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

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6 Cravath Swaine & Moore  
7 825 Eighth Avenue  
8 New York, New York 10019  
9 November 14, 2017  
10 10:00 a.m.

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APPEARANCES:

Judicial Institute on Professionalism in the Law  
PAUL SAUNDERS, Chair  
MICHAEL CARDOZO  
HON. RANDALL ENG  
SOPHIA GIANACOPLOS  
JERRY KREMER  
LAUREN KANFER  
HON. RACHEL KRETZER  
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

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

11 Let me say just a brief word about the New York State Judicial  
12 Institute on Professionalism in case some of you are not intimately  
13 familiar with it. Many years ago, Judge Judith Kaye who was the Chief  
14 Judge of the New York Court of Appeals, decided to respond to some  
15 very critical things that were being said about the legal profession.  
16 We're now talking probably 25 years ago, and she decided to create a  
17 commission to look into the legal profession, whether it was doing the  
18 right thing, whether it needed to change itself, why was it being held  
19 in such low repute. And she asked Lou Craco, who was a practicing  
20 lawyer in New York City with Willkie, Farr & Gallagher, to create a  
21 commission known as the the Craco Commission, and some of the people  
22 in this room were actually on the Craco Commission. There were maybe  
23 15 or 20 lawyers and judges who held a series of town hall meetings  
24 around New York State to meet with Bar associations and others to  
25 understand the legal profession: was anything wrong with it? What  
26 needed to be fixed? And how to go about fixing it if it needed to be

1 fixed. The Craco Commission then came up with a series of  
2 recommendations -- probably 40 or 50 recommendations -- one of which  
3 all of we practicing lawyers know well, because it is a requirement  
4 that lawyers enter into retention agreements with retention letters to  
5 their clients setting forth the terms of the retention, and the fees,  
6 and so forth. That proposal came out of the Craco Commission. The  
7 Craco Commission also recommended that there be established in New  
8 York State a permanent institute to monitor the legal profession to  
9 speak out, when appropriate, about things relating to the legal  
10 profession, and, most important for today's meeting, to facilitate  
11 dialogue between the Bench, the Bar, and the Academy about issues  
12 relating to the legal profession. I have put on the table several  
13 booklets that are the kind of things that the Institute publishes  
14 after our convocations. For example, a couple of years ago, we did a  
15 series of five convocations in which we looked at the question of  
16 lawyer independence from many different perspectives. What does it  
17 mean? How do you do it? Are there different rules for different  
18 lawyers in different kinds of practices?, and so forth, and we  
19 typically publish these books -- booklets -- after our convocations  
20 and circulate them pretty widely around New York State and elsewhere.  
21 What brings us together today is a topic that we have actually been  
22 thinking about for some time, and that is a robust discussion among  
23 the New York State law schools about the new rules established by the  
24 New York Court of Appeals for admission to the Bar, and some of the  
25 new rules that are being promulgated by the ABA - outcomes assessments  
26 and other things like that. We've seen a lot of those -- those of you

1 who published your outcomes assessments, for example, we've seen  
2 those. One of our perceptions was that what the Academy needed to  
3 have was a principled, relatively private discussion to talk about  
4 these new rules -- how easy or hard they are to implement, whether  
5 they should be changed, modified, how are they working, what  
6 difficulties are you having, and coming to grips with the new rules,  
7 and so forth. I want to say absolutely clearly I do not have any  
8 inside information, but my guess, looking at the state of play, is  
9 that these rules are in flux; that is, I would not be surprised if  
10 these rules are changed in the coming years. I do know that, for  
11 example, when the New York State Court of Appeals wrote rules that  
12 talked about skills and values, they were, I think, deliberately not  
13 defined -- left open, left vague -- to see how the law schools would  
14 react when it comes to inculcating skills and values into their  
15 curriculum. Whether that's going to change or not, I have no idea,  
16 but I expect that that would be an important part of today's  
17 discussion. What I thought we would do now -- we have a very, very  
18 full schedule -- we're going to discuss the list of topics on the  
19 agenda that you all have until 12:30, at which time we will hear from  
20 Alli Gerkman from the Institute for the Advancement of the American  
21 Legal System in Denver; many of you or probably all of you are  
22 familiar with the Institute's project, Educating Tomorrow's Lawyers,  
23 and Alli has been the director of that project for some time. She'll  
24 tell us more about the survey that she conducted a couple of years ago  
25 to try to get some empirical data about what skills lawyers actually  
26 needed to have in practice. So we're going to have a "committee of

1 the whole" discussion. We have many discussion leaders. Mary Lu  
2 signed up for, I think, almost every available discussion.

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

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

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

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

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

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

23 MS. GERKMAN: I'm Alli Gerkman, Director of Educating Tomorrow's  
24 Lawyers at the Institute for the Advancement of the American Legal  
25 System, which is a mouthful. A fun fact, I guess, given the topic  
26 today and given what we do when we think a lot of how is it that

1 people develop some of skills and competencies that make us successful  
2 as lawyers, what I'll say is, my first job was at Burger King, and I  
3 was Team Member of the Month my first month there.

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

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

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

15 MS. ABRAMOVSKY: Hi. I'm Aviva Abramovsky from Buffalo Law; I'm  
16 from New York; my father was a professor for Fordham University for a  
17 very long time. So the fun fact is, I had to do that in crayons on a  
18 paper plate in kindergarten. I'm the Dean of Buffalo Law and grew up  
19 here; my father was professor at Fordham, so this is my home stomping  
20 ground, and I suppose I just gave you a batch of fun facts. But I can  
21 remember sliding down the bannister of the old Fordham building all  
22 the time. The security guards would stay to do basically day care,  
23 and when I was young, we would get free tickets, you know, to go shop  
24 at Lincoln Center, so that's why I learned the difference between  
25 doing something right and wrong.

1 MR. BOISE: I'm Craig Boise, and I'm the Dean of Syracuse  
2 University College of Law. I've been there for a little over a year,  
3 and I guess the fun fact about me is, I came to the law through law  
4 enforcement; so I was a police officer for five years in Kansas City,  
5 Missouri and actually was a sniper on the S.W.A.T team for a couple of  
6 years.

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

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

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

25 MR. CROWELL: Anthony Crowell, Dean of New York Law School, and  
26 I'm debating which is the most fun fact, but I was the youngest real

1 estate agent in the State of New Jersey for a short period of time, my  
2 first job in college.

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

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

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

20 MS. BILEK: I'm Mary Lu Bilek; I'm the Dean of CUNY Law School,  
21 recently back after being the Dean of the University of Massachusetts.  
22 My fun fact -- well, one fun fact is that if the very first Judicial  
23 Institute recordings are going around, I'm in there -- that's how old  
24 I am -- because I presented at one of those -- but my -- and I guess  
25 this is related to Craig's fun fact, notwithstanding the fact that  
26 Caplow & Associates has just called me the most liberal law firm in

1 the United States. I lived with marshals sometimes because of what my  
2 father -- U.S. marshals because of what my father -- did and the  
3 danger he was in and with my husband.

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

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

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

20 MR. CARDOZO: I'm Michael Cardozo of Proskauer Rose. I had a  
21 few jobs before that with the City; and I guess my fun fact for this  
22 context is, for many years, I was an adjunct professor at Cardozo, and  
23 one day, I was called as an expert witness in Canada, and in  
24 qualifying me, the lawyer -- my lawyer -- said, "Well, do you teach,  
25 Mr. Cardozo?" -- this is in Canada; I said, "Yes, we are Cardozo Law  
26 School," and the whole room broke into hysterics.

1 MR. ENG: Good morning everyone. My name is Randy Eng; I'm  
2 presiding justice -- I've been a judge for about 34 years, so -- which  
3 leads me to my next point, and that is that I have a knack for doing  
4 my life backwards. I was a judge for ten years; before, I was a  
5 father. So right now, I'm still doing things that many of the younger  
6 people are doing and paying the price for it; and the academia, I've  
7 been an adjunct professor teaching criminal law subjects at St.  
8 John's, and I think that -- let's see now -- some of us have been in  
9 the service, right? Paul and myself. Has anyone else been in the  
10 service and still have their kids? Great. Congratulations. I wish  
11 everybody a late Veterans' Day. Thank you.

12 MR. SAUNDERS: Lauren?

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

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

23 MR. SAUNDERS: Well, thank you all very much for those fun  
24 facts. Let's get started with our very first discussion group.  
25 Again, the format is, we have discussion leaders who have volunteered  
26 to lead the discussions on these topics. Some of you have actually

1 recommended some topics which we've added to our agenda. And I'll  
2 keep track of the time, but I'm not going to put any time limit; we  
3 have four discussions between now and 12:30, so we should have more  
4 than enough time to deal with these four discussions; and then, we'll  
5 break for lunch and have our luncheon and keynote address from Alli  
6 Gerkman. So the discussion leaders, as you see, for this very first  
7 discussion are Randy Hertz and Mary Lu Bilek. The topic is -- and I'm  
8 saying this just for the record -- what are the best practices for  
9 ensuring that the required skills for practice are incorporated into  
10 law school courses? The words "required skills" in this agenda are in  
11 quotes because, at least, the New York State rules do not tell us what  
12 the required skills actually are. So let me turn it over to Randy and  
13 Mary Lu Bilek.

14 MR. HERTZ: I hope you don't mind my giving a personal  
15 historical note to follow up on what Paul said earlier about the fact  
16 that these things change and also what he said just now about the  
17 whole concept of required skills. Back in the late eighties, when the  
18 ABA created the MacCrate Task Force on narrowing the gap which looked  
19 at skills and values and which led to the adoption of the ABA's rules  
20 on the skills and values in the early nineties, I was a reporter for  
21 the task force, and I developed a hundred-page inventory of skills and  
22 values for them, because they needed what they viewed as a blueprint  
23 for what skills and values are needed for effective practice which  
24 could guide what they would then say to the law schools on what the  
25 law schools should teach. The Task Force concluded you have to have a  
26 view of the end product of what lawyers need to know when they

1 graduate from law school and become members of the Bar and then work  
2 backwards to figure out what law schools should teach. When we  
3 drafted that document and when the Task Force adopted it, we had in  
4 mind that it was silly to try to develop a fixed set of skills or  
5 values and that this has to be a living, breathing document. And so,  
6 although we articulated a lot of skills and values in great detail,  
7 what we said was, we imagine and we expect that others will build on  
8 this and refine it in the future and that this thing will change over  
9 time and evolve. So then, I was on the Task Force formed by Chief  
10 Judge Kaye in the 1990s looking at that for New York State, and we had  
11 embellished on it but also said we expect this thing to grow and  
12 evolve; and then, I was on Judge Rivera's Task Force, which drafted  
13 the new Court of Appeals' rules, and as you say, we purposely left  
14 things open and broad, and we said we expect that many flowers will  
15 grow and that law schools will figure out for themselves what is the  
16 appropriate way to fulfill their mission and teach the skills and  
17 values that they regard as important for the graduates of their law  
18 school. So I think that's an important backdrop for everything that  
19 we say and do in this field, and I expect that, as Paul said, there  
20 will be changes, because the whole point of this is evolving over time  
21 and keeping in tune with the changes in practice and also the changes  
22 in law school pedagogy; and those things evolve over time, so  
23 therefore, naturally, requirements and rules and recommended practices  
24 need to change as well.

25 MS. BILEK: I'll make this brief. Randy and I served together  
26 on an ABA Task Force on the future of legal education. Lillian --

1 Lilly did discuss specific skills, and that's how some specific skills  
2 we'd like to think we influenced, the fact that there were specific  
3 skills that were baked into the ABA standards, although I'm not sure  
4 that Randy and I -- the full list of either of ours would have made it  
5 all the way there. I'll also say that because of the work that was  
6 done under the MacCrate Report when the law school started in 1983,  
7 that was our blueprint, was our understanding that what we needed to  
8 do to become lawyers who were prepared for practice, and instead of  
9 focusing on skills, we focused on competencies. So not to muddy the  
10 waters very much but to think about the fact that while there are  
11 skills, the skills of oral communication, the skills of interviewing,  
12 that competency-based education embraces a variety of skills but makes  
13 sure the main competencies lawyers need are achieved by the time a  
14 student graduates. And just to be more concrete, our -- at the time,  
15 our -- six competencies were -- I think I can remember them --  
16 professional responsibility, management of effort, clinical judgment,  
17 communication oral and written, theoretical perspectives, and legal  
18 analysis -- I knew there was one I was missing -- legal reasoning.  
19 But I think, you know, to loop back to where Randy was, there's --  
20 this is also related to the ABA standards on assessments that thinking  
21 about skills in relation to outcomes and in relation to the pedagogy  
22 of law schools is kind of, I think, where most of us are these days,  
23 so -- because the ABA is right in the middle of the application of its  
24 standards. So I think all law schools this year for the first time  
25 need to have started their first assessments, and last year was when  
26 all law schools needed to have stated their outcomes. So I don't

1 think you can separate from training teaching required skills and the  
2 kind of outcome and assessment practices that the law schools are  
3 putting into place.

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

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

21 MR. HERTZ: That's a fun fact.

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

23 MR. SAUNDERS: Let me add to that question something that  
24 interests me and, I believe, that others in the room share as well:  
25 is there a one-size-fits-all requirement, or is there room for  
26 diversity? There's only one Bar exam. There's only one Character and

1 Fitness Committee. So where is the room for the diversity in  
2 inculcating professional values and teaching professional skills? So  
3 let's go around the room and hear about the various rules.

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

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

10 MS. CAPLOW: Sure. Stacy Caplow from Brooklyn Law School. So I  
11 think we're slow out of the gate a little bit in terms of being  
12 thoughtful and deliberate about making choices. So I think one -- the  
13 one skill that is clear and that we reinforce a lot -- is writing so  
14 that students have writing -- and that's also an ABA requirement, that  
15 students have writing -- throughout the curriculum. Our curriculum  
16 committee currently is really hard at work in developing what we're  
17 calling a portfolio system where, while it's not a graduation  
18 requirement, it's a set of guidelines for students to map out things  
19 they should have experienced while they're still in law school -- not  
20 necessarily under a guided system -- it could be at a job, it could  
21 be, obviously, in a clinical, an externship or a simulation course,  
22 but there's sort of a checklist of writing opportunities, other types  
23 of skills in professional identity growth opportunities. So that's,  
24 sort of, one of the more deliberate plans that we're working on, but  
25 it's a work in progress. Other than that, we've also included in the  
26 first-year mandatory course some other skills such as negotiation -- a

1 client letter and things like that -- and we have a one-semester  
2 clinic -- or externship graduation requirement so that every  
3 student has to have at least one real-world experience as opposed to  
4 simulation, which has been a challenge, because we have an evening  
5 division. So we have a little bit of trouble, but our evening  
6 division has shrunk a lot, so that, as it turns out, probably only  
7 about ten of them out of the whole really have to apply for a hardship  
8 waiver, and they have to -- compensate by taking four additional  
9 simulation credits extra the six credits of experiential ABA  
10 required course credits. It's an accommodation that's useful for the  
11 evening division to the extent they really cannot participate for one  
12 reason or another in a clinic or externship. So that's kind of where  
13 we are. We have not had a deliberate faculty meeting conversation of  
14 this scale that would be required to develop the kind of thoughtful  
15 programs you just articulated.

16 MS. EISEN: I'm just going to add that, one -- this is Karen  
17 Eisen, Dean of Career Services at Brooklyn. One of the things that  
18 we're working on from my perspective is the development of those soft  
19 skills, so communication, responsiveness -- all these professional --  
20 professionalism -- things and how to teach those, and we -- you know,  
21 we hear these -- we hear the need for these kinds of things from our  
22 employers. We have a lot of faculty that understand it but a lot of  
23 faculty that don't think that it needs to be taught, and it's  
24 something that we should be just handling from, you know, a  
25 programming perspective from the Career Services. But we have  
26 recently proposed and gotten provisional approval for a credit-bearing

1 class in professionalism; that my dream is that one day, it will be a  
2 mandatory class for one Ls. As of right now, it's being -- it will be  
3 tested as a kind of four-day boot camp during an intersession, and  
4 we'll really focus on those soft skills -- communication,  
5 responsiveness, how to write an e-mail that is not a text with emojis  
6 -- you know, you laugh, but I'm sure you've all seen it. There's  
7 really -- there's really a disconnect -- and I hate to sound old and,  
8 you know, talk about generational differences, but we're educating the  
9 generation that -- where they don't talk to each other; they text and  
10 they don't know how to read body language and they don't know the  
11 subtleties and nuances of a conversation; and so, we think it's very  
12 important for them to be able to understand those things as well as  
13 things like time management and prioritizing and asking for help and  
14 seeking feedback and giving feedback. So all of those -- what are  
15 generally-termed soft skills -- are things that we're also trying to  
16 incorporate into teaching, and I love people's suggestions on how best  
17 to teach those things.

