Deans' Convocation Addressing Legal Education and the Skills and Values Requirements for New York Bar Admission

Cravath Swaine & Moore
825 Eighth Avenue
New York, New York 10019
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APPEARANCES:

Judicial Institute on Professionalism in the Law
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MICHAEL CARDozo
HON. RANDALL ENG
SOPHIA GIANACOPLOS
JERRY KREMER
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CATHERINE RICHARDSON
SETH ROSNER
STEPHEN WEINER
JAMES WICKS
CATHERINE O'HAGAN WOLFE

November 14, 2017 Attendees
Law School Deans and Designees
Albany Law School, Dean ALICIA OUELLETTE

Brooklyn Law School, Dean of Career Services
& Professional Development KAREN EISEN &
Dean of Professional Legal Education STACY CAPLOW

Benjamin N. Cardozo Law School, Vice Dean
MYRIAM GILLES
Buffalo Law School, Dean AVIVA ABRAMOVSKY
Columbia Law School, Vice Dean AVERY KATZ
Cornell Law School, Professor JOHN BLUME
CUNY School of Law, Dean MARY LU BILEK
Fordham Law School, Associate Dean for
Experiential Education LEAH HILL

Hofstra Law School, Professor JENNIFER GUNDLACH

New York Law School, Dean ANTHONY CROWELL

NYU Law School, Vice Dean RANDY HERTZ

St. John's Law School, Dean MICHAEL A. SIMONS

Syracuse Law School, Dean CRAIG BOISE
Touro Law School, Provost PATRICIA SALKIN

Touro Law School, Provost PATRICIA SALKIN
MR. SAUNDERS: Good morning everybody. My name is Paul Saunders, and I'm the Chair of the New York State Judicial Institute on Professionalism in the Law. I want to welcome all of you to this convocation. I think we're going to discuss some timely, interesting, and challenging topics. I want to thank all of you for volunteering to lead various discussion groups. The procedure will be generally a committee as a whole; we're not going to break up into smaller groups. The proceedings are being transcribed; what we do with the transcription afterwards remains to be seen; it would be subject to discussion among all of you after the conclusion of the convocation.

Let me say just a brief word about the New York State Judicial Institute on Professionalism in case some of you are not intimately familiar with it. Many years ago, Judge Judith Kaye who was the Chief Judge of the New York Court of Appeals, decided to respond to some very critical things that were being said about the legal profession. We're now talking probably 25 years ago, and she decided to create a commission to look into the legal profession, whether it was doing the right thing, whether it needed to change itself, why was it being held in such low repute. And she asked Lou Craco, who was a practicing lawyer in New York City with Willkie, Farr & Gallagher, to create a commission known as the the Craco Commission, and some of the people in this room were actually on the Craco Commission. There were maybe 15 or 20 lawyers and judges who held a series of town hall meetings around New York State to meet with Bar associations and others to understand the legal profession: was anything wrong with it? What needed to be fixed? And how to go about fixing it if it needed to be
fixed. The Craco Commission then came up with a series of
recommendations -- probably 40 or 50 recommendations -- one of which
all of we practicing lawyers know well, because it is a requirement
that lawyers enter into retention agreements with retention letters to
their clients setting forth the terms of the retention, and the fees,
and so forth. That proposal came out of the Craco Commission. The
Craco Commission also recommended that there be established in New
York State a permanent institute to monitor the legal profession to
speak out, when appropriate, about things relating to the legal
profession, and, most important for today's meeting, to facilitate
dialogue between the Bench, the Bar, and the Academy about issues
relating to the legal profession. I have put on the table several
booklets that are the kind of things that the Institute publishes
after our convocations. For example, a couple of years ago, we did a
series of five convocations in which we looked at the question of
lawyer independence from many different perspectives. What does it
mean? How do you do it? Are there different rules for different
lawyers in different kinds of practices?, and so forth, and we
typically publish these books -- booklets -- after our convocations
and circulate them pretty widely around New York State and elsewhere.
What brings us together today is a topic that we have actually been
thinking about for some time, and that is a robust discussion among
the New York State law schools about the new rules established by the
New York Court of Appeals for admission to the Bar, and some of the
new rules that are being promulgated by the ABA - outcomes assessments
and other things like that. We've seen a lot of those -- those of you
who published your outcomes assessments, for example, we've seen those. One of our perceptions was that what the Academy needed to have was a principled, relatively private discussion to talk about these new rules -- how easy or hard they are to implement, whether they should be changed, modified, how are they working, what difficulties are you having, and coming to grips with the new rules, and so forth. I want to say absolutely clearly I do not have any inside information, but my guess, looking at the state of play, is that these rules are in flux; that is, I would not be surprised if these rules are changed in the coming years. I do know that, for example, when the New York State Court of Appeals wrote rules that talked about skills and values, they were, I think, deliberately not defined -- left open, left vague -- to see how the law schools would react when it comes to inculcating skills and values into their curriculum. Whether that's going to change or not, I have no idea, but I expect that that would be an important part of today's discussion. What I thought we would do now -- we have a very, very full schedule -- we're going to discuss the list of topics on the agenda that you all have until 12:30, at which time we will hear from Alli Gerkman from the Institute for the Advancement of the American Legal System in Denver; many of you or probably all of you are familiar with the Institute's project, Educating Tomorrow's Lawyers, and Alli has been the director of that project for some time. She'll tell us more about the survey that she conducted a couple of years ago to try to get some empirical data about what skills lawyers actually needed to have in practice. So we're going to have a "committee of
the whole” discussion. We have many discussion leaders. Mary Lu
signed up for, I think, almost every available discussion.

MS. BILEK: I didn't know what the magic words were.

MR. SAUNDERS: Well, "no" is obviously not one of them.

MS. BILEK: I'm not good at "no."

MR. SAUNDERS: So what I'd like to do before we get started with
the very first panel discussion is to ask everybody in the room, very
briefly, introduce themselves, and I'm going to ask each one of you,
for no particular reason other than it would be fun, to give us one
fun fact about yourself, okay? I'll start. I'm a retired partner at
Cravath Swaine & Moore; I've been a litigation partner for many, many
years. Before that, I was in the Army; I teach at Georgetown Law
School one semester a year, and the fun fact for me is that I am in
graduate school. All right, Judge.

MS. KRESTER: Rachel Kretser, recently retired from the Bench
and now an adjunct at Albany Law School. I guess a fun fact is, I fly
planes when I'm not doing legal things.

MR. KREMER: Arthur Jerry Kremer; I'm from the law firm of
Ruskin Moscou Faltischek; I was about to say I'm a trustee of Hofstra
University, but that would be an advertisement. I could talk about
the smart thing I did: after 23 years in the Legislature, I had the
wisdom to leave.

MS. GERKMAN: I'm Alli Gerkman, Director of Educating Tomorrow's
Lawyers at the Institute for the Advancement of the American Legal
System, which is a mouthful. A fun fact, I guess, given the topic
today and given what we do when we think a lot of how is it that
people develop some of skills and competencies that make us successful as lawyers, what I'll say is, my first job was at Burger King, and I was Team Member of the Month my first month there.

MS. OUELLETTE: I'm Alicia Ouellette, and I'm the Dean of Albany, and after the week I've had, I don't think I have fun facts for you, but my first job was at Dunkin' Donuts and I was fired.

MS. EISEN: I'm Karen Eisen; I'm the Dean of Career in Professional Development at Brooklyn Law School, and my fun fact is that I have seen Bruce Springsteen in concert 155 times, and I did see Springstein on Broadway; he was wonderful.

MS. CAPLOW: Hi. I'm Stacy Caplow from Brooklyn Law School, and the fun fact is, I'm a crossword puzzle wiz, but the equally fun fact is, I knew Randy Hertz -- I've had the pleasure of knowing Randy Hertz before his gray hair.

MS. ABRAMOVSKY: Hi. I'm Aviva Abramovsky from Buffalo Law; I'm from New York; my father was a professor for Fordham University for a very long time. So the fun fact is, I had to do that in crayons on a paper plate in kindergarten. I'm the Dean of Buffalo Law and grew up here; my father was professor at Fordham, so this is my home stomping ground, and I suppose I just gave you a batch of fun facts. But I can remember sliding down the bannister of the old Fordham building all the time. The security guards would stay to do basically day care, and when I was young, we would get free tickets, you know, to go shop at Lincoln Center, so that's why I learned the difference between doing something right and wrong.
MR. BOISE: I'm Craig Boise, and I'm the Dean of Syracuse University College of Law. I've been there for a little over a year, and I guess the fun fact about me is, I came to the law through law enforcement; so I was a police officer for five years in Kansas City, Missouri and actually was a sniper on the S.W.A.T team for a couple of years.

MS. RICHARDSON: Catherine Richardson, retired attorney from Bond, Schoeneck & King, Syracuse, New York office. I was past President of the New York State Bar Association; I was on the original Craco Commission, so I'm the dinosaur in the group; and the fun fact is John Gross, at the other end, having dinner with him, convinced me to sign up for fly-fishing school and I'm going in May with John.

MS. GIANACOPLOS: Sophia Gianacoplos; I'm the Executive Director of the New York County Lawyers Association, and the fun fact for me is, I love to bake, and probably not fun for you, but I really enjoy it a lot.

MR. HERTZ: Randy Hertz; I'm the Vice Dean at NYU Law School. Since Stacy mentioned my gray hair, I would just like to note that it started turning grey when I started teaching students to defend clients in delinquency cases in my clinic at NYU Law School. I would hear from students that, for example, one student would go up to drug dealers on the street and say, "I need to find the following witnesses. Can you take me to them?" and would then go with them through dark alleys, and that's when my hair started turning gray.

MR. CROWELL: Anthony Crowell, Dean of New York Law School, and I'm debating which is the most fun fact, but I was the youngest real
estate agent in the State of New Jersey for a short period of time, my first job in college.

MS. GUNDLACH: I'm Jennifer Gundlach from Hofstra Law School, and up until about a year ago, I oversaw all of our experiential programs and have been involved in a variety of ways at the state level as well with respect to all of the relatively new rules.

MS. HILL: So my name is Leah Hill; I'm the Associate Dean for Experiential Education at Fordham Law School. Picking up on the Dean on my first job -- it's not my first job, but I graduated high school early and decided to go to a temp. agency to work another six months before going to college and decided I could do keyboard operating based on a summer job I had with the City. I was kindly asked to leave at noon after ruining several cards that I was given. That's my fun fact.

MR. KATZ: I'm Avery Katz; I'm Vice Dean for Curriculum at Columbia, and my fun facts got a lot less fun once I realized they were going to be written down. So I will just say that I am very proud to be an accredited regional referee for the West Side Soccer League.

MS. BILEK: I'm Mary Lu Bilek; I'm the Dean of CUNY Law School, recently back after being the Dean of the University of Massachusetts. My fun fact -- well, one fun fact is that if the very first Judicial Institute recordings are going around, I'm in there -- that's how old I am -- because I presented at one of those -- but my -- and I guess this is related to Craig's fun fact, notwithstanding the fact that Caplow & Associates has just called me the most liberal law firm in...
the United States. I lived with marshals sometimes because of what my father -- U.S. marshals because of what my father -- did and the danger he was in and with my husband.

MR. ROSNER: Seth Rosner, from Saratoga Springs, New York where I practice still partly in New York City; I've practiced law for probably 40, 50 years with my dad and brother; I was adjunct professor at NYU Law School for almost 30 years. My fun fact -- and you can look out the window here and look down at my old home -- I was legal officer and qualified legal watch onboard USS Intrepid.

MR. GROSS: John Gross. I practice law on Long Island; I'm a member of the Institute, and I've spent the last two-and-a-half years as a president of the New York State Bar Association Foundation, and every time I walk up to one of my friends, they run away because they know I'm going to ask them for money.

MR. WEINER: I'm Steve Weiner; I'm a retired partner and senior counselor with the firm of Pillsbury Winthrop Shaw & Pittman, and I'm also an adjunct professor at Cardozo Law School and Brooklyn Law School; and my fun fact is that, together with my son and his friends, I'm addicted to fantasy football.

MR. CARDOZO: I'm Michael Cardozo of Proskauer Rose. I had a few jobs before that with the City; and I guess my fun fact for this context is, for many years, I was an adjunct professor at Cardozo, and one day, I was called as an expert witness in Canada, and in qualifying me, the lawyer -- my lawyer -- said, "Well, do you teach, Mr. Cardozo?" -- this is in Canada; I said, "Yes, we are Cardozo Law School," and the whole room broke into hysterics.
MR. ENG: Good morning everyone. My name is Randy Eng; I'm presiding justice -- I've been a judge for about 34 years, so -- which leads me to my next point, and that is that I have a knack for doing my life backwards. I was a judge for ten years; before, I was a father. So right now, I'm still doing things that many of the younger people are doing and paying the price for it; and the academia, I've been an adjunct professor teaching criminal law subjects at St. John's, and I think that -- let's see now -- some of us have been in the service, right? Paul and myself. Has anyone else been in the service and still have their kids? Great. Congratulations. I wish everybody a late Veterans' Day. Thank you.

MR. SAUNDERS: Lauren?

MS. KANFER: I'm Lauren Kanfer; I work in the Office of Court Administration for this Institute and for the Permanent Commission on Access to Justice; I'm thrilled to be in the room with all of you esteemed people, and my first job aspiration was to work in an ice cream store, and I was not hired.

MS. WOLFE: I'm Catherine Wolfe; I'm the Clerk of Court at the Court of Appeals for the Second Circuit; I've been a longtime member of the Institute and its predecessor group. A fun fact, when I was in law school, the only summer job I could get was at an amusement park working the grill and later, the cotton candy machine.

MR. SAUNDERS: Well, thank you all very much for those fun facts. Let's get started with our very first discussion group. Again, the format is, we have discussion leaders who have volunteered to lead the discussions on these topics. Some of you have actually
recommended some topics which we've added to our agenda. And I'll keep track of the time, but I'm not going to put any time limit; we have four discussions between now and 12:30, so we should have more than enough time to deal with these four discussions; and then, we'll break for lunch and have our luncheon and keynote address from Alli Gerkman. So the discussion leaders, as you see, for this very first discussion are Randy Hertz and Mary Lu Bilek. The topic is -- and I'm saying this just for the record -- what are the best practices for ensuring that the required skills for practice are incorporated into law school courses? The words "required skills" in this agenda are in quotes because, at least, the New York State rules do not tell us what the required skills actually are. So let me turn it over to Randy and Mary Lu Bilek.

MR. HERTZ: I hope you don't mind my giving a personal historical note to follow up on what Paul said earlier about the fact that these things change and also what he said just now about the whole concept of required skills. Back in the late eighties, when the ABA created the MacCrate Task Force on narrowing the gap which looked at skills and values and which led to the adoption of the ABA's rules on the skills and values in the early nineties, I was a reporter for the task force, and I developed a hundred-page inventory of skills and values for them, because they needed what they viewed as a blueprint for what skills and values are needed for effective practice which could guide what they would then say to the law schools on what the law schools should teach. The Task Force concluded you have to have a view of the end product of what lawyers need to know when they
graduate from law school and become members of the Bar and then work backwards to figure out what law schools should teach. When we drafted that document and when the Task Force adopted it, we had in mind that it was silly to try to develop a fixed set of skills or values and that this has to be a living, breathing document. And so, although we articulated a lot of skills and values in great detail, what we said was, we imagine and we expect that others will build on this and refine it in the future and that this thing will change over time and evolve. So then, I was on the Task Force formed by Chief Judge Kaye in the 1990s looking at that for New York State, and we had embellished on it but also said we expect this thing to grow and evolve; and then, I was on Judge Rivera's Task Force, which drafted the new Court of Appeals' rules, and as you say, we purposely left things open and broad, and we said we expect that many flowers will grow and that law schools will figure out for themselves what is the appropriate way to fulfill their mission and teach the skills and values that they regard as important for the graduates of their law school. So I think that's an important backdrop for everything that we say and do in this field, and I expect that, as Paul said, there will be changes, because the whole point of this is evolving over time and keeping in tune with the changes in practice and also the changes in law school pedagogy; and those things evolve over time, so therefore, naturally, requirements and rules and recommended practices need to change as well.

MS. BILEK: I'll make this brief. Randy and I served together on an ABA Task Force on the future of legal education. Lillian --
Lilly did discuss specific skills, and that's how some specific skills we'd like to think we influenced, the fact that there were specific skills that were baked into the ABA standards, although I'm not sure that Randy and I -- the full list of either of ours would have made it all the way there. I'll also say that because of the work that was done under the MacCrate Report when the law school started in 1983, that was our blueprint, was our understanding that what we needed to do to become lawyers who were prepared for practice, and instead of focusing on skills, we focused on competencies. So not to muddy the waters very much but to think about the fact that while there are skills, the skills of oral communication, the skills of interviewing, that competency-based education embraces a variety of skills but makes sure the main competencies lawyers need are achieved by the time a student graduates. And just to be more concrete, our -- at the time, our -- six competencies were -- I think I can remember them -- professional responsibility, management of effort, clinical judgment, communication oral and written, theoretical perspectives, and legal analysis -- I knew there was one I was missing -- legal reasoning. But I think, you know, to loop back to where Randy was, there's -- this is also related to the ABA standards on assessments that thinking about skills in relation to outcomes and in relation to the pedagogy of law schools is kind of, I think, where most of us are these days, so -- because the ABA is right in the middle of the application of its standards. So I think all law schools this year for the first time need to have started their first assessments, and last year was when all law schools needed to have stated their outcomes. So I don't
think you can separate from training teaching required skills and the
kind of outcome and assessment practices that the law schools are
putting into place.

MR. HERTZ: So as a way of starting just a general conversation,
I thought it might be worth having the representative schools talk a
little bit about how have you identified the skills -- since we're
starting by talking about skills, how have you identified the skills --
that you regard as most important to teach in your law school, and
how do you ensure that all JDs and maybe also all LLMs who go through
your law school learn those things? Because it's the volume portion
of this that is often a challenge, because, of course, we can offer
lots of courses, but we've got to make sure that all students learn
the lessons we want them to learn about skills. So I'm hoping that we
can just go around the room and have each representative of the school
say a little about those things? Does that seem like an okay way to
begin, Mary Lu?

MS. BILEK: Yeah, and we might want to add what the one was that
that was most hotly debated. In my experience, there's one or two
skills that some people feel passionately about but others feel either
can't be taught or that they don't want to enforce, and --

MR. HERTZ: That's a fun fact.

MS. BILEK: Right. Right. That's a fun fact.

MR. SAUNDERS: Let me add to that question something that
interests me and, I believe, that others in the room share as well:
is there a one-size-fits-all requirement, or is there room for
diversity? There's only one Bar exam. There's only one Character and
Fitness Committee. So where is the room for the diversity in
inculcating professional values and teaching professional skills? So
let's go around the room and hear about the various rules.

MR. HERTZ: And, sort of, to be honest, so we don't have to
depend on volunteers and Mary Lu and I don't have to cold-call anyone,
why don't we just go around the room and each representative of a law
school in order to know what's going on in different schools.

MR. SAUNDERS: Why don't you identify for the record what school
you're talking about.

