Convocation culmination of year-long focus on challenges facing schools and the legal profession

By Patricia Sears Doherty

There has been talk about it all year long. Legal education and the future of the profession: two topics with a close relationship and an even closer connection to the State Bar. It was the signature concern of David M. Schraver’s presidency and he worked hard all year to turn the talk about it into an action plan.

That was the impetus for a joint, daylong, convocation on emerging trends in legal education and the future of the profession on May 22 hosted by Schraver, the State Bar’s Committee on Legal Education and Admission to the Bar and the New York State Judicial Institute on Professionalism in the Law. It was held on the campus of Pace University Law School in White Plains.

Panelists from all walks of the profession spoke candidly to an audience of local, state and national bar leaders, educators and practitioners. Schraver of Rochester (Nixon Peabody) and Judicial Institute Chair Paul C. Saunders of New York City (Cravath, Swaine & Moore), hosted the day’s guest speakers, keynote addresses and two panels, all examining “The Coming Changes to Legal Education: Ensuring Professional Values,” the day’s theme.

“I think their experience and perspectives painted a picture of the current situation and of what it could be,” Schraver said a day later.

“It is important that the State Bar stay involved and continue to bring the various stakeholders together to continue these discussions,” he said. “We need to identify what the New York State Bar Association can do to contribute to shaping legal education and the profession, because things are changing and will continue to change. We should play a leadership role in shaping that change.”

In his concluding address, Matthew Diller, dean of the Benjamin N. Cardozo School of Law, said that practitioners and law school faculty share a deep concern and passion for lifelong learning and for justice. The convocation and the hearings held around the state leading up to it show that educators and practitioners alike are grappling “with a tumble of issues that won’t be untangled easily.”

“We are feeling our way into the future,” he said.

The problems have been well defined—how to educate the next generation to enter the profession ready to work and how to help the next generation continue the high level of professionalism now expected of practitioners.

The challenge, he said, will be to persuade the practicing bar to roll up its sleeves and teach young lawyers how to practice. “The challenge will be getting that ethos to permeate throughout the profession,” said Diller.

“The convocation was very important in that it established the groundwork for moving forward on these concerns,” said President Glenn Lau-Kee of New York City (Kee & Lau-Kee, PLLC). “The issues presented during the convocation are profound issues that will require examination and action over a sustained time period, which is what we at the State Bar intend to do.”

A purposeful agenda

When Schraver became president in June 2013, he set the State Bar on a path to bring the challenges facing both legal education and the profession to the front of the daily agenda. He wanted to engage law students, new lawyers and experienced lawyers in planning a future together.

He began by revitalizing the State Bar’s longstanding Committee on Legal Education and Admission to the Bar with new members and a broadened agenda.

He took advantage of the power of the State Bar’s press. The September issue of the Journal devoted all of its content space to several nationally recognized experts who examined and discussed the educational challenges now apparent to practitioners and legal philosophers alike. Many of those experts were panelists at the May Convocation.

Throughout the year, Schraver worked with the staff of the Association’s newspaper, the State Bar News (SBN), to investigate the issue from several angles. The lead article in the September/October issue explained the committee’s new mission: to focus on finding concrete proposals for changing how law students are educated and admitted to the bar. In November/December, the newspaper examined how the cost of a legal education has grown in the past 20 years and how stressful
Panelists offer best practices on legal education, professionalism

By Patricia Sears Doherty

They were two panels with daunting tasks: the first examining changes in present and future legal education; and the second analyzing the impact proposed changes in education will have on professionalism today and going forward.

In other words, how to teach students to be lawyers while infusing their studies and aspirations with the loftier goal of acting with a high degree of professionalism from their earliest employment—a tall order for discussion and in practice.

After conducting hearings around the state and then discussing the challenges all day long at a joint convocation, both sets of panelists seemed to come to the same conclusion: Just Do It.


Various Proposals for Change in Legal Education.”

In various ways, speakers on both panels agreed that despite all of the philosophy, history and critical thinking skills taught in law school, they are often not the lessons that inform daily practice. More than a few speakers on both panels said lawyers learn how to be effective, ethical and successful lawyers by watching practicing lawyers model that behavior in law firms and courtrooms every day.

Blending book learning with experiences

Michael Cardozo of New York City (Proskauer Rose) noticed the move toward what he termed “experiential learning” after the 9-11 attack, when he was the corporation counsel for New York City.

“I realized that young lawyers are hungry for hands-on experience,” Cardozo said. That opinion was strengthened during the recession years when members of the Class of 2011 were sent to assist in the corporate counsel’s office while they waited to join firms, which were delaying many new associates’ arrivals in order to minimize financial constraints.

In his office, Cardozo said the young lawyers had opportunities to learn while doing meaningful basic practices that they are often not allowed to do in a firm setting.

“Once in those firms, (the young lawyers) were valued more highly by the firm because of their experience,” said Cardozo. “Maybe there is something to this.”