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

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

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

25 MS. GILLES: Hi, I'm Myriam. So I'm the Vice Dean. I'm  
26 relatively new being Vice Dean, so, you know, bear with me, but I was

1 actually Chair of the Committee, and maybe this was -- you did such a  
2 good job on this so this is why I'm now Vice Dean. I head a committee  
3 -- a New York State policy committee -- that was tasked to sort of  
4 figure out what -- the question you just heard -- what do we do and  
5 how do we make sure that all the students have these skills -- and,  
6 you know, the one question I don't think you proposed, unless I missed  
7 it, is, administratively, how do we certify this and how do we ensure  
8 it? I'm happy to hear a culture could have done it -- this is two-  
9 fold -- and second of all, we don't like to have a ton of mandatory  
10 stuff. We have a hard time -- you know, we don't have the students --  
11 it's hard to keep track of who's in what room at what time for what  
12 sorts of things, and -- even if there is a room of students who are  
13 actually paying attention and actually absorbing these skills. We  
14 cannot say as to what's mandatory. I believe what they think  
15 mandatory means is that you're all talking about writing and PR and I  
16 think in this case -- in other words "what's imposed upon us." But  
17 with this new requirement, I think our approach was to gather all the  
18 things that we already require to satisfy the ABA six credits - our  
19 in-house clinics, our January skills month, which is a fun course that  
20 students can take in a kind of boot camp format, all sorts of upper-  
21 level skills courses, drafting courses, pre-trial practice courses.  
22 So those are all just kind of the formal ways. What we focused on and  
23 what we continue to focus on and, quite frankly, struggle with are all  
24 the less formal things. Things that are not credit-bearing things,  
25 that don't go on a student's transcript. And those are the things  
26 that we, again, have difficulty in. We call this the extracurricular

1 program. So we think, if, for instance, your education falls into  
2 that, we start professionalism training now, we basically try to scare  
3 the crap out of you about all the things that have done wrong -- you  
4 know, at this moment, you are becoming a professional. We have a  
5 judge come and talk to them about all the things he's ever seen go  
6 terribly wrong, how lawyers get their licenses stripped; I mean, they  
7 are so scared; it's right after that that our Dean of Students says  
8 that she gets a ton of people who need to make peace with their  
9 application, because they realize, "Uh-oh, I forgot something" or  
10 "I've misstated something." So we start professionalism there and  
11 then. The question is how to follow this clearly during the first  
12 year and in the upper level, and what we've come up with is really  
13 clear. In response to this requirement, they set up a program on  
14 Sunday because we're with Cardozo, other schools can do this on a  
15 Saturday, instead of requiring Sunday sessions for everyone else.  
16 This is not popular, as you can all see, and this is my first year --  
17 I was Vice Dean last year. I think the only thing that parents ever  
18 called me about was, they said, "Counselor, why the heck does a senior  
19 have to come in on a Sunday?" And these were -- you had to attend two  
20 out of the four that were spread out across the semester. They  
21 discussed some of the issues that Karen just talked about in an all-  
22 day setting. And the idea this year is whether we could actually give  
23 them a quiz. Because, again, mandatory sounds great, but we're in the  
24 business of teaching, so the thing about mandatory is "So what if  
25 we've got people in the room? We'd want to make sure they are  
26 actually absorbing. We just did one a couple of weekends ago; we did

1 a bunch of hypotheticals and improv. things, and it all looked great  
2 on paper, and as I looked around the room, I thought, 'Okay. How many  
3 of them are actually paying attention? How many of them are on  
4 Facebook? How many of them are good souls or who laugh through this?'  
5 You know, it's hard to know.

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

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

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

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

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

20 MS. GILLES: A little bit. I think a little bit. But I frankly  
21 think that it's a little bit heavy-handed to try to mandate this. I  
22 think we all want students to -- because, as Karen has said, we want  
23 them to write not just good e-mails when they graduate, we want them  
24 to represent what's so great about our schools and our profession, and  
25 we do try to ensure that.

1 MR. SAUNDERS: There's a reason why I asked that question,  
2 because as Alli Gerkman can attest, the Dean at the University of  
3 Denver Law School told me that they require skills training, I think,  
4 in all of their courses. Am I misremembering that?

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

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

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

20 MS. KRETSER: One of the things that an academician -- a  
21 brilliant academician -- who hasn't been out in the real world, if you  
22 will, recently might do is have guest lecturers. I have guest-  
23 lectured in addition to being an adjunct, and that brings -- and they  
24 can have you guest-lecture on whatever practical skills you may, you  
25 know, consider yourself an expert at. But it brings a little bit of  
26 the practical into the courses that are taught by scholars.

1 MR. SAUNDERS: All right. Let's keep going around the room; I  
2 guess the next is Buffalo?

3 MS. ABRAMOVSKY: So I have actually only been at Buffalo for  
4 four months, so bear with me. You know, I'm very impressed with the  
5 experiential learning: it's broad, it's deep, there's required  
6 courses. What I think is really fascinating -- this is possibly a  
7 consequence of requirements -- is that they're doing -- we do  
8 something called a practicum, which is an experiential thing that's  
9 scaleable -- we have a lot more students. The issue with classical  
10 clinical education is that either it's required for everybody or  
11 basically -- you know, a clinic can take only take five students a  
12 year. We have an enormous process that's not realistic to deal with  
13 500 or 700 students to only have classical, clinical training. So  
14 because of that, I think what we're seeing is moving to all different  
15 kinds of models of experiential learning that I'm not sure necessarily  
16 were first foreseen when these kind of required skills and values that  
17 were articulated, because that's a function around the reality of the  
18 training occurring for the practicum where you have a type of in-class  
19 course. So the issue about what we're actually talking about when you  
20 say "experiential learning," I just wanted to make it more clear.  
21 Two, I am very proud of the professionalism course. If anybody wants  
22 to see the syllabi for my professors -- you should know it is being  
23 revised -- it's not in revision yet -- to make the Buffalo route the  
24 most attractive for the job market, as well as more successful  
25 emphases in their coursework. Two issues that you wanted to talk  
26 about that I think are not addressed enough in this conversation, the

1 real elephant in the room -- the hot topic that no one wants to  
2 discuss -- is actual work. You know, there's -- we have a lot of  
3 students who work for lawyers for money, starting possibly even before  
4 they're necessarily supposed to. They would prefer to work for  
5 lawyers for money than almost any other form of training, especially  
6 since, you know, you may have a certain demographic set, a more  
7 working-class background. But work for lawyers is not recognized in  
8 this hierarchy at all, you know, and I really think that should be  
9 something you want to think about, because we're pushing away actual  
10 work experience for noncredit -- for money -- into these accredited  
11 experiences, and that has a financial effect on students who really  
12 need the income. I just want to point that out as a thing to talk  
13 about. Again, this is the hot topic that everybody gets really riled  
14 up about. And the second point is computer literacy or Internet  
15 literacy. There is a consistent debate on whether or not when we say  
16 "skills," do you mean -- you know e-Discovery, is that a real skill,  
17 or is this just a passing fad, these computers? There is a tendency  
18 to think that e-skills are not real lawyer skills as opposed to  
19 different types of drafting skills -- the more traditional  
20 understanding of what required skills are and yet, as we all know in  
21 the true practice of law, has gone almost entirely online and virtual.  
22 So there's not enough being done there; there's not enough support  
23 from all parties in different experiential communities for the exact  
24 method that the law schools should make and should bring these types  
25 of skills into an equal playing field as to certain things. For

1 instance, law school teachers work with quills, right? But we don't  
2 work with quills anymore, and --

3 MR. SAUNDERS: Some lawyers do.

4 MS. ABRAMOVSKY: No, I get that.

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

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

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

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

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

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

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

21 MS. ABRAMOVSKY: I actually would think that would be a great  
22 thing to do. Now, I understand that in a lot of ways, it's a control  
23 issue, right? When you have someone working in a firm, who is  
24 trusting the lawyers? They're not really supervised in the same  
25 pedagogical way as an internship or externship would be. I get that.  
26 It's a question of quality control. But there could be ways in which

1 we deal with that, and I really do think that that issue is for  
2 students who need to work -- and they really do need to work -- to  
3 figure out a way in which we can grant some credits for them and not  
4 push those working hours out into required, unpaid, credit  
5 experiences.

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

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

15 MR. ABRAMOVSKY: Right. So that's a move in the right  
16 direction, if they could be paid for externships. But it's still not  
17 the same as just working in the firm. They're two different unique  
18 paths. It's a pedagogically different experience when you bring in  
19 someone to be an educational supervisor as an extern as opposed to  
20 just having someone working in the Court. I mean, you require all  
21 different kind of things from the supervisor, you require them to do  
22 all different kinds of direct supervision -- there's a lot of  
23 compliance paperwork, there's lots and lots of work on both sides. My  
24 point is that if lawyers just want the students to work for them, I  
25 assume they just want work for lawyers, you know, just like in the old  
26 days, and we don't have a space for that. You know, we can craft

1 externship opportunities as well, and I think the problem is they're  
2 all discussing it or, having discussed it, adopted it already; some  
3 are working to figure out, you know, exactly what we want to do with  
4 that. But what worries me is thinking about how much this pushes out,  
5 you know, traditional work, which is a concern for me with my students  
6 just generally, because I would rather have them working at the firm  
7 to working as a security guard or a waitress or a bartender, you know,  
8 to pay rent and pay for all these other types of things and all that;  
9 I'd rather have them working in a firm and at least getting that  
10 experience, you know. So I just want to bring this up, because  
11 there's a tendency to think, still traditionally, that students are  
12 all young, that they have access to loans, that they have, you know,  
13 money to burn; they're not, you know, single mothers or single fathers  
14 or attached to any group to give them this plan, and that their  
15 decisions of what they're doing for their own finances are impacted as  
16 well.

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

21 MR. BOISE: So let me just follow up on what Aviva said. I'm on  
22 the ABA Standards Review Committee, and I supported the repeal of the  
23 prohibition on allowing students to be paid for credit-bearing  
24 externships, and in that process, there was a very strong student  
25 voice at the time, and it's for the reasons you just articulated:  
26 that students need to earn money; they don't want to subsist on their

1 loans -- it's not prudent to do that -- and so, I think it makes a lot  
2 of sense to allow students to get credit for those externships where  
3 they're being paid. The core question about skills, I agree with what  
4 Randy said, that this is an evolving issue -- what skills are needed  
5 and relevant and so there's history at Syracuse about how the skills  
6 curriculum was developed, and I'm fairly new and we're in a process of  
7 revamping and rethinking our curriculum. And so, in doing that, we're  
8 kind of focused on what are the sources for the kinds of skills that  
9 students need -- in other words, who are we asking about this; and I  
10 agree with the points made earlier that faculty are generally not in a  
11 position to be able to identify those skills because they're not in  
12 practice, and if they were it was many years ago and probably for a  
13 very short time. So we're focused on what our alumni in practice have  
14 to say. I spend a lot of time trying to keep track of where the  
15 practice of law is moving in terms of the future of law, and I think  
16 that those kinds of things can inform the Skills students need. But -  
17 - and there's some that always recur when we talk to alumni and people  
18 at firms who are assessing our graduates, things like writing; that  
19 still serves as a big one, and that, quite simply, has been part of  
20 the curriculum for a long time, but that is a skill in which there  
21 always seems to be room for improvement. Increasingly, things like  
22 networking and business development, understanding client perspectives  
23 in given matters, and understanding how as a lawyer you have to try  
24 and understand your client's problem and how you can be helpful in  
25 solving that. Project management. I hear increasingly that lawyers  
26 want to hire people that they can give a project to, and know they

1 will figure out the process for managing that project, which also  
2 involves collaboration with other team members, whether it's with  
3 other lawyers in the firm, with lawyers in other firms. Presentation  
4 skills -- and this ranges from opening arguments to client  
5 presentations, being able to present effectively; resume writing; in  
6 the age of communication and in the age of text messaging, I think a  
7 lot of communication face to face is most definitely a lost art. So  
8 those are all things that we've identified as important, but I think  
9 that one of the best ways -- when we're talking about skills, one of  
10 the best ways -- for students to develop those is by doing. There's a  
11 limit to the extent that you can put students in a classroom and tell  
12 them about how to do those things; they really have to do them in the  
13 context of work. So I'm a big proponent of putting students in  
14 situations where they actually have to do these things, which is why  
15 we really have doubled-down on and expanded our externship program.  
16 And I think when students are in work situations, it also helps to  
17 drive them to learn, because they realize their own deficiencies as  
18 they model themselves after peers in the office who are maybe a year  
19 or two in practice, and I think that drives for them the necessity to  
20 learn these things. I'll just say one other thing. I think there was  
21 a comment made about providing courses for students or instruction for  
22 students on Sundays or during lunch hours -- that kind of thing -- to  
23 kind of squeeze some of these things in and around the rest of the  
24 curriculum, and my observation about that is that I think that  
25 students won't value those if we don't assign credit to them; they  
26 just are annoyed by the fact that they have to do them, particularly

1 if you're making them graduation requirements. So I think if we  
2 really value these skills, we've got to give them credit in the  
3 curriculum and be very upfront about that.

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

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

12 MR. HERTZ: We're happy about that.

13 MS. SALKIN: So I won't repeat some of the things that everybody  
14 has already talked about that we're doing too; let me just add some  
15 other things to the conversation. In addition to our alumni, we speak  
16 with our Board of Governors at least once a year in a conversation  
17 about how we've seen the recent graduates and also what kinds of  
18 skills do they think we should be putting into the curriculum that you  
19 haven't seen in your new hires that would make you want to hire our  
20 graduates. And that conversation takes place in two forums: one is  
21 at a board meeting with the Board of Governors and the Dean and Senior  
22 Administration, and then, once a year, we have a dinner with just the  
23 faculty and the Board with no dean and no administration present, and  
24 they have questions that they are supposed to discuss over dinner, and  
25 they debrief. And so, the questions come from the Administration, and  
26 it's designed to move the agenda forward but to have the faculty hear

1 from the practicing attorneys and the community directly instead of  
2 saying, "Oh, yeah. Of course the Dean or the experiential Dean is  
3 going to say that." So they engage in that communication. I think  
4 that it's effective. I know it's effective, because they bring it  
5 back to faculty meetings and talk about changes in courses or new  
6 courses and they say it's because of things that they heard from the  
7 Board of Governors. Another thing that Touro has done since we moved  
8 to the new location in Central Islip, which is across from the Federal  
9 and State courthouses, is it is required in the first year that every  
10 student participate in a Court observation program, and that includes  
11 a visit to both the State and the Federal courthouses at separate  
12 times with a faculty member in small groups, meetings with judges with  
13 permission of counsel who are arguing motions or cases that day; they  
14 participate in conferences with the judge and the counsels; there are  
15 other courses that are directly tied in with judges and the Courts  
16 that the students can take over the summer, and at other times, they  
17 have them actually in the courthouse for credit, not a clerkship, but  
18 -- doing something along those lines, but not exactly the same. And  
19 so, I think that the students get a sense from the beginning of what  
20 it means to be in the Court, how people dress in the Court, how -- the  
21 decorum in the Court, how clients behave in the Court, how lawyers  
22 behave in their efforts, and at times, having them interact with the  
23 judges and the clerks without having to sit in a classroom or read it  
24 from a book or being told by a faculty member. So we think that that  
25 is a popular program and effective program. We also have a clinic  
26 requirement; there's discussion now as to whether it should be a

1 clinic or an externship. I think that there is -- it's probably going  
2 to move to the either/or, but right now, the requirement is a clinic.  
3 We do have a heavy emphasis on externship opportunities, and I think  
4 almost all of our students do at least one, and some of them beg to do  
5 more than one. We've worked OCA and we've brought poverty simulation  
6 into the law school every year, and that's very effective for the  
7 students in terms of developing empathy and awareness of the kinds of  
8 clients that we need to serve. Dean Ballin has brought in a heavy  
9 emphasis on formative assessments in the classroom multiple times  
10 throughout the semester, but there's a lot of conversation with the  
11 faculty about what those formative assessments should be. So things  
12 that I have seen over the last year, a lot more drafting -- drafting  
13 of complaints, drafting of other kinds of litigation documents,  
14 drafting of administrative documents that are not necessarily tied up  
15 in litigation. I'd like to say that every faculty member is doing the  
16 drafting skills in every course but not yet, but the conversation  
17 continues. There are some faculty that have turned to problem-based  
18 learning and really teaching instead of the traditional case method of  
19 working on problems with the students throughout the semester -- some  
20 students love it and some students would rather have the Black Letter  
21 Law fed to them. But again, it's the variety in terms of trying to  
22 reach different students where they are. This year -- and I know some  
23 law schools in the past have been involved with this, too -- I have  
24 started to do a street law program in one of our host communities in  
25 Brentwood, where for the majority of the students, Spanish is their  
26 first language. So we're working with Spanish-speaking students at

1 the law school as well as faculty and administrators, and we're now in  
2 the high schools in Brentwood with our students on a weekly basis, so  
3 I think that helps for communication and cultural competency kinds of  
4 issues. We also, like a number of law schools around the table, have  
5 an incubator program to help our graduates with start-up law firms  
6 aimed at Access to Justice as the goal, but in order to help prepare  
7 our graduates who might want to enter into that program, we have a  
8 number of courses around -- the Law Office Management, Accounting for  
9 Lawyers and other things -- that I think, again, are good skills. We  
10 also have a program with our graduate School of Business. So I think  
11 these are just examples of some of the best practices. We also, like  
12 everybody around the table, make good use of our adjuncts, and we have  
13 our adjuncts meet with our faculty on a regular basis as well, and  
14 that also helps to keep the conversation real about skills and what  
15 it's like out practicing on an ongoing, realtime basis.