MS. CAPLOW: Sure. Stacy Caplow from Brooklyn Law School. So I
think we're slow out of the gate a little bit in terms of being
thoughtful and deliberate about making choices. So I think one -- the
one skill that is clear and that we reinforce a lot -- is writing so
that students have writing -- and that's also an ABA requirement, that
students have writing -- throughout the curriculum. Our curriculum
committee currently is really hard at work in developing what we're
calling a portfolio system where, while it's not a graduation
requirement, it's a set of guidelines for students to map out things
they should have experienced while they're still in law school -- not
necessarily under a guided system -- it could be at a job, it could
be, obviously, in a clinical, an externship or a simulation course,
but there's sort of a checklist of writing opportunities, other types
of skills in professional identity growth opportunities. So that's,
sort of, one of the more deliberate plans that we're working on, but
it's a work in progress. Other than that, we've also included in the
first-year mandatory course some other skills such as negotiation -- a
client letter and things like that -- and we have a one-semester clinic -- or externship graduation requirement so that every student has to have at least one real-world experience as opposed to simulation, which has been a challenge, because we have an evening division. So we have a little bit of trouble, but our evening division has shrunk a lot, so that, as it turns out, probably only about ten of them out of the whole really have to apply for a hardship waiver, and they have to -- compensate by taking four additional simulation credits extra the six credits of experiential ABA required course credits. It's an accommodation that's useful for the evening division to the extent they really cannot participate for one reason or another in a clinic or externship. So that's kind of where we are. We have not had a deliberate faculty meeting conversation of this scale that would be required to develop the kind of thoughtful programs you just articulated.

MS. EISEN: I'm just going to add that, one -- this is Karen Eisen, Dean of Career Services at Brooklyn. One of the things that we're working on from my perspective is the development of those soft skills, so communication, responsiveness -- all these professional -- professionalism -- things and how to teach those, and we -- you know, we hear these -- we hear the need for these kinds of things from our employers. We have a lot of faculty that understand it but a lot of faculty that don't think that it needs to be taught, and it's something that we should be just handling from, you know, a programming perspective from the Career Services. But we have recently proposed and gotten provisional approval for a credit-bearing
class in professionalism; that my dream is that one day, it will be a mandatory class for one Ls. As of right now, it's being -- it will be tested as a kind of four-day boot camp during an intersession, and we'll really focus on those soft skills -- communication, responsiveness, how to write an e-mail that is not a text with emojis -- you know, you laugh, but I'm sure you've all seen it. There's really -- there's really a disconnect -- and I hate to sound old and, you know, talk about generational differences, but we're educating the generation that -- where they don't talk to each other; they text and they don't know how to read body language and they don't know the subtleties and nuances of a conversation; and so, we think it's very important for them to be able to understand those things as well as things like time management and prioritizing and asking for help and seeking feedback and giving feedback. So all of those -- what are generally-termed soft skills -- are things that we're also trying to incorporate into teaching, and I love people's suggestions on how best to teach those things.

MR. SAUNDERS: That raises a question in my mind. How many of you have required courses in professionalism?

MR. BOISE: When you say "professionalism," you mean beyond professional responsibility?

MR. SAUNDERS: Beyond professional responsibility. All right. Thank you very much. So that was the Brooklyn Law School. Who's next?

MS. GILLES: Hi, I'm Myriam. So I'm the Vice Dean. I'm relatively new being Vice Dean, so, you know, bear with me, but I was
actually Chair of the Committee, and maybe this was -- you did such a
good job on this so this is why I'm now Vice Dean. I head a committee
-- a New York State policy committee -- that was tasked to sort of
figure out what -- the question you just heard -- what do we do and
how do we make sure that all the students have these skills -- and,
you know, the one question I don't think you proposed, unless I missed
it, is, administratively, how do we certify this and how do we ensure
it? I'm happy to hear a culture could have done it -- this is two-
fold -- and second of all, we don't like to have a ton of mandatory
stuff. We have a hard time -- you know, we don't have the students --
it's hard to keep track of who's in what room at what time for what
sorts of things, and -- even if there is a room of students who are
actually paying attention and actually absorbing these skills. We
cannot say as to what's mandatory. I believe what they think
mandatory means is that you're all talking about writing and PR and I
think in this case -- in other words "what's imposed upon us." But
with this new requirement, I think our approach was to gather all the
things that we already require to satisfy the ABA six credits -- our
in-house clinics, our January skills month, which is a fun course that
students can take in a kind of boot camp format, all sorts of upper-
level skills courses, drafting courses, pre-trial practice courses.
So those are all just kind of the formal ways. What we focused on and
what we continue to focus on and, quite frankly, struggle with are all
the less formal things. Things that are not credit-bearing things,
that don't go on a student's transcript. And those are the things
that we, again, have difficulty in. We call this the extracurricular
program. So we think, if, for instance, your education falls into
that, we start professionalism training now, we basically try to scare
the crap out of you about all the things that have done wrong -- you
know, at this moment, you are becoming a professional. We have a
judge come and talk to them about all the things he's ever seen go
terribly wrong, how lawyers get their licenses stripped; I mean, they
are so scared; it's right after that that our Dean of Students says
that she gets a ton of people who need to make peace with their
application, because they realize, "Uh-oh, I forgot something" or
"I've misstated something." So we start professionalism there and
then. The question is how to follow this clearly during the first
year and in the upper level, and what we've come up with is really
clear. In response to this requirement, they set up a program on
Sunday because we're with Cardozo, other schools can do this on a
Saturday, instead of requiring Sunday sessions for everyone else.
This is not popular, as you can all see, and this is my first year --
I was Vice Dean last year. I think the only thing that parents ever
called me about was, they said, "Counselor, why the heck does a senior
have to come in on a Sunday?" And these were -- you had to attend two
out of the four that were spread out across the semester. They
discussed some of the issues that Karen just talked about in an all-
day setting. And the idea this year is whether we could actually give
them a quiz. Because, again, mandatory sounds great, but we're in the
business of teaching, so the thing about mandatory is "So what if
we've got people in the room? We'd want to make sure they are
actually absorbing. We just did one a couple of weekends ago; we did
a bunch of hypotheticals and improv. things, and it all looked great on paper, and as I looked around the room, I thought, 'Okay. How many of them are actually paying attention? How many of them are on Facebook? How many of them are good souls or who laugh through this?' You know, it's hard to know.

MR. SAUNDERS: Let me ask you this question, Dean. Do you require professors to incorporate experiential learning or skill training in their courses?

MS. GILLES: Yes, of course. I go to each one of their classrooms and I can . . .

MR. SAUNDERS: Well, I thought that was going to be the answer, you know, academic freedom being what it is.

MS. GILLES: I don't think -- it's not just academic freedom. We just mandated these things but we really killed all the things that are interesting about what it means to be a law professor and law student.

MR. SAUNDERS: That being the case, do you think it's realistic for people to expect that skill training will be incorporated into the law school curriculum?

MS. GILLES: A little bit. I think a little bit. But I frankly think that it's a little bit heavy-handed to try to mandate this. I think we all want students to -- because, as Karen has said, we want them to write not just good e-mails when they graduate, we want them to represent what's so great about our schools and our profession, and we do try to ensure that.
MR. SAUNDERS: There's a reason why I asked that question, because as Alli Gerkmans can attest, the Dean at the University of Denver Law School told me that they require skills training, I think, in all of their courses. Am I misremembering that?

MS. GERKMAN: I don't think they require that. What they have is -- they have a program where they're guaranteeing the students that they can have a certain amount of experience-based education if they choose to. I don't think that's required in the courses, but they are trying to carve out a big portion of the curriculum for that.

MS. BILEK: The idea that law professors who have never practiced and who don't understand the phrase -- experiential education getting incorporated into their classes, I think, is something that I feel is a little tricky. Many law professors at most law schools, their only practical experience is clerking. There are skills that you could incorporate into the classroom based on that, but to ask a law professor who's never interviewed the client to teach interviewing --

MR. SAUNDERS: This sounds like it's right out of the MacCrate Report. Where have I seen that before? Judge.

MS. KRETSER: One of the things that an academician -- a brilliant academician -- who hasn't been out in the real world, if you will, recently might do is have guest lecturers. I have guest-lectured in addition to being an adjunct, and that brings -- and they can have you guest-lecture on whatever practical skills you may, you know, consider yourself an expert at. But it brings a little bit of the practical into the courses that are taught by scholars.
MR. SAUNDERS: All right. Let's keep going around the room; I guess the next is Buffalo?

MS. ABRAMOVSKY: So I have actually only been at Buffalo for four months, so bear with me. You know, I'm very impressed with the experiential learning: it's broad, it's deep, there's required courses. What I think is really fascinating -- this is possibly a consequence of requirements -- is that they're doing -- we do something called a practicum, which is an experiential thing that's scaleable -- we have a lot more students. The issue with classical clinical education is that either it's required for everybody or basically -- you know, a clinic can take only take five students a year. We have an enormous process that's not realistic to deal with 500 or 700 students to only have classical, clinical training. So because of that, I think what we're seeing is moving to all different kinds of models of experiential learning that I'm not sure necessarily were first foreseen when these kind of required skills and values that were articulated, because that's a function around the reality of the training occurring for the practicum where you have a type of in-class course. So the issue about what we're actually talking about when you say "experiential learning," I just wanted to make it more clear. Two, I am very proud of the professionalism course. If anybody wants to see the syllabi for my professors -- you should know it is being revised -- it's not in revision yet -- to make the Buffalo route the most attractive for the job market, as well as more successful emphases in their coursework. Two issues that you wanted to talk about that I think are not addressed enough in this conversation, the
real elephant in the room -- the hot topic that no one wants to
discuss -- is actual work. You know, there's -- we have a lot of
students who work for lawyers for money, starting possibly even before
they're necessarily supposed to. They would prefer to work for
lawyers for money than almost any other form of training, especially
since, you know, you may have a certain demographic set, a more
working-class background. But work for lawyers is not recognized in
this hierarchy at all, you know, and I really think that should be
something you want to think about, because we're pushing away actual
work experience for noncredit -- for money -- into these accredited
experiences, and that has a financial effect on students who really
need the income. I just want to point that out as a thing to talk
about. Again, this is the hot topic that everybody gets really riled
up about. And the second point is computer literacy or Internet
literacy. There is a consistent debate on whether or not when we say
"skills," do you mean -- you know e-Discovery, is that a real skill,
or is this just a passing fad, these computers? There is a tendency
to think that e-skills are not real lawyer skills as opposed to
different types of drafting skills -- the more traditional
understanding of what required skills are and yet, as we all know in
the true practice of law, has gone almost entirely online and virtual.
So there's not enough being done there; there's not enough support
from all parties in different experiential communities for the exact
method that the law schools should make and should bring these types
of skills into an equal playing field as to certain things. For
instance, law school teachers work with quills, right? But we don't
work with quills anymore, and --

MR. SAUNDERS: Some lawyers do.

MS. ABRAMOVSKY: No, I get that.

MR. SAUNDERS: When you argue in the Supreme Court, they give
you a quill and a notepad.

MS. ABRAMOVSKY: Definitely. But this is my point. This is a
hot topic, right? This is a point of conflict.

MR. SAUNDERS: Let me press you on that. The New York State
Court of Appeals rules say that -- I'm reading from Rule 2(iv): "A
student may earn up to six of the fifteen required credits through law
school certified non-credit bearing summer employment supervised by an
attorney in good standing..." et. cetera, et. cetera, et. cetera.
That's not what you're talking about, right?

MS. ABRAMOVSKY: I'm talking about during the year.

MR. SAUNDERS: But is there any reason that could not apply to
work during the year as well?

MS. ABRAMOVSKY: My reading of the rule is that it doesn't.

MR. SAUNDERS: It clearly doesn't. Is there any a reason why
that shouldn't apply?

MS. ABRAMOVSKY: I actually would think that would be a great
thing to do. Now, I understand that in a lot of ways, it's a control
issue, right? When you have someone working in a firm, who is
trusting the lawyers? They're not really supervised in the same
pedagogical way as an internship or externship would be. I get that.
It's a question of quality control. But there could be ways in which
we deal with that, and I really do think that that issue is for
students who need to work -- and they really do need to work -- to
figure out a way in which we can grant some credits for them and not
push those working hours out into required, unpaid, credit
experiences.

MR. SAUNDERS: Michael Cardozo wanted to ask you a question.

MR. CARDOZO: Under suggestions from both the Institute and the
United States bar, I know that the ABA just recently changed its rules
to allow credit for students who are working for pay; it used to be
just for non-pay. So my question is whether you could provide a
program in which we can find potential employers. Your thoughts on
that. If a faculty member in some way could supervise them, that will
not at all be as expensive as a clinic. Wouldn't that be meeting some
of those issues that you're raising?

MR. ABRAMOVSKY: Right. So that's a move in the right
direction, if they could be paid for externships. But it's still not
the same as just working in the firm. They're two different unique
paths. It's a pedagogically different experience when you bring in
someone to be an educational supervisor as an extern as opposed to
just having someone working in the Court. I mean, you require all
different kind of things from the supervisor, you require them to do
all different kinds of direct supervision -- there's a lot of
compliance paperwork, there's lots and lots of work on both sides. My
point is that if lawyers just want the students to work for them, I
assume they just want work for lawyers, you know, just like in the old
days, and we don't have a space for that. You know, we can craft
externship opportunities as well, and I think the problem is they're all discussing it or, having discussed it, adopted it already; some are working to figure out, you know, exactly what we want to do with that. But what worries me is thinking about how much this pushes out, you know, traditional work, which is a concern for me with my students just generally, because I would rather have them working at the firm to working as a security guard or a waitress or a bartender, you know, to pay rent and pay for all these other types of things and all that; I'd rather have them working in a firm and at least getting that experience, you know. So I just want to bring this up, because there's a tendency to think, still traditionally, that students are all young, that they have access to loans, that they have, you know, money to burn; they're not, you know, single mothers or single fathers or attached to any group to give them this plan, and that their decisions of what they're doing for their own finances are impacted as well.

MR. SAUNDERS: Well, let's put a pin in that proposal, because I think that's something practical that clearly ought to be considered by people who are willing to participate in this program. Let's keep going around. Syracuse, I think, is next.

MR. BOISE: So let me just follow up on what Aviva said. I'm on the ABA Standards Review Committee, and I supported the repeal of the prohibition on allowing students to be paid for credit-bearing externships, and in that process, there was a very strong student voice at the time, and it's for the reasons you just articulated: that students need to earn money; they don't want to subsist on their
loans -- it's not prudent to do that -- and so, I think it makes a lot
of sense to allow students to get credit for those externships where
they're being paid. The core question about skills, I agree with what
Randy said, that this is an evolving issue -- what skills are needed
and relevant and so there's history at Syracuse about how the skills
curriculum was developed, and I'm fairly new and we're in a process of
revamping and rethinking our curriculum. And so, in doing that, we're
kind of focused on what are the sources for the kinds of skills that
students need -- in other words, who are we asking about this; and I
agree with the points made earlier that faculty are generally not in a
position to be able to identify those skills because they're not in
practice, and if they were it was many years ago and probably for a
very short time. So we're focused on what our alumni in practice have
to say. I spend a lot of time trying to keep track of where the
practice of law is moving in terms of the future of law, and I think
that those kinds of things can inform the Skills students need. But -
- and there's some that always recur when we talk to alumni and people
at firms who are assessing our graduates, things like writing; that
still serves as a big one, and that, quite simply, has been part of
the curriculum for a long time, but that is a skill in which there
always seems to be room for improvement. Increasingly, things like
networking and business development, understanding client perspectives
in given matters, and understanding how as a lawyer you have to try
and understand your client's problem and how you can be helpful in
solving that. Project management. I hear increasingly that lawyers
want to hire people that they can give a project to, and know they
will figure out the process for managing that project, which also involves collaboration with other team members, whether it's with other lawyers in the firm, with lawyers in other firms. Presentation skills -- and this ranges from opening arguments to client presentations, being able to present effectively; resume writing; in the age of communication and in the age of text messaging, I think a lot of communication face to face is most definitely a lost art. So those are all things that we've identified as important, but I think that one of the best ways -- when we're talking about skills, one of the best ways -- for students to develop those is by doing. There's a limit to the extent that you can put students in a classroom and tell them about how to do those things; they really have to do them in the context of work. So I'm a big proponent of putting students in situations where they actually have to do these things, which is why we really have doubled-down on and expanded our externship program. And I think when students are in work situations, it also helps to drive them to learn, because they realize their own deficiencies as they model themselves after peers in the office who are maybe a year or two in practice, and I think that drives for them the necessity to learn these things. I'll just say one other thing. I think there was a comment made about providing courses for students or instruction for students on Sundays or during lunch hours -- that kind of thing -- to kind of squeeze some of these things in and around the rest of the curriculum, and my observation about that is that I think that students won't value those if we don't assign credit to them; they just are annoyed by the fact that they have to do them, particularly
if you're making them graduation requirements. So I think if we
really value these skills, we've got to give them credit in the
curriculum and be very upfront about that.

MR. SAUNDERS: Thank you very much, Dean. Ms. Salkin?

MS. SALKIN: I'm Patty Salkin; I'm the former Dean at Touro Law
Center; I'm now the Provost for the Graduate Professional Division.
Dean Harry Ballin is doing the other part of his job and is out of
town fundraising, so I apologize for him not being here; and our
Associate Dean for experiential learning also had a previous
commitment that could not be rescheduled, so by default, you got me.
I'm sorry.

MR. HERTZ: We're happy about that.

MS. SALKIN: So I won't repeat some of the things that everybody
has already talked about that we're doing too; let me just add some
other things to the conversation. In addition to our alumni, we speak
with our Board of Governors at least once a year in a conversation
about how we've seen the recent graduates and also what kinds of
skills do they think we should be putting into the curriculum that you
haven't seen in your new hires that would make you want to hire our
graduates. And that conversation takes place in two forums: one is
at a board meeting with the Board of Governors and the Dean and Senior
Administration, and then, once a year, we have a dinner with just the
faculty and the Board with no dean and no administration present, and
they have questions that they are supposed to discuss over dinner, and
they debrief. And so, the questions come from the Administration, and
it's designed to move the agenda forward but to have the faculty hear
from the practicing attorneys and the community directly instead of saying, "Oh, yeah. Of course the Dean or the experiential Dean is going to say that." So they engage in that communication. I think that it's effective. I know it's effective, because they bring it back to faculty meetings and talk about changes in courses or new courses and they say it's because of things that they heard from the Board of Governors. Another thing that Touro has done since we moved to the new location in Central Islip, which is across from the Federal and State courthouses, is it is required in the first year that every student participate in a Court observation program, and that includes a visit to both the State and the Federal courthouses at separate times with a faculty member in small groups, meetings with judges with permission of counsel who are arguing motions or cases that day; they participate in conferences with the judge and the counsels; there are other courses that are directly tied in with judges and the Courts that the students can take over the summer, and at other times, they have them actually in the courthouse for credit, not a clerkship, but -- doing something along those lines, but not exactly the same. And so, I think that the students get a sense from the beginning of what it means to be in the Court, how people dress in the Court, how -- the decorum in the Court, how clients behave in the Court, how lawyers behave in their efforts, and at times, having them interact with the judges and the clerks without having to sit in a classroom or read it from a book or being told by a faculty member. So we think that that is a popular program and effective program. We also have a clinic requirement; there's discussion now as to whether it should be a
clinic or an externship. I think that there is -- it's probably going
to move to the either/or, but right now, the requirement is a clinic.
We do have a heavy emphasis on externship opportunities, and I think
almost all of our students do at least one, and some of them beg to do
more than one. We've worked OCA and we've brought poverty simulation
into the law school every year, and that's very effective for the
students in terms of developing empathy and awareness of the kinds of
clients that we need to serve. Dean Ballin has brought in a heavy
emphasis on formative assessments in the classroom multiple times
throughout the semester, but there's a lot of conversation with the
faculty about what those formative assessments should be. So things
that I have seen over the last year, a lot more drafting -- drafting
of complaints, drafting of other kinds of litigation documents,
drafting of administrative documents that are not necessarily tied up
in litigation. I'd like to say that every faculty member is doing the
drafting skills in every course but not yet, but the conversation
continues. There are some faculty that have turned to problem-based
learning and really teaching instead of the traditional case method of
working on problems with the students throughout the semester -- some
students love it and some students would rather have the Black Letter
Law fed to them. But again, it's the variety in terms of trying to
reach different students where they are. This year -- and I know some
law schools in the past have been involved with this, too -- I have
started to do a street law program in one of our host communities in
Brentwood, where for the majority of the students, Spanish is their
first language. So we're working with Spanish-speaking students at
the law school as well as faculty and administrators, and we're now in
the high schools in Brentwood with our students on a weekly basis, so
I think that helps for communication and cultural competency kinds of
issues. We also, like a number of law schools around the table, have
an incubator program to help our graduates with start-up law firms
aimed at Access to Justice as the goal, but in order to help prepare
our graduates who might want to enter into that program, we have a
number of courses around -- the Law Office Management, Accounting for
Lawyers and other things -- that I think, again, are good skills. We
also have a program with our graduate School of Business. So I think
these are just examples of some of the best practices. We also, like
everybody around the table, make good use of our adjuncts, and we have
our adjuncts meet with our faculty on a regular basis as well, and
that also helps to keep the conversation real about skills and what
it's like out practicing on an ongoing, realtime basis.