Luke Bierman, dean-designate of Elon University School of Law in Greensboro, North Carolina, noted that his grandfather, a lawyer in 1922, and his father, a lawyer in 1952, could have entered a law school classroom when he was a student in 1982 and would not have seen any substantial changes in the curriculum. “The only real innovation in the last 100 years is the advent of clinical education,” said Bierman.

One law school riding the clinical education wave is the University of New Hampshire School of Law with its Daniel Webster Scholar Honors Program. Professor John Burwell Garvey said that the historic American Bar Association MacCrate Report made the need for “a more robust, vigorous component to legal education very clear.”

He said Webster Scholar students “go through experiences that blend the doctrinal with feedback from real lawyers and judges. Then they go out and apply that in the externships” after the first year.

The externships allow students “to come into their second year with some practical experiences, allowing them to reflect on that and to accelerate their studies,” said Garvey. “More schools are blending these two experiences rather than viewing them as...
separate ways of studying.”

**Education costly for students and schools**

One factor limiting innovations by law schools that could give students skills training necessary for real world practice is the high cost of maintaining fulltime faculty and also providing clinical experience, where classes are small.

Dr. Robert Lapiner of New York University noted that he is seeing a growing number of part-time students who are working adults, not just law students. “The issue of cost is a terrible driver of the movement away from being fulltime students,” he said.

Cardozo said the high cost of education is bumping headlong against the real world’s reaction to the economic recession: fewer jobs and those jobs that are available with lower pay scales. “Students are graduating with $125,000 school debt and taking a $50,000 salary. They can’t afford to make their payments,” said Cardozo. “That all has an enormous impact.”

Diane F. Bosse, chair of the New York State Board of Law Examiners, noted that first-year student enrollment in this academic year was under 40,000. “The last time that happened was in 1977. But the number of faculty increased by 37 percent,” she said.

One bright spot in that equation is that the ABA’s accreditation standards will see some changes over the next few months, she said. One change will be that law schools will be required to provide at least six experiential hours of training, Bosse said.

However, the practicing bar and the teaching bar need to collaborate more often in order to really effect meaningful change in preparing students for practice, alleviate the cost of providing their education and of tuition, said the panelists.

Cardozo suggested creating more partnerships for experiential learning with private law firms to provide more law schools modelled after the Webster Scholar program.

“Do we need as many fulltime tenured professors teaching all three years?” continued Cardozo. “There are a lot of qualified lawyers who would jump at the chance to teach. Is it better to have a professor who knows all of the cases, or a practicing lawyer who teaches it from his or her experience?”

Webster’s Garvey agreed that practicing lawyers are important.

Bierman summed up his fellow panelists’ vision of the future. “It is time to start doing, to experiment. It is time to take some of these ideas and see if they work,” he said.

**Keeping professional ethics**

Saunders opened the afternoon panel discussion with a question designed to advance the conclusions reached by the morning panel.

“Given that change is happening, how do those changes affect the inculcation of professional values in law students?” he asked.

The question proved difficult to answer. John T. Broderick, Jr., dean of the University of New Hampshire School of Law and former Chief Justice of the New Hampshire Supreme Court, said he was “not sure that it should be expected of law schools.”

He described being a young associate in a firm whose attorneys allowed him to tag along to client meetings and observe how they worked.

“I was not ‘overhead,’” he said. “But that world is largely gone. Today, when graduates leave law school, there are fewer opportunities for them to learn.”

“I learned to be a lawyer from other lawyers, I didn’t learn it in the classroom,” said Broderick. He challenged the practicing bar “to make yourself available to model for other lawyers.”

Law school faculties have different core identities today, said Martin Katz, dean and professor of law at the University of Denver Sturm College of Law. “How important is experience to teaching professionalism? Very important,” he said. “The best way to do that is to provide experiences with an apprenticeship.”

Law Schools that provide such opportunities need to spend time with those apprentices “supervising them, giving them the opportunity to try being a lawyer,” he said, “and giving them feedback to help them create their professional identity.”

Law schools also teach professionalism, said Myra Berman, associate dean for Experiential Learning and director of the Collaborative Court Programs at Touro College’s Jacob D. Fuschtsberg Law Center. “Part of what we do must be to address what it is to be a lawyer, to teach the values that you need to be a practicing lawyer,” said Berman, because “reputation is everything” to a lawyer’s success.

However, she emphasized that it is “absolutely necessary to be outside the classroom to get experiential, practical learning.”

Panelists James M. Wicks and Professor Patrick Longan agreed.

“Maybe we have to define what it means to be a professional from Day One of law school. Maybe that can’t be taught,” said Wicks, of Uniondale (Farrell Fritz PC), an adjunct professor at St. John’s University School of Law. “Can I teach them (skills)? You bet. But I can’t teach professionalism.”

When presented with difficult situations, lawyers need integrity and wisdom to implement professionalism, said Longan, who teaches at Mercer University Law School.

“We can begin the process, but we can’t complete it” in school, Longan said.

**More adjuncts**

Saunders noted that one way to infuse classrooms with real world experience is to employ more adjunct faculty, often practicing lawyers who teach on a part-time basis. However, the ABA limits the use of adjuncts, he said.