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

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

25 MR. BLUME: Good morning. I'm John Blume; I'm the Director of  
26 Clinical Advocacy in Skills programs at Cornell. I apologize for

1 being late; my excuse is, I was coming from Ithaca. So I think  
2 Randy's kind of got me up to date on what we're doing if we're going  
3 around talking about, sort of, what their schools were doing to impart  
4 what they believe to be the necessary skills and values. So we have  
5 actually started on this; I was appointed by Dean to be the Chair on  
6 the Professional Development Committee to try and analyze on what we  
7 need to do differently in the curriculum. Several years ago, as all  
8 of you know, there was the mandate from the New York Bar that, sort  
9 of, certified skills and values for our students, which set things in  
10 sort of a different timeframe that we were, sort of, moving on, again,  
11 that we hadn't certified at. But now, we're back looking at the big  
12 picture. So I'll just mention a couple of things; I'll be relatively  
13 prompt about it. In the last five years, we have doubled the number  
14 of clinical faculty, we've expanded the number of clinics in practicum  
15 when it comes to a difference between whether a clinic is taught by  
16 full-time members of the faculty or practicum was taught by an  
17 adjunct; we've expanded those by 200 percent. The number of those  
18 that we have, we're adding two more next year -- a transactional  
19 clinic and a First Amendment clinic -- and we've hired one of those  
20 people and we are doing a search for the First Amendment director.  
21 We've expanded clinical capacity by creating and broadening the  
22 Clinical Fellows program. So we now guarantee every student who wants  
23 to take a clinic a clinical experience, which they didn't have the  
24 capacity to do before; about 70 percent do. So that's basically the  
25 ratio. In addition to that, I'd say the other two major initiatives  
26 are, we have standardized and expanded our lawyering program, which is

1 the first year; it's not legal writing -- it's more than a legal  
2 writing program and includes an emphasis on many of the skills and  
3 values that we identified in connection with the New York Bar. And  
4 then, I would say the other main thing we're doing is, when we stepped  
5 back and looked at our curriculum, we thought that the things that  
6 students were not getting from the normal curriculum that we had were  
7 sufficient emphasis on teamwork and on practical legal writing and  
8 communication skills. So we're now in the process of -- we're going  
9 to roll out next year a program -- a pilot program -- that we are  
10 modeling on Harvard's Professional Development Institute, where it  
11 will be a ten-day program the student has to complete before  
12 graduation that would be taught by a combination of the in-house  
13 faculty and adjuncts, which will basically put students in teams and  
14 work them through a series of problems over a ten-day period. And the  
15 final, penultimate step would be that they will have to go to either a  
16 law firm or a public service organization and make a presentation on  
17 that.

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

20 MR. BLUME: We have not done it. We're in the process of  
21 planning it. I believe several of us are going to Harvard in January  
22 to observe their program -- we're going to do it a little bit  
23 different from them: we had them come to us and give a presentation  
24 last year, so we're going to roll it out in January, next January, and  
25 then we have funding for a three-year pilot program where we're trying

1 to work out the kinks; I mean, the goal is to make it mandatory for  
2 our students as a requirement for graduation.

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

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

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

12 MR. HERTZ: Well, I'll keep it very brief. In my role as  
13 moderator or co-moderator of this session, I see that we're spending  
14 probably more than our share of the time on the first question,  
15 although the good news is that as we've been going around, people have  
16 been addressing each of the other questions this morning. So we've  
17 actually been managing to get through the agenda in a very informal  
18 and unplanned way. So what I'll say about NYU briefly is that our  
19 platform for teaching skills to everybody -- to all JDs -- was set  
20 back in the early eighties when a truly visionary professor and lawyer  
21 named Tony Amsterdam came to NYU and created the first-year lawyering  
22 program and redesigned our clinics. And his model of teaching was  
23 that all JDs would learn certain skills in the first year and every  
24 single JD would take this lawyering course as one of their courses  
25 each semester or first year. That lawyering course teaches legal  
26 research and writing, of course, but it also teaches all of the other

1 general lawyering skills. It teaches interviewing, counseling,  
2 negotiation, trial skills, and alternative dispute resolution skills,  
3 remediation, and it teaches all of them through simulation methods,  
4 and we have 14 lawyering professors who are full-time and who teach  
5 these things and come to NYU for two or three years and then move on  
6 to go to academia and other schools. So this is designed to teach all  
7 JDs. We didn't used to have to a way to ensure the same thing for  
8 transfer students. But this year, we've just instituted a new course  
9 called Lawyering for Transfers, so that all students who come from  
10 other schools and who didn't get lawyering now get it in their second  
11 year. This is designed so every single student gets this, and so, we  
12 front-loaded what we seek to teach all the students to get them ready  
13 to practice. Then, the upper level -- the second and third years --  
14 are devoted to allowing students to take whatever simulation courses,  
15 clinics, or externships that a student himself or herself regards as  
16 important to their professional development, and our advising program  
17 is designed to help students figure out what they need and want, but  
18 it is not a mandatory program; it is designed to educate students on  
19 what they think they might need and let them make professional choices  
20 in law school about how to design their own professional development.  
21 John's 70 percent statistic about who takes clinics or externships  
22 actually fits NYU, too. But we have found -- we have 40 clinics and  
23 externships -- and what we have found is that roughly two-thirds of  
24 our JD student body takes at least one clinic or externship before  
25 they graduate; many of them take more than one; some of them take  
26 three. We have year-long clinics and semester-long clinics. Some

1 people take two years of year-long clinics, which is half their  
2 courseload, so they take three single-semester clinics or externships,  
3 and we place approximately 450 students a year into clinics or  
4 externships. It's all voluntary. And one of the things that the  
5 MacCrate Report and the Court of Appeals also said in its report is  
6 that we shouldn't be imposing a one-size-fits-all on schools. I also  
7 believe and NYU believes that we shouldn't impose a one-size-fits-all  
8 regimen on students, and we do need to teach them the basics, which is  
9 what we try to do in the first year, but thereafter, we want students  
10 to figure out what's right for them.

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

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

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

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

24 MR. SAUNDERS: And we love it, too. Let's do New York Law  
25 School next.

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

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

11 MR. CROWELL: Skills mapping. So I'll talk a little bit about -  
12 - let me just, sort of, explain the general structure of the  
13 curriculum, and then, I'll tell you how the mapping exercise works.  
14 So we adopted a new curriculum last year, and the curriculum basically  
15 focuses on three specific but general areas at the same time:  
16 business and financial services law, intellectual property media  
17 technology and applied sciences, and government and public interest.  
18 We call it Think Big -- B-I-G -- and basically, those are the areas of  
19 law that encompass the predominant players in New York's network  
20 global economy, and we try to contextualize business health; both  
21 their required and elective courses dip into their professional goals.  
22 We have an expanded array of required courses that align to what they  
23 need for successful preparation for the Bar exam. At the same time,  
24 we don't want them to feel it's too prescriptive, so we try to  
25 contextualize it within their areas of interest, whether it be in one  
26 of those areas or general practice. What we've done is, we've looked

1 at our core competencies. A few years ago, we adopted a list of core  
2 competencies, 12 at the time; we've expanded it to 14, and certainly,  
3 under the competency of -- the competency of 14 is understanding the  
4 basic lawyering skills, and we have a broad array of skills that we  
5 seek the students to develop in that category. We tell the students  
6 what all their competencies -- what competencies we expect them to  
7 exhibit are, and we make them take ownership of them, and we have the  
8 faculty explain to them what each course is seeking to teach or the  
9 skills that the course is seeking to develop in the student. When we  
10 talk about skills mapping, what we've done is, we use Survey Monkey  
11 quite a bit, a very data-driven approach to managing the law, and what  
12 we did is, we took each of the 14 competencies and asked all  
13 professors to evaluate how their courses address competency, whether  
14 it's a basic level, a more advanced level, or a high degree of  
15 proficiency. So that's the mapping. So we have an understanding --

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

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

1 to explain the learning outcomes -- the goals and learning outcomes --  
2 for students better and through the use of the syllabus as a tool.

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

4 MR. CROWELL: The adjuncts -- a modified version. It's harder  
5 to have the adjuncts do it; we're going to do some additional training  
6 with the adjuncts; it's hard to corral them all at once -- that's the  
7 problem. What we did do in that regard, we actually produced a small  
8 video that we disseminated to the adjuncts asking them to undertake  
9 this exercise and use these considerations in developing those  
10 courses. So it will be a little more of an interactive practice one  
11 on one if we don't see that the syllabi are addressing what we need  
12 addressed in those classes. And interestingly, many of the adjuncts  
13 do teach skills courses, so we want to be very focused on that. We  
14 similarly have expanded our clinical program rather significantly in  
15 recent years; we built a new center -- it's called the Joe Plumeri  
16 Center for Social Justice and Economic Opportunity -- that broadly  
17 encompasses all our clinical and experiential learning programs,  
18 including our first year of legal practice program, so everything is  
19 centrally located in what we call, effectively, the law school's law  
20 firm at ground level. Clients walk in, and it's a nice inspiring  
21 space, but students are introduced to that space in their first year  
22 with our legal practice program, which is a two-semester, four credits  
23 each semester, teaching basic legal research and recommending an  
24 expanded range of skills not dissimilar from the NYU lawyering skills  
25 program. So -- and that uses a lot of technology, and we have paid  
26 actors come in to help the students with interviewing skills, making

1 negotiations, all digitally recorded, so there is a lot of reflection  
2 by the individual students and review with the professors and the paid  
3 actors who come in. It's very helpful to use the technology and get  
4 students comfortable with that. And then, they advance to negotiation  
5 in the second semester, and then, they use those same facilities in  
6 their clinical work as well. So overall it's a work in progress, but  
7 it is certainly a highly coordinated approach. One of my big  
8 priorities for this coming year is going to be ensuring that the  
9 doctrinal and skills professors are having more conversations and  
10 having the skills professors be able to work with the doctrinal  
11 professors in using some of the subject matter that's being taught  
12 contemporaneously in the skills courses. It's something that's often  
13 not done, and I think it's to the detriment of the student. I think  
14 we can do a much better job if we do that.

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

20 MS. GUNDLACH: Jennifer Gundlach from Hofstra. I've been pretty  
21 closely involved in our experiential courses development for the last  
22 several years at Hofstra, and we, several years ago, revamped a lot of  
23 our required curriculum, and as part of that process, pretty early on,  
24 we identified a list of the learning outcomes that we wanted for our  
25 students -- that was actually a very noncontroversial process as  
26 things go with our faculty. I think that the more controversial

1 process has been the aftermath of that. Having agreed upon learning  
2 outcomes, we are having much more pushback about the assessments of  
3 those learning outcomes and particularly how much formative assessment  
4 we need to integrate within a semester-long course, for example, as  
5 opposed to just one final summary assessment in a final exam, which is  
6 what many of us are used to from our law school experiences. I would  
7 say that the story at Hofstra is, I suspect, no different from any of  
8 the other schools around the table -- there's a tension between what  
9 we believe we need to do to better serve our students to go out in the  
10 profession with very practical realities of budget constraints for  
11 offering an array of really good student-faculty ratio experiential  
12 courses, the reality of Bar exam concerns and passage and making sure  
13 that our students have what they need to go into a Bar exam, which,  
14 frankly, doesn't test skills, which has been a recurring discussion  
15 amongst us: that we are imposing all of this new stuff in our  
16 curriculum without remotely testing at the end the skills needed in  
17 order to enter into the profession. More on that later. So at  
18 Hofstra, specifically, one way that we have tried and managed an  
19 increasing regulatory push for experiential programs with some of  
20 those other constraints is that I worked with a couple of my  
21 colleagues to create a foundational lawyering course that is not in  
22 the first year but is actually offered to students in the fall  
23 semester of their second year; and the idea of it is to reorient them  
24 from what they've done during their first year of law school, which  
25 was reading appellate decisions, to actually starting at the beginning  
26 of a lawsuit. So getting them to think about facts, which they really

1 are given on a silver platter in an appellate decisions, to how do you  
2 develop facts? What role do facts play in trying to prove your case  
3 and what facts have to be synthesized with legal elements: how do you  
4 investigate facts? Where do they come from? How do you marshal them  
5 as a case goes forward? So it's less about the kind of persuasive  
6 advocacies that they learn in legal writing, and learning from the  
7 facts given to them in the first year to really thinking about how  
8 lawyers gather facts and use facts in their advocacy. And the course  
9 covers the use of facts both within transactional types of settings as  
10 well as within litigation-based settings over the course of a  
11 semester. This is the third year of doing this, and I would say we  
12 still don't have it right; we use about 50 instructors who are  
13 basically adjunct instructors, primarily alumni from a variety of  
14 different areas of practice -- and it's almost like an NITA course,  
15 where you have the teaching of whatever the skill is followed by a  
16 skills lab, where it's a one-to-eight ratio with an instructor who  
17 watches each student perform the skill and then gives some feedback.  
18 The alumni instructors think that this is a great course and wish they  
19 had this in law school; they're so excited to be a part of it, and the  
20 students, I think, are still suspect of it -- they don't understand it  
21 -- because it doesn't look like all the other classes that they're  
22 taking. We're asking very different things of them, which I think is  
23 hard; it's also a little bit of a budget constraint, so we've  
24 continued to think about ways that we can make it something that is  
25 sustainable at a scaleable level, and it's required for all too 2Ls,

1 so 240 or so students every year are going to do this, and there are  
2 practical realities of classroom space, et. cetera.