MR. ROSNER: So Paul, it may be of interest when Patty was Dean
at Albany Law School, she asked me to do a voluntary monthly meeting
that we called "Conversations with Seth," which was intended to be,
sort of, what we're talking about here. Unfortunately, the President
of the State Bar, Steve Younger, scheduled a job fair in the same
location; I think two law students showed up. It was fun for the two
of them, but the program died while Seth did not.

MR. SAUNDERS: Well, thanks very much, Patty. That was very
interesting. Cornell. Professor Blume.

MR. BLUME: Good morning. I'm John Blume; I'm the Director of
Clinical Advocacy in Skills programs at Cornell. I apologize for
being late; my excuse is, I was coming from Ithaca. So I think Randy's kind of got me up to date on what we're doing if we're going around talking about, sort of, what their schools were doing to impart what they believe to be the necessary skills and values. So we have actually started on this; I was appointed by Dean to be the Chair on the Professional Development Committee to try and analyze on what we need to do differently in the curriculum. Several years ago, as all of you know, there was the mandate from the New York Bar that, sort of, certified skills and values for our students, which set things in sort of a different timeframe that we were, sort of, moving on, again, that we hadn't certified at. But now, we're back looking at the big picture. So I'll just mention a couple of things; I'll be relatively prompt about it. In the last five years, we have doubled the number of clinical faculty, we've expanded the number of clinics in practicum when it comes to a difference between whether a clinic is taught by full-time members of the faculty or practicum was taught by an adjunct; we've expanded those by 200 percent. The number of those that we have, we're adding two more next year -- a transactional clinic and a First Amendment clinic -- and we've hired one of those people and we are doing a search for the First Amendment director. We've expanded clinical capacity by creating and broadening the Clinical Fellows program. So we now guarantee every student who wants to take a clinic a clinical experience, which they didn't have the capacity to do before; about 70 percent do. So that's basically the ratio. In addition to that, I'd say the other two major initiatives are, we have standardized and expanded our lawyering program, which is
the first year; it's not legal writing -- it's more than a legal
writing program and includes an emphasis on many of the skills and
values that we identified in connection with the New York Bar. And
then, I would say the other main thing we're doing is, when we stepped
back and looked at our curriculum, we thought that the things that
students were not getting from the normal curriculum that we had were
sufficient emphasis on teamwork and on practical legal writing and
communication skills. So we're now in the process of -- we're going
to roll out next year a program -- a pilot program -- that we are
modeling on Harvard's Professional Development Institute, where it
will be a ten-day program the student has to complete before
graduation that would be taught by a combination of the in-house
faculty and adjuncts, which will basically put students in teams and
work them through a series of problems over a ten-day period. And the
final, penultimate step would be that they will have to go to either a
law firm or a public service organization and make a presentation on
that.

MR. SAUNDERS: Have you actually done that yet? That sounds
like a very interesting program.

MR. BLUME: We have not done it. We're in the process of
planning it. I believe several of us are going to Harvard in January
to observe their program -- we're going to do it a little bit
different from them: we had them come to us and give a presentation
last year, so we're going to roll it out in January, next January, and
then we have funding for a three-year pilot program where we're trying
to work out the kinks; I mean, the goal is to make it mandatory for our students as a requirement for graduation.

MR. SAUNDERS: Do you have any plans to publish for others to see how that program works, what worked, what didn't work, what the results were, and so forth? So can it be replicated?

MR. BLUME: At the moment, we're still sort of working this out, but that is something we could incorporate into it. We obviously do want to see how it's going and what we could do to make it better, you know, as it's going. So we hope this will be successful.

MR. SAUNDERS: That sounds like it might be a very valuable program. Randy, is there anything else you need to tell us about NYU?

MR. HERTZ: Well, I'll keep it very brief. In my role as moderator or co-moderator of this session, I see that we're spending probably more than our share of the time on the first question, although the good news is that as we've been going around, people have been addressing each of the other questions this morning. So we've actually been managing to get through the agenda in a very informal and unplanned way. So what I'll say about NYU briefly is that our platform for teaching skills to everybody -- to all JDs -- was set back in the early eighties when a truly visionary professor and lawyer named Tony Amsterdam came to NYU and created the first-year lawyering program and redesigned our clinics. And his model of teaching was that all JDs would learn certain skills in the first year and every single JD would take this lawyering course as one of their courses each semester or first year. That lawyering course teaches legal research and writing, of course, but it also teaches all of the other
general lawyering skills. It teaches interviewing, counseling, negotiation, trial skills, and alternative dispute resolution skills, remediation, and it teaches all of them through simulation methods, and we have 14 lawyering professors who are full-time and who teach these things and come to NYU for two or three years and then move on to go to academia and other schools. So this is designed to teach all JDs. We didn't used to have to a way to ensure the same thing for transfer students. But this year, we've just instituted a new course called Lawyering for Transfers, so that all students who come from other schools and who didn't get lawyering now get it in their second year. This is designed so every single student gets this, and so, we front-loaded what we seek to teach all the students to get them ready to practice. Then, the upper level -- the second and third years -- are devoted to allowing students to take whatever simulation courses, clinics, or externships that a student himself or herself regards as important to their professional development, and our advising program is designed to help students figure out what they need and want, but it is not a mandatory program; it is designed to educate students on what they think they might need and let them make professional choices in law school about how to design their own professional development. John's 70 percent statistic about who takes clinics or externships actually fits NYU, too. But we have found -- we have 40 clinics and externships -- and what we have found is that roughly two-thirds of our JD student body takes at least one clinic or externship before they graduate; many of them take more than one; some of them take three. We have year-long clinics and semester-long clinics. Some
people take two years of year-long clinics, which is half their
course load, so they take three single-semester clinics or externships,
and we place approximately 450 students a year into clinics or
externships. It's all voluntary. And one of the things that the
MacCrate Report and the Court of Appeals also said in its report is
that we shouldn't be imposing a one-size-fits-all on schools. I also
believe and NYU believes that we shouldn't impose a one-size-fits-all
regimen on students, and we do need to teach them the basics, which is
what we try to do in the first year, but thereafter, we want students
to figure out what's right for them.

MR. SAUNDERS: The one thing I know about the lawyering program
is at least -- that many years ago, I was asked to participate -- I
was a practice lawyer; I had no connection with NYU. Somebody asked
me to participate in, I think it was a moot court?

MR. HERTZ: Yes. It was a simulation in the context of a trial,
in which students argued a motion in limine on the admissibility of
prior criminal convictions.

MR. SAUNDERS: I thought that that was a welcome joining of the
practicing Bar and the Academy.

MR. HERTZ: Yes. We made extensive use of lawyers and judges in
these exercises, and the students went out to law firms and to judges'
chambers to do these exercises. The students love it, but lawyers and
the judges are wonderfully generous with their time --

MR. SAUNDERS: And we love it, too. Let's do New York Law
School next.
MR. CROWELL: Okay. Sure. I'm happy to do it. So we have also been similarly busy trying to refashion a lot of our work to our law school. We've recently adopted a new curriculum and are in the throes right now of doing an extensive exercise of skills mapping to each of our courses. Our curriculum design is one where we want to provide a guided journey to the law student but at the same time make sure that they have a rich array of options in that journey; we don't want to be too prescriptive, but we want to make sure they're getting all the courses they need but also every array of skills -

MR. SAUNDERS: You're talking about skills mapping?

MR. CROWELL: Skills mapping. So I'll talk a little bit about - - let me just, sort of, explain the general structure of the curriculum, and then, I'll tell you how the mapping exercise works.

So we adopted a new curriculum last year, and the curriculum basically focuses on three specific but general areas at the same time: business and financial services law, intellectual property media technology and applied sciences, and government and public interest. We call it Think Big -- B-I-G -- and basically, those are the areas of law that encompass the predominant players in New York's network global economy, and we try to contextualize business health; both their required and elective courses dip into their professional goals. We have an expanded array of required courses that align to what they need for successful preparation for the Bar exam. At the same time, we don't want them to feel it's too prescriptive, so we try to contextualize it within their areas of interest, whether it be in one of those areas or general practice. What we've done is, we've looked
at our core competencies. A few years ago, we adopted a list of core competencies, 12 at the time; we've expanded it to 14, and certainly, under the competency of -- the competency of 14 is understanding the basic lawyering skills, and we have a broad array of skills that we seek the students to develop in that category. We tell the students what all their competencies -- what competencies we expect them to exhibit are, and we make them take ownership of them, and we have the faculty explain to them what each course is seeking to teach or the skills that the course is seeking to develop in the student. When we talk about skills mapping, what we've done is, we use Survey Monkey quite a bit, a very data-driven approach to managing the law, and what we did is, we took each of the 14 competencies and asked all professors to evaluate how their courses address competency, whether it's a basic level, a more advanced level, or a high degree of proficiency. So that's the mapping. So we have an understanding --

MR. SAUNDERS: How did that go over with the faculty?

MR. CROWELL: Some faculty were confused on where do certain things fit into which category, but it was a very good exercise, I think, to help all faculty understand that were doing some things that they may not even have realized they were doing, and it also helped them understand what they weren't doing but could be doing either naturally because of the subject matter or better. So it helped us to use this as a management tool so -- like sort of an overwhelming collaborative endeavor, but we're happy about that. We're also using it as a vehicle to look at syllabi and to help everyone understand how
to explain the learning outcomes -- the goals and learning outcomes -- for students better and through the use of the syllabus as a tool.

**MS. ABRAMOVSKY:** Did you have your adjuncts also do this?

**MR. CROWELL:** The adjuncts -- a modified version. It's harder to have the adjuncts do it; we're going to do some additional training with the adjuncts; it's hard to corral them all at once -- that's the problem. What we did do in that regard, we actually produced a small video that we disseminated to the adjuncts asking them to undertake this exercise and use these considerations in developing those courses. So it will be a little more of an interactive practice one on one if we don't see that the syllabi are addressing what we need addressed in those classes. And interestingly, many of the adjuncts do teach skills courses, so we want to be very focused on that. We similarly have expanded our clinical program rather significantly in recent years; we built a new center -- it's called the Joe Plumeri Center for Social Justice and Economic Opportunity -- that broadly encompasses all our clinical and experiential learning programs, including our first year of legal practice program, so everything is centrally located in what we call, effectively, the law school's law firm at ground level. Clients walk in, and it's a nice inspiring space, but students are introduced to that space in their first year with our legal practice program, which is a two-semester, four credits each semester, teaching basic legal research and recommending an expanded range of skills not dissimilar from the NYU lawyering skills program. So -- and that uses a lot of technology, and we have paid actors come in to help the students with interviewing skills, making
negotiations, all digitally recorded, so there is a lot of reflection by the individual students and review with the professors and the paid actors who come in. It's very helpful to use the technology and get students comfortable with that. And then, they advance to negotiation in the second semester, and then, they use those same facilities in their clinical work as well. So overall it's a work in progress, but it is certainly a highly coordinated approach. One of my big priorities for this coming year is going to be ensuring that the doctrinal and skills professors are having more conversations and having the skills professors be able to work with the doctrinal professors in using some of the subject matter that's being taught contemporaneously in the skills courses. It's something that's often not done, and I think it's to the detriment of the student. I think we can do a much better job if we do that.

MR. SAUNDERS: That's great. Thank you very much, Dean. Let's just keep going around the table, because when we finish this segment, I have a suggestion that I want to make to the group about, a way forward in this discussion, but let's keep going, and then, we'll finish skills and move on to values.

MS. GUNDLACH: Jennifer Gundlach from Hofstra. I've been pretty closely involved in our experiential courses development for the last several years at Hofstra, and we, several years ago, revamped a lot of our required curriculum, and as part of that process, pretty early on, we identified a list of the learning outcomes that we wanted for our students -- that was actually a very noncontroversial process as things go with our faculty. I think that the more controversial
process has been the aftermath of that. Having agreed upon learning outcomes, we are having much more pushback about the assessments of those learning outcomes and particularly how much formative assessment we need to integrate within a semester-long course, for example, as opposed to just one final summary assessment in a final exam, which is what many of us are used to from our law school experiences. I would say that the story at Hofstra is, I suspect, no different from any of the other schools around the table -- there's a tension between what we believe we need to do to better serve our students to go out in the profession with very practical realities of budget constraints for offering an array of really good student-faculty ratio experiential courses, the reality of Bar exam concerns and passage and making sure that our students have what they need to go into a Bar exam, which, frankly, doesn't test skills, which has been a recurring discussion amongst us: that we are imposing all of this new stuff in our curriculum without remotely testing at the end the skills needed in order to enter into the profession. More on that later. So at Hofstra, specifically, one way that we have tried and managed an increasing regulatory push for experiential programs with some of those other constraints is that I worked with a couple of my colleagues to create a foundational lawyering course that is not in the first year but is actually offered to students in the fall semester of their second year; and the idea of it is to reorient them from what they've done during their first year of law school, which was reading appellate decisions, to actually starting at the beginning of a lawsuit. So getting them to think about facts, which they really
are given on a silver platter in an appellate decision, to how do you develop facts? What role do facts play in trying to prove your case and what facts have to be synthesized with legal elements: how do you investigate facts? Where do they come from? How do you marshal them as a case goes forward? So it's less about the kind of persuasive advocacies that they learn in legal writing, and learning from the facts given to them in the first year to really thinking about how lawyers gather facts and use facts in their advocacy. And the course covers the use of facts both within transactional types of settings as well as within litigation-based settings over the course of a semester. This is the third year of doing this, and I would say we still don't have it right; we use about 50 instructors who are basically adjunct instructors, primarily alumni from a variety of different areas of practice -- and it's almost like an NITA course, where you have the teaching of whatever the skill is followed by a skills lab, where it's a one-to-eight ratio with an instructor who watches each student perform the skill and then gives some feedback. The alumni instructors think that this is a great course and wish they had this in law school; they're so excited to be a part of it, and the students, I think, are still suspect of it -- they don't understand it -- because it doesn't look like all the other classes that they're taking. We're asking very different things of them, which I think is hard; it's also a little bit of a budget constraint, so we've continued to think about ways that we can make it something that is sustainable at a scaleable level, and it's required for all too 2Ls,
so 240 or so students every year are going to do this, and there are practical realities of classroom space, et. cetera.

MS. RICHARDSON: Counselor, can I just ask you? You started off by saying, "Well, we do it as a lawsuit." But you do transactional, too?

MS. GUNDLACH: We do it transactional as well; it's a series of different fact patterns that we use throughout. And then, students are required to take an additional three credits of experiential courses and they have the liberty to do externships, simulation courses, or clinics. We can guarantee an experience in a clinic or externship for all of our students, and I would say the vast majority of students do that, but some will do it through simulation courses or things like that. A couple of the things that I wanted to highlight that might be a little bit different from what other people have talked about is, some of you may know that the American Association of Law Schools has a new section that I'm on the executive board of; they're focusing on empirical study of the profession and legal education. One of the lingering questions about a lot of the new curriculum developments that we've been all engaged in is, to what end? Is it actually making a difference? One, are students actually getting it? And two, is it going to make them better lawyers or not? How do you compare that versus -- I have colleagues who say, "Isn't it better for us to engage in a real, rich case method study of doctrine and getting somebody to think like a lawyer versus having them draft discovery documents or something like that?" Legitimate questions. So there's a group of us who are starting to really study this
question, and one of my colleagues and I are thinking about how we can actually assess our own foundational lawyers skills course to determine whether it's actually doing what we have set out to do and looking at the long-range impact of students who have gone through that course and how it positions them for practice and even into practice. I'm also doing a research study with my civil procedure course and whether or not the way that I'm teaching it is actually having an impact on students' learning. These are important questions that we can't ignore as we are thinking about these new curricular developments. I just want to follow up on the point that's been made that there are, unfortunately, too many of our colleagues who are frustrated that they don't have the skill set to be able to participate in experiential courses. I have colleagues who went straight from law school, got an LLM, and started teaching and have never actually had a client. So how could you possibly ask those people to teach experiential courses? Also, I have another colleague who has said, "I teach skills in my bankruptcy course. I teach thinking -- you know, how to think -- like a lawyer. I teach how to synthesize law and facts. I talk about drafting of different bankruptcy laws and choices that were available for people who are drafting those laws." So I think we also have to think more broadly when we talk about required skills, we have to be inclusive about what that means to make sure that we are incorporating the host of skill sets that our colleagues have, who, frankly, are in tenure positions and aren't going anywhere. So that's another piece of the equation.
MR. SAUNDERS: Great. Thank you very much. Let's keep going around the table, and I should tell you this: this is the last time in which we're going to go around asking different schools to tell us what they are doing -- this has been extraordinarily useful, but for the following discussion, I want a much more freewheeling discussion. But let's keep going around the table and hear what each one of the schools is doing, and then, I have a suggestion, and then, we'll go on to the next topic.

MS. HILL: Leah Hill for Fordham. So the question was, what's the best practices for incorporating skills? I think I want to situate this a little bit and provide some context on how I'm coming at this, and that is to say I'm going to label it the "perfect storm" with an emphasis on both of those words. So let me give you a little bit of a context. I was appointed the Dean of Experiential Education in December of 2015 at the very end of the year along with another colleague who was appointed director of the clinic at the very same time. The very first task we were asked to do was to deal with the new regulations regarding New York skills and values requirements as well as the ABA course requirements, the experiential course requirements. So you have new leadership, new, eager, very motivated; at the same time that -- there were a lot of conversations about what was happening among our faculty about curricular reform and what we teach and how we teach it, and part of that is to the extent that the teachers are teaching so-called skills. So a long-range plan the committee was focusing on is teachers who are adopting institutional learning outcomes. There's a draft; one of those outcomes focused on
skills, right? There was a working group of representatives from a variety of faculty committees -- two or three appointed to this curriculum committee -- to have and continue to develop a program on professional excellence. There was a recent modification to our 1L curriculum to add a writing component to one of the required courses for one credit so that students would have more writing in the first year in addition to the legal writing, and that would be great in that there would be feedback given in the middle of the year. We have just undergone our self-study. And so, we had all these activities going on at the same time that there is a willingness to give this new leadership a chance to find their footing, right? So that really worked for us, and we began to think about how we're going to deal with the New York skills requirement. We took an inventory of what we were already teaching in the way of skills. In light of the learning outcomes that were under consideration, we looked at what students were really doing, the courses that were offered in our upper-level curriculum, so 50 to 70 percent of the students were involved in clinics which guaranteed a spot for every student who wants to enroll in clinics; many -- a lot of them were taking externship courses; that was something we were focusing on, was with regard to externship courses. Eighty to ninety percent of our students were taking our signature lawyering course, which is called Fundamental Lawyering Skills, which is to focus and concentrate on negotiation -

MR. SAUNDERS: That's not a required course?

