was around the time that the UBE was adopted. But the 77 percent has to be put into context which is that before the UBE, before the switch to UBE, only 19 percent of New York law school graduates were taking New York practice so I think that has to be put in perspective. But if I could add something else, Professor Wicks, which is that something we haven't talked about today is the role of assessment. We talked a lot about teaching and there's been a lot of what I would consider sort of broad statements about what students are and are not learning. And the reality is the ABA in 2014 and 2015 changed their standards to require law schools, who are sort of the last of the disciplines to do this, but to adopt programmatic assessment. Law schools are under an affirmative obligation to collect data on how and whether students are learning each of the things that you are talking about. We have to document that and then make changes to our curriculum or teaching if we identify. So this is an area where we don't need anecdote, we don't need well it's my sort of perspective that your students are not graduating with these skills or are graduating with these skills. These are things that we're under affirmative obligation at the programmatic level to actually measure.

SPEAKER

Let me give you a perspective of someone who -- the last time I -- well, maybe not the last time -- the last I seriously opened the CPLR was when I was studying for the bar exam. If you are not going into litigation, you really don't care. You learn civil procedure as a federal matter. You sort of know

your way around what it is and you figure if I ever have to look it up, I can. But more importantly, if you want to focus on New York Law it's a very important body of contract law just like Delaware corporate law is a very important part of corporate law.

MR. WICKS

I think that's what Hank Greenberg was really alluding to, the substantive New York Law.

SPEAKER

But instead of saying well, students don't learn New York Law, you have to ask yourself what percentage, however you want to measure it, of New York contract law differs from contract law? If I just open up Fuller Eisenberg, or whatever the case book is called now, and maybe it's not that great a difference that you have to say I need a course in New York contract law as opposed to just generally learning contracts. CPLR, yes. But other things, no.

AVIVA ABRAMOVSKY

Hi, I'm the Dean of the Buffalo State University of New York and I just wanted to say a couple of different points. There's two different changes in the CPLR and Larry pointed out yes we always had only about 20 percent taking it although Buffalo currently has the highest number of students taking New York practice but it was required of the bar so they figured they would take and that applies to all the people sitting for the bar in the State of New York, internal or external. So we have a larger number of people who figure (inaudible in the back of the lecture hall). My second point is that I think this has been an amazing conference and I'm so impressed that the Court of Appeals is here to listen to us and I hope we have further opportunities to have different conversations and really speak to each other on these points. And the second is, I understand that we -- the people who frequently have when discussing education, reflect on their own time and their own personal practice, but realistically what we are talking about here is our standards for admission to the bar in New York State. And what that means is our only real lever of creating a standard for admission and admission kicks back to what is on the bar which is kicked back to JD. So remember 90 percent of lawyers are not going to be at an elite law firm. Ninety percent of attorneys are going to be at solo firms or small firms, which is great work, I want everyone to understand that, I'm proud of that. My lawyer was a lawyer in this state, my mother was a lawyer in the state, I have two brothers admitted to practice law in New York State, I'm admitted in the Second Department -- thank you, Judge Scheinkman -- but it is very important for us to understand, almost to the consumer protection level, that the majority of citizens of the State of New York that interact with a lawyer, right, what is their expectation and will that be met? My mom was a traffic judge and she always said she took that with particular

responsibility because when 90 percent of the people, even those traffic (inaudible) it represented everything to them about the law and order and judiciary. So I just want us to think about what we are supposed to be doing, who we are serving in the public.