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

6 MS. GUNDLACH: We do it transactional as well; it's a series of  
7 different fact patterns that we use throughout. And then, students  
8 are required to take an additional three credits of experiential  
9 courses and they have the liberty to do externships, simulation  
10 courses, or clinics. We can guarantee an experience in a clinic or  
11 externship for all of our students, and I would say the vast majority  
12 of students do that, but some will do it through simulation courses or  
13 things like that. A couple of the things that I wanted to highlight  
14 that might be a little bit different from what other people have  
15 talked about is, some of you may know that the American Association of  
16 Law Schools has a new section that I'm on the executive board of;  
17 they're focusing on empirical study of the profession and legal  
18 education. One of the lingering questions about a lot of the new  
19 curriculum developments that we've been all engaged in is, to what  
20 end? Is it actually making a difference? One, are students actually  
21 getting it? And two, is it going to make them better lawyers or not?  
22 How do you compare that versus -- I have colleagues who say, "Isn't it  
23 better for us to engage in a real, rich case method study of doctrine  
24 and getting somebody to think like a lawyer versus having them draft  
25 discovery documents or something like that?" Legitimate questions.  
26 So there's a group of us who are starting to really study this

1 question, and one of my colleagues and I are thinking about how we can  
2 actually assess our own foundational lawyers skills course to  
3 determine whether it's actually doing what we have set out to do and  
4 looking at the long-range impact of students who have gone through  
5 that course and how it positions them for practice and even into  
6 practice. I'm also doing a research study with my civil procedure  
7 course and whether or not the way that I'm teaching it is actually  
8 having an impact on students' learning. These are important questions  
9 that we can't ignore as we are thinking about these new curricular  
10 developments. I just want to follow up on the point that's been made  
11 that there are, unfortunately, too many of our colleagues who are  
12 frustrated that they don't have the skill set to be able to  
13 participate in experiential courses. I have colleagues who went  
14 straight from law school, got an LLM, and started teaching and have  
15 never actually had a client. So how could you possibly ask those  
16 people to teach experiential courses? Also, I have another colleague  
17 who has said, "I teach skills in my bankruptcy course. I teach  
18 thinking -- you know, how to think -- like a lawyer. I teach how to  
19 synthesize law and facts. I talk about drafting of different  
20 bankruptcy laws and choices that were available for people who are  
21 drafting those laws." So I think we also have to think more broadly  
22 when we talk about required skills, we have to be inclusive about what  
23 that means to make sure that we are incorporating the host of skill  
24 sets that our colleagues have, who, frankly, are in tenure positions  
25 and aren't going anywhere. So that's another piece of the equation.

1 MR. SAUNDERS: Great. Thank you very much. Let's keep going  
2 around the table, and I should tell you this: this is the last time  
3 in which we're going to go around asking different schools to tell us  
4 what they are doing -- this has been extraordinarily useful, but for  
5 the following discussion, I want a much more freewheeling discussion.  
6 But let's keep going around the table and hear what each one of the  
7 schools is doing, and then, I have a suggestion, and then, we'll go on  
8 to the next topic.

9 MS. HILL: Leah Hill for Fordham. So the question was, what's  
10 the best practices for incorporating skills? I think I want to  
11 situate this a little bit and provide some context on how I'm coming  
12 at this, and that is to say I'm going to label it the "perfect storm"  
13 with an emphasis on both of those words. So let me give you a little  
14 bit of a context. I was appointed the Dean of Experiential Education  
15 in December of 2015 at the very end of the year along with another  
16 colleague who was appointed director of the clinic at the very same  
17 time. The very first task we were asked to do was to deal with the  
18 new regulations regarding New York skills and values requirements as  
19 well as the ABA course requirements, the experiential course  
20 requirements. So you have new leadership, new, eager, very motivated;  
21 at the same time that -- there were a lot of conversations about what  
22 was happening among our faculty about curricular reform and what we  
23 teach and how we teach it, and part of that is to the extent that the  
24 teachers are teaching so-called skills. So a long-range plan the  
25 committee was focusing on is teachers who are adopting institutional  
26 learning outcomes. There's a draft; one of those outcomes focused on

1 skills, right? There was a working group of representatives from a  
2 variety of faculty committees -- two or three appointed to this  
3 curriculum committee -- to have and continue to develop a program on  
4 professional excellence. There was a recent modification to our 1L  
5 curriculum to add a writing component to one of the required courses  
6 for one credit so that students would have more writing in the first  
7 year in addition to the legal writing, and that would be great in that  
8 there would be feedback given in the middle of the year. We have just  
9 undergone our self-study. And so, we had all these activities going  
10 on at the same time that there is a willingness to give this new  
11 leadership a chance to find their footing, right? So that really  
12 worked for us, and we began to think about how we're going to deal  
13 with the New York skills requirement. We took an inventory of what we  
14 were already teaching in the way of skills. In light of the learning  
15 outcomes that were under consideration, we looked at what students  
16 were really doing, the courses that were offered in our upper-level  
17 curriculum, so 50 to 70 percent of the students were involved in  
18 clinics which guaranteed a spot for every student who wants to enroll  
19 in clinics; many -- a lot of them were taking externship courses; that  
20 was something we were focusing on, was with regard to externship  
21 courses. Eighty to ninety percent of our students were taking our  
22 signature lawyering course, which is called Fundamental Lawyering  
23 Skills, which is to focus and concentrate on negotiation -

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

25 MS. HILL: It was not at the time, and I'll tell you a little  
26 more about that. But we're also focused on practical wisdom,

1 judgment, problem solving, and we saw that as a real significant  
2 course in our curriculum. So one of the things we had -- we faced  
3 some of the same concerns that I heard earlier about mandating  
4 courses; the 1L curriculum was pretty much maxed out; we didn't feel  
5 like we had a way in to try anything additional, in addition to the  
6 fact that we recognize that a lot of these legal research and writing  
7 courses had lawyering components, so we would teach interviewing,  
8 counseling, negotiation -- well, interviewing, negotiation, and oral  
9 advocacy through simulations. So that practice for us is to get a  
10 handle on what was going on, begin to name the skills that we were  
11 teaching looking across the curriculum, and we really saw that we were  
12 doing a really a good job at effective communication through our legal  
13 writing course, through our lawyering course, through our clinics; and  
14 also problem solving and ethical practice is something that we were  
15 covering pretty well. We went to the faculty to get input as  
16 newcomers for us to work out this requirement, and we were surprised  
17 about how receptive the faculty was to really doing something  
18 different. And so, we saw that opportunity to have the fundamental  
19 learning skills course mandated as part of our path to one program  
20 plan. So that was really nice because we did not expect people to be  
21 open to any more mandates. But we're continuing to work on developing  
22 a program on professional excellence, and so, we identified some  
23 competencies and some characteristics that we thought needed to be in  
24 that program, picking up on the foundation for practice study that  
25 Alli Gerkman instituted -- she said quite a mouthful that I won't  
26 repeat. And so, we took the top ten most urgent characteristics that

1 employers saw as necessary professions right out of the gate. We  
2 would send them out now -- great. So -- but things like showing up on  
3 time and I think others talked about this, right? -- being responsive  
4 to employers and clients, ethical practice, trustworthiness. So we've  
5 already identified those characteristics and things we want to focus  
6 on throughout this program of professional excellence that we're  
7 developing; we've gone to our faculty with a survey now, because we  
8 have learned that many of our faculty are already incorporating these  
9 skills and characteristics into their classes. Some of them have been  
10 using simulations, and, as I mentioned, some of them are using  
11 problem-based methods, others are really focusing on professionalism;  
12 it's time that students do, you know, things like networking. And so,  
13 we're going to pick up on that and begin to continue to develop as a  
14 program of professional excellence. We have at least one person from  
15 our professional responsibility committee -- one person who teaches  
16 professional responsibility, and so, we're excited about that program;  
17 we still have a little bit -- we're almost two years in -- so we still  
18 have a little bit of leeway in terms of just using this as an  
19 opportunity to find our footing, but I think that's going to wear out  
20 soon, so we're moving quickly to try to develop this program and try  
21 to get it to the faculty so that we can incorporate skills which is, I  
22 think, worthwhile for our students.

23 MR. SAUNDERS: That's great. And I'm going to tell Dean Diller,  
24 who's a member of this Institute, that you did a great job. So thank  
25 you very much. Let's keep going around. Columbia?

1 MR. KATZ: So one advantage of speaking relatively late in the  
2 queue is that many of the things that I would've said have been said,  
3 so I can simply associate myself with them. We at Columbia also have  
4 talked with our alums and with the people who hire our students, and  
5 they said exactly the same things as the Syracuse alums and employers  
6 say. I would also add financial literacy to the list of core  
7 competencies for a modern lawyer -- that seems really important; also  
8 cultural competency, which I think has also been mentioned. We also  
9 have found that we do better in skills teaching if we allow a bottom-  
10 up approach in which individual faculty members and students focus on  
11 the skill sets and skills courses based on their expertise -- and for  
12 the students, on what they want to do with their careers rather than  
13 saying, "Everybody has to become a trial lawyer and take Trial  
14 Practice." There are two additional things that I would mention that  
15 have not been part of our conversation. The first one, which applies  
16 to all the schools that are represented here today, is that not only  
17 are there different conceptions of what kinds of skills are required  
18 for modern legal practice; there are different regulatory mandates.  
19 So we are subject to the New York Court of Appeals mandates, we're  
20 subject to the ABA, we're subject to the American Association of Law  
21 Schools, and to the New York State Department of Education, and via  
22 the NYDOE, to the mandates of the Middle States Commission on Higher  
23 Education. We also have to respond to what our students' employers  
24 tell us and what our alums tell us, and then there are foundations  
25 that are very active in giving out grants and supporting initiatives,  
26 and they have their own conceptions of what kind of skills and values

1 are appropriate to the legal profession. So in this regard, we have  
2 been very appreciative in recent years that the Court of Appeals has  
3 made an attempt to harmonize its expectations with those of the ABA,  
4 and that is much appreciated and we hope that that will continue. But  
5 I think we are together as a profession discovering what skills are  
6 going to be needed in the future, and within that context, a top-down  
7 approach of mandating particular solutions to things that none of us  
8 fully understand how best to implement, is not wise. I.e., it would  
9 be more effective if it were a conversation rather than a mandate.

10 The second and related point, which I think is part of our distinctive  
11 intellectual culture at Columbia, is that we tend to favor a scholarly  
12 and administrative approach which some of us like to call  
13 "experimentalism," which more or less means that, rather than assume  
14 we know what the answer is, we encourage multiple experiments that the  
15 participants are actively motivated to engage in because they are  
16 affirmatively interested in them, and then, we share information and  
17 we check back on how things work, and finally we encourage good  
18 practices to promulgate what we have learned, with repeated rounds of  
19 feedback and learning. So in the spirit of that, we are doing a  
20 number of things in addition to beefing up our experiential  
21 curriculum. We have been adding new courses, we have been encouraging  
22 co-teaching between full-time academics and adjunct faculty; we're  
23 launching this January, the week before MLK Day, a one-week, upper-  
24 level J term where we will also have a series of intensive, one-credit  
25 courses on various topics that in the majority of cases also offer  
26 experiential opportunities. We have added a new course offering -

1 Individual Experiential Project - through which students can go and  
2 find internships and other outside opportunities, and have full-time  
3 faculty members supervise them in these projects and earn academic  
4 credit for it. Everyone today is sharing similar ideas. So I am very  
5 interested in hearing what the other schools here are doing, in the  
6 spirit of that kind of experimentalism shared across our institutions,  
7 and I'm hoping that others will benefit from that discussion as well.

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

9 MS. BILEK: I always want to talk about CUNY. You know that I'm  
10 appreciative of -- first of all, in case anybody wondered what  
11 relation makes the difference, the amount of work and focus that we  
12 just heard about at the law schools around the state is pretty  
13 overwhelming. I would guess that more time had been spent in the last  
14 three years in talking about curriculum in law schools than was spent  
15 in the 50 years preceding it combined. There is an advantage to  
16 starting a law school in 1983 as opposed to 1858, and it isn't donor  
17 dollars. It is instead, you know, kind of being slightly ahead of the  
18 curve. So a couple of thoughts. One, a difference of opinion that  
19 Randy and I have had before -- and then you're going to have to put a  
20 dot, dot, dot there. You know, the truth is that it really makes  
21 sense for different law schools to do different things because of what  
22 they're preparing their students to do on the one hand. On the other  
23 hand, we're a unitary profession with a single likeness, and we come  
24 at it from that end, that we have -- there's nothing we could do to  
25 prevent a student who may be making unwise choices or changing her  
26 mind. We're not afraid of mandating these things because we think we

1 have to be responsible to those future clients in a certain way, and  
2 certainly, CUNY is a different law school than NYU, so we're not  
3 trying to butt heads, but -- so we have 12 credits of lawyering before  
4 our students get the 12 credits of mandated clinic; we sequence and  
5 integrate the lawyering skills that we teach, building on from  
6 introduction and exposure in our first semester of lawyering to more  
7 opportunities for more in-depth learning and opportunities for  
8 feedback in our third semester -- there's a seminar where they're  
9 using the skills in context from tutor work in the clinic. Behind it  
10 all is an understanding that really, probably, the most important  
11 thing we can teach any of our students is how to learn from  
12 experience, because that's what lawyers need to do for the rest of  
13 their careers. And so, we've identified that as a skill, and that's  
14 one of the skills that we are teaching. One thing that I think is  
15 important -- and it would be different for each law school -- it's the  
16 idea for us having a recursive framework that is constantly testing  
17 what's new in practice in terms of the skills that are needed and  
18 feeding back information about whether our students have it and then  
19 having that change to the curriculum and then testing again. One way  
20 to do that is a way for people to ask new lawyers, what did you need  
21 to do that you didn't know. I suggest two other ways of doing that:  
22 one is asking your clinical teachers what the students can do when  
23 they get there what else they think needs to be taught. For us at  
24 CUNY and actually at UMass, we have a not-for-profit law firm where we  
25 have recent graduates, only a few of whom are from our law school, but  
26 they're from law schools across the country working on representing

1 moderate and low-income clients in a partnership we have with the City  
2 Bar, and we're asking those lawyers what they needed to be able to do  
3 on Day One doing that work, and we're asking the supervisors there  
4 what they needed to be able to do on Day One. I think the work that  
5 every law school is doing now is enormous and it feels like a huge  
6 burden, but I think it's work that has to happen. Building in a  
7 framework for figuring out how skills change goes back to Randy's  
8 original point, which is, the list of skills that MacCrate generated  
9 in 1985, which we're all trying to reinvent, right, was 95 percent  
10 right, and for all time, 95 percent are the skills the lawyers use -  
11 - maybe that's an overstatement, 75 percent. You know, so 25 percent,  
12 we are learning that there are new skills that we either ignore or  
13 that we need because of the changing profession, ranging from things  
14 that have been mentioned: project management, cultural competency,  
15 financial literacy if you work -- well, I'll just leave it there.

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

17 MS. OUELLETTE: Albany did this in a very deliberate, very  
18 faculty-driven, and very enthusiastic way. We went through a  
19 strategic screening process that identified six subject matter areas.  
20 We thought three of them are the traditional areas, which are  
21 government and public interest and criminal and civil litigation,  
22 innovation and entrepreneurship, tax and business, and -- now I'm  
23 blanking on our third pathway. So we have these six areas, and the  
24 faculty talked and worked and thought amongst ourselves about what our  
25 core competency skills and values should be, and then we tested it as  
26 part of that strategic screening process by going to our employers,

1 who did focus groups for each pathway for each of those areas -- and  
2 health, that was the third one -- and asked a series of questions  
3 related to the faculty and our career services and our Board of  
4 Trustees. In this process of asking about what do they need, we asked  
5 recent graduates and we asked graduates who are a little farther out  
6 what -- how they did it and what do they need to know. And so, we  
7 adopted core competencies and also domain-specific competencies. With  
8 the core competencies, we worked really through the learning outcomes,  
9 we mapped our curriculums -- where are these things being taught, what  
10 do we need to do to add, and also -- because every student needs to  
11 graduate demonstrating those things. For the domain-specific  
12 competencies, those are voluntary; a student may say, "I want to do  
13 the innovation pathway" and then say, "I really hate this" and then  
14 move on to something else and try something else, but they're able to  
15 look at our curriculum map, which has each of our courses; we put  
16 skills that are taught or assessed in each of the courses. The  
17 faculty continually asks, do we need to add things and do we need to  
18 change our curriculum? We did adopt -- we require clinics now -- we  
19 adopted writing across the curriculum, because that was our weakest  
20 as we measured the strength of our students and what they needed the  
21 most; we are about to engage in thinking about diversity across the  
22 curriculum, so that's on the agenda for the faculty. So we changed  
23 our curriculum, we adopted a really wonderful and robust professional  
24 development program that is run mostly through our career services,  
25 but we also have a required first-year seminar -- I think, one credit  
26 -- that incorporates a lot those things in the first year; and then,

1 our faculty has just done these amazing things, and this is the thing  
2 I can say is the most exciting about what we're doing. We've really  
3 broken down the walls between the skills faculty, the clinical  
4 faculty, the lawyering faculty -- so that triangle faculty -- and  
5 there are all kinds of -- we keep coming up with new names for them:  
6 you know, apprenticeship for this and hybrids and practicums, where  
7 there are different models for all of these things; some of these  
8 things are co-taught with some of these -- you know, a traditional law  
9 professor who didn't have practice experience who has someone  
10 alongside him who has the practice experience might get permission,  
11 might be an adjunct -- so there's lots of ways that we do it. We've  
12 got triangle faculty to particular courses and turning them really  
13 into these, sort of, semi-clinics, these apprenticeships where they're  
14 working, they're placing their students; as part of that triangle  
15 class, they're working and they're being assessed through that. It's  
16 exciting, this stuff. The faculty are so into this; they love the  
17 breaking down of the walls between the clinic and the triangle  
18 faculty. But there are some triangle faculties that are doing what  
19 they've always done. What we learned when we did our curriculum map  
20 is a lot of enriching at least some skill, right? I mean, it's not  
21 all knowledge; it's -- at least they're thinking like a lawyer, and  
22 so, they're a piece of it. But there are people who have been  
23 teaching for 40 years who are trying new things, global things, and  
24 doing some of these really innovative programs. We are assessing how  
25 it's working, so we are doing -- this year, we just did summer  
26 employers -- we're going to try to expand that, but we did a summer

1 employer survey; I love the idea of doing a survey of our students,  
2 too, to ask do we know what they need, but we got really good feedback  
3 and we're working that in to -- each of the curricula around that. So  
4 it's fun to do what we're doing; we are seeing the outcomes improve in  
5 some of these things. Our biggest challenge is budget; when you have  
6 a professor turning a class into its own hybrid, you get far fewer  
7 students and it makes it hard; we require clinics, so we've committed  
8 to do that; it's tough to keep doing that.