MS. HILL: It was not at the time, and I'll tell you a little more about that. But we're also focused on practical wisdom,
judgment, problem solving, and we saw that as a real significant
course in our curriculum. So one of the things we had -- we faced
some of the same concerns that I heard earlier about mandating
courses; the 1L curriculum was pretty much maxed out; we didn't feel
like we had a way in to try anything additional, in addition to the
fact that we recognize that a lot of these legal research and writing
courses had lawyering components, so we would teach interviewing,
counseling, negotiation -- well, interviewing, negotiation, and oral
advocacy through simulations. So that practice for us is to get a
handle on what was going on, begin to name the skills that we were
teaching looking across the curriculum, and we really saw that we were
doing a really a good job at effective communication through our legal
writing course, through our lawyering course, through our clinics; and
also problem solving and ethical practice is something that we were
covering pretty well. We went to the faculty to get input as
newcomers for us to work out this requirement, and we were surprised
about how receptive the faculty was to really doing something
different. And so, we saw that opportunity to have the fundamental
learning skills course mandated as part of our path to one program
plan. So that was really nice because we did not expect people to be
open to any more mandates. But we're continuing to work on developing
a program on professional excellence, and so, we identified some
competencies and some characteristics that we thought needed to be in
that program, picking up on the foundation for practice study that
Alli Gerkman instituted -- she said quite a mouthful that I won't
repeat. And so, we took the top ten most urgent characteristics that
employers saw as necessary professions right out of the gate. We
would send them out now -- great. So -- but things like showing up on
time and I think others talked about this, right? -- being responsive
to employers and clients, ethical practice, trustworthiness. So we've
already identified those characteristics and things we want to focus
on throughout this program of professional excellence that we're
developing; we've gone to our faculty with a survey now, because we
have learned that many of our faculty are already incorporating these
skills and characteristics into their classes. Some of them have been
using simulations, and, as I mentioned, some of them are using
problem-based methods, others are really focusing on professionalism;
it's time that students do, you know, things like networking. And so,
we're going to pick up on that and begin to continue to develop as a
program of professional excellence. We have at least one person from
our professional responsibility committee -- one person who teaches
professional responsibility, and so, we're excited about that program;
we still have a little bit -- we're almost two years in -- so we still
have a little bit of leeway in terms of just using this as an
opportunity to find our footing, but I think that's going to wear out
soon, so we're moving quickly to try to develop this program and try
to get it to the faculty so that we can incorporate skills which is, I
think, worthwhile for our students.

MR. SAUNDERS: That's great. And I'm going to tell Dean Diller,
who's a member of this Institute, that you did a great job. So thank
you very much. Let's keep going around. Columbia?
MR. KATZ: So one advantage of speaking relatively late in the queue is that many of the things that I would've said have been said, so I can simply associate myself with them. We at Columbia also have talked with our alums and with the people who hire our students, and they said exactly the same things as the Syracuse alums and employers say. I would also add financial literacy to the list of core competencies for a modern lawyer -- that seems really important; also cultural competency, which I think has also been mentioned. We also have found that we do better in skills teaching if we allow a bottom-up approach in which individual faculty members and students focus on the skill sets and skills courses based on their expertise -- and for the students, on what they want to do with their careers rather than saying, "Everybody has to become a trial lawyer and take Trial Practice." There are two additional things that I would mention that have not been part of our conversation. The first one, which applies to all the schools that are represented here today, is that not only are there different conceptions of what kinds of skills are required for modern legal practice; there are different regulatory mandates. So we are subject to the New York Court of Appeals mandates, we're subject to the ABA, we're subject to the American Association of Law Schools, and to the New York State Department of Education, and via the NYDOE, to the mandates of the Middle States Commission on Higher Education. We also have to respond to what our students' employers tell us and what our alums tell us, and then there are foundations that are very active in giving out grants and supporting initiatives, and they have their own conceptions of what kind of skills and values
are appropriate to the legal profession. So in this regard, we have been very appreciative in recent years that the Court of Appeals has made an attempt to harmonize its expectations with those of the ABA, and that is much appreciated and we hope that that will continue. But I think we are together as a profession discovering what skills are going to be needed in the future, and within that context, a top-down approach of mandating particular solutions to things that none of us fully understand how best to implement, is not wise. I.e., it would be more effective if it were a conversation rather than a mandate.

The second and related point, which I think is part of our distinctive intellectual culture at Columbia, is that we tend to favor a scholarly and administrative approach which some of us like to call "experimentalism," which more or less means that, rather than assume we know what the answer is, we encourage multiple experiments that the participants are actively motivated to engage in because they are affirmatively interested in them, and then, we share information and we check back on how things work, and finally we encourage good practices to promulgate what we have learned, with repeated rounds of feedback and learning. So in the spirit of that, we are doing a number of things in addition to beefing up our experiential curriculum. We have been adding new courses, we have been encouraging co-teaching between full-time academics and adjunct faculty; we're launching this January, the week before MLK Day, a one-week, upper-level J term where we will also have a series of intensive, one-credit courses on various topics that in the majority of cases also offer experiential opportunities. We have added an new course offering -
Individual Experiential Project - through which students can go and find internships and other outside opportunities, and have full-time faculty members supervise them in these projects and earn academic credit for it. Everyone today is sharing similar ideas. So I am very interested in hearing what the other schools here are doing, in the spirit of that kind of experimentalism shared across our institutions, and I'm hoping that others will benefit from that discussion as well.

MR. SAUNDERS: Dean, do you want to talk about CUNY?

MS. BILEK: I always want to talk about CUNY. You know that I'm appreciative of -- first of all, in case anybody wondered what relation makes the difference, the amount of work and focus that we just heard about at the law schools around the state is pretty overwhelming. I would guess that more time had been spent in the last three years in talking about curriculum in law schools than was spent in the 50 years preceding it combined. There is an advantage to starting a law school in 1983 as opposed to 1858, and it isn't donor dollars. It is instead, you know, kind of being slightly ahead of the curve. So a couple of thoughts. One, a difference of opinion that Randy and I have had before -- and then you're going to have to put a dot, dot, dot there. You know, the truth is that it really makes sense for different law schools to do different things because of what they're preparing their students to do on the one hand. On the other hand, we're a unitary profession with a single likeness, and we come at it from that end, that we have -- there's nothing we could do to prevent a student who may be making unwise choices or changing her mind. We're not afraid of mandating these things because we think we
have to be responsible to those future clients in a certain way, and
certainly, CUNY is a different law school than NYU, so we're not
trying to butt heads, but -- so we have 12 credits of lawyering before
our students get the 12 credits of mandated clinic; we sequence and
integrate the lawyering skills that we teach, building on from
introduction and exposure in our first semester of lawyering to more
opportunities for more in-depth learning and opportunities for
feedback in our third semester -- there's a seminar where they're
using the skills in context from tutor work in the clinic. Behind it
all is an understanding that really, probably, the most important
thing we can teach any of our students is how to learn from
experience, because that's what lawyers need to do for the rest of
their careers. And so, we've identified that as a skill, and that's
one of the skills that we are teaching. One thing that I think is
important -- and it would be different for each law school -- it's the
idea for us having a recursive framework that is constantly testing
what's new in practice in terms of the skills that are needed and
feeding back information about whether our students have it and then
having that change to the curriculum and then testing again. One way
to do that is a way for people to ask new lawyers, what did you need
to do that you didn't know. I suggest two other ways of doing that:
one is asking your clinical teachers what the students can do when
they get there what else they think needs to be taught. For us at
CUNY and actually at UMass, we have a not-for-profit law firm where we
have recent graduates, only a few of whom are from our law school, but
they're from law schools across the country working on representing
moderate and low-income clients in a partnership we have with the City Bar, and we're asking those lawyers what they needed to be able to do on Day One doing that work, and we're asking the supervisors there what they needed to be able to do on Day One. I think the work that every law school is doing now is enormous and it feels like a huge burden, but I think it's work that has to happen. Building in a framework for figuring out how skills change goes back to Randy's original point, which is, the list of skills that MacCrate generated in 1985, which we're all trying to reinvent, right, was 95 percent right, and for all time, 95 percent are the skills the lawyers use — maybe that's an overstatement, 75 percent. You know, so 25 percent, we are learning that there are new skills that we either ignore or that we need because of the changing profession, ranging from things that have been mentioned: project management, cultural competency, financial literacy if you work — well, I'll just leave it there.

MR. SAUNDERS: That's great. Let's finish with Albany.

MS. OUELLETTE: Albany did this in a very deliberate, very faculty-driven, and very enthusiastic way. We went through a strategic screening process that identified six subject matter areas. We thought three of them are the traditional areas, which are government and public interest and criminal and civil litigation, innovation and entrepreneurship, tax and business, and — now I'm blanking on our third pathway. So we have these six areas, and the faculty talked and worked and thought amongst ourselves about what our core competency skills and values should be, and then we tested it as part of that strategic screening process by going to our employers,
who did focus groups for each pathway for each of those areas -- and health, that was the third one -- and asked a series of questions related to the faculty and our career services and our Board of Trustees. In this process of asking about what do they need, we asked recent graduates and we asked graduates who are a little farther out what -- how they did it and what do they need to know. And so, we adopted core competencies and also domain-specific competencies. With the core competencies, we worked really through the learning outcomes, we mapped our curriculums -- where are these things being taught, what do we need to do to add, and also -- because every student needs to graduate demonstrating those things. For the domain-specific competencies, those are voluntary; a student may say, "I want to do the innovation pathway" and then say, "I really hate this" and then move on to something else and try something else, but they're able to look at our curriculum map, which has each of our courses; we put skills that are taught or assessed in each of the courses. The faculty continually asks, do we need to add things and do we need to change our curriculum? We did adopt -- we require clinics now -- we adopted writing across the curriculum, because that was our weakest as we measured the strength of our students and what they needed the most; we are about to engage in thinking about diversity across the curriculum, so that's on the agenda for the faculty. So we changed our curriculum, we adopted a really wonderful and robust professional development program that is run mostly through our career services, but we also have a required first-year seminar -- I think, one credit -- that incorporates a lot those things in the first year; and then,
our faculty has just done these amazing things, and this is the thing I can say is the most exciting about what we're doing. We've really broken down the walls between the skills faculty, the clinical faculty, the lawyering faculty -- so that triangle faculty -- and there are all kinds of -- we keep coming up with new names for them: you know, apprenticeship for this and hybrids and practicums, where there are different models for all of these things; some of these things are co-taught with some of these -- you know, a traditional law professor who didn't have practice experience who has someone alongside him who has the practice experience might get permission, might be an adjunct -- so there's lots of ways that we do it. We've got triangle faculty to particular courses and turning them really into these, sort of, semi-clinics, these apprenticeships where they're working, they're placing their students; as part of that triangle class, they're working and they're being assessed through that. It's exciting, this stuff. The faculty are so into this; they love the breaking down of the walls between the clinic and the triangle faculty. But there are some triangle faculties that are doing what they've always done. What we learned when we did our curriculum map is a lot of enriching at least some skill, right? I mean, it's not all knowledge; it's -- at least they're thinking like a lawyer, and so, they're a piece of it. But there are people who have been teaching for 40 years who are trying new things, global things, and doing some of these really innovative programs. We are assessing how it's working, so we are doing -- this year, we just did summer employers -- we're going to try to expand that, but we did a summer
employer survey; I love the idea of doing a survey of our students, too, to ask do we know what they need, but we got really good feedback and we're working that in to -- each of the curricula around that. So it's fun to do what we're doing; we are seeing the outcomes improve in some of these things. Our biggest challenge is budget; when you have a professor turning a class into its own hybrid, you get far fewer students and it makes it hard; we require clinics, so we've committed to do that; it's tough to keep doing that.

MR. SAUNDERS: That's great. Thank you very, very much. John Gross wanted to say a word about the foundation.

MR. GROSS: We partnered with Judge DiFiore to establish the Catalyst Fellowship Program with thirteen of the law schools that are involved in it. That provides through the foundation a grant of $2500, and it's matched by the law school for first-year students who want to work in legal service positions and in public service, DA, several legal service organizations; the foundation supports about a hundred of those organizations in New York State financially, and we concluded that without lawyers dedicated to legal services, our fundraising doesn't have a source of the funds; I mean, there are organizations that do wonderful work for those desperately who need it. However, the program started out with 15 students and ended with 45, and next year, we're anticipating 60 from each of the 15 law schools. At this point, the participation in both the foundation and the law school appears to be financial, because the student selects the -- or goes out and gets a job in one of these organizations. It seems to me rife with the possibility of integration with your
curriculum, and I just wanted to mention we would be certainly open to any discussions with any of the institutions that participate perhaps in a greater integration with your curriculum.

MR. SAUNDERS: I want to make an observation about what I just heard as we go forward. What I heard was far richer than I expected it to be. I am actually quite astonished by the work that each one of you is doing in sort of a curriculum review and reform and new ideas and new forms of engagement. Speaking only for myself, I'm blown away by what I just heard. This is far more than I expected to hear in this forum, and my sense is that there's so much rich information that each one of you has to share that we at the Institute can, I hope, form some kind of a methodology of facilitating the sharing of all of this information among all the 15 schools in New York State. It is truly extraordinary, and speaking out of turn for the New York Court of Appeals, my guess is that they would also be blown away by what you're doing. It is truly extraordinary, and we need to find a way to encourage each one of you to share with the others what you're doing and how you're doing it, because it's -- I'm astonished; that's all I can say. It is truly amazing. I've heard some things here that I never imagined, and I think we need to keep this dialogue going. If you all think it would be useful for us to reconvene this group in a year or so, we and the Institute are more than willing to do it -- to facilitate this dialogue. So I wanted to say that you are all to be congratulated. I can't imagine anything as rich as what I've just heard, given, you know, where we came from. Just keep doing what you're doing. It is really pretty amazing, and that's coming from a
jaded member of the practicing bar. It's really extraordinary. We have a couple of comments. Patty, you are first.

MS. SALKIN: I just want to quickly add that the New York State Bar Association has agreed to give the July/August issue of the State Bar Journal over to the theme of legal education, and the Committee on Legal Education is trying to put this together, and some of the things that people have discussed today would be great. If you or somebody from your school would want to provide an article; I know there are people from around the country that are interested in curriculum reform and licensing reform, Bar exam reform, and so forth, and so, an open call for ideas and volunteers; nothing has been committed at this point other than we now know that we have a date and copy due around March or April.

MR. SAUNDERS: What we will do -- I will circulate to each one of you a copy of the transcript of this session, and then we will decide after you've had a chance to look at it and edit it and mark it up -- however you'd like -- what we should do with it, but it's very rich.

MS. GUNDLACH: I just wanted to add, in addition to the committee, which is one place where all the sharing of ideas happens, there are a couple of other gatherings of faculty and administrators of the law schools who are sharing ideas like this on a regular basis; there is an Access to Justice Council, which has representatives from all of the 15 schools as well as legal services providers; there's also a coalition of externship coordinators and clinicians who gather every year to share ideas, do trainings for supervisors; those of us
who have been serving as experiential education deans are often
calling each other and, you know, problem solving and talking about
steps. So I think the more we can do that, the better, so I think
that's a great suggestion.

MS. EISEN: Our career services deans in New York and New Jersey
meet quarterly.

MR. SAUNDERS: That's correct.

MR. HERTZ: Maybe this is too ambitious, but it seems to me what
would be wonderful is if an article could be placed in that issue that
comes out of this meeting and that summarizes trends that cut across
the different law schools and includes some information about Alli's
programs and what they're doing and thereby telling the rest of the
country about what's happening in New York State as well as in Denver.

MR. SAUNDERS: I think that's a great idea, and we can make that
happen.

MS. BILEK: What I love about that is that for a long time,
there are all these vehicles for the meetings that are taking place,
but most of the Bar doesn't know any of this is going on, and they're
astonished to hear it, and I think this particular vehicle is one that
reaches various members across the state, and it's a great
contribution.

MS. ABRAMOVSKY: I agree. I think that the perceptions of the
Bar are very out of date from the reality of all that we've been
doing, but one of the points -- let's just to go back to the Court of
Appeals -- we need to -- New York needs to lead again in this
conversation. I mean, the idea is that, you know, if you could help -
- if we could help -- facilitate that through, you know, banking or best practices or data memos; not all of us can afford to consistently hire the most expensive legal consultants. If people have already done the consulting work and the data, let's just share it and work on best practices if we can get it with a number of other organizations in conjunction with the New York State Bar Association and education and file those together so there's more to think about other ways in which we can help finance the additional training and collaboration of our different faculties so that they can get the opportunity to travel amongst and between each other. For people like me who live upstate, you know, there's a tendency for everything to be down here in New York City, right, or, at best, over at Albany, you know, and shipping all of our professors all these different types of things, you know, while I definitely would want to do it, we want to think of maybe rotating around the state or figuring out other ways in which to do these types of things. But basically, I want to say that I am thrilled to be here, and I think we definitely should do this again, because we can aggregate our responsibilities to California or the University of Denver. My point is that we are the number one jurisdiction for law in the United States; we are the premier jurisdictions for commercial law in the world outside of London arbitration -

MR. SAUNDERS: Including London arbitration.

MS. ABRAMOVSKY: Including London. I apologize. Exactly. We need to not just be seen at this meeting.

MR. SAUNDERS: Seth.
MR. ROSNER: I am a past Chair of the ABA -- Coordinating Counsel of the ABA -- and serve in a professional responsibility. An article coming from this, I think, would be a phenomenal piece for The Professional Lawyer, which is a regular publication of the Center.

MR. SAUNDERS: Well, we'll need to work on that, and I think it is a great beginning. We are going to cover the other items on this agenda. We've gone a little far on Number One, but I think it was extraordinarily valuable, and we're going to break at 12:30 for lunch, and then, Alli is going to make her keynote address to us at 12:30. I know Karen and Mary Lu have agreed to lead the second discussion on values, and let me just introduce that and then throw it open -- I think we should just throw this open -- for freewheeling discussion.

We in the Institute -- when I first joined the Institute many, many years ago, the project that we assigned to ourself was to define professionalism. Those of you who have been looking around the room will remember, you set out to define professionalism, and John, did we succeed or fail?

MR. GROSS: Utterly failed.

MR. SAUNDERS: We couldn't do it. So we talk about inculcating professional values, all right? We don't really know what that means. We have spent many, many years talking about professional values. We have never been able to clearly articulate exactly what that means. So it would be very interesting to those of us who failed in that endeavor to hear how the law schools have gone about inculcating professional values into their curriculum, especially since we don't really know what they are.
MS. EISEN: I'll just add. You know, one of the things that we're trying to do is the stand-alone course in professionalism, which will identify those values and really show the students or teach the students how to be authentic, and I think what that means is, you're taking your personal values and integrating them with your identity as a lawyer. So, you know, your personal values and your ethics and your honesty, civility, courtesy -- all of those things that we always think of when we think of -- as -- professionalism -- good character, it's hard to treat them -- to teach them out of context. So if you can help the students do a self-assessment and to identify and know and be aware of their values and then teach them how to incorporate that into their practice along with cultural competency, which is recognizing the differences that other people might have --

MR. SAUNDERS: What do you mean by "cultural competency"?

MS. EISEN: So cultural competency is -- it's so out there. It's recognizing and identifying similarities and differences between -- like, you and I might have different cultural competencies. We have gender, we may have socioeconomic status, age, race, ethnicity, all of those things that make up your identity. So part of your identity comes from your culture; it's all -- I'm not an expert in it -- I don't know if I'm --

MS. KANFER: Can I just say something, and you will probably -- Judge Fisher, who many of you know, she made this point at our law school Access to Justice conference where she described she was observing a judge who had a woman of color who had braids in her hair, and it was a custody support application, and the judge actually said
to this young mother, "You should have used your money for food for your children rather than putting it in your hair." And Judge Fisher pointed out that people don't understand how long it takes for someone to get their hair in an orderly fashion to be presentable, and by putting the braids in her hair, she was able to use her hairstyle like that for a month or two, and this judge was making an assumption about her appearance, and that was how she conveyed a sense of cultural competency, and that's what they mean by saying going in and simulating living a life.

MS. KRETSER: It's almost recognized as implicit bias.

MS. KANFER: Yes.