MR. WICKS

Thank you, Dean. I'm glad you caught my attention –

HON. SCHEINKMAN

I want to address this topic a little bit and react to a couple of things. You know, I heard the argument, I knew I was not going to be a litigator so I didn't want to learn about the CPLR. I think that generally applies that unless we are going to have a student specific bar examination, you have to have a general exam that tests knowledge across the board and that necessitates testing on areas that students may think they are never going to actually engage in. Secondly, this issue is often presented as an all or nothing proposition and it's not really that way, it's just very difficult to enforce. For example, to your point, there probably isn't a New York Law of contracts defined as such but there are particular statutes and principles that are unique. It would not be terribly difficult if a professor wanted to include in a more general course. So for example, when I taught torts, Jim you may have remembered, when we talked about products liability I almost always started that discussion by reading the pattern jury charge of what a proper products liability instructions to a jury would be, partly because I wanted to explain how difficult it was for juries to figure this out and as a way of introduction to that material. I always tried to teach about, for example, general obligations 415 and 108 which impacts on how one settles those cases. The problem with this approach is that it's obviously up to the judgement of the individual faculty members as to what he or she wants to teach, and that becomes a matter of academic freedom. And of course there are subjects that are so disproportionate such as you really couldn't do a federal civil procedure course and then say by the way, let me compare and contrast the CPLR. That would be very difficult, although one could do an evidence course, and teach it off of the federal rules of evidence and compare and contrast specific New York rules. The question is, what's going to -- do students want that, do students need that, do they see a value in that, do employers see a value in that? And to Hank's point, sometimes we lose sight of where our giants are and where they came from. I know this may be unimaginable, but Judge Jack Weinstein, while he was at Columbia, was the guru on New York civil practice. Remember Weinstein, Korn & Miller? That's Weinstein, that's the guy. McLaughlin at Fordham was the next guy. And if we don't -- if New York for better or for worse has many unique features of law where we don't go with the flow and that could be a good thing, it could be a bad thing. But if you assume that most, many large percentage, make up a number, people who go to law school in New York will end up practicing in

New York and it seems to me they ought to know something about New York Law when they graduate. Whether they get it by reason of going to a unique class where they focus on that or whether they get it by going to a general class that happens at times where appropriate to focus on New York specific issues.

MR. WICKS

Jerry, did you have a question or comment?

JERRY KREMER

And this really is a supplement to what Hank said. I come from the fact that I serve in the state legislature. Maybe parts of what you are taught in law school about New York Law may be superfluous to you but we are a bellwether state. A lot of things we do in New York are copied in state after state after state and I can name ten different laws that I was involved in that were passed here and became the laws in other states, multiple states, if not nationally. So New York -- maybe California will argue with us that it's different, but New York tends to be a state that takes the lead in lots of things, consumer protection, criminal law, that will serve a law student well.

MR. WICKS

So I wish we had more time. This really for me has been a fascinating discussion on so many levels. The MacCrate report 27 years ago really is I think wisely acknowledged and the big take away I think from that report is this is a common enterprise, judiciary, academia and practicing lawyers, that we have to develop a blueprint. We have to continue to do that to ensure new members to the profession have opportunities to acquire these skills and these values and it's a joint, it really is sort of a joint project of all of us and I think it's remarkable that we have assembled here, Paul and Lauren, for doing this, pulling this all together, it's great. So please, I want to thank not only our panelists, but you, this has been a great discussion, your thoughtful contributions towards this common enterprise discussion. So thank you very much and hopefully the discussion will continue.

CLOSING REMARKS

HON. RIVERA

Good afternoon everyone, closing remarks. I want to first thank everyone that participated as speakers, of course attendees, the wonderful lunch conversation we had, colleagues, Court of Appeals, members of the Judicial Institute and judges (inaudible) for hosting and providing wonderful food and a wonderful environment and I love being in this room surrounded by Lady Justices, so thank you very much. So my role in the couple of minutes

that I have is just to make some closing remarks and I've been taking copious notes throughout, which I will not go through because we don't have that kind of time, but I just wanted to pick up a few themes that I heard throughout the day and they are very helpful for my own thinking and development on this issue. The theme of course of today's convocation was skills, competencies and professional values (inaudible) bench and the bar from law school to practice so it struck me in part that we were often dealing with some myths and lack of information as to what is going on in law schools today so I think that has been a very helpful part of the conversation but it strikes me as an ongoing dialogue whether that's the bar, the state bar or the bar associations, that help take up this effort to insure that not only the public been their own membership fully appreciates what's going on with the law schools. And the law schools with their alumni and their own ways of publicly communicating gave some ideas of the sense of the incredible innovative projects that they have on the ground in their law schools and how they are preparing their law students, as Dean Diller said, as part of the globalization of practice but also the domestication of practice. And so I hope the Judicial Institute can take up some of that and help along the way as it has in the past because I think we have to be careful to give too much oxygen to what is not really the correct understanding of what is going on in the moment in our law schools and what it is that the practice requires.

So I also want to thank IAALS for the great work that they are doing and I look forward to the report and to attempt to suggest how we can align the competencies and the needs of employers with what they say they want and their hiring criteria to the extent that hiring criteria is a proxy for something else and not really a good assessment of who is going to be an excellent lawyer, who is a good fit for an office. I look forward to the work IAALS is going to do that in area. And I think the other thing that was pointed out during the conversations, various conversations today, how much many of these choices are very market driven, driven by the needs of the employer and those are of course the bottom line and are very market driven, driven by the needs of the students who go to law school or the applicants as they are applying to law school, and we can't forget that the market forces are very robust and have tremendous impact.