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

11 MR. GROSS: We partnered with Judge DiFiore to establish the  
12 Catalyst Fellowship Program with thirteen of the law schools that are  
13 involved in it. That provides through the foundation a grant of  
14 \$2500, and it's matched by the law school for first-year students who  
15 want to work in legal service positions and in public service, DA,  
16 several legal service organizations; the foundation supports about a  
17 hundred of those organizations in New York State financially, and we  
18 concluded that without lawyers dedicated to legal services, our  
19 fundraising doesn't have a source of the funds; I mean, there are  
20 organizations that do wonderful work for those desperately who need  
21 it. However, the program started out with 15 students and ended with  
22 45, and next year, we're anticipating 60 from each of the 15 law  
23 schools. At this point, the participation in both the foundation and  
24 the law school appears to be financial, because the student selects  
25 the -- or goes out and gets a job in one of these organizations. It  
26 seems to me rife with the possibility of integration with your

1 curriculum, and I just wanted to mention we would be certainly open to  
2 any discussions with any of the institutions that participate perhaps  
3 in a greater integration with your curriculum.

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

1    jaded member of the practicing bar.  It's really extraordinary.  We  
2    have a couple of comments.  Patty, you are first.

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

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

19          MS. GUNDLACH:  I just wanted to add, in addition to the  
20   committee, which is one place where all the sharing of ideas happens,  
21   there are a couple of other gatherings of faculty and administrators  
22   of the law schools who are sharing ideas like this on a regular basis;  
23   there is an Access to Justice Council, which has representatives from  
24   all of the 15 schools as well as legal services providers; there's  
25   also a coalition of externship coordinators and clinicians who gather  
26   every year to share ideas, do trainings for supervisors; those of us

1 who have been serving as experiential education deans are often  
2 calling each other and, you know, problem solving and talking about  
3 steps. So I think the more we can do that, the better, so I think  
4 that's a great suggestion.

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

7 MR. SAUNDERS: That's correct.

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

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

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

22 MS. ABRAMOVSKY: I agree. I think that the perceptions of the  
23 Bar are very out of date from the reality of all that we've been  
24 doing, but one of the points -- let's just go back to the Court of  
25 Appeals -- we need to -- New York needs to lead again in this  
26 conversation. I mean, the idea is that, you know, if you could help -

1 - if we could help -- facilitate that through, you know, banking or  
2 best practices or data memos; not all of us can afford to consistently  
3 hire the most expensive legal consultants. If people have already  
4 done the consulting work and the data, let's just share it and work on  
5 best practices if we can get it with a number of other organizations  
6 in conjunction with the New York State Bar Association and education  
7 and file those together so there's more to think about other ways in  
8 which we can help finance the additional training and collaboration of  
9 our different faculties so that they can get the opportunity to travel  
10 amongst and between each other. For people like me who live upstate,  
11 you know, there's a tendency for everything to be down here in New  
12 York City, right, or, at best, over at Albany, you know, and shipping  
13 all of our professors all these different types of things, you know,  
14 while I definitely would want to do it, we want to think of maybe  
15 rotating around the state or figuring out other ways in which to do  
16 these types of things. But basically, I want to say that I am  
17 thrilled to be here, and I think we definitely should do this again,  
18 because we can aggregate our responsibilities to California or the  
19 University of Denver. My point is that we are the number one  
20 jurisdiction for law in the United States; we are the premier  
21 jurisdictions for commercial law in the world outside of London  
22 arbitration -

23 MR. SAUNDERS: Including London arbitration.

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

26 MR. SAUNDERS: Seth.

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

5 MR. SAUNDERS: Well, we'll need to work on that, and I think it  
6 is a great beginning. We are going to cover the other items on this  
7 agenda. We've gone a little far on Number One, but I think it was  
8 extraordinarily valuable, and we're going to break at 12:30 for lunch,  
9 and then, Alli is going to make her keynote address to us at 12:30. I  
10 know Karen and Mary Lu have agreed to lead the second discussion on  
11 values, and let me just introduce that and then throw it open -- I  
12 think we should just throw this open -- for freewheeling discussion.  
13 We in the Institute -- when I first joined the Institute many, many  
14 years ago, the project that we assigned to ourself was to define  
15 professionalism. Those of you who have been looking around the room  
16 will remember, you set out to define professionalism, and John, did we  
17 succeed or fail?

18 MR. GROSS: Utterly failed.

19 MR. SAUNDERS: We couldn't do it. So we talk about inculcating  
20 professional values, all right? We don't really know what that means.  
21 We have spent many, many years talking about professional values. We  
22 have never been able to clearly articulate exactly what that means.  
23 So it would be very interesting to those of us who failed in that  
24 endeavor to hear how the law schools have gone about inculcating  
25 professional values into their curriculum, especially since we don't  
26 really know what they are.

1 MS. EISEN: I'll just add. You know, one of the things that  
2 we're trying to is the stand-alone course in professionalism, which  
3 will identify those values and really show the students or teach the  
4 students how to be authentic, and I think what that means is, you're  
5 taking your personal values and integrating them with your identity as  
6 a lawyer. So, you know, your personal values and your ethics and your  
7 honesty, civility, courtesy -- all of those things that we always  
8 think of when we think of -- as -- professionalism -- good character,  
9 it's hard to treat them -- to teach them out of context. So if you  
10 can help the students do a self-assessment and to identify and know  
11 and be aware of their values and then teach them how to incorporate  
12 that into their practice along with cultural competency, which is  
13 recognizing the differences that other people might have -

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

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

22 MS. KANFER: Can I just say something, and you will probably --  
23 Judge Fisher, who many of you know, she made this point at our law  
24 school Access to Justice conference where she described she was  
25 observing a judge who had a woman of color who had braids in her hair,  
26 and it was a custody support application, and the judge actually said

1 to this young mother, "You should have used your money for food for  
2 your children rather than putting it in your hair." And Judge Fisher  
3 pointed out that people don't understand how long it takes for someone  
4 to get their hair in an orderly fashion to be presentable, and by  
5 putting the braids in her hair, she was able to use her hairstyle like  
6 that for a month or two, and this judge was making an assumption about  
7 her appearance, and that was how she conveyed a sense of cultural  
8 competency, and that's what they mean by saying going in and  
9 simulating living a life.

10 MS. KRETZER: It's almost recognized as implicit bias.

11 MS. KANFER: Yes.

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

16 MR. SAUNDERS: So how do you teach that?

17 MS. EISEN: You have to -- you can't teach every single trait of  
18 every culture, but you have to teach deans how to be mindful, how to  
19 listen, and to almost have a kind of introductory script so that they  
20 can see when someone is not comfortable and not being forthcoming and  
21 try to find more similarities than differences so that they can  
22 establish some kind of trusting, you know, attorney-client  
23 relationship or a working relationship with a colleague. And as the  
24 world becomes more diverse and our profession becomes more diverse and  
25 our clients become more diverse, it's really necessary. And so, it  
26 means letting go, it means -- before you can let go of an implicit

1 bias, you have to be aware you have one, so -- Mary Lu and I were just  
2 talking about that: modeling. We have to model for our students what  
3 is the correct behavior, and you can do that everywhere in the law  
4 schools: from administration, your deans, your professors, your  
5 career services -- everyone should be modeling that professionalism  
6 that we want our students to exhibit.

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

18 MS. ABRAMOVSKY: So I think one of the issues, which is, are you  
19 trying to articulate the values or the standards that are leading up  
20 to those values, the presentation of those values, which are two  
21 different things. We can all agree on candid independent legal  
22 counsel, but exactly the standard presentation of that can be a  
23 different issue, which is why I think it's almost two different  
24 conversations. So the conversation about it goes back and forth and  
25 back and forth, but I think it's helpful -- for decades and decades  
26 back and forth; I think it's really helpful for us to think about the

1 current climate that we're in right now. If the law exists to protect  
2 and establish property rights and we are just arbiters between  
3 different vested financial interests, I don't think anyone in the law  
4 in the legal profession really can articulate that that's what we do.  
5 So if that's not the case, then we can revert back to the principles  
6 of Access to Justice, rule of law, support for democracy. I actually  
7 think it would really be hurtful for us to go back to basics with  
8 principles and re-establish those foundations and worry slightly less  
9 about the standards of implementation between them than just  
10 articulating our shared first-principled values.

11 MS. BILEK: Because Karen and I talked a little about this  
12 point, it often puts you back into perspective that you can teach  
13 values, so I was trying to think about the different settings in which  
14 we can, and most of us do teach values. And one is within the  
15 standard course where the professor asks the question about, is this  
16 just, is this fair, why is the law argued this way, which way is the  
17 law, was it intended to work, could the lawyer have behaved  
18 differently, so that's a standard, regular course. You can do a  
19 stand-alone course in professionalism, like Karen was talking about.  
20 We model. We model not only by how we teach as faculty, but we model  
21 by who we honor among our alums, we honor by whose pictures are on the  
22 wall, we honor by what we give awards with at graduation, we model by  
23 whether or not we show up to each of the meetings, whether it's play,  
24 collegiality, or collaboration. You can learn a lot about  
25 professionalism in experiential courses. In this instance that you  
26 were saying, it took you a long time to sort out how that principle of

1 candid opinions applies in different settings. One of the things  
2 about experiential learning is that the rubber hits the road in that  
3 setting, and you just figure that out, and then, I think many also are  
4 doing this and the profession as well have done this, but I think law  
5 schools have done this measuring in a way that new lawyers learn  
6 values. I mean, the final is just to also think about what MacCrate  
7 originally said about values and habits, and I like to talk about  
8 habits because I don't think you can teach everybody to assume certain  
9 values, but I think you can have an expectation for certain habits:  
10 you show up on time, you always do your best work, you're responsive  
11 to your clients; and if those things become expectations from the very  
12 beginning of law school, they could become habits that people carry  
13 into the profession if they don't enter law school with those values.

14 MR. SAUNDERS: Randy.

15 MR. HERTZ: In the same way that Mary Lu references MacCrate, I  
16 want to say something that the late Bob MacCrate used to say a lot,  
17 which is -- and which Mary Lu incorporated into the report -- that he  
18 believed that values should be the framework for everything that law  
19 school teaches and skills should be folded into this framework of  
20 values. The MacCrate Report also said that all students should be  
21 taught about the vision of skills and values that law schools aspire  
22 to teach. And so, one could imagine an orientation session for first-  
23 year students in each law school that begins by talking about the  
24 vision of a lawyer, which includes the values and habits that lawyers  
25 should be expected to have, and then you fold into that framework the  
26 skills and substantive law and everything else you're going to teach,

1 and you give students a blueprint of what a lawyer needs to learn in  
2 order to become an effective member of the profession, and you do all  
3 that at the front end.

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

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

24 MR. SAUNDERS: We did a convocation on professional values in  
25 legal education, and I believe one of the books from that convocation  
26 is on the table. Michael.

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

17 MR. SAUNDERS: I would answer to that, that one of the areas of  
18 interest to me in thinking about this and talking about it and trying  
19 to talk to others about it is those areas in which there are competing  
20 obligations, which occurs more frequently in the practice of law than  
21 you might think, and how do we teach people to work their way through  
22 areas where you have competing obligations -- an obligation of candor  
23 to the Court, an obligation of loyalty to your client? That's a  
24 particular example, and you can think of -- some of the lawyers in  
25 this room have constructed hypothetical situations where you have  
26 situations in which there is no right answer, right? There's

1 absolutely no right answer. And so, how do you work your way through  
2 that? In the real world, that happens, and it's really hard to say,  
3 "Well, values are honesty and loyalty, trustworthiness like the boy  
4 scout oath." But in actual practice, these kinds of issues come up  
5 all the time, and if I could rule the world and talk to all the law  
6 students, I would say that these issues come up every day in practice.  
7 When we talk about values, we're not talking about something that's  
8 abstract, that's theoretical. It's real.

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

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

23 MS. GUNDLACH: I'm going to start off by saying I agree  
24 wholeheartedly with Randy about clinical education, a clinical  
25 professor being the best model for incorporating an understanding of  
26 the substantive law and the skills and the values -- I mean, I teach

1 civil procedure, and there's great opportunities to talk about the  
2 attention to Access to Justice issues. There's an enormous amount of  
3 opportunity, even within those classes, to stop at various times and  
4 engage students with the moments of lawyering -- you know, even it's  
5 hard from an Appellate decision, but you can still say, "Gosh. Think  
6 back to when that client walked in the door. What were the options  
7 that that lawyer had? What were the challenges that they were facing?  
8 When that discovery dispute was happening, when we were talking about  
9 sanctions, why do you think it got to that level that they were  
10 fighting this much? You know, what were the issues that were the  
11 intention for them?" So I think there are those kind of opportunities  
12 even outside of the more experiential courses.

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

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

25 MR. SAUNDERS: And I'm going to leave you with one fact before  
26 we break for lunch. A lot of lawyers in New York State are solo

1 practitioners, and if Chris Chang were here, he would tell us that a  
2 very high -- disproportionately high -- number of disciplinary  
3 proceedings are proceedings against solo practitioners. So whatever  
4 we're doing, we need to keep in mind that a lot of the students are  
5 going to wind up hanging out a shingle, and there's nobody they can  
6 talk to about how to make these decisions that they're going to be  
7 called upon to make. I just leave that with you, because when I first  
8 started thinking about this, I wasn't thinking about solo  
9 practitioners, but like Michael said, that's a very important part of  
10 our profession in New York State, to be able to keep that in mind as  
11 we talk about inculcating professional values. Dean, you wanted to  
12 say something?

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

20 MR. SAUNDERS: Thanks. Mary Lu.

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

1 about when we have a relationship with the profession, it begins to  
2 start back with opportunity in law courses.

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

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

9 **[KEYNOTE ADDRESS - MS. ALLY GERKMAN]**

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

16 MS. GERKMAN: The consortium.

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

23 MS. GERKMAN: Thank you. Let me warn you as we get started that  
24 I did something that you probably  
25 didn't do in your offices, and that includes where I started  
26 updating and adding in some things based on the discussion.