MS. EISEN: And another example is, in certain cultures it's disrespectful to make eye contact, whereas in other cultures, you would think someone is being dishonest because they can't make eye contact.

MR. SAUNDERS: So how do you teach that?

MS. EISEN: You have to -- you can't teach every single trait of every culture, but you have to teach deans how to be mindful, how to listen, and to almost have a kind of introductory script so that they can see when someone is not comfortable and not being forthcoming and try to find more similarities than differences so that they can establish some kind of trusting, you know, attorney-client relationship or a working relationship with a colleague. And as the world becomes more diverse and our profession becomes more diverse and our clients become more diverse, it's really necessary. And so, it means letting go, it means -- before you can let go of an implicit
bias, you have to be aware you have one, so -- Mary Lu and I were just talking about that: modeling. We have to model for our students what is the correct behavior, and you can do that everywhere in the law schools: from administration, your deans, your professors, your career services -- everyone should be modeling that professionalism that we want our students to exhibit.

MR. SAUNDERS: Let me just come back to something, you know, I mentioned earlier this morning. One of the professional values is actually required by the Code of Professional Responsibility, and that is that the lawyer is expected to render candid, independent legal advice, and that is clearly one of the professional values, I think, and we in the Institute spent a long time, as I mentioned, trying to understand exactly what that meant, and it took us -- we spent -- almost two years doing that, and I think we became pretty close to understanding what that meant in different contexts. But it was not -- it was not an intuitively easy concept to understand. What does it mean to give candid independent legal advice?

MS. ABRAMOVSKY: So I think one of the issues, which is, are you trying to articulate the values or the standards that are leading up to those values, the presentation of those values, which are two different things. We can all agree on candid independent legal counsel, but exactly the standard presentation of that can be a different issue, which is why I think it's almost two different conversations. So the conversation about it goes back and forth and back and forth, but I think it's helpful -- for decades and decades back and forth; I think it's really helpful for us to think about the
current climate that we're in right now. If the law exists to protect
and establish property rights and we are just arbiters between
different vested financial interests, I don't think anyone in the law
in the legal profession really can articulate that that's what we do.
So if that's not the case, then we can revert back to the principles
of Access to Justice, rule of law, support for democracy. I actually
think it would really be hurtful for us to go back to basics with
principles and re-establish those foundations and worry slightly less
about the standards of implementation between them than just
articulating our shared first-principled values.

MS. BILEK: Because Karen and I talked a little about this
point, it often puts you back into perspective that you can teach
values, so I was trying to think about the different settings in which
we can, and most of us do teach values. And one is within the
standard course where the professor asks the question about, is this
just, is this fair, why is the law argued this way, which way is the
law, was it intended to work, could the lawyer have behaved
differently, so that's a standard, regular course. You can do a
stand-alone course in professionalism, like Karen was talking about.
We model. We model not only by how we teach as faculty, but we model
by who we honor among our alums, we honor by whose pictures are on the
wall, we honor by what we give awards with at graduation, we model by
whether or not we show up to each of the meetings, whether it's play,
collegiality, or collaboration. You can learn a lot about
professionalism in experiential courses. In this instance that you
were saying, it took you a long time to sort out how that principle of
candid opinions applies in different settings. One of the things about experiential learning is that the rubber hits the road in that setting, and you just figure that out, and then, I think many also are doing this and the profession as well have done this, but I think law schools have done this measuring in a way that new lawyers learn values. I mean, the final is just to also think about what MacCrate originally said about values and habits, and I like to talk about habits because I don't think you can teach everybody to assume certain values, but I think you can have an expectation for certain habits: you show up on time, you always do your best work, you're responsive to your clients; and if those things become expectations from the very beginning of law school, they could become habits that people carry into the profession if they don't enter law school with those values.

MR. SAUNDERS: Randy.

MR. HERTZ: In the same way that Mary Lu references MacCrate, I want to say something that the late Bob MacCrate used to say a lot, which is -- and which Mary Lu incorporated into the report -- that he believed that values should be the framework for everything that law school teaches and skills should be folded into this framework of values. The MacCrate Report also said that all students should be taught about the vision of skills and values that law schools aspire to teach. And so, one could imagine an orientation session for first-year students in each law school that begins by talking about the vision of a lawyer, which includes the values and habits that lawyers should be expected to have, and then you fold into that framework the skills and substantive law and everything else you're going to teach,
and you give students a blueprint of what a lawyer needs to learn in order to become an effective member of the profession, and you do all that at the front end.

MR. CROWELL: If I may, that was exactly what we did this year; we actually talked about the goals of American legal education, and from there, it all flowed, and that was the way -- and it worked, and we talked about these competencies and the skills we wanted them to learn, and then, we tried to reinforce that in all the first-year courses. So hopefully, it will stick, but I do think that's a very good framework.

MS. ABRAMOVSKY: I think a study that's part of that -- I mean, I had an orientation where that's the goal within the Senate Judiciary legal system. I mean, you know, this is very topical right now, and I think that we lose the forest from the trees. I mean, the students are coming from a place of great confusion; I mean, in many ways, there's never been more of a crisis in the understanding of the rules of law since Watergate, and I think that's very important to remember how very young our students are and the realities of what they've grown up with understanding what the legal system is or is alleged to be, and so, to bring it back to show, you know, what they hear about lawyers is not always as bad as they think, right, but truly, in actuality, in their learning about the profession, that explains the pressure; they don't necessarily believe that.

MR. SAUNDERS: We did a convocation on professional values in legal education, and I believe one of the books from that convocation is on the table. Michael.
MR. CARDOZO: I'm interested in how you teach these kind of values we just talked about. One of you said we have a separate course dealing with values, and it seems to me that the best way to do it is one in which in every course that you're teaching, the value question can come up. Anthony and I used to work for some guy named Bloomberg, and an issue arose on gay marriage, and Bloomberg was in favor of gay marriage, and we had a case where -- well, this is long before the Supreme Court decision, where -- the Court ruled upon gay marriage prohibition -- that gay marriage in New York was illegal. Should I file a notice of appeal? As an independent lawyer, what should I do? Forget the debate, but aren't those the kind of cases when you're really teaching, is to digress for ten minutes and get the students to be focusing on those kinds of issues? And I'm sure all of you could use other examples. Isn't that more concrete in bringing it home to the students more than, sort of, the abstract, "All right, we're going to talk about values"?

MR. SAUNDERS: I would answer to that, that one of the areas of interest to me in thinking about this and talking about it and trying to talk to others about it is those areas in which there are competing obligations, which occurs more frequently in the practice of law than you might think, and how do we teach people to work their way through areas where you have competing obligations -- an obligation of candor to the Court, an obligation of loyalty to your client? That's a particular example, and you can think of -- some of the lawyers in this room have constructed hypothetical situations where you have situations in which there is no right answer, right? There's
absolutely no right answer. And so, how do you work your way through that? In the real world, that happens, and it's really hard to say, "Well, values are honesty and loyalty, trustworthiness like the boy scout oath." But in actual practice, these kinds of issues come up all the time, and if I could rule the world and talk to all the law students, I would say that these issues come up every day in practice. When we talk about values, we're not talking about something that's abstract, that's theoretical. It's real.

MR. HERTZ: So for those of us who have been around a very long time in clinical education, we know that back in the 1960s, CLEPR (the Council for Legal Education for Professional Responsibility) first developed the whole modern concept of clinical education and said it is the best way to teach professional responsibility and values because students will learn these things best if they deal with them in role as lawyers in actual cases and made exactly the point you just made, and there's even a book developed by CLEPR to teach legal ethics through simulation problems developed from real practice.

MR. SAUNDERS: I didn't know that, but I can appreciate that. So how many of you -- I know some of you teach professionalism, but how many of you have actually thought about in some concrete way how to communicate professional values to your students? I assume all of you have in one way or another. How do you do that?

MS. GUNDLACH: I'm going to start off by saying I agree wholeheartedly with Randy about clinical education, a clinical professor being the best model for incorporating an understanding of the substantive law and the skills and the values -- I mean, I teach
civil procedure, and there's great opportunities to talk about the
attention to Access to Justice issues. There's an enormous amount of
opportunity, even within those classes, to stop at various times and
engage students with the moments of lawyering -- you know, even it's
hard from an Appellate decision, but you can still say, "Gosh. Think
back to when that client walked in the door. What were the options
that that lawyer had? What were the challenges that they were facing?
When that discovery dispute was happening, when we were talking about
sanctions, why do you think it got to that level that they were
fighting this much? You know, what were the issues that were the
intention for them?" So I think there are those kind of opportunities
even outside of the more experiential courses.

MR. SAUNDERS: I would say that those opportunities exist in
every doctrinal course.

MS. HILL: Right. Whether you are intentionally teaching values
or not--I think that was a point that made earlier--most of the time
values are implicit. And so, yes, there are those opportunities. How
many of us are taking advantage of them, to what extent are we paying
attention to them across the curriculum, and to what extent can we be
explicit about teaching values? And I think there's another related
question--what does it mean to teach values in the sense that, are we
surfacing and exploring value judgments implicit in judicial decisions
or, for example, are we highlighting for students questions about
values of the profession as they emerge in our teaching?

MR. SAUNDERS: And I'm going to leave you with one fact before
we break for lunch. A lot of lawyers in New York State are solo
practitioners, and if Chris Chang were here, he would tell us that a
very high -- disproportionately high -- number of disciplinary
proceedings are proceedings against solo practitioners. So whatever
we're doing, we need to keep in mind that a lot of the students are
going to wind up hanging out a shingle, and there's nobody they can
talk to about how to make these decisions that they're going to be
called upon to make. I just leave that with you, because when I first
started thinking about this, I wasn't thinking about solo
practitioners, but like Michael said, that's a very important part of
our profession in New York State, to be able to keep that in mind as
we talk about inculcating professional values. Dean, you wanted to
say something?

MR. BOISE: I have to follow up on that point, and it's a very
good point, and I think it illustrates how broad these ideas are for
students, because I think probably the most common complaint that's
lodged against attorneys is failure to communicate with clients. So I
think it's not just, sort of, taking the money out of an IOLTA
account; it's more a broader sense of how you represent a client and
what you owe as a professional to your client.

MR. SAUNDERS: Thanks. Mary Lu.

MS. BILEK: When I talk about professional responsibility, I
would give the students a problem and then call another a lawyer.
Your point is exactly right. When we have an ethical problem, we need
someone to talk us through this. And there's even a study teaching
ethics that teaches that the way you make good ethical decisions is in
dialogues with other professionals. So it's just something to think
about when we have a relationship with the profession, it begins to
start back with opportunity in law courses.

MR. SAUNDERS: I can say from the perspective of somebody who
practiced in a big firm all of his life, we do that all the time, all
the time.

MR. ROSNER: The beginning lawyer has to recognize there's an
ethical issue in order to even go about calling -- you know, seeking
help.

[KEYNOTE ADDRESS – MS. ALLY GERKMAN]

MR. SAUNDERS: We're going to start again with our keynote
address by Alli Gerkman. As I mentioned earlier, Alli is the Director
of Educating Tomorrow's Lawyers program from the Institute of
Advancement of the American Legal System in Denver, Colorado, and she
runs this entire program. Many of you, I think, are probably In her -
what do you call that list of schools? --

MS. GERKMAN: The consortium.

MR. SAUNDERS: -- consortium of law schools, and have
participated in the project Educating Tomorrow's Lawyers. So we've
asked Alli to talk to us and, among other things, to describe for us
the survey that her program conducted to try to get some empirical
data concerning skills -- lawyer's skills. So with that, let me turn
it over to Alli Gerkman.

MS. GERKMAN: Thank you. Let me warn you as we get started that
I did something that you probably
didn't do in your offices, and that includes where I started
updating and adding in some things based on the discussion.
Hopefully, that comes up all right on my computer. So as Paul has said, I'm with the Institute for the Advancement of the American Legal System -- or IAALS -- and sometimes, as with that name, it's a cautionary tale about what happens when you put lawyers in a room to name something. But it does really accurately describe what we do. What we do at IAALS is we work in putting together research; sometimes we do research to bring together people and putting together thoughts and ideas to try to tackle some of the biggest challenges that are facing the legal system and the justice system. So today, I'm going to talk to you about a problem that we were trying to think about tackling, and then, I'm going to talk to you about the beginning of our solution to that problem. And the problem is one that you all are, you know, intimately familiar with, but I'll still walk you through it so you have a sense of how we got to where we are. 38 percent. This is the percentage of 2016 law grads who hadn't landed a full-time, long-term job that are hired by that ten-month mark that the ABA is requiring. Not everyone goes to law school to be a lawyer. 28 percent, this is the percentage of 2016 law grads who hadn't landed full-time, long-term employment. But even more concerning than that, perhaps for some, is 24 percent. This is the percentage of 2016 law grads who haven't landed full-time, long-term employment, period, by that ten-month mark. Now, some of you may have some employment issues at your schools and some of you may not. This is just a piece of the problem, because there's this other problem that we suspect all of you are dealing with in one way or another, and that's this: 71 percent. This is the percentage of third-year law students who believe they
have sufficient skills to practice. Forty-five percent is the percentage of your faculty members who believe that the new lawyers who are coming out in roughly that same year have sufficient skills to practice. And finally -- and this is the main piece of the problem here -- 23 percent. So this is the percentage of practitioners who believe that new lawyers have sufficient skills to practice. So that's -- that's a problem, and it's one -- again, even if you haven't seen these numbers before, you know this, because we hear it all the time: we hear it in the media, we hear it in talking to alums, we hear it in comments and concerns that are voiced by Bar organizations and organizations like this. So this is something that's well-known, but there's this other problem, which is that what we know that maybe there's some concern that new lawyers coming out don't have what's needed. What we don't have a good sense of is, well, what are those things? Again, we've had a lot of anecdotal information. We certainly have done some work with MacCrate or the Shultz Zedeck study. And so, what we wanted to have a sense of was nationally, right now, post-everything, that all of the shifts that have happened in legal education and the legal profession, one of the things the profession is saying are important. So we launched this project, Foundations for Practice. From the outset, we sought to do three things: the first was to identify the foundations that entry-level lawyers need -- and you'll understand in a moment why I say "foundations" instead of just "competencies." Second, to use that to develop measurable models of legal education that support those foundations. When I say that, by the way, I don't mean that we will
do that. What we will try to do is what we were talking about earlier; we're trying to collect information and then partner with people like you to find ways to really use it to make it meaningful and actionable. We're not saying we're trying to come up with what you guys should do; we're trying to create stuff so that you all have the information you need to do what you're doing well. And finally, because we thought this was critical, align market needs with hiring practices to incentivize positive improvements. And really, what I mean by that, I mean that, if we're going to ask the profession -- legal employers often -- what it is that new lawyers need and law schools are going to be -- and I think we've heard here working with an attorney or two to ensure that their graduates have the competencies, characteristics, and skills that they need, we need a legal marketplace that is hiring based on the broader set of characteristics and competencies that they are saying are so critical for new lawyers. So we've created a survey, and we distributed it in 37 states, mostly through state Bar organizations for the Court; quite happily, we were able to distribute it in New York. As we were doing this, I had a lot of fear about not being able to distribute it in New York, because it seemed -- again, I think even -- I think, actually, around the country, New York is viewed as a leader still, and to have this survey and not have had it in New York would have been a problem. So happily, it was distributed in New York, and we ended up with more than 24,000 responses to the survey; and what we asked those respondents to do was take 147 foundations -- I'm going to define those a little more clearly in just a moment -- and -- oh, I'm going
to do it right now. So when I talk about foundations, this is what I'm talking about. So I'm talking about things like identify relevant facts and legal issues, critically evaluate arguments, conducting defense depositions, make decisions and deliver results, work as part of a team, demonstrate initiative, diligence, and trustworthiness -- in other words, having not taken away legal skills, broader professional competencies, meaning basically skills that are useful across professional endeavors, and characteristics -- personal characteristics. And we asked respondents to place these in buckets. Either these were necessary in the short term, meaning right out of law school, they are necessary but they can be acquired over time throughout the course of that lawyer's career; advantageous but not necessary; or not relevant. And we did it like this for a reason. You know, we could have done the one-to-ten scale as to one-to-ten how important is this. But what we really wanted to try to understand is what is it that lawyers needed when they leave law school and enter that first position. In total, over those 147 foundations we asked about, 77 were identified as necessary right out of law school by 50 percent or more of respondents. And so, this is the top-20 list. I'm going to show you -- so one of the things Paul talked to me about was how these results stack up to New York, and what I would say in general -- so we have a report that's about to come out that will go into different cities across practice setting and firm size, because there are a handful of differences in terms of practice setting and firm size -- not many, but there are differences. Across geography, there weren't even enough to talk about in a publication. So just so
you have some sense, if the national top-ten list is over here (indicating) and the New York top-ten list is over here (indicating), the only item that shows up on the New York list -- or that's not on the national -- conscientiousness and attention to detail. So the point being, the national results during last year in New York -- and so, I'm going to speak mostly about the national results here; I'm going to come back to this list now. Take a look at this list for just a moment: we've got things like keep confidentiality as number one, right on time, honor commitments, integrity, and trustworthiness. I want to be clear, I'm sharing the top 20 because it's easier to talk about in a presentation. There were 77 items that are all viewed as necessary out of law school, but we did the top 20. Here's the first thing we noticed: legal skills, there's one that's a traditional legal skill on here, and that shows up as Number 14. So what are the rest of these items, then? They're things like competencies and characteristics. So as we went through these results and we're thinking about them, what we realized is that, in fact, characteristics were huge in that list of items that are necessary right out of law school; 76 percent of all of the characteristics we asked about were identified as necessary right out of law school. Compare that to professional competencies; 46 percent of those were identified as necessary right out of law school; and legal skills, only 40 percent of the legal skills that we asked about were identified right out of law -- is necessary right out of law -- school. So we talked about this in the report that was released last year as the need for a new law school graduate to be a whole lawyer,
to have a combination of characteristics, competencies, and skills that are necessary to practice. And over the last six months, what we've been doing is trying to work on making that meaningful to law schools, and so, we've been doing -- we hired -- because as part of the next phase of this, we'll be working with a handful of law schools across the country and employer groups that they have identified to create learning outcomes from this and from conversations with employers and also to create hiring rubrics for the employers. So over the last six months, I have been able to actually work with a learning outcome assessment consultant, learning that comes with higher ed. and adult learning more broadly -- she had a legal background, so with the learning outcome, we were about to learn just how complicated and crazy that particular process is. So what we're beginning to swirl around on and what we continue to work on with the law school partners over the next six months to a year are some of these concepts coming out of those 77 foundations: thinking about the lawyer as a professional, thinking about the lawyer as a practitioner, thinking about the lawyer as a communicator, a problem solver, and legal self-starter. So because of the topic of these sessions, the conversations that have happened, one of the things I wanted to do was talk through the requirements under 302 and sort where they fell short of the results that came out of this survey. So that first item of 302 is about knowledge of the substantive and procedural law. So we actually had a foundation on our survey that asks, you know, about the importance to maintain core knowledge of the substantive procedural law in the relevant focus areas. This is, sort of, the Bar exam in
one foundation -- of the 147, right? It actually barely made the list; 58.7 percent of respondents indicated that that was necessary right out of law school. So I don't -- I would be curious to hear what you all think about that; I'm not going to share an opinion on that, but I'd love it to hear what would be the results of that.

The second requirement under 302 I would view as kind of a think-like-a-lawyer requirement of the learning outcomes, and, in fact, while for the most part legal skills were not as likely to show up as necessary right out of law school, these ones here that are in red (indicating) are the items that did actually show up as necessary right out of law school, and one of the things that we noticed right away with these particular items is that they do tend to be that think-like-a-lawyer set, which suggests that the profession is wanting that, and that's also a good thing.

There is the third 302 requirement, which is about professionalism and ethics. This is where a lot of our professionalism requirements were; in fact, only three of these items were not viewed as necessary right out of law school; for the most part, they are wrapped up in that first bucket.