So for all the conversations around us we think it's just legal pedagogy, we can't ignore the fact that there are tremendous market forces that influence the choices we have. We've heard several people from the law schools talk about the costs and what they can do, how they tried to come back from a recession and drop in applicants and of course we already know how expensive it is for students to go.

At the same time, our focus is on skills and competencies. And I do want to say this and I think it's very important that we recognize it: Much of what also goes on law school is very important to ensure the diversification of our profession. There are many, many people who apply to law school, get

accepted and go to law school for whom that is their one and only exposure to anything dealing with the law other than what they saw on TV. They don't have lawyers who are their relatives, they don't know any lawyers, they are not going to talk to anybody, if the law school helps them with that, when they have that legal job over the summer, that may be the first time they walked into a law office. And so that opportunity to have an experiential learning environment, one that nurtures them, supports them, and helps them find their way in developing a professional identity is really critical to the diversification of the profession. And then I do want to say a couple of things about this last point being raised and I think there is much more that can be said but I'll say this: There certainly is an importance to ensuring by the regulator of the Court of Appeals, the ABA, and accreditor, in that way that students and graduates and people admitted to the bar are competent and able to practice. That doesn't necessarily mean that using the language, exalting the laws, there are many market forces that drive why New York becomes the center of commerce and the center of commercial litigation but there is something very important to ensuring that people are able to engage with New York Law. So those two things I want to say on that.

UBE does test New York Law wherever the law overlaps the basic principle (inaudible) to the extent that New York has particular differences whether they are a small percentage or a large percentage of a particular subject area, we try to do that in the New York Law courses and New York Law exam. All those things could be better. That's what the conversation is about and I think it's a very helpful one and useful for the court and academia and the profession and it is a practice of law. We are always assuming someone ten years out is better than someone ten months out. So I agree that we can do all of these things much, much better.

But we have to remember New York is very unique. There are a large number of people who come to take the New York bar exam who are not trained in New York courses specifically or across the board and they find their way and if we think that they are somehow not able to deliver and they put the public in danger, that is something of course we have to address.

So I think the Court is always very open to whatever suggestion you have. So the last thing I'll say in that there are areas we need to focus on that are pre admission that allow for one to be admitted and then there's post admission and not every subject area, not every question is a question that needs to be resolved for purposes of admitting someone to practice. There are certainly plenty of areas that can be addressed through CLE or other ways that is post admissions that can be as robust as anything somebody learns an entire semester learning in law school.

The dean mentioned before a lot of people have been in the bar review course, as I'm sure all of you did, to learn material we never learned in law school, never took the class, and we tried to get up to speed. So there are a variety of ways that we can ensure that not just those who graduated or trying

to get admitted have some basic understanding and will not commit malpractice the first day they are out there but there are ways to ensure that professionals indeed are up to speed as they continue on this wonderful career trajectory for four decades, I hope longer because I'm close to four decades so I'm getting a little worried. Thank you so much.

MR. SAUNDERS

Well, ladies and gentlemen, there you have it. On behalf of the Judicial Institute on Professionalism in the Law, I would like to thank all of you and to echo Judge Rivera's comments in that regard, to thank in particular Chief Judge DiFiore and the members of her Court for their attendance today, it reinforces the work that we do and reinforces our knowledge that we have the full support of the Court of Appeals in addressing issues of professionalism as we have been for these last 20 years.

I think this was a very successful convocation not because I think we answered all the questions that need to be answered, I'm not really sure we answered any of the questions. We've at least raised the level of dialogue and conversation and I think that's really a very important role for us to play.

There are of course open questions that remain. If Judge Iannacci is correct that the Court of Appeals should not attempt to define or specify the skills that ought to be taught in law school, then one of the open questions is how are the law schools going to decide what those skills ought to be? And if they are to do that, how will they measure the outcome?

How will they decide whether the students have in fact attained the competence in the required skills? All of those are open questions and open issues. I can't answer those questions but I can promise you on behalf of our Judicial Institute that we will continue to address those questions in the days and months and years ahead because we think those questions are essential to the public's perception of the legal profession as an honorable and learned profession. We pledge to you that we will continue our vigilance in that regard. Again, thank you all very much for coming. We will continue this discussion. I wish you all safe travels home. Thank you very much.