1 Hopefully, that comes up all right on my computer. So as Paul has  
2 said, I'm with the Institute for the Advancement of the American Legal  
3 System -- or IAALS -- and sometimes, as with that name, it's a  
4 cautionary tale about what happens when you put lawyers in a room to  
5 name something. But it does really accurately describe what we do.  
6 What we do at IAALS is we work in putting together research; sometimes  
7 we do research to bring together people and putting together thoughts  
8 and ideas to try to tackle some of the biggest challenges that are  
9 facing the legal system and the justice system. So today, I'm going  
10 to talk to you about a problem that we were trying to think about  
11 tackling, and then, I'm going to talk to you about the beginning of  
12 our solution to that problem. And the problem is one that you all  
13 are, you know, intimately familiar with, but I'll still walk you  
14 through it so you have a sense of how we got to where we are. 38  
15 percent. This is the percentage of 2016 law grads who hadn't landed a  
16 full-time, long-term job that are hired by that ten-month mark that  
17 the ABA is requiring. Not everyone goes to law school to be a lawyer.  
18 28 percent, this is the percentage of 2016 law grads who hadn't landed  
19 full-time, long-term employment. But even more concerning than that,  
20 perhaps for some, is 24 percent. This is the percentage of 2016 law  
21 grads who haven't landed full-time, long-term employment, period, by  
22 that ten-month mark. Now, some of you may have some employment issues  
23 at your schools and some of you may not. This is just a piece of the  
24 problem, because there's this other problem that we suspect all of you  
25 are dealing with in one way or another, and that's this: 71 percent.  
26 This is the percentage of third-year law students who believe they

1 have sufficient skills to practice. Forty-five percent is the  
2 percentage of your faculty members who believe that the new lawyers  
3 who are coming out in roughly that same year have sufficient skills to  
4 practice. And finally -- and this is the main piece of the problem  
5 here -- 23 percent. So this is the percentage of practitioners who  
6 believe that new lawyers have sufficient skills to practice. So  
7 that's -- that's a problem, and it's one -- again, even if you haven't  
8 seen these numbers before, you know this, because we hear it all the  
9 time: we hear it in the media, we hear it in talking to alums, we  
10 hear it in comments and concerns that are voiced by Bar organizations  
11 and organizations like this. So this is something that's well-known,  
12 but there's this other problem, which is that what we know that maybe  
13 there's some concern that new lawyers coming out don't have what's  
14 needed. What we don't have a good sense of is, well, what are those  
15 things? Again, we've had a lot of anecdotal information. We  
16 certainly have done some work with MacCrate or the Shultz Zedeck  
17 study. And so, what we wanted to have a sense of was nationally,  
18 right now, post-everything, that all of the shifts that have happened  
19 in legal education and the legal profession, one of the things the  
20 profession is saying are important. So we launched this project,  
21 Foundations for Practice. From the outset, we sought to do three  
22 things: the first was to identify the foundations that entry-level  
23 lawyers need -- and you'll understand in a moment why I say  
24 "foundations" instead of just "competencies." Second, to use that to  
25 develop measurable models of legal education that support those  
26 foundations. When I say that, by the way, I don't mean that we will

1 do that. What we will try to do is what we were talking about  
2 earlier; we're trying to collect information and then partner with  
3 people like you to find ways to really use it to make it meaningful  
4 and actionable. We're not saying we're trying to come up with what  
5 you guys should do; we're trying to create stuff so that you all have  
6 the information you need to do what you're doing well. And finally,  
7 because we thought this was critical, align market needs with hiring  
8 practices to incentivize positive improvements. And really, what I  
9 mean by that, I mean that, if we're going to ask the profession --  
10 legal employers often -- what it is that new lawyers need and law  
11 schools are going to be -- and I think we've heard here working with  
12 an attorney or two to ensure that their graduates have the  
13 competencies, characteristics, and skills that they need, we need a  
14 legal marketplace that is hiring based on the broader set of  
15 characteristics and competencies that they are saying are so critical  
16 for new lawyers. So we've created a survey, and we distributed it in  
17 37 states, mostly through state Bar organizations for the Court; quite  
18 happily, we were able to distribute it in New York. As we were doing  
19 this, I had a lot of fear about not being able to distribute it in New  
20 York, because it seemed -- again, I think even -- I think, actually,  
21 around the country, New York is viewed as a leader still, and to have  
22 this survey and not have had it in New York would have been a problem.  
23 So happily, it was distributed in New York, and we ended up with more  
24 than 24,000 responses to the survey; and what we asked those  
25 respondents to do was take 147 foundations -- I'm going to define  
26 those a little more clearly in just a moment -- and -- oh, I'm going

1 to do it right now. So when I talk about foundations, this is what  
2 I'm talking about. So I'm talking about things like identify relevant  
3 facts and legal issues, critically evaluate arguments, conducting  
4 defense depositions, make decisions and deliver results, work as part  
5 of a team, demonstrate initiative, diligence, and trustworthiness --  
6 in other words, having not taken away legal skills, broader  
7 professional competencies, meaning basically skills that are useful  
8 across professional endeavors, and characteristics -- personal  
9 characteristics. And we asked respondents to place these in buckets.  
10 Either these were necessary in the short term, meaning right out of  
11 law school, they are necessary but they can be acquired over time  
12 throughout the course of that lawyer's career; advantageous but not  
13 necessary; or not relevant. And we did it like this for a reason.  
14 You know, we could have done the one-to-ten scale as to one-to-ten how  
15 important is this. But what we really wanted to try to understand is  
16 what is it that lawyers needed when they leave law school and enter  
17 that first position. In total, over those 147 foundations we asked  
18 about, 77 were identified as necessary right out of law school by 50  
19 percent or more of respondents. And so, this is the top-20 list. I'm  
20 going to show you -- so one of the things Paul talked to me about was  
21 how these results stack up to New York, and what I would say in  
22 general -- so we have a report that's about to come out that will go  
23 into different cities across practice setting and firm size, because  
24 there are a handful of differences in terms of practice setting and  
25 firm size -- not many, but there are differences. Across geography,  
26 there weren't even enough to talk about in a publication. So just so

1 you have some sense, if the national top-ten list is over here  
2 (indicating) and the New York top-ten list is over here (indicating),  
3 the only item that shows up on the New York list -- or that's not on  
4 the national -- conscientiousness and attention to detail. So the  
5 point being, the national results during last year in New York -- and  
6 so, I'm going to speak mostly about the national results here; I'm  
7 going to come back to this list now. Take a look at this list for  
8 just a moment: we've got things like keep confidentiality as number  
9 one, right on time, honor commitments, integrity, and trustworthiness.  
10 I want to be clear, I'm sharing the top 20 because it's easier to talk  
11 about in a presentation. There were 77 items that are all viewed as  
12 necessary out of law school, but we did the top 20. Here's the first  
13 thing we noticed: legal skills, there's one that's a traditional  
14 legal skill on here, and that shows up as Number 14. So what are the  
15 rest of these items, then? They're things like competencies and  
16 characteristics. So as we went through these results and we're  
17 thinking about them, what we realized is that, in fact,  
18 characteristics were huge in that list of items that are necessary  
19 right out of law school; 76 percent of all of the characteristics we  
20 asked about were identified as necessary right out of law school.  
21 Compare that to professional competencies; 46 percent of those were  
22 identified as necessary right out of law school; and legal skills,  
23 only 40 percent of the legal skills that we asked about were  
24 identified right out of law -- is necessary right out of law --  
25 school. So we talked about this in the report that was released last  
26 year as the need for a new law school graduate to be a whole lawyer,

1 to have a combination of characteristics, competencies, and skills  
2 that are necessary to practice. And over the last six months, what  
3 we've been doing is trying to work on making that meaningful to law  
4 schools, and so, we've been doing -- we hired -- because as part of  
5 the next phase of this, we'll be working with a handful of law schools  
6 across the country and employer groups that they have identified to  
7 create learning outcomes from this and from conversations with  
8 employers and also to create hiring rubrics for the employers. So  
9 over the last six months, I have been able to actually work with a  
10 learning outcome assessment consultant, learning that comes with  
11 higher ed. and adult learning more broadly -- she had a legal  
12 background, so with the learning outcome, we were about to learn just  
13 how complicated and crazy that particular process is. So what we're  
14 beginning to swirl around on and what we continue to work on with the  
15 law school partners over the next six months to a year are some of  
16 these concepts coming out of those 77 foundations: thinking about the  
17 lawyer as a professional, thinking about the lawyer as a practitioner,  
18 thinking about the lawyer as a communicator, a problem solver, and  
19 legal self-starter. So because of the topic of these sessions, the  
20 conversations that have happened, one of the things I wanted to do was  
21 talk through the requirements under 302 and sort where they fell short  
22 of the results that came out of this survey. So that first item of  
23 302 is about knowledge of the substantive and procedural law. So we  
24 actually had a foundation on our survey that asks, you know, about the  
25 importance to maintain core knowledge of the substantive procedural  
26 law in the relevant focus areas. This is, sort of, the Bar exam in

1 one foundation -- of the 147, right? It actually barely made the  
2 list; 58.7 percent of respondents indicated that that was necessary  
3 right out of law school. So I don't -- I would be curious to hear  
4 what you all think about that; I'm not going to share an opinion on  
5 that, but I'd love it to hear what would be the results of that.

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

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

20 The other -- the fourth -- item, other professional skills needed  
21 for competent and ethical participation as a member of the legal  
22 profession, Part D of 302, we would argue that's actually a pretty  
23 important section of the learning outcomes requirement of the ABA,  
24 because, in fact, the bulk of the foundations that were identified by  
25 more than 24,000 lawyers across the country would probably fall into  
26 that category. So there's an opportunity there for law schools to

1 think about what those are for their school, and that might be  
2 different from school to school. While there is some obvious need for  
3 all law schools to graduate students who have a certain set of skills  
4 -- or who are competent at some level, there are opportunities to  
5 distinguish your students by thinking about how you define these, of  
6 course.

7       The other piece I want to share is the second part of our survey.  
8 In our survey, we asked about the foundations that are necessary for  
9 new lawyers, and then we had a separate section, and we said now,  
10 reflect back on those foundations that you just identified as critical  
11 for new lawyers and tell us how would you identify these things. If  
12 someone was coming to -- you know, if it was a prospective employee --  
13 and we did not say, and I think you'll see why it's important to make  
14 this distinction in just a moment; we did not say, "How do you  
15 currently hire?", because we have some sense of that and that didn't  
16 seem as useful for purposes of this particular survey. What we wanted  
17 to understand is, if you really wanted to hire prospective job  
18 applicants who were a whole lawyer as we have now called it, what  
19 would you look at? And we gave them 17 options, and I'll read them to  
20 you in just a moment, because I'm going to read them to you when I  
21 show you the results. Basically, we said to place them on a spectrum  
22 of very helpful to very unhelpful. So for purposes of the  
23 presentation on the next several slides, I have lumped together very  
24 helpful and somewhat helpful. None of these items was viewed as  
25 somewhat unhelpful or very unhelpful, but they certainly were viewed  
26 as helpful to different degrees. So that's why we look at them

1 through the helpful lens here. And so, this is the chart  
2 (indicating). I'm going to read from left to right, because I know  
3 that you guys don't all have superhero vision. Legal employment,  
4 which is interesting given the comments that came up relating to the  
5 importance of just working in a legal setting; recommendations from  
6 practitioners or judges; legal externships; life experience between  
7 college and law school; other experiential education; participation in  
8 a law school clinic; federal court clerkship; state court clerkship;  
9 law school courses of a particular specialty; recommendations from  
10 professors; class rank; law school attendance; law school  
11 certification in a particular area; ties to a particular geographic  
12 location; law review experience as second to last; and general  
13 experience. So is there anything anyone notices about these items?  
14 Anything jump out?

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

18 MS. GERKMAN: Yes. So I'll show you in just a moment. So these  
19 first eight items that are now in red (indicating), these are all  
20 based in and linked to some kind of experience, and the first thing we  
21 thought when we saw this was, 'there's no way this holds up for big  
22 law,' right? And it's just a little bit, right? We have class rank  
23 jump up to second-most important, and we have law school attendance  
24 jump up, and even law review experience is now Number, I think, 11  
25 here. So it gets a little bit of a boost. But those top eight items,  
26 they hang tough in the top ten. And then, we've looked at -- this is,

1 like, a ridiculous range but for purposes of presentation, and just be  
2 aware that we actually have looked at and we've broken it down  
3 further, and it holds true. It's not how they're hiring. If they're  
4 going to bring in these people who have these broader skills, right?  
5 -- you're absolutely right; it's not how they're hiring, but I can  
6 still pull that up and look at that. All of the data, most of the  
7 ways to slice and dice it are available on our website in a data  
8 visualization tool. So you can actually go in and look at practice  
9 setting, firm size, practice type, gender -- everything, to see how  
10 these are different across different types of slides. And we did that  
11 for that reason; there's all kinds of ways to look at this, and we  
12 wanted -- our point is for people to have the information. And then,  
13 for solos, we see law school courses that are of a particular  
14 specialty jump out, but again, these top eight items are faring well.

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

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

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

22 MS. GERKMAN: Clinic is Number One in this particular slide. So  
23 what we are doing now is, as we're looking at all of this, we're  
24 thinking about what it means and we're thinking about opportunities to  
25 work with it and to use it, and so, I wanted to share with you some of  
26 those things that we are either doing or are on the verge of doing.

1 So we see an opportunity to ensure that law grads have the necessary  
2 foundation, and this is really important, I think, and -- this came up  
3 in conversations basically today, and -- to ensure that we have  
4 adequate signals to indicate that they do, because we think that,  
5 'well, certainly, surely there are things that law schools can do  
6 better; all organizations have opportunities to improve.' We also  
7 think that there are a lot of things that law schools are doing where  
8 there's a signal disconnect, and that is not to say it's on the fault  
9 of the profession by any means, but there need to be conversations  
10 like this and there need to be partnerships so that employers in the  
11 profession really understand what law schools are doing and what that  
12 means for the graduates both on a pragmatic level but also, I mean, to  
13 some extent even on a student-by-student level; just like schools can  
14 distinguish themselves with different emphases, so can students who  
15 are graduating and entering the job market. So thinking about ways to  
16 better signal to employers what students have and what law schools are  
17 doing is one of things we're thinking about, and I would also say  
18 that, too, that I was not so surprised by everything that's going on.  
19 That said, one of the things that we think is critical is not just  
20 that these programs be done but that they really be effectively  
21 measured toward outcomes so that schools know whether what they're  
22 doing is actually achieving whatever it is that they're trying to get  
23 to; and again, because I'm learning how people are learning to be much  
24 more evolving in law school, I know that this is not just a law school  
25 issue; everyone is grappling with how to do that. And so, I used to  
26 think law schools were maybe further behind some of higher education,

1 and maybe that's slightly true, but now, I feel like everyone's sort  
2 of trying to get there, but the great programs that you're doing, make  
3 sure you're measuring them. What we would like them to do is to have  
4 the ability to look at those traditional criteria alongside this  
5 latter set of criteria. The reason we think that might be possible is  
6 we really talked to a lot of them about it. We have hosted countless  
7 roundtables with employers with managing partners and with people from  
8 the private and the public sectors to talk through these results and  
9 to talk through whether they are achieving what they want to given the  
10 way they are currently hiring. So just as an example, we actually do  
11 an exercise where we walk in, we give them a set of resumes, and they  
12 just quickly order these based on how you would if you were hiring;  
13 and we do that, and then, we present the results of the survey; they  
14 work with it, they get really engaged, they have arguments over  
15 whether common sense is more than important than conscientiousness,  
16 and then, we come back and say, "Now, go back to your resumes, take  
17 the top two, and just go through and note on there the experience  
18 through their accomplishments that lets you know that they have those  
19 characteristics that you said are so important." And with every group  
20 -- I don't care if it's a big firm group or a smaller firm group --  
21 there's this uncomfortable moment where they go, "Well, that's not how  
22 we've looked at the resumes." And so, then, what we do is, we talk  
23 about how, you know, are there -- you know, why that is, and there are  
24 a lot of reasons that they would have: risk aversity, right? They're  
25 never going to get their hand slapped for, you know, hiring in a  
26 traditional way, whereas if they take a risk, they might. But also --

1 and this is why we're looking at this -- they don't have -- they don't  
2 have -- the tools in order to do it at a volume level, and so, we're  
3 trying to think about, 'Are there -- are there proxies, are there  
4 tools that they think that can used?' And it's not just to help  
5 students get jobs or to help law schools place students; it's really  
6 to ensure that the best possible candidates are being picked so that  
7 they're a good fit in the firm, they're going to be happy in the  
8 organization or whatever it is, and when they're going to be happier,  
9 they're going to service clients better. So that's a piece that we  
10 are working on. We're also thinking how this can be used to look at  
11 the current way that we evaluate candidates for admission to the Bar  
12 exam and whether if it is aligned with what the profession really  
13 believes is necessary. And finally, we're looking at what clients  
14 value. So to my mind, one of the biggest gaps with Foundations for  
15 Practice -- and we knew it was there from the beginning, but we still  
16 thought it was worthwhile to do, but the biggest gaps -- is that this  
17 is a survey of the profession; this is a survey of lawyers about what  
18 is it that lawyers need, and that means we have in-house counsel as a  
19 group of respondents, but we don't have other clients. And so, we  
20 just launched a project that is called -- and this is a group that  
21 will appreciate this title -- Think Like a Client, and what we are  
22 doing is -- and I'll back up just a moment to explain how we got to  
23 this. Are you all familiar with AVVO? You've heard of that? So AVVO  
24 is, like, a -- it is Yelp for legal services, basically. So clients  
25 can go onto this website and evaluate their lawyers; and I had  
26 actually just been listening to podcasts about a similar thing for

1 doctors, and I was thinking about my own experiences with doctors, and  
2 I thought, 'You know, I don't know if that surgeon's good at being a  
3 surgeon. What I know, though, is that he was good at giving me my  
4 options and talking me through it' -- you know, whatever, and I  
5 thought, 'I wonder what people are saying on AVVO.' And so, I went on  
6 the site kind of expecting that everything was outcome driven, like,  
7 "I won, so my lawyer is great," "I lost, so my lawyer is horrible."  
8 That's not what it is. And so, I and our researchers started poking  
9 around and we reached out to AVVO and said, "We would like to do a  
10 qualitative review of your data -- you know, give us the data," so  
11 they are saying "great." So what we are doing is that qualitative  
12 study of the AVVO review comments field to try to determine from that  
13 what it is that individual clients value in their legal  
14 representation. So we will have that additional information to layer  
15 on top of the foundation practice.