The other -- the fourth -- item, other professional skills needed for competent and ethical participation as a member of the legal profession, Part D of 302, we would argue that's actually a pretty important section of the learning outcomes requirement of the ABA, because, in fact, the bulk of the foundations that were identified by more than 24,000 lawyers across the country would probably fall into that category. So there's an opportunity there for law schools to
think about what those are for their school, and that might be
different from school to school. While there is some obvious need for
all law schools to graduate students who have a certain set of skills
-- or who are competent at some level, there are opportunities to
distinguish your students by thinking about how you define these, of
course.

The other piece I want to share is the second part of our survey.
In our survey, we asked about the foundations that are necessary for
new lawyers, and then we had a separate section, and we said now,
reflect back on those foundations that you just identified as critical
for new lawyers and tell us how would you identify these things. If
someone was coming to -- you know, if it was a prospective employee --
and we did not say, and I think you'll see why it's important to make
this distinction in just a moment; we did not say, "How do you
currently hire?", because we have some sense of that and that didn't
seem as useful for purposes of this particular survey. What we wanted
to understand is, if you really wanted to hire prospective job
applicants who were a whole lawyer as we have now called it, what
would you look at? And we gave them 17 options, and I'll read them to
you in just a moment, because I'm going to read them to you when I
show you the results. Basically, we said to place them on a spectrum
of very helpful to very unhelpful. So for purposes of the
presentation on the next several slides, I have lumped together very
helpful and somewhat helpful. None of these items was viewed as
somewhat unhelpful or very unhelpful, but they certainly were viewed
as helpful to different degrees. So that's why we look at them
through the helpful lens here. And so, this is the chart
(indicating). I'm going to read from left to right, because I know
that you guys don't all have superhero vision. Legal employment,
which is interesting given the comments that came up relating to the
importance of just working in a legal setting; recommendations from
practitioners or judges; legal externships; life experience between
college and law school; other experiential education; participation in
a law school clinic; federal court clerkship; state court clerkship;
law school courses of a particular specialty; recommendations from
professors; class rank; law school attendance; law school
certification in a particular area; ties to a particular geographic
location; law review experience as second to last; and general
experience. So is there anything anyone notices about these items?
Anything jump out?

MS. GUNDLACH: Alli, did this depend on what type of employer
would answer your question? Would you break it down to say law firms,
government, legal services, small firms, et. cetera?

MS. GERKMAN: Yes. So I'll show you in just a moment. So these
first eight items that are now in red (indicating), these are all
based in and linked to some kind of experience, and the first thing we
thought when we saw this was, 'there's no way this holds up for big
law,' right? And it's just a little bit, right? We have class rank
jump up to second-most important, and we have law school attendance
jump up, and even law review experience is now Number, I think, 11
here. So it gets a little bit of a boost. But those top eight items,
they hang tough in the top ten. And then, we've looked at -- this is,
like, a ridiculous range but for purposes of presentation, and just be aware that we actually have looked at and we've broken it down further, and it holds true. It's not how they're hiring. If they're going to bring in these people who have these broader skills, right? -- you're absolutely right; it's not how they're hiring, but I can still pull that up and look at that. All of the data, most of the ways to slice and dice it are available on our website in a data visualization tool. So you can actually go in and look at practice setting, firm size, practice type, gender -- everything, to see how these are different across different types of slides. And we did that for that reason; there's all kinds of ways to look at this, and we wanted -- our point is for people to have the information. And then, for solos, we see law school courses that are of a particular specialty jump out, but again, these top eight items are faring well.

MR. ROSNER: Those are solos -- those are solo respondents?

MS. GERKMAN: Solo respondents. So if they were going to hire, that's what they would look like in the small setting. Government lawyers, again, you see those, and then, finally, legal services and public defenders, those top eight items are still doing well; what we see jump out is law school courses in a particular specialty.

MS. BILEK: And we do see clinic as Number One.

MS. GERKMAN: Clinic is Number One in this particular slide. So what we are doing now is, as we're looking at all of this, we're thinking about what it means and we're thinking about opportunities to work with it and to use it, and so, I wanted to share with you some of those things that we are either doing or are on the verge of doing.
So we see an opportunity to ensure that law grads have the necessary foundation, and this is really important, I think, and -- this came up in conversations basically today, and -- to ensure that we have adequate signals to indicate that they do, because we think that, 'well, certainly, surely there are things that law schools can do better; all organizations have opportunities to improve.' We also think that there are a lot of things that law schools are doing where there's a signal disconnect, and that is not to say it's on the fault of the profession by any means, but there need to be conversations like this and there need to be partnerships so that employers in the profession really understand what law schools are doing and what that means for the graduates both on a pragmatic level but also, I mean, to some extent even on a student-by-student level; just like schools can distinguish themselves with different emphases, so can students who are graduating and entering the job market. So thinking about ways to better signal to employers what students have and what law schools are doing is one of things we're thinking about, and I would also say that, too, that I was not so surprised by everything that's going on. That said, one of the things that we think is critical is not just that these programs be done but that they really be effectively measured toward outcomes so that schools know whether what they're doing is actually achieving whatever it is that they're trying to get to; and again, because I'm learning how people are learning to be much more evolving in law school, I know that this is not just a law school issue; everyone is grappling with how to do that. And so, I used to think law schools were maybe further behind some of higher education,
and maybe that's slightly true, but now, I feel like everyone's sort of trying to get there, but the great programs that you're doing, make sure you're measuring them. What we would like them to do is to have the ability to look at those traditional criteria alongside this latter set of criteria. The reason we think that might be possible is we really talked to a lot of them about it. We have hosted countless roundtables with employers with managing partners and with people from the private and the public sectors to talk through these results and to talk through whether they are achieving what they want to given the way they are currently hiring. So just as an example, we actually do an exercise where we walk in, we give them a set of resumes, and they just quickly order these based on how you would if you were hiring; and we do that, and then, we present the results of the survey; they work with it, they get really engaged, they have arguments over whether common sense is more than important than conscientiousness, and then, we come back and say, "Now, go back to your resumes, take the top two, and just go through and note on there the experience through their accomplishments that lets you know that they have those characteristics that you said are so important." And with every group -- I don't care if it's a big firm group or a smaller firm group -- there's this uncomfortable moment where they go, "Well, that's not how we've looked at the resumes." And so, then, what we do is, we talk about how, you know, are there -- you know, why that is, and there are a lot of reasons that they would have: risk aversity, right? They're never going to get their hand slapped for, you know, hiring in a traditional way, whereas if they take a risk, they might. But also --
and this is why we're looking at this -- they don't have -- they don't have -- the tools in order to do it at a volume level, and so, we're trying to think about, 'Are there -- are there proxies, are there tools that they think that can used?' And it's not just to help students get jobs or to help law schools place students; it's really to ensure that the best possible candidates are being picked so that they're a good fit in the firm, they're going to be happy in the organization or whatever it is, and when they're going to be happier, they're going to service clients better. So that's a piece that we are working on. We're also thinking how this can be used to look at the current way that we evaluate candidates for admission to the Bar exam and whether if it is aligned with what the profession really believes is necessary. And finally, we're looking at what clients value. So to my mind, one of the biggest gaps with Foundations for Practice -- and we knew it was there from the beginning, but we still thought it was worthwhile to do, but the biggest gaps -- is that this is a survey of the profession; this is a survey of lawyers about what is it that lawyers need, and that means we have in-house counsel as a group of respondents, but we don't have other clients. And so, we just launched a project that is called -- and this is a group that will appreciate this title -- Think Like a Client, and what we are doing is -- and I'll back up just a moment to explain how we got to this. Are you all familiar with AVVO? You've heard of that? So AVVO is, like, a -- it is Yelp for legal services, basically. So clients can go onto this website and evaluate their lawyers; and I had actually just been listening to podcasts about a similar thing for
doctors, and I was thinking about my own experiences with doctors, and I thought, 'You know, I don't know if that surgeon's good at being a surgeon. What I know, though, is that he was good at giving me my options and talking me through it' -- you know, whatever, and I thought, 'I wonder what people are saying on AVVO.' And so, I went on the site kind of expecting that everything was outcome driven, like, "I won, so my lawyer is great," "I lost, so my lawyer is horrible." That's not what it is. And so, I and our researchers started poking around and we reached out to AVVO and said, "We would like to do a qualitative review of your data -- you know, give us the data," so they are saying "great." So what we are doing is that qualitative study of the AVVO review comments field to try to determine from that what it is that individual clients value in their legal representation. So we will have that additional information to layer on top of the foundation practice.

MS. GUNDLACH: Can I ask a question about that? How are you going to ensure that you get a broader diversity of the clients? I don't know what clients are actually posting on AVVO, but my guess is that a lot of poor people, for example, are not going on and then posting. So how will you try to get a broad read on that?

MS. GERKMAN: So that is absolutely true. In fact, someone at one of the conferences suggested maybe there is some information that can be drawn from law school clinical clients to ensure that that broader perspective is taken in; and the answer is, we're going to do the best that we can, but we recognize there are some limitations with this, right? It's not perfect. On the other hand, there's no great
way to reach clients. You know, there's no national association of clients. So we can't send out a survey to the national association of clients, so this, we hope, is an initial step forward in trying to understand what it is that clients need; and while it's not perfect, hopefully it's at least some information that can be built upon. And with that, I will turn things back over.

MR. SAUNDERS: Well, that's great. Thank you very, very much. Now, you could all see here why the Institute continues to work, as we have done for the last several years, with Alli Gerkman and the Institute for the Advancement of the American Legal System in Denver. I don't know of any other organization like it that has this kind of data and information on skill sets, hiring practices, and so forth. It's truly invaluable, and we have worked with Alli on a number of occasions in the past, and I hope we will continue to be able to call on you, because it's truly an invaluable service.

AFTERNOON SESSION

MR. SAUNDERS: Let's come back to our discussion; we have an hour-and-a-half, and let's try to follow the same format that we followed at the end of the morning session. Dean Boise, you're going to help us talk about changes to core curriculum and experimental learning requirements that have impacted your school the most. We know you've all made some core curriculum changes and some experiential learning initiatives in your schools. Which ones have had the most impact?

MR. BOISE: So first of all, I have to ask Aviva to assist me on this one. Her name didn't appear under one of these topics, and I
thought that was unfair -- that her name didn't appear. So I read the question as referring to the changes that were imposed by the judiciary, and so, my own comments are about the extent to which these rules have affected our core curriculum and experiential learning, so it may be slightly -- slightly -- off point. I think we talked about some of the things that we've done in our own curriculum earlier. With respect to the experiential learning, as I said at the outset, I'm a huge proponent of experiential learning. I think one thing that has been evident from the requirements of the particular number of credit hours of experiential learning is that this kind of requirement can entail administrative burdens for schools. And so, particularly, I think it's important to think about the extent to which compliance with these things involves staff time to gather data to certify whether students have completed certain things. This is sometimes a not-so-visible outcome of these kinds of requirements. I think -- you know, another thing that's had an impact is -- having one particular state with a requirement is one thing, and maybe in the case of New York, which is the big law jurisdiction and that's fine; I think the question is, what happens if multiple jurisdictions start adopting their own individual requirements? And that can get into a real thorny mess. The law school would be trying to comply with all these various requirements.

MR. SAUNDERS: What's the next most significant jurisdiction besides New York for your curriculum?

MR. BOISE: For us?

MR. SAUNDERS: Yes.
MR. BOISE: Probably D.C. I can say a lot of our students in D.C., in California --

MS. BILEK: Do any of the ones besides California have additional requirements?

MR. BOISE: Not yet, but I think in many respects, the fact that New York has done it also has a number of jurisdictions questioning whether they should, too. When I was at Cleveland State, I chaired a task force of the nine law school deans in Ohio, and one of the questions that we were asked by the Court was to look at the Bar exam, and so, one of the questions that came up was, should there be an Ohio set of requirements with experiential learning? So I think we're confident that that is being considered elsewhere.

MS. ABRAMOVSKY: If anyone was on the call for the clinical education, I think, last month, you know, D.C. is doing lot of things to make it much easier for people to be admitted to the Bar; you know, they're trying to compete with New York to be the default law, you know, for a lot of our government issues, and they're making it significantly easier for international lawyers to become licensed in D.C., and this is a direct assault on our business here. You know, if I wanted -- if I can be perfectly blunt -- I don't think people are paying enough attention to detail. On one hand, we have our traditional arms race that's conducted in California for the articulation on regulatory standards, and on the other, we have D.C. kind of doing, you know, an end run around this to take away our business. And now that we're all actually using UBE, it becomes increasingly -- those of us who are using UBE, it becomes increasingly
difficult for us to add additional requirements and say we aren't
recognizing someone who's admitted to practice who took a UBE at a
different jurisdiction, you know, with the appropriate reciprocity.

So the structural facts of that adoption of UBE, I think, has somewhat
slowly permeated our minds in New York, and the fact that the UBE has
experiential learning for law schools -- and I don't think it's been
completely successful in New York, because if we had moved away from
New York on the Bar, then experiential learning would be of what law?
You know, on the one hand, if you come from a school that's putting a
lot of people to practice in New York, I think you'll just be making
sure that those skills are required, but if you aren't or if you're
going to head out to D.C. or elsewhere, those experiential learning
courses don't exist in a vacuum, you know, without any framework in
terms of law. This is something I'm struggling with deeply to
articulate and I think we need to pay attention to, with that
fundamental change for our Bar.

MR. BOISE: I would just say that I would wager that all of the
things that you've heard about this morning were things law schools
began to do before it was a requirement. I think all of us as deans
have responded to market pressure to be responsive not only to what's
going on in the current market but also what students are looking for,
which is increasingly experiential, hands-on learning. So I don't
think that it's necessary always to have a hammer at the judiciary
level to get schools to innovate. We are moving as quickly, I think,
as we can given the many constraints that we have in legal education,
but the faculty is not particularly forward-thinking in many respects
with ingrained issues around the ability to shift faculty amongst different programs and to shift the courses that are taught.

MR. SAUNDERS: To what extent do you think the changes in legal education are driven by the market?

MR. BOISE: I think that they're driven in large part by the market. You know, I think that's what we're responding to: the market for students, the market to get our students jobs when they graduate, to get them the right kind of experience.

MR. SAUNDERS: But because I think the 2008 period was really a dramatic -- a dramatic -- period for the practice of law, and I think -- Lou Craco used to say to me that -- he had been the president of the City Bar, and once a year, I think all the living former presidents of the City Bar would get together and have dinner or lunch or something, and I remember him telling me that their conclusion was that the practice of law will never be the same after 2008; that it had changed fundamentally; that there were things that lawyers were doing prior to 2008 that they would never again do afterwards. I don't know exactly what he had in mind, but I never forgot that, and it was very important. We saw that in our own hiring practices -- I mean everybody did -- and the market just fell out, and I've always thought that that was one of the drivers for the changes in legal education in addition to requirements for regulators of courts -- that there was a recognition that the law graduates were not getting jobs.

MS. OUELLETTE: I think that also there's recognition that students learn differently, at least this generation of students. I really think that they need to do it to learn it, and that probably
was always true, but I think that's actually -- that the market is obviously one of the main drivers.

MS. BILEK: I don't want to distract; I just want to make a point, which is -- there's been something that was exactly the same in 2007 as when the crash happened in 2008 and 2010 and in 2016, which is -- that starting -- that many more people are not represented by lawyers that are on our Council, and that didn't change, and whenever we look at the market to figure out either what our law schools should do or what's going on, we're widening that gap. And I just heard this woman -- a probation officer who was a victim of domestic violence in her home in front of her 16-year-old kid who could not -- didn't -- qualify for free legal services because she makes $52,000 a year -- knew exactly where to go and she helps people do that; and there is no one to serve her in New York State, and her life begins to unravel. We're talking, in child support cases in New York, 99 percent of people who are in those cases are pro se. So I guess I don't -- I know that's not the purpose of this conversation, but I think not having this conversation has gotten us to where we are.

MR. SAUNDERS: And that's a paradox. That's a paradox, because there are -- Lauren knows the number; something like two million people a year who aren't represented in New York State --

MS. KANFER: 1.7 million.

MR. SAUNDERS: 1.7 million unrepresented in New York State every year, and yet, we have law graduates who can't get jobs. That's a paradox.

MS. ABRAMOVSKY: It's a market failure.
MR. SAUNDERS: It is a market failure.

MS. BILEK: So we haven't created -- we haven't helped to create a way to financially, economically, sustainably represent a lot of these people as a profession. We don't encourage our students to do it, we don't teach them how to do it, we don't give them credit for doing it. Many cases of us doing pro bono is never going to do it, and we have built a system that requires it. We have. We lawyers have, not non-lawyers who have built a system that requires a lawyer.

MS. ABRAMOVSKY: I completely agree with you a hundred percent on it. Together, we could be quite, you know, influential in fundraising. There needs to be more money for filling this gap with different models. That's for a different talk. What I wanted to say was, what we're really saying now is, we're talking about the market, we're changing the market, and the market changes for lawsuits, right? Because there's a demand that the firm no longer wants to invest in the type of practical skills training that they've done traditionally. So I just wanted to make sure that --

MR. SAUNDERS: I'm not sure that's true, at least from our perspective; I don't think that's true.

MS. ABRAMOVSKY: Not everyone, but there's a perception -- I mean, that's what those slides are showing, right? I mean, there's an implication of why we keep bringing this conversation with the number of unemployed and the number of lawyers who think that they don't have the skills to be hired. You know, the real bridge is that -- there's some responsibility for the schools to bridge that, make that change. We don't have to necessarily say in a pejorative way that maybe it's a
long time coming, but, you know, there are multiple different reasons why when we engage in experiential learning and or skills assessment learning, it's important for us to accept it's market driven, because that's what the lawyers want to hire.

MR. BOISE: There's been a lot of statements by high profile GCs about the fact that they are no longer going to fund, they don’t want to be billed for associates -- for junior associates time -- working at firms. I mean -

MR. SAUNDERS: That is true.

MR. BOISE: So that -- I'm certain that that is going to have an impact on the way that law firms think about, you know, how they are building a pipeline -- everybody wants a mature, experienced lawyer, but how do you get that from somebody who's coming out of law school? Who's going to pay for that?

MR. SAUNDERS: But just to give you a specific example about this firm, every year, we run -- I don't remember; the last number I saw was -- 125 training programs every year.

MS. GUNDLACH: I just want to follow up on two points. One, Mary Lu, I'm really glad you said what you said, and I actually think it's not at all an offshoot; it's directly relevant to exactly what we're talking about, which is professionalism. We haven't talked that much about the professional values of Access to Justice and serving more people and cultural competencies. There's a lot of that that is talked about on the sidelines but that is not talked about in professionalism programs across the country. That is something that we need to be valuing more as a profession and education. So with
respect to what changes to the core curriculum, I think we are at a
turning point primarily because of Judge Lippman's real push in this
direction on Access to Justice issues, and my hope is that that will
continue forward. But I think what we foresee in the next four
years, my hope is that that will continue to be something that we will
build out, and that's something I am incredibly proud that my dean is
focused on right now. The second thing that is a very real problem
which I said earlier is that there's all these rules and regulations
that are being imposed upon us, which, in theory, I think are
wonderful with respect to expanding experiential education but our Bar
exam is not testing for that. And so, for those schools -- and I'm
going to put ourselves out there, that we are -- we are -- struggling
with getting our students to pass the Bar, and so, how do we both meet
the regulatory obligations and, frankly, our own interests in wanting
to have our students get that strong grounding and then also prepare
them for a Bar exam that bears no relationship to that piece of
curriculum?