“Are we sending a message to students that courses taught by adjuncts are not as important as courses taught by a fulltime professor?” asked Saunders.
“Yes,” said Katz. He said the most popular courses taught at Sturm are those taught in partnerships between fulltime faculty and practitioners. “The students rave about it,” he said.

Broderick said law schools’ view of the ABA limits is that they are “too granular.” “There need to be opportunities for law to change, to be entrepreneurial, to be flexible,” said Broderick. “Adjunct partnerships may be one way of doing that.”

Berman suggested that rather than waiting for the ABA to reform its rules, law schools need to enlist its alumni in the cause, allowing students to shadow “practice mentors,” and observe basic practices such as uncontested divorce work. “The whole first year should be an ongoing informational exposure to what it means to be a lawyer,” she said. Those opportunities should gain speed for 2Ls until the third year of experiential learning, she added.

In responding to a question from the audience, Saunders summed up the discussion. “Students are desperate for this type of training and they want to be seen as part of the legal profession,” he said. ♦

Sears Doherty is State Bar News editor.

 Speakers to education convocation: Changes needed now

By Patricia Sears Doherty

“By the end of the day, I want some real solutions,” co-host Paul C. Saunders told attendees of the May 22 joint Convocation on Legal Education and the Future of the Profession. “I regard this group as a working group.”

Saunders, of New York City (Cravath, Swaine & Moore LLP), is chair of the New York State Judicial Institute on Professionalism in the Law, which co-sponsored with the State Bar a daylong convocation to examine “The Coming Changes to Legal Education: Ensuring Professional Values” at Pace University School of Law in White Plains.

In his welcoming remarks, Saunders asked that the discussion center on the “proper rule of law schools” in the inculcation of professional values” in the profession’s future practitioners.

“If we do not inculcate into our students the critical importance of professional values, then, in my view, our profession will not survive,” Saunders said.

Then-State Bar president David M. Schraver agreed. “It is critically important that the profession understand these issues,” he said in his welcome. He thanked the focus groups who provided the background to the convocation’s discussions. “The discussions have been going on for many years. The discussions will continue and the New York State Bar Association needs to be involved” as a stakeholder in the future of the profession, said Schraver.

James R. Silkenat, president of the American Bar Association (ABA), noted the recommendations of the ABA’s Task Force on the Future of the Profession concerning legal education.

Law schools need to “redesign the financial model” to reduce the debt burden on the profession’s newest practitioners and, he said, there need to be “revisions in accreditation” of law schools and in the availability of legal services.

Silkenat said that a new ABA task force will look at the cost of law school, student debt, tuition and need-based financial aid, among other concerns.

“Law is a great profession. It provides a meaningful and inspired career,” Silkenat said, “even today.”

Demand v. supply

Chief Judge Jonathan Lippman asked the convocation participants to remember the increasing and critical needs for better access to justice “for the people of limited means, who are fighting for the necessities of life, a roof over their heads. Those people among us who are threatened by the difficult economy and the difficulty of getting legal representation.”

Despite the fact that “law schools are in the middle of that disconnect, kids come out of law school without a job,” Lippman said. “Law schools must focus on the values of our profession so that the next generation can play a vital role in the future of the profession.”

Now is the time to find solutions, said Lippman. “We have to enrich and make the three years of law school as meaningful as possible,” and make law school “more relevant to the world around us.”

Keynote speaker Hon. Rebecca Love Kourlis, executive director of the Institute for the Advancement of the American Legal System and former justice of the Colorado Supreme Court, crystalized the challenge for the convocation.

She said the day’s discussions hinged on two premises:

• “Law schools should serve law students, not professors or the practicing bar, but law students; and,
• “Practicing lawyers directly serve their clients and society.”

Those statements “seem axiomatic, but they have not been the guiding design of law schools,” which are attempting to produce “the effective student,” said Kourlis.

Kourlis then offered her personal—seven—solutions to the dilemma.

“Number One: Figure out what law students need to learn to be successful lawyers. Begin with what they need to know at the end of law school. What a concept!” she noted, moving into the rest of her plan:

Solution #2: “Allow and encourage law schools to differentiate. Law schools should have areas of focus—and not all law schools should serve all students.”

Solution #3: “I am looking at the sacred cow—the role of scholarship should be examined,” she said. “Scholarship cannot proceed at the expense of teaching.”

Solution #4: “Law students should develop a course plan that corresponds to their future. We must allow students to chart courses to prepare them to practice their own interests.”

Solution #5: “Embed in students the core apprenticeship of professionalism. Ethics is a way of life, not a class. Integrity needs to be taught.”

Solution #6: “Encourage lawyers to hire according to the attributes of the candidate, not according to the ranking of the law school.”

Solution #7: “Implement ideas designed to help more new lawyers. This is the practicing bar’s opportunity to step into the conversation and play it forward.”

Every cohort of the legal profession, said Kourlis, needs to “reinvest in redirection and redesign, hold onto the principles that we hold dear and then, to teach them.”

Challenge issued.

Sears Doherty is State Bar News editor.