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

21 MS. GERKMAN: So that is absolutely true. In fact, someone at  
22 one of the conferences suggested maybe there is some information that  
23 can be drawn from law school clinical clients to ensure that that  
24 broader perspective is taken in; and the answer is, we're going to do  
25 the best that we can, but we recognize there are some limitations with  
26 this, right? It's not perfect. On the other hand, there's no great

1 way to reach clients. You know, there's no national association of  
2 clients. So we can't send out a survey to the national association of  
3 clients, so this, we hope, is an initial step forward in trying to  
4 understand what it is that clients need; and while it's not perfect,  
5 hopefully it's at least some information that can be built upon. And  
6 with that, I will turn things back over.

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

16 **AFTERNOON SESSION**

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

25 MR. BOISE: So first of all, I have to ask Aviva to assist me on  
26 this one. Her name didn't appear under one of these topics, and I

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

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

25 MR. BOISE: For us?

26 MR. SAUNDERS: Yes.

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

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

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

13 MS. ABRAMOVSKY: If anyone was on the call for the clinical  
14 education, I think, last month, you know, D.C. is doing lot of things  
15 to make it much easier for people to be admitted to the Bar; you know,  
16 they're trying to compete with New York to be the default law, you  
17 know, for a lot of our government issues, and they're making it  
18 significantly easier for international lawyers to become licensed in  
19 D.C., and this is a direct assault on our business here. You know, if  
20 I wanted -- if I can be perfectly blunt -- I don't think people are  
21 paying enough attention to detail. On one hand, we have our  
22 traditional arms race that's conducted in California for the  
23 articulation on regulatory standards, and on the other, we have D.C.  
24 kind of doing, you know, an end run around this to take away our  
25 business. And now that we're all actually using UBE, it becomes  
26 increasingly -- those of us who are using UBE, it becomes increasingly

1 difficult for us to add additional requirements and say we aren't  
2 recognizing someone who's admitted to practice who took a UBE at a  
3 different jurisdiction, you know, with the appropriate reciprocity.  
4 So the structural facts of that adoption of UBE, I think, has somewhat  
5 slowly permeated our minds in New York, and the fact that the UBE has  
6 experiential learning for law schools -- and I don't think it's been  
7 completely successful in New York, because if we had moved away from  
8 New York on the Bar, then experiential learning would be of what law?  
9 You know, on the one hand, if you come from a school that's putting a  
10 lot of people to practice in New York, I think you'll just be making  
11 sure that those skills are required, but if you aren't or if you're  
12 going to head out to D.C. or elsewhere, those experiential learning  
13 courses don't exist in a vacuum, you know, without any framework in  
14 terms of law. This is something I'm struggling with deeply to  
15 articulate and I think we need to pay attention to, with that  
16 fundamental change for our Bar.

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

1 with ingrained issues around the ability to shift faculty amongst  
2 different programs and to shift the courses that are taught.

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

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

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

24 MS. OUELLETTE: I think that also there's recognition that  
25 students learn differently, at least this generation of students. I  
26 really think that they need to do it to learn it, and that probably

1 was always true, but I think that's actually -- that the market is  
2 obviously one of the main drivers.

3 MS. BILEK: I don't want to distract; I just want to make a  
4 point, which is -- there's been something that was exactly the same in  
5 2007 as when the crash happened in 2008 and 2010 and in 2016, which is  
6 -- that starting -- that many more people are not represented by  
7 lawyers that are on our Council, and that didn't change, and whenever  
8 we look at the market to figure out either what our law schools should  
9 do or what's going on, we're widening that gap. And I just heard this  
10 woman -- a probation officer who was a victim of domestic violence in  
11 her home in front of her 16-year-old kid who could not -- didn't --  
12 qualify for free legal services because she makes \$52,000 a year --  
13 knew exactly where to go and she helps people do that; and there is no  
14 one to serve her in New York State, and her life begins to unravel.  
15 We're talking, in child support cases in New York, 99 percent of  
16 people who are in those cases are pro se. So I guess I don't -- I  
17 know that's not the purpose of this conversation, but I think not  
18 having this conversation has gotten us to where we are.

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

22 MS. KANFER: 1.7 million.

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

26 MS. ABRAMOVSKY: It's a market failure.

1 MR. SAUNDERS: It is a market failure.

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

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

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

20 MS. ABRAMOVSKY: Not everyone, but there's a perception -- I  
21 mean, that's what those slides are showing, right? I mean, there's an  
22 implication of why we keep bringing this conversation with the number  
23 of unemployed and the number of lawyers who think that they don't have  
24 the skills to be hired. You know, the real bridge is that -- there's  
25 some responsibility for the schools to bridge that, make that change.  
26 We don't have to necessarily say in a pejorative way that maybe it's a

1 long time coming, but, you know, there are multiple different reasons  
2 why when we engage in experiential learning and or skills assessment  
3 learning, it's important for us to accept it's market driven, because  
4 that's what the lawyers want to hire.

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

9 MR. SAUNDERS: That is true.

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

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

18 MS. GUNDLACH: I just want to follow up on two points. One,  
19 Mary Lu, I'm really glad you said what you said, and I actually think  
20 it's not at all an offshoot; it's directly relevant to exactly what  
21 we're talking about, which is professionalism. We haven't talked  
22 that much about the professional values of Access to Justice and  
23 serving more people and cultural competencies. There's a lot of that  
24 that is talked about on the sidelines but that is not talked about in  
25 professionalism programs across the country. That is something that  
26 we need to be valuing more as a profession and education. So with

1 respect to what changes to the core curriculum, I think we are at a  
2 turning point primarily because of Judge Lippman's real push in this  
3 direction on Access to Justice issues, and my hope is that that will  
4 continue forward. But I think what we foresee in the next four  
5 years, my hope is that that will continue to be something that we will  
6 build out, and that's something I am incredibly proud that my dean is  
7 focused on right now. The second thing that is a very real problem  
8 which I said earlier is that there's all these rules and regulations  
9 that are being imposed upon us, which, in theory, I think are  
10 wonderful with respect to expanding experiential education but our Bar  
11 exam is not testing for that. And so, for those schools -- and I'm  
12 going to put ourselves out there, that we are -- we are -- struggling  
13 with getting our students to pass the Bar, and so, how do we both meet  
14 the regulatory obligations and, frankly, our own interests in wanting  
15 to have our students get that strong grounding and then also prepare  
16 them for a Bar exam that bears no relationship to that piece of  
17 curriculum?

18 MS. HILL: The one thing that strikes me is that we talk about  
19 the market as if there is one singular market, and I think to some  
20 extent there is, but I think all of us encounter different markets  
21 depending on the school, depending on the student population. I think  
22 one market that you just identified is the market of students that  
23 need to pass the Bar, right? We need to serve that aspect of the  
24 market and then some might say the market that is clients,  
25 particularly clients who don't have access to lawyers, right? We don't  
26 often think about them when we think about the market. Fordham has

1 recently launched an Access to Justice Initiative that is really  
2 focused on how we might address the needs of people who need legal  
3 help but don't have access to lawyers. So I think we need to think  
4 about the differential needs across the so-called market. I think we  
5 would all agree that how we think about teaching skills has to be  
6 informed by a broad notion of the market they will enter. For some of  
7 us that market is going to be big law -- for example. For some of us,  
8 that makes a lot of sense, but for some of us, it may not.

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

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

24 MR. SAUNDERS: So let me jump ahead to the second -- the next --  
25 question that you were going to address, Craig, and that is the  
26 reaction of the faculty and students to these requirements. What has

1 that been like? We covered some of that this morning, but I'm curious  
2 to know whether there's any pushback, whether the students are liking  
3 it or not liking it.

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

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

17 MS. HILL: I think students are often confused to some extent.  
18 There are so many things that they're trying to wrap their heads  
19 around during the three years in law school; they're thinking about  
20 their career options, grades and meeting all the graduation and Bar  
21 requirement, I think it takes time to institutionalize a change like  
22 the new skills requirement is, and I think that adds to the  
23 administrative burden, right? We have decided to offer information at  
24 various touch points throughout the year, particularly around  
25 registration when we offer school-wide advising sessions.

1 MR. ROSNER: I'd like to ask the deans here if the science that  
2 Paul just described is a counterthreat to the faculties.

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

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

7 MS. GILLES: I think it's generational.

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

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

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

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

25 MS. ABRAMOVSKY: I don't think it's a resistance in their  
26 hearts.

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

9 MR. ROSNER: Or a complaint.

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

13 MR. ROSNER: It's clinical training.

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

19 MR. BOISE: I'd like to say something in support of what  
20 Jennifer said earlier about the Bar exam. I think that that is  
21 something that is long overdue for an examination. I think -- you  
22 know, I mean we test things that are sort of enshrined in what counts  
23 as the law -- and we're going back a hundred years -- but there are  
24 various areas that are evolving that our students need exposure to  
25 increasingly. We have healthcare law that is now more important than  
26 secured transactions. Compliance is more important, I think, than -

1 trusts and estates; which has generally become a very small niche  
2 practice. So I think the fact that we've added on new things without,  
3 sort of, re-examining what the new landscape looks like, what the  
4 practice is, is a problem, and our curriculum is constrained by this;  
5 we have to offer these courses for this Bar -

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

16 MS. BILEK: Well, given that we've been a regulatory state since  
17 the 1950s, one may think there might be some administrative law,  
18 obviously, right? And so, I a hundred percent agree with you. I  
19 would ask that the inquiry may be broader, especially given what we  
20 saw there and given what we know. It's not true that no skills are  
21 testing -- obviously, there are some skills tested on the Bar exam --  
22 some skills that are very important to learning and then some other  
23 skills that are not so important that may be antithetical to learning,  
24 such as memorization. We live in a world where an e-library could be  
25 loaded onto my computer very quickly, and when I could practice law, I  
26 could write essays the way a starting lawyer would actually do her

1 work. And the people taking that test would feel that it was real.  
2 And the measure on that test may be more valid than where we are now.  
3 I mean, right now, our students are taking a multiple choice test  
4 that's based on the law of no state and then an essay test where they  
5 have to memorize rules word for word, and I'm not going to spend my  
6 time teaching them how do that.

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

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

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

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

25 MR. WITMER: I'm not sure I'm a particularly good one to do  
26 that. So again, it is independent from the state Bar, which, of

1 course, is where I spend a lot of my time. My impression, though, is  
2 that you've got some good people there, but they are overwhelmed, I  
3 think, with just keeping up with the current, you know, way we're  
4 doing things. I'm not sure there's that much time that we have to sit  
5 back and really think carefully about what changes should be made, and  
6 some of these changes, of course, can -- you know, are sort, of -- can  
7 negatively -- impact the minority students and that causes a  
8 significant political problem.

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

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

24 MS. SAUNDERS: Catherine.

25 MS. RICHARDSON: Well, if I remember correctly, it was Judge  
26 Lippman who wanted the uniform Bar exam, and he just -- they changed

1 rules just so that they could give the uniform Bar exam, and it's  
2 caused a lot more problems than what I think the original exam did. I  
3 mean, we needed reform back in 1975,'76.

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

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

25 MS. GILLES: We haven't talked much about students, and so, I  
26 just want to give you a perspective from our students, because we did

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

25 MR. SAUNDERS: That's a good segue, because now, I want to turn  
26 the discussion now to Ms. Ouellette. The floor is yours.

1 MS. OUELLETTE: The topic is what outcome assessment tools does  
2 your school use and are outcome assessments valuable tools? So  
3 technically, I think it's a little early to say, although we're  
4 trying. I'm actually curious to hear what the other schools are  
5 doing; I'll talk a little bit about what we're doing. We've gone very  
6 low tech. Our assessment process is very faculty driven; there are  
7 products you can buy to do the assessment -- you can plug it into your  
8 exam software and, kind of, push in keys to your outcomes. What we  
9 did was, for each learning outcome to identify performance indicators  
10 -- so I can circulate some of my handouts -- but if you pick as a  
11 learning outcome "demonstrate the ability to communicate effectively"  
12 one of the learning outcomes or performance indicators is that the  
13 student will demonstrate the ability to speak in a clear, concise,  
14 well-organized, and professional manner. So it's not going to be too  
15 shocking with some of the values or characteristics-types things that  
16 we're looking for. We have an outcome that is to "demonstrate an  
17 awareness and understanding of the knowledge, skills, and values  
18 necessary to be competent and effective lawyers in a multicultural  
19 world." There are four different performance measures. One of them  
20 is, "students will demonstrate sensitivity regarding different  
21 positions in cultural communication between lawyers and others." So  
22 we've identified the performance indicators, faculty-tagged the  
23 outcomes on their syllabi in their in-class assessment; they try to  
24 see whether the students are demonstrating the performance measures.  
25 And then, the assessment on the institutional level, we have an  
26 assessment committee that is -- it's mostly faculty, but there's also

1 administrators on it as well. And for each of the outcomes, they've  
2 developed rubrics that track the performance indicators, and they do a  
3 sort of sampling. So if it's written, the committee is actually  
4 tracking a sampling of the papers, of the exams, of the midterms, of  
5 the quizzes so that we could see on an institution-wide level whether  
6 our students are performing at advanced, competent, developing, or  
7 deficient levels for the outcomes. The ABA just requires us to  
8 assess; it doesn't actually require us to meet it, but, of course, we  
9 want to meet it. And so, the idea is, as you get that information,  
10 you feed it back and change your curriculum and work with your  
11 faculty. So those are the tools that we have developed, so they're  
12 homegrown -- I think we've relied so much on your work, Alli -- and  
13 we're doing it now and talking about it a lot. There are other tools,  
14 and I am curious what other schools are doing.

15 MR. SAUNDERS: I put that question on this agenda for one  
16 reason, and that is, as we were preparing for this workshop, we looked  
17 at the published outcomes that many of you make publicly available,  
18 and our reaction was that they were, sort of, all over the place.  
19 They were very different, one from the other. Some of them were very,  
20 very detailed; some of them said we're doing great; you know,  
21 everything's great here. And so, that's why I wanted to have a  
22 discussion of whether these outcome assessments are really doing  
23 anything, because the responses that we saw were very different, one  
24 from the other.

1 MS. OUELLETTE: I think the answer is whether you're just trying  
2 to check a box or whether you're actually trying to change the  
3 curriculum.

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

20 MS. HILL: They can even disrupt activities that are already  
21 undertaken to create innovative programs. For example,  
22 it is not possible to develop formative assessment processes  
23 overnight. You have to analyze research and tailor processes to the  
24 needs of your courses and you want faculty to be able to engage in  
25 that work thoughtfully, not because they have to and not necessarily  
26 on an artificial timeline.

1 MR. SAUNDERS: Craig now wants to offer a question to the group.

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

23 MR. SAUNDERS: So is the general consensus that outcome  
24 assessment is valuable or a hindrance; is it an unnecessary  
25 administrative burden? If you could rule the world, how many of you  
26 would eliminate outcomes assessment requirements?