MS. HILL: The one thing that strikes me is that we talk about
the market as if there is one singular market, and I think to some
extent there is, but I think all of us encounter different markets
depending on the school, depending on the student population. I think
one market that you just identified is the market of students that
need to pass the Bar, right? We need to serve that aspect of the
market and then some might say the market that is clients,
particularly clients who don’t have access to lawyers, right? We don’t
often think about them when we think about the market. Fordham has
recently launched an Access to Justice Initiative that is really focused on how we might address the needs of people who need legal help but don’t have access to lawyers. So I think we need to think about the differential needs across the so-called market. I think we would all agree that how we think about teaching skills has to be informed by a broad notion of the market they will enter. For some of us that market is going to be big law -- for example. For some of us, that makes a lot of sense, but for some of us, it may not.

MR. BOISE: And I don't mean -- by my prior reference to the market, I don't mean big, big firms, because I think our response to what we're doing is whatever our market is. But I mean, there is a market that is not able to hire students who want to go into legal service, for example, because of lack of funding, right, and I don't think, with respect, that the solution to the pro bono Access to Justice issue is to give folks who were not even lawyers a requirement that they meet a certain pro bono requirement. I mean, I don't think that's doing justice either to the people who need representation nor to the students who are trying hard to get to the Bar and pass. But that's another issue and that's something that happened before I got here.

MS. HILL: I certainly agree that student pro bono service is not a solution to the crisis in access to justice for those who cannot afford representation.

MR. SAUNDERS: So let me jump ahead to the second -- the next -- question that you were going to address, Craig, and that is the reaction of the faculty and students to these requirements. What has
that been like? We covered some of that this morning, but I'm curious
to know whether there's any pushback, whether the students are liking
it or not liking it.

MR. BOISE: So I think for us, one is, you know, the student
response, because we're really pushing forward with experiential
learning, and I think that the issue has been a problem on the margins
for some students who are, for example, in joint degree programs and
have to complete 15 hours of experiential learning; there have been
some challenges with that, I think. In terms of the faculty, I think
there are some faculty that are still very, very fixated on a 50-year
old vision of what legal education looks like and then will push back
on the idea that the law schools should be principally or, in large
part, experiential.

MR. SAUNDERS: I can't tell you how many faculty members I have
heard say to me, "We teach the science of law, not the practice of
law."

MS. HILL: I think students are often confused to some extent.
There are so many things that they're trying to wrap their heads
around during the three years in law school; they're thinking about
their career options, grades and meeting all the graduation and Bar
requirement, I think it takes time to institutionalize a change like
the new skills requirement is, and I think that adds to the
administrative burden, right? We have decided to offer information at
various touch points throughout the year, particularly around
registration when we offer school-wide advising sessions.
MR. ROSNER: I'd like to ask the deans here if the science that
Paul just described is a counterthreat to the faculties.

MR. SAUNDERS: He was asking whether my articulation -- and I've
heard that on more than one occasion -- that is, we teach the science
of law and not the practice of law, is common among your faculty.

MS. GUNDLACH: I think that's increasingly a minority.

MS. GILLES: I think it's generational.

MS. HILL: To some extent that is true. Faculty hired within the
last decade includes many Ph. Ds who have interdisciplinary training
but not necessarily practice experience but it’s also true that more
and more faculty members are experimenting with different pedagogical
models.

MS. BILEK: When we're talking about generationally, we’re
talking about tenured faculty. So that -- there's a long tail on our
senior generation.

MS. ABRAMOVSKY: There's also back and forth on
interdisciplinary actions, and I don't think that's fair. I mean, the
pendulum does historically swing back and forth between their skills
and interdisciplinary -- you know, with various fields, and it's
difficult within our structured credit system, you know, within three
years, to square that circle all the time, which is a completely fair
point.

MR. SAUNDERS: I'm going to editorialize here for a second since
I have this audience --

MS. ABRAMOVSKY: I don't think it's a resistance in their
hearts.
MR. SAUNDERS: Right. I think we in the academy are kind of hamstrung by the semester model. I have always thought that there were lots of things that law students could and should be exposed to that don't require a full semester. An example I always use -- and my friends have heard me use this many times -- is you can graduate from law school without ever having seen a will. I'm not talking about writing a will. You can graduate from law school without ever having seen a will.

MR. ROSNER: Or a complaint.

MR. SAUNDERS: Or a complaint. My son is a doctor -- he's a heart surgeon -- but he could deliver a baby if he had to, because in medical school, the medical students are exposed to the entire --

MR. ROSNER: It's clinical training.

MR. SAUNDERS: -- clinical training. It wouldn't be pretty, but you don't need a whole semester to learn what a will looks like. So I've always thought that there's a sort of truth-in-packaging issue that we allow people to graduate and call themselves lawyers without having had any exposure at all to certain parts of the law.

MR. BOISE: I'd like to say something in support of what Jennifer said earlier about the Bar exam. I think that that is something that is long overdue for an examination. I think -- you know, I mean we test things that are sort of enshrined in what counts as the law -- and we're going back a hundred years -- but there are various areas that are evolving that our students need exposure to increasingly. We have healthcare law that is now more important than secured transactions. Compliance is more important, I think, than -
trusts and estates; which has generally become a very small niche practice. So I think the fact that we've added on new things without, sort of, re-examining what the new landscape looks like, what the practice is, is a problem, and our curriculum is constrained by this; we have to offer these courses for this Bar -

MR. SAUNDERS: I think you're on to something. So I think in addition to talking about skills and values, it would be useful to assess what that legal landscape looks like, and I'm no expert in the way in which the Bar exam is created. I know we've now gone to the UBE in New York, and that's a whole other process that I really know nothing about. But that would be a very useful conversation to have as to what are the -- not only -- not only what are the skills that are required, but what's the -- what's the -- landscape of substantive issues to which students ought to be exposed if they're going to call themselves lawyers.

MS. BILEK: Well, given that we've been a regulatory state since the 1950s, one may think there might be some administrative law, obviously, right? And so, I a hundred percent agree with you. I would ask that the inquiry may be broader, especially given what we saw there and given what we know. It's not true that no skills are testing -- obviously, there are some skills tested on the Bar exam -- some skills that are very important to learning and then some other skills that are not so important that may be antithetical to learning, such as memorization. We live in a world where an e-library could be loaded onto my computer very quickly, and when I could practice law, I could write essays the way a starting lawyer would actually do her
work. And the people taking that test would feel that it was real. And the measure on that test may be more valid than where we are now. I mean, right now, our students are taking a multiple choice test that's based on the law of no state and then an essay test where they have to memorize rules word for word, and I'm not going to spend my time teaching them how do that.

MR. SAUNDERS: And that's why I always believed that open-book tests, for example, are much more realistic than anything else. I mean, no practicing lawyer worth her salt would ever give me legal advice without looking into the books.

MR. LU BILEK: I'm pretty sure there's an exception there.

MR. HERTZ: So as someone who's been involved in these conversations for the past 30 years, I can tell you that I was part of conversations like this with the City Bar Association, the State Bar Association, the ABA when they issued reports saying that the Bar exam needs to be revamped in exactly the way that people are talking about right now. I was also a reporter for a city bar association committee that was ongoing for the better part of five years and kept coming out with drafts of a report and then, when Bar examiners objected to our recommendations, new drafts with new recommendations. This went on for five years until finally the committee just went out of business --

MR. SAUNDERS: Is Bob Witmer still on the phone? Bob, I'm going to throw this over to you to talk about the Board of Bar Examiners in New York State.

MR. WITMER: I'm not sure I'm a particularly good one to do that. So again, it is independent from the state Bar, which, of
course, is where I spend a lot of my time. My impression, though, is that you've got some good people there, but they are overwhelmed, I think, with just keeping up with the current, you know, way we're doing things. I'm not sure there's that much time that we have to sit back and really think carefully about what changes should be made, and some of these changes, of course, can -- you know, are sort, of -- can negatively -- impact the minority students and that causes a significant political problem.

MR. SAUNDERS: I think that this is really not the main topic for today's discussion, but I think that this is clearly a related -- a significantly related -- topic that needs to be addressed, and to whatever extent that we in the Judicial Institute can facilitate that conversation, we want to do that. We recognize that this is an important issue that goes hand in glove with making other changes to law school curricula programs.

MR. HERTZ: I'm sorry. I didn't mean to suggest by saying that I've been through whatever frustrating experiences of trying to do this that it shouldn't be tried again, but what I can tell you from my prior experiences is that you won't get anywhere unless you get the Bar examiners -- including the National Conference of Bar Exams -- the NCBE, the national organization, involved at the front end and you get people from that part of the profession who are open to change and are interested in change, because if they're not, then this won't happen.

MS. SAUNDERS: Catherine.

MS. RICHARDSON: Well, if I remember correctly, it was Judge Lippman who wanted the uniform Bar exam, and he just -- they changed
rules just so that they could give the uniform Bar exam, and it's
caused a lot more problems than what I think the original exam did. I
mean, we needed reform back in 1975,'76.

MS. KANFER: Right at the time that that happened, there was a
push to include Access to Justice principles on the Bar exam, because
that was how we were hoping it would get through the curriculum, and
that was the year that the UBE was discussed. So now, the New York
component is so tiny.

MS. ABRAMOVSKY: I think that's something we need to keep
articulating as a group for ourselves here: skills and values to what
end, right? To what end? I mean, that's what Mary Lu and Jennifer
and I are talking about, is that Access to Justice, is it to make sure
that we have enough qualified lawyers? To what end? To serve the
clients? Which clients? The only clients that are currently to hire
us or advocate for law reform? You know, is our responsibility
broader than just preparing some people for some practice or to get
out there and be part of the state conversation and the regulation
lawyers as a whole have Access to Justice? I think it is. I think
that we have an ability to keep a broader responsibility. And as you
could see, most of us think that we're actually doing a pretty good
job for most of the skills and discussing that in the class and
pushing students to think about those things in a classical way for
one hour or two hours or three hours. But the broad conversation to
regulators is to what end?

MS. GILLES: We haven't talked much about students, and so, I
just want to give you a perspective from our students, because we did
a survey to look at some of these questions, because we have the new
t skills requirement, and we wanted to get a sense of -- and we also
have a lot of professors -- this is not New York, this committee --
but the ABA has pushed us to not only put in learning outcomes but
also to try to assess them, and our faculty went into this gung ho
last year, because we had tons of midterms and writing assignments and
quizzes, and the students were just so overwhelmed because, of course,
we, you know -- I teach civil procedure and I had -- they had to
write, you know, a portion for a summary judgment paper, which I
should have kind of thought it was way too much for first-year
students. The same day, we also had a quiz in torts, and then, they
have a legal writing assignment too. And so, there were students who
looked like the living Walking Dead in my classroom, and I thought to
myself, 'We need to Google calendar this. We need to do something.'
But that's quite difficult, because, you know, I got a pretty big
first-year class. Even though we have section meetings, professors
don't really know how to assign the section meetings, what they're
claiming to do in a particular class. So maybe they should know, but
they don't necessarily, since these are new. So one of the things
that really came across in our survey is that 1Ls were feeling really
bruised and battered by all this, and I really think it was an
unintentional outcome. The professors were trying to really figure
out how to assess these outcomes that they had put forth, and I'm
proud of how engaged they were, but boy, the students suffered.

MR. SAUNDERS: That's a good segue, because now, I want to turn
the discussion now to Ms. Ouellette. The floor is yours.
MS. OUELLETTE: The topic is what outcome assessment tools does your school use and are outcome assessments valuable tools? So technically, I think it's a little early to say, although we're trying. I'm actually curious to hear what the other schools are doing; I'll talk a little bit about what we're doing. We've gone very low tech. Our assessment process is very faculty driven; there are products you can buy to do the assessment -- you can plug it into your exam software and, kind of, push in keys to your outcomes. What we did was, for each learning outcome to identify performance indicators -- so I can circulate some of my handouts -- but if you pick as a learning outcome “demonstrate the ability to communicate effectively” one of the learning outcomes or performance indicators is that the student will demonstrate the ability to speak in a clear, concise, well-organized, and professional manner. So it's not going to be too shocking with some of the values or characteristics-types things that we're looking for. We have an outcome that is to “demonstrate an awareness and understanding of the knowledge, skills, and values necessary to be competent and effective lawyers in a multicultural world.” There are four different performance measures. One of them is, “students will demonstrate sensitivity regarding different positions in cultural communication between lawyers and others.” So we've identified the performance indicators, faculty-tagged the outcomes on their syllabi in their in-class assessment; they try to see whether the students are demonstrating the performance measures. And then, the assessment on the institutional level, we have an assessment committee that is -- it's mostly faculty, but there's also
administrators on it as well. And for each of the outcomes, they've
developed rubrics that track the performance indicators, and they do a
sort of sampling. So if it's written, the committee is actually
tracking a sampling of the papers, of the exams, of the midterms, of
the quizzes so that we could see on an institution-wide level whether
our students are performing at advanced, competent, developing, or
deficient levels for the outcomes. The ABA just requires us to
assess; it doesn't actually require us to meet it, but, of course, we
want to meet it. And so, the idea is, as you get that information,
you feed it back and change your curriculum and work with your
faculty. So those are the tools that we have developed, so they're
homegrown -- I think we've relied so much on your work, Alli -- and
we're doing it now and talking about it a lot. There are other tools,
and I am curious what other schools are doing.

MR. SAUNDERS: I put that question on this agenda for one
reason, and that is, as we were preparing for this workshop, we looked
at the published outcomes that many of you make publicly available,
and our reaction was that they were, sort of, all over the place.
They were very different, one from the other. Some of them were very,
very detailed; some of them said we're doing great; you know,
everything's great here. And so, that's why I wanted to have a
discussion of whether these outcome assessments are really doing
anything, because the responses that we saw were very different, one
from the other.
MS. OUELLETTE: I think the answer is whether you're just trying
to check a box or whether you're actually trying to change the
curriculum.

MR. BLUME: One of the things with making anything mandatory is
it creates a race-to-the-bottom incentive. I mean, once you say that
you have to certify that every student in New York in your school
possesses the skills and values, it immediately creates, "Okay.
What's the minimum we have to do to be able to do that?" And I think,
you know, in some ways, the certification requirement, at least at our
school, sort of stopped the process which was going in a more positive
direction anyway until we had to stop and say, "Okay. What are we
going to do now? We've got to be able to create a plan. We've got to
be able to certify that every student meets this." I think it's the
same with outcome assessments: once you say, "You got to do it," then
people say, "Okay. What's the minimum amount, you know, I have to do
to be able to say that I'm doing this?" So a lot of these things are
very well-intentioned and they're intended to push in a positive
direction, but they can actually create incentives that work against
what might be positive.

MS. HILL: They can even disrupt activities that are already
undertaken to create innovative programs. For example,
it is not possible to develop formative assessment processes
overnight. You have to analyze research and tailor processes to the
needs of your courses and you want faculty to be able to engage in
that work thoughtfully, not because they have to and not necessarily
on an artificial timeline.
MR. SAUNDERS: Craig now wants to offer a question to the group.

MR. BOISE: I just want to echo what you said was kind of a hot topic. So I would agree. I would be very reluctant to jump in with a requirement about this just yet for a couple of reasons: one, the ABA, only a couple years ago, had introduced this concept in the accreditation process of establishing learning outcomes and method of assessment. So I think that, again, being part of the Syracuse community, I know that this is fairly new; it's starting to infuse all of the standards. And so, I think there should be a little bit of time permitted for schools to make the pivot to really thinking about it. So it's actually a different way of thinking about education, whereas before, it was always about how many faculty you had, how many books in the library, how much money you were spending; and now it's focused, as I think it should be, on what is it that your students need to know, and then, what are you doing to make sure that they are getting there. The other thing is that I think that today in law schools, some law schools by virtue of being part of a university that is accredited by Middle States, our accreditor, the outcomes assessment is a huge piece of the Middle States re-accreditation -- we're going through that right now -- and so, they're also forcing constituent parts of these institutions to be more focused on this. So I think you'll see more uniformity and more focus on that.

MR. SAUNDERS: So is the general consensus that outcome assessment is valuable or a hindrance; is it an unnecessary administrative burden? If you could rule the world, how many of you would eliminate outcomes assessment requirements?
MS. GILLES: For me, it would be much more limited. I've seen this as a very powerful tool to get the faculty members who I think are honing it in to focus and be much more engaged as to what they're teaching and why they're teaching this. So a lot of my faculty who are already doing this stuff, you were much more inventive -- I think you're absolutely right, John, much more inventive -- than these requirements. It is an administrative hassle; I mean, it takes time and money that we would rather spend elsewhere, frankly.

MS. HILL: On the other hand, it might be helpful for some students to have course level outcomes, especially those students who have no previous exposure to attorneys or law schools. Different assessment models could assist students with a range of learning styles as well.

MS. GILLES: And there are students that don't even read. They don't really process it, is what I think.

MS. GUNDLACH: You mean they're not reading the outcomes list, but I think they do, but I thought we were going into they value the assessment. They sometimes do. So rather than having the one exam at the end of the semester, and if you've got the midterm, if you've got writing exercises, you know, drafting a complaint or whatever, that is showing them that they are where they are and how they're doing and that that bears some relation to whatever assessment is happening in a class. I think to that extent, it is valuable, and it also is valuable to the teachers when we see, "Gosh, they just bombed on that personal jurisdiction question, and so I've got to go back and focus on that," or something like that.
MS. HILL: Of course, it varies from student to student.

MR. BLUME: Well, the classes that most rigorously focus on student outcomes are much more work for the students -- students and faculty -- and the students complain about it, because "God, this other class, all I got to do is take an exam at the end. Here, I'm going to be assigned to somebody; I'm going to have to do this exercise, and I'm going to have to do that." I'm not saying it's not valuable, but there's a lot of students complaining about it.

MR. SAUNDERS: Give Alli a second; she was eager to make a comment.

MS. GERKMAN: What I was going to say is, I actually tend to agree that outcomes shouldn't be required for those same reasons. I think actually, schools that are doing a really good job of -- who are already doing a good job of -- looking at outcomes kind of lose out if it becomes required, because it's sort of the same thing; I think that it actually skews the market in weird ways, too. But I'd be really curious to hear from people who have indicated that outcomes assessment maybe isn't valuable or that they were on a better track before, what that track was, and how they were -- how they were -- effectively demonstrating the value of a legal education.

MS. GILLES: We were doing a really cool project before all this came out where we have a civil procedure professor and torts professor. So in the same session, the civil procedure and torts and -- so the teacher -- professor -- teaching the civil procedure would first start teaching a lesson in doctrine and we would come together -- you know, the two professors would come together, and say, "Today,
we're going to have you draft a complaint, and it's going to be on the
tort concept that you just learned -- a med mal complaint -- and then,
in a few weeks, we're going to have you draft an answer" -- you know,
so if there's all these rules combined, there's all this great meat on
those bones. We were doing this -- we were getting a lot of our
faculty to do this regularly, and it was great for the students to see
their professors working together; it was great for them to get
different feedback from two different perspectives -- from the
substantive perspective as well as the procedural perspective -- and
we got in return a great thing. And now that we have a set of
learning outcomes, it is not as simple for professors to, kind of,
come together and agree on. It's not workable.

MR SAUNDERS: All right. Dean Katz.