1 MS. GILLES: For me, it would be much more limited. I've seen  
2 this as a very powerful tool to get the faculty members who I think  
3 are honing it in to focus and be much more engaged as to what they're  
4 teaching and why they're teaching this. So a lot of my faculty who  
5 are already doing this stuff, you were much more inventive -- I think  
6 you're absolutely right, John, much more inventive -- than these  
7 requirements. It is an administrative hassle; I mean, it takes time  
8 and money that we would rather spend elsewhere, frankly.

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

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

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

1 MS. HILL: Of course, it varies from student to student.

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

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

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

21 MS. GILLES: We were doing a really cool project before all this  
22 came out where we have a civil procedure professor and torts  
23 professor. So in the same session, the civil procedure and torts and  
24 -- so the teacher -- professor -- teaching the civil procedure would  
25 first start teaching a lesson in doctrine and we would come together -  
26 - you know, the two professors would come together, and say, "Today,

1 we're going to have you draft a complaint, and it's going to be on the  
2 tort concept that you just learned -- a med mal complaint -- and then,  
3 in a few weeks, we're going to have you draft an answer" -- you know,  
4 so if there's all these rules combined, there's all this great meat on  
5 those bones. We were doing this -- we were getting a lot of our  
6 faculty to do this regularly, and it was great for the students to see  
7 their professors working together; it was great for them to get  
8 different feedback from two different perspectives -- from the  
9 substantive perspective as well as the procedural perspective -- and  
10 we got in return a great thing. And now that we have a set of  
11 learning outcomes, it is not as simple for professors to, kind of,  
12 come together and agree on. It's not workable.

13 MR SAUNDERS: All right. Dean Katz.

14 MR. KATZ: So this a very good bridge to the sixth question,  
15 which I actually proposed being added to the agenda. I think it's  
16 helpful to put our discussions in a larger context about regulation  
17 generally. If we look at regulation of physicians, if we look at  
18 regulation of educators, if we look at regulation of lawyers,  
19 different kinds of professionals who take pride in what they do and  
20 have a lot of deep granular knowledge, we have found you can't just  
21 leave it to the physicians to decide how much to bill; you can't just  
22 leave it to the educators just how much to teach. But when you come  
23 in with managed care and No Child Left Behind, you have the educators  
24 saying, "We know how to teach these students but we don't have time to  
25 do it, because we have to spend all of our time teaching for the  
26 test," and the regulators are just dumbing it down. We all know

1 physicians who say, "I don't have time to spend on individual  
2 consultations with my patients anymore, because I have to spend so  
3 much time filling out forms." And there's truth on both sides. And  
4 so, that's true in regulation of law schools, too. We actually have a  
5 lot of local knowledge about how to teach law students -- what helps  
6 people remember a lesson, what kinds of classroom exercises work and  
7 which don't. We have a large group of adjunct faculty who come in to  
8 teach subjects on which they're expert, and we're really proud of  
9 these colleagues. I'm one of these JD PhD.s that everyone talks  
10 about, without full-time practice experience, and if I came into an  
11 office like this and you tried to put me to work, it would take me  
12 awhile to find the copier and the wastepaper basket. And similarly  
13 there are very eminent people who we bring in as adjunct teachers who,  
14 at first, don't automatically come in with the skill of how to ask a  
15 question the students will respond to. It turns out that talking to  
16 students is different from talking to judges, or junior associates, or  
17 clients. For example, one common pitfall is to ask a question that's  
18 too vague to nobody in particular, and nobody answers it, and then the  
19 instructor waits ten seconds, and answers it themselves, and then,  
20 they do it a second time and a third time, and within a half-an-hour,  
21 they have trained the students not to participate. And so, we have  
22 instituted some training programs for our adjunct faculty to interact  
23 with our full-time faculty and to discuss best techniques for  
24 teaching, including teaching in an experiential modality. A second  
25 example has to do with skills assessment. If we want to persuade  
26 legal educators to use assessment appropriately, we need to teach them

1 that assessment is not just something we have to do at the end of the  
2 year in order to certify students that are getting ready to go into  
3 the job market; the assessment is actually part of the education. But  
4 for that we have to have a collaborative discussion. I'm delighted  
5 that we all came down to have a talk with you. But I think it would  
6 be good if also you came uptown to see what we were doing. I would  
7 also like to hear how those of you who are doing more experiential  
8 teaching at your schools share information about how you can get more  
9 traditionally-minded faculty to care about and participate in this  
10 effort.

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

25 MR. SAUNDERS: Do you publish your assessment outcomes -- your  
26 outcomes assessments?

1 MS. OUELLETTE: So because we're doing random sampling, yes, and  
2 remember, this was faculty driven, so we published it to each other.  
3 If we were doing class by class by class, that would be a much harder  
4 answer. At least, I would share -- we would share it with faculty.

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

15 MR. HERTZ: With regard to how you get people to be interested  
16 in this if they are not naturally: we held a faculty workshop, not  
17 about requirements but about all the innovative things one can do with  
18 simulations in traditional law school courses, and we had professors  
19 who are traditional law school professors but who use simulations, and  
20 they talked about how they do this in their corporations course or  
21 other courses, and everyone who came to it were people who were open  
22 to this; and as a result of that, a number of professors started  
23 saying, "Hey, that looks pretty interesting; I'd like to do something  
24 like that, too." And so, once you get it outside the mandatory  
25 framework and you show professors that their peers are doing this,  
26 then you open their minds to the possibility.

1 MS. HILL: Right. We did a similar thing at Fordham. I knew  
2 there were nonclinical faculty members who were doing simulations in  
3 their first year and upper level courses. When I conducted a  
4 presentation on experiential learning, I was able to call on those  
5 faculty members to provide concrete examples about how to incorporate  
6 experiential models into their doctrinal courses. The fact that  
7 nonclinical faculty provided the examples provided credibility for  
8 those who may have been skeptics. And we also instituted an annual  
9 teaching retreat in 2016 and invited outside speakers to talk about  
10 outcomes assessment, to talk about technological innovations for use  
11 in the classroom. The fact is that governance and independence at  
12 Fordham is really important to people. So if you want people to  
13 experiment, you have to do so in the context of allowing people to be  
14 autonomous to a certain extent and to get excited, and I feel like the  
15 teaching retreat will provide a forum for faculty consider  
16 incorporating new teaching models. In the teacher retreat, we had  
17 roundtable discussions about facilitating difficult conversations in  
18 the classroom around race, gender and class differences and the  
19 faculty was very engaged. So it goes back to what many have already  
20 said--that a lot of law schools are already engaged in curricular  
21 innovation, so regulations can sometimes be seen as imposing for some  
22 schools.

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

25 MS. GUNDLACH: So just in further answer to the prior question,  
26 I think sometimes -- to Randy's point, you have to walk people into

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

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

25 MR. KATZ: I also suggested putting this topic on the agenda,  
26 though I think a number of people have mentioned this or referred to

1 it. So I am lucky enough to teach at a law school that is pretty well  
2 off, but we still can't afford, on our current budget, to provide  
3 small-clinic experiences taught by full-time faculty to 100% of our  
4 students, without either cutting back on other essential parts of our  
5 mission or raising significant additional revenue. Much of this is  
6 just a matter of class size. If we just want to have a doctrinal  
7 course with repeated assessments with a midterm and skills exercises  
8 with feedback and reflection, that can't be done in a class of 180;  
9 maybe it can be done in a class of 30. So to cut class size by five-  
10 sixths, either we can hire a lot more faculty, which we can't afford  
11 to do, or we may have the current faculty teach six times as many  
12 sections as they're currently teaching, which will be of limited  
13 effectiveness and will undermine other core activities; that's not  
14 feasible either. When the topic of experiential learning comes up,  
15 one popular thing for the faculty to say is, "Well, that's for the  
16 adjunct faculty." That's not a great answer, especially when in other  
17 settings they say we shouldn't let the adjuncts to do so much  
18 teaching. I think that some schools are doing a lot of contracting  
19 out; and it's hard to maintain quality control in doing that. We are  
20 trying some new things, like joint teaching between full-time and  
21 part-time faculty; new kinds of externships where people go off to  
22 various different workplaces and then come back to a faculty-led  
23 seminar to assess. I think we all know clinical teaching is the most  
24 expensive part of legal education, measured in terms of student-to-  
25 faculty ratio, and so, if we're going to say "the answer is more  
26 clinical teaching," that rubs up against the need to not have tuition

1 keep rising, as well as the financial pressures on the legal  
2 profession itself, which means that it may not be so sustainable any  
3 longer for leveraged borrowing to be the standard way for the typical  
4 student to finance a legal education. I don't know the answer to  
5 this, but I know that we have to think about those kinds of problems  
6 if we're going to impose regulatory requirements that entail real  
7 expense.

8 MS. BILEK: I think -- one of the things I think about is that  
9 this varies dramatically from school to school. And just the other  
10 day, somebody said to me, "We're getting to code our budgets again.  
11 How do you want to code the budgets?" I said, "What do you mean? This  
12 is my lucky day. I'm picking where I'm going to go on vacation: how  
13 do I want to code the faculty?", and they said, "Well, you know, the  
14 way we can do this as far as faculty, adjuncts visit the clinical  
15 faculty library," and I said, "Well, faculty and clinical faculty  
16 doesn't accurately represent our faculty where people move in and  
17 out"; and the person that I was talking to in my law school said, "But  
18 you need to know how expensive your clinical program is," and I said,  
19 "And I need to know how expensive it is to teach a set grade." So the  
20 problem is that it appears to be that this is a pretty abrupt life,  
21 where we are in a shift from a moment in time where law schools were  
22 sorting and students were sorting within them, and that was the entire  
23 game or close to it, and of course, that's a big overstatement. But  
24 that was a strong thing that was what legal education was about: "I  
25 get into the best law school I can get into, the faculty sorts me into  
26 what I do or not, I take a job or not," and then, it goes downstream a

1 little bit. All the people who taught at law schools in the year 2008  
2 are still teaching there except for the ones who switched who they  
3 choose to hired. They bought into that stake, and particularly the  
4 ones who were hired in the late eighties and early nineties, we told  
5 them the game was to produce scholarships. But that's who our  
6 faculties are nationwide, that's why our tuition went up, because we  
7 were doing things to reduce loans to get those people, produce more  
8 scholarships, and go off and do as you do. You can't do a 180-degree  
9 turn off of that. So part of my answer to you, Avery, is, yes, a  
10 clinic is expensive, but there is nothing more valuable than to do it.  
11 But I understand that you can't turn around and do that without doing  
12 it off the backs of your students. I think the same thing is true of  
13 outcome assessments; like, all of a sudden, you guys acting like we do  
14 in law school is supposed to lead to some outcome and practice. Like,  
15 really? One of the things that it had to lead to was that they pass  
16 the Bar exam, and why would you want us to do that based on who they  
17 let in?

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

24 MS. GUNDLACH: I think that that's a really good question, and  
25 also -- just for the record, there was actually a really interesting  
26 recent article about how clinical education is as expensive as what

1 has previously been thought. The point is that one could make an  
2 argument that there are people who work eight to nine months out of  
3 the year and teach a seminar of ten students and have one big class  
4 and you have a sabbatical every few years that are also quite  
5 expensive, right? And so, I think that there are -- this is to Mary  
6 Lu's point, this is very much attention that we're seeing in law  
7 schools right now that -- you know, we've got lots of different things  
8 that we're trying to do, right? We've got a whole host of things that  
9 we are trying to teach; we're asking more of everybody, and I think  
10 the bigger elephant is that the tuition is ratcheting up as a result,  
11 because we're trying to do so much that we need to hire more  
12 administrators and have more resources for the monitoring and for the  
13 reporting; we need to have more faculty who can teach this way and  
14 you've got to get the jobs for students so you've got to build up  
15 career services people, and we've got to help people pass the Bar, so  
16 we've got to have academic support people, and we've got to do more on  
17 the admissions side to try and drive students in, and so on and so on  
18 and so on. So I think the anxiety among the deans in the room is  
19 about a shrinking pool of people who can afford to go to law school  
20 and, not to mention, who are qualified to go to law school. So that's  
21 another big concern that goes with every regulatory piece and what  
22 everyone was trying to achieve is costing more, which then gets passed  
23 down to the students.

24 MR. SAUNDERS: With that said -- I don't know the answer to that  
25 question, and I'm not even going to try, but I think it's important  
26 for the people who are responsible for regulating law schools --

1 whoever they are: Middle States, the Court of Appeals, the ABA,  
2 whatever organizations there are -- is to understand -- and I think  
3 this is to the extent that this proceeding constitutes a voice, to  
4 understand -- that these regulations, although they are very well  
5 intended, bring with them a cost, and that cost is borne by the  
6 students, and there's a tradeoff; and I don't know enough about the  
7 regulatory process to know the extent to which that tradeoff is  
8 considered by the regulators, but it certainly ought to be, because  
9 there's a tradeoff. The goal is quality, affordable legal education;  
10 the two things go together in my view.

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

17 MR. BOISE: I asked to have this added to the agenda; and in the  
18 interest of full disclosure: Syracuse is seeking a variance from the  
19 ABA to have a hybrid residential and online program. But I think,  
20 really, this goes to the issue you just raised, which is the multitude  
21 of regulatory requirements; it not only can be costly for students,  
22 but it also inhibits innovation. And so, it's interesting to me. I  
23 don't know the history behind New York's restriction on online --  
24 there now is a limit of 12 credit hours; as part of the JD, there's 90  
25 -- 70, 80, 90 credit hours. Well, currently, the ABA has a 15-credit  
26 requirement, and the ABA Standards Review Committee has proposed to

1 the Council that that be expanded to allow up to 50 percent of the JD  
2 to be done online. Now, it's not as big a change as it might seem,  
3 because currently, a course is not even considered a distance  
4 education course unless more than a third of the instruction is  
5 provided online. So definitionally, if you think about that, you  
6 could essentially have a third of the JD be online under the current  
7 rule plus another 15 credit hours, so you're approaching half anyway.

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

10 MR. BOISE: It will be put out first for notice and comment --  
11 after we propose that. I don't know whether that will be -- you know,  
12 it's hard to say what the Council's going to do on this, but I think  
13 one of the things that came out of the discussion we've had about this  
14 is, you know, the ABA's 15 credit hours is completely arbitrary;  
15 there's nothing about that number -- I mean, it could be somebody  
16 pulled the number out of a hat. And so, I think particularly when  
17 we're talking about dual regulatory regimes, that it would make sense  
18 to really think about where those numbers are coming from; and my own  
19 recommendation would be that New York simply look at what the ABA's  
20 doing. Certainly, the ABA is -- in every respect, is -- sort of, the  
21 standard for New York. I mean, you can't take the Bar unless you  
22 graduated from an ABA-accredited law school, so presumably,  
23 accreditation with the ABA means something substantively. So I think  
24 it would be useful to have a single standard, and I would say that the  
25 ABA is probably in the best position to do that. Again, you could  
26 have multiple jurisdictions coming out with different rules -

1 MR. SAUNDERS: Let me ask you a question, and I want to ask it  
2 out of complete ignorance. Let's assume you were giving a class and  
3 the students were physically present in the classroom and you wanted  
4 to bring me in to give a lecture by Skype and you don't say a word  
5 during the class. Is that distance learning or not?

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

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

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

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

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

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

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

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

25 MS. GERKMAN: The one thing that I would add is that I think the  
26 importance of distance learning can underscore the importance of

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

15 MR. HERTZ: I'm my law school's representative on a university  
16 commission that evaluates new programs throughout the university, and  
17 a lot of them are using distance education both synchronous and  
18 asynchronous, and we get a lot of presentations in which we hear a lot  
19 about -- and I ask a lot of questions about -- what's working and  
20 what's not working. Interestingly, sometimes asynchronous turns out  
21 to be better than synchronous for some kinds of things. But the  
22 important point here is, higher education has a lot of experience with  
23 this, and we can turn to them to find out about what works and what  
24 doesn't work; and actually, one group that came and presented to us  
25 said to us that they're doing a study right now of what works and what  
26 doesn't work throughout their part of the university. And so, I think

1 we can get useful information. We are so far behind what other parts  
2 of higher education are doing. What you're doing, Patty, sounds great.  
3 But maybe we could do even better if we knew more about what works and  
4 what doesn't work.

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

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

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

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

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

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

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

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

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

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CERTIFICATION

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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%>

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DAVID NOVICK

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