MR. KATZ: So this a very good bridge to the sixth question,
which I actually proposed being added to the agenda. I think it's
helpful to put our discussions in a larger context about regulation
generally. If we look at regulation of physicians, if we look at
regulation of educators, if we look at regulation of lawyers,
different kinds of professionals who take pride in what they do and
have a lot of deep granular knowledge, we have found you can't just
leave it to the physicians to decide how much to bill; you can't just
leave it to the educators just how much to teach. But when you come
in with managed care and No Child Left Behind, you have the educators
saying, "We know how to teach these students but we don't have time to
do it, because we have to spend all of our time teaching for the
test," and the regulators are just dumbing it down. We all know
physicians who say, "I don't have time to spend on individual consultations with my patients anymore, because I have to spend so much time filling out forms." And there's truth on both sides. And so, that's true in regulation of law schools, too. We actually have a lot of local knowledge about how to teach law students -- what helps people remember a lesson, what kinds of classroom exercises work and which don’t. We have a large group of adjunct faculty who come in to teach subjects on which they’re expert, and we're really proud of these colleagues. I'm one of these JD PhD.s that everyone talks about, without full-time practice experience, and if I came into an office like this and you tried to put me to work, it would take me awhile to find the copier and the wastepaper basket. And similarly there are very eminent people who we bring in as adjunct teachers who, at first, don't automatically come in with the skill of how to ask a question the students will respond to. It turns out that talking to students is different from talking to judges, or junior associates, or clients. For example, one common pitfall is to ask a question that's too vague to nobody in particular, and nobody answers it, and then the instructor waits ten seconds, and answers it themselves, and then, they do it a second time and a third time, and within a half-an-hour, they have trained the students not to participate. And so, we have instituted some training programs for our adjunct faculty to interact with our full-time faculty and to discuss best techniques for teaching, including teaching in an experiential modality. A second example has to do with skills assessment. If we want to persuade legal educators to use assessment appropriately, we need to teach them
that assessment is not just something we have to do at the end of the year in order to certify students that are getting ready to go into the job market; the assessment is actually part of the education. But for that we have to have a collaborative discussion. I'm delighted that we all came down to have a talk with you. But I think it would be good if also you came uptown to see what we were doing. I would also like to hear how those of you who are doing more experiential teaching at your schools share information about how you can get more traditionally-minded faculty to care about and participate in this effort.

   MS. OUELLETTE: I think part of what worked with us is, there are people who really believe in assessment and faculty, and they did a lot of teaching of the other faculty in demonstrating the improvement in their outcomes, right? So here are exams -- you know, before midterms, here are exams -- after midterms, so that there are actually changes and outcomes that everyone can understand and see. So I think -- I feel like our faculty is -- they're kind of -- buying it; it's a lot of paperwork; it's a lot of knowledge, and all these papers; and it's at the class level, it's at the institution level, so it would be really nice to have some automated help -- but there's a little bit of fear for assessing our outcomes; like I said, we're going to be assessing our faculty's effectiveness, and there's a little fear among some of the faculty because that would mean they're going to be called out as not being great teachers.

   MR. SAUNDERS: Do you publish your assessment outcomes -- your outcomes assessments?
MS. OUELLETTE: So because we're doing random sampling, yes, and remember, this was faculty driven, so we published it to each other. If we were doing class by class by class, that would be a much harder answer. At least, I would share -- we would share it with faculty.

MS. ABRAMOVSKY: I think sometimes I wish also there would be some harmonization between the regulators. The Middle States assessment is quite a lot, and poor Cornell had some trouble, too. So, you know -- and then, there's the ABA assessment, you know, different assessments here and there. So considering the fact that at least -- I think we're all regulated by Middle States, right? You know, we're all regulated by the ABA, we're all regulated by -- you know, if society wants to, like, start switching around the assessment step, maybe have a conversation of what all the different rules are, we have three different sets of rules for outcome assessment strategy.

MR. HERTZ: With regard to how you get people to be interested in this if they are not naturally: we held a faculty workshop, not about requirements but about all the innovative things one can do with simulations in traditional law school courses, and we had professors who are traditional law school professors but who use simulations, and they talked about how they do this in their corporations course or other courses, and everyone who came to it were people who were open to this; and as a result of that, a number of professors started saying, "Hey, that looks pretty interesting; I'd like to do something like that, too." And so, once you get it outside the mandatory framework and you show professors that their peers are doing this, then you open their minds to the possibility.
MS. HILL: Right. We did a similar thing at Fordham. I knew there were nonclinical faculty members who were doing simulations in their first year and upper level courses. When I conducted a presentation on experiential learning, I was able to call on those faculty members to provide concrete examples about how to incorporate experiential models into their doctrinal courses. The fact that nonclinical faculty provided the examples provided credibility for those who may have been skeptics. And we also instituted an annual teaching retreat in 2016 and invited outside speakers to talk about outcomes assessment, to talk about technological innovations for use in the classroom. The fact is that governance and independence at Fordham is really important to people. So if you want people to experiment, you have to do so in the context of allowing people to be autonomous to a certain extent and to get excited, and I feel like the teaching retreat will provide a forum for faculty consider incorporating new teaching models. In the teacher retreat, we had roundtable discussions about facilitating difficult conversations in the classroom around race, gender and class differences and the faculty was very engaged. So it goes back to what many have already said—that a lot of law schools are already engaged in curricular innovation, so regulations can sometimes be seen as imposing for some schools.

MR. SAUNDERS: One more question, and then, I want to ask Dean Katz to cover Question 7 and Dean Boise to cover Question 8.

MS. GUNDLACH: So just in further answer to the prior question, I think sometimes— to Randy's point, you have to walk people into
the conversation in a different way when you -- rather than saying "the regulators are telling us to do X." So I had a similar workshop where I had to deal with talking about different ways of assessment, and when you talk about -- what are you trying to get your students to learn? If they finished your class, what do you want them to be able to demonstrate? And then, you walk back -- "Okay. What's the best way that people learn something?" They learn by doing, right? So a lot of people can agree on that, and frankly, what you're doing on the final exam is, you're applying what you memorized and learned or whatever to be a fact pattern, right? So then, it's just a matter of taking a step back further, what can you do before the final exam to give more opportunities for them to apply what they're learning? And to test them in that capacity to get ready for the final outcome assessment. And when you walk them into that conversation, then you want to use the simulation, because the simulation is just a fact pattern -- all it is is a fact pattern that they're going to find whatever the best thing is, or maybe you're integrating some skills or -- you know, whatever. But I just think that it's often how you package it.

MR. SAUNDERS: Dean Katz. Question Number 7: How do these initiatives and mandates relate to ongoing and anticipated -- I emphasize the word "anticipated" -- changes in the practice of law and the need to keep legal education affordable? And Mary Lu, you're involved in this as well.

MR. KATZ: I also suggested putting this topic on the agenda, though I think a number of people have mentioned this or referred to
it. So I am lucky enough to teach at a law school that is pretty well
toff, but we still can't afford, on our current budget, to provide
small-clinic experiences taught by full-time faculty to 100% of our
students, without either cutting back on other essential parts of our
mission or raising significant additional revenue. Much of this is
just a matter of class size. If we just want to have a doctrinal
course with repeated assessments with a midterm and skills exercises
with feedback and reflection, that can't be done in a class of 180;
maybe it can be done in a class of 30. So to cut class size by five-sixths, either we can hire a lot more faculty, which we can't afford
to do, or we may have the current faculty teach six times as many
sections as they're currently teaching, which will be of limited
effectiveness and will undermine other core activities; that's not
feasible either. When the topic of experiential learning comes up,
one popular thing for the faculty to say is, "Well, that's for the
adjunct faculty." That's not a great answer, especially when in other
settings they say we shouldn't let the adjuncts to do so much
teaching. I think that some schools are doing a lot of contracting
out; and it's hard to maintain quality control in doing that. We are
trying some new things, like joint teaching between full-time and
part-time faculty; new kinds of externships where people go off to
various different workplaces and then come back to a faculty-led
seminar to assess. I think we all know clinical teaching is the most
expensive part of legal education, measured in terms of student-to-
faculty ratio, and so, if we're going to say "the answer is more
clinical teaching," that rubs up against the need to not have tuition
keep rising, as well as the financial pressures on the legal profession itself, which means that it may not be so sustainable any longer for leveraged borrowing to be the standard way for the typical student to finance a legal education. I don't know the answer to this, but I know that we have to think about those kinds of problems if we're going to impose regulatory requirements that entail real expense.

MS. BILEK: I think -- one of the things I think about is that this varies dramatically from school to school. And just the other day, somebody said to me, "We're getting to code our budgets again. How do you want to code the budgets?" I said, "What do you mean? This is my lucky day. I'm picking where I'm going to go on vacation: how do I want to code the faculty?", and they said, "Well, you know, the way we can do this as far as faculty, adjuncts visit the clinical faculty library," and I said, "Well, faculty and clinical faculty doesn't accurately represent our faculty where people move in and out"; and the person that I was talking to in my law school said, "But you need to know how expensive your clinical program is," and I said, "And I need to know how expensive it is to teach a set grade." So the problem is that it appears to be that this is a pretty abrupt life, where we are in a shift from a moment in time where law schools were sorting and students were sorting within them, and that was the entire game or close to it, and of course, that's a big overstatement. But that was a strong thing that was what legal education was about: "I get into the best law school I can get into, the faculty sorts me into what I do or not, I take a job or not," and then, it goes downstream a
little bit. All the people who taught at law schools in the year 2008 are still teaching there except for the ones who switched who they choose to hired. They bought into that stake, and particularly the ones who were hired in the late eighties and early nineties, we told them the game was to produce scholarships. But that's who our faculties are nationwide, that's why our tuition went up, because we were doing things to reduce loans to get those people, produce more scholarships, and go off and do as you do. You can't do a 180-degree turn off of that. So part of my answer to you, Avery, is, yes, a clinic is expensive, but there is nothing more valuable than to do it. But I understand that you can't turn around and do that without doing it off the backs of your students. I think the same thing is true of outcome assessments; like, all of a sudden, you guys acting like we do in law school is supposed to lead to some outcome and practice. Like, really? One of the things that it had to lead to was that they pass the Bar exam, and why would you want us to do that based on who they let in?

MR. ROSNER: There's a rhinoceros in here that nobody's talked about in terms of legal education, it seems to me, and that is to what extent does scholarship and writing for publication inhibit -- or I shouldn't say "inhibit," but limit -- the willingness of tenured faculty -- well, not "tenured," but faculty -- full-time faculty -- to engage in these activities?

MS. GUNDLACH: I think that that's a really good question, and also -- just for the record, there was actually a really interesting recent article about how clinical education is as expensive as what
has previously been thought. The point is that one could make an
argument that there are people who work eight to nine months out of
the year and teach a seminar of ten students and have one big class
and you have a sabbatical every few years that are also quite
expensive, right? And so, I think that there are -- this is to Mary
Lu's point, this is very much attention that we're seeing in law
schools right now that -- you know, we've got lots of different things
that we're trying to do, right? We've got a whole host of things that
we are trying to teach; we're asking more of everybody, and I think
the bigger elephant is that the tuition is ratcheting up as a result,
because we're trying to do so much that we need to hire more
administrators and have more resources for the monitoring and for the
reporting; we need to have more faculty who can teach this way and
you've got to get the jobs for students so you've got to build up
career services people, and we've got to help people pass the Bar, so
we've got to have academic support people, and we've got to do more on
the admissions side to try and drive students in, and so on and so on
and so on. So I think the anxiety among the deans in the room is
about a shrinking pool of people who can afford to go to law school
and, not to mention, who are qualified to go to law school. So that's
another big concern that goes with every regulatory piece and what
everyone was trying to achieve is costing more, which then gets passed
down to the students.

MR. SAUNDERS: With that said -- I don't know the answer to that
question, and I'm not even going to try, but I think it's important
for the people who are responsible for regulating law schools --
whoever they are: Middle States, the Court of Appeals, the ABA, whatever organizations there are -- is to understand -- and I think this is to the extent that this proceeding constitutes a voice, to understand -- that these regulations, although they are very well intended, bring with them a cost, and that cost is borne by the students, and there's a tradeoff; and I don't know enough about the regulatory process to know the extent to which that tradeoff is considered by the regulators, but it certainly ought to be, because there's a tradeoff. The goal is quality, affordable legal education; the two things go together in my view.

Let me just -- we have one more topic left, and let me ask Dean Boise to talk about this topic. This may be the coming next big thing, and that is distance education. There are all sorts of restrictions in the ABA rules and other rules on how much distance education is, or should be, permitted, but this looks like it's the next big issue on the horizon. So let me turn it to you, Dean.

MR. BOISE: I asked to have this added to the agenda; and in the interest of full disclosure: Syracuse is seeking a variance from the ABA to have a hybrid residential and online program. But I think, really, this goes to the issue you just raised, which is the multitude of regulatory requirements; it not only can be costly for students, but it also inhibits innovation. And so, it's interesting to me. I don't know the history behind New York's restriction on online -- there now is a limit of 12 credit hours; as part of the JD, there's 90 -- 70, 80, 90 credit hours. Well, currently, the ABA has a 15-credit requirement, and the ABA Standards Review Committee has proposed to
the Council that that be expanded to allow up to 50 percent of the JD to be done online. Now, it's not as big a change as it might seem, because currently, a course is not even considered a distance education course unless more than a third of the instruction is provided online. So definitionally, if you think about that, you could essentially have a third of the JD be online under the current rule plus another 15 credit hours, so you're approaching half anyway.

MS. ABRAMOVSKY: Do you know when the ABA is going to announce that?

MR. BOISE: It will be put out first for notice and comment -- after we propose that. I don't know whether that will be -- you know, it's hard to say what the Council's going to do on this, but I think one of the things that came out of the discussion we've had about this is, you know, the ABA's 15 credit hours is completely arbitrary; there's nothing about that number -- I mean, it could be somebody pulled the number out of a hat. And so, I think particularly when we're talking about dual regulatory regimes, that it would make sense to really think about where those numbers are coming from; and my own recommendation would be that New York simply look at what the ABA's doing. Certainly, the ABA is -- in every respect, is -- sort of, the standard for New York. I mean, you can't take the Bar unless you graduated from an ABA-accredited law school, so presumably, accreditation with the ABA means something substantively. So I think it would be useful to have a single standard, and I would say that the ABA is probably in the best position to do that. Again, you could have multiple jurisdictions coming out with different rules -
MR. SAUNDERS: Let me ask you a question, and I want to ask it out of complete ignorance. Let's assume you were giving a class and the students were physically present in the classroom and you wanted to bring me in to give a lecture by Skype and you don't say a word during the class. Is that distance learning or not?

MR. BOISE: Yes, it is, because the instructor is separated from the students, and if it's -

MR. ABRAMOVSKY: If it's more than a third.

MR. BOISE: -- and if more than a third of the course is done that way. Now, with the new standard, with the 50 percent rule, any course that has more than the de minimis amount of online is considered online, so it also is changing the definitional view.

MR. SAUNDERS: And I think you're going to see what I just articulated more and more happening, because it's just so easy to do, and you can really enrich the educational experience for the students by bringing several different voices into the conversation, not just the people in the room. We'll go to Patty now.

MS. SALKIN: So I teach online, and I taught online maybe ten years ago at Albany, and Alicia also has taught online -- both at the law school at the graduate level. Way back when, we did it asynchronously, meaning that we weren't meeting there at the same time with our students. Today, I teach my class from my office in Manhattan or from my apartment to the students, wherever they might be -- whether they live in Long Island or they live in New Jersey or they live in Manhattan, but I use Zoom as a platform. So we meet at the same time twice a week; I see them, they see me; we engage in a
conversation; it's exactly the same as being in the classroom.

Instead of a Powerpoint in the room here, I share my screen. If I want to use a Powerpoint, I could bring up the statute and they could read the language in the statute. And then, we talked about collaboration routines. Using Zoom, I have organized the students into -- I divided them up into -- groups of three or four, and I put them into Zoom classrooms after we start the class, put them into the classrooms; I can visit each classroom while the two, three, or four of them are working together on a problem, see how all the teams and groups are doing, and then, I press a button and bring them all back to discuss how they're doing. I've had people come in from around the country to do, just as you said, guest-lecture as part of the class while I'm there and the students are there. You know, each year, the students think it's great; some of the students are skeptical at first; some of them have taken their college degrees with lots of online courses. After I put them into the Zoom rooms for the semester, they said, "This is great. This is better than actually being in the classroom, because it's noisy, and now, we can work with just the three or four of us together, you know, uninterrupted."

MR. SAUNDERS: So am I right that the objection to distance learning is that the educational experience is not as good as in-person learning? If that's right, is that objection correct?

MS. SALKIN: I think it's misinformation and perceptions that maybe don't match with the technologies today.

MS. GERKMAN: The one thing that I would add is that I think the importance of distance learning can underscore the importance of
outcomes and assessing outcomes, because I think part of the problem is, it's kind of like in a workplace; there's a lot of workplaces that are thinking about managing teams that are not at the site, and what happens is, it becomes a huge management issue, because before, where you could say, "That person's doing a good job, because they're there from 7:00 in the morning 'til 5:00 at night, so I'm pretty sure they're doing their jobs." Now, you have to actually manage based on what they're supposed to do, and it's similar to distance learning. So I actually think having those outcomes when they're thinking about their time devoted to distance learning will open up a lot of opportunities in that world. And the higher ed. that does distance learning already a lot of times have very sophisticated platforms, and that is -- they are way ahead of everyone else in higher ed. in terms of evaluating learning.

MR. HERTZ: I'm my law school's representative on a university commission that evaluates new programs throughout the university, and a lot of them are using distance education both synchronous and asynchronous, and we get a lot of presentations in which we hear a lot about -- and I ask a lot of questions about -- what's working and what's not working. Interestingly, sometimes asynchronous turns out to be better than synchronous for some kinds of things. But the important point here is, higher education has a lot of experience with this, and we can turn to them to find out about what works and what doesn't work; and actually, one group that came and presented to us said to us that they're doing a study right now of what works and what doesn't work throughout their part of the university. And so, I think
we can get useful information. We are so far behind what other parts
of higher education are doing. What you're doing, Patty, sounds great.
But maybe we could do even better if we knew more about what works and
what doesn't work.

MR. SAUNDERS: So let me get a sense of the room. How many of
you think that the limitations on the distance education and credit
hours should be increased or eliminated completely?

MS. BILEK: And this is something that I've heard that
distinguishes New York in a bad light.

MR. SAUNDERS: Just for the record, the sense of the room was, I
think, that was yes in answer to my question.

MR. HERTZ: If I could offer a friendly amendment. If you were
to ask the question, how many think it should be considered and
studied, my guess is everybody in the room would say yes.

MS. ABRAMOVSKY: That's what I wanted to say. I think the
problem is that we have not done it, and it's a risky proposition to
make an enormous change. Think about the conversation we had
concerning GRE. Graduates had studied backwards and forwards data,
quanta analytics, everything known to mankind. But, you know,
switching over all of a sudden to distance learning for half the
curriculum, no problem; let's just do it. It is not just successful
being in the class itself. But how do you think that those students
are being provided with law school experience? Where are the
experiential learning requirements? How does that all link together?
Where is student support, Bar support, job support? Have a co-worker
there. Collegiality. What's the right -- we do know from online
learning in other fields there's a really low chance -- I'm sorry.

Let me inverse that. There's a high proposition that they won't
finish -- they'll take a few courses and then stop, racking up all
different kinds of debts. We know that from a variety of different
kinds of studies. None of it is right or wrong. It's the type of
thing that I simply believe we really should actually study, right, in
a variety of different ways before we make a significant comprehensive
change. While I agree with Craig that the number is arbitrary, I
think I understand why: it's that -- "Well, 12 credits probably won't
do too much harm"; more than that, I think we could be getting into a
danger zone. Is it probably arbitrary? Yes. It is probably a gut
understanding, right?

MR. SAUNDERS: All right. Craig, you get the last word.

MR. BOISE: Well, I appreciate Aviva's point that, you know, we
-- the plan we propose addresses each one of those things, from the
academic to the experiential to the placement, and I think that's part
of what -- we all want to be sure that the quality is going to be
equivalent. But by the same token, we have no experience, and we
can't have experience as long as our rule prohibits experimenting.
And so, that's -- I'm of the mind that a thousand flowers blooming --

MR. SAUNDERS: Now that we have a thousand flowers blooming, it
is precisely 3 o'clock, and I promised all of you that we would finish
at exactly 3 o'clock. Thank you all very, very much.
CERTIFICATION

I, DAVID NOVICK, a Notary Public for and within the State of New York, do hereby certify:

That the within transcript is a true and accurate record of the proceedings.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of December, 2017.

<%Signature%>

____________________
DAVID NOVICK

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