



September/October 2013

Volume 55, No. 5

www.nysba.org



Thomas F. Liotti



David P. Miranda

PRESIDENT-ELECT CANDIDATES SPEAK

The candidates for president-elect present their action plans to the membership.

PAGE 3



BUSINESS LAW SECTION PROFILE

Committees are key to the success of this active section.

PAGE 12

NEW YORK STATE BAR ASSOCIATION

State Bar News

President, committee redefining future

Legal education seen as key to profession's direction in modern world



Future of Law—Hon. Randolph F. Treece, U.S. Magistrate Judge for the Northern District of New York, conducts a swearing-in ceremony for the 187 new students who comprise the Albany Law School Class of 2016. The ceremony, which concluded three days of orientation, was held on August 16. *[Photo by Melissa Batalin/Albany Law School]*

By Patricia Sears Doherty

President David M. Schraver has taken meeting the crisis in legal education and creating a practical vision for the future of the profession as the lynchpin of his tenure—and he is moving fast to put his plan into action.

For instance, Schraver has breathed new vigor into the mission of the State Bar's Committee on Legal Education and Admission to the Bar (LEAB), which was formed in 1952. Today, "this little committee that never received much attention," as one of its co-chairs charac-

terized it recently, is front and center on the State Bar's priority programming.

"Our mission is to understand the changes happening all around us in the profession and help today's lawyers—our members—deal with that changing profession," said Schraver of Rochester (Nixon Peabody LLP). That mission has to begin with the education of law students—who will be the State Bar's future members and who will carry the profession's principles and practices into the future.

In May, when he made the committee appointments that fall to each

incoming president, Schraver added members to the LEAB, including a vice-chair, and gave it a new emphasis. He asked co-chairs Eileen D. Millett of New York City (Epstein Becker & Green, P.C.) and Eileen R. Kaufman of Central Islip (Touro College School of Law) and Vice-chair Ian Weinstein of New York City (Fordham University School of Law) to focus the committee's work on finding concrete proposals for changing how law students are educated and admitted to the bar. They

Continued on page 6

NY's Silkenat ABA's new leader

State Bar proudly supports president, who takes first oath of office



National leader—James R. Silkenat, newly inaugurated president of the American Bar Association, makes his inaugural speech at the Annual Meeting on August 13. He noted the legal community's responsibility to "make things a little better than we found them." *[Photo courtesy of American Bar Association]*

By Patricia Sears Doherty

In this imperfect world, New Yorker James R. Silkenat, the new president of the American Bar Association, used his inauguration speech to remind the legal community of its responsibility to "make things a little better than we found them."

"As lawyers, and judges, and teachers and corporate counsel, we are all One Profession," said Silkenat. "This unity of a single profession is a great strength for American lawyers" and a distinct contrast to legal communities in other parts of the world.

Silkenat, a partner at Sullivan & Worcester in New York City, is the 21st
Continued on page 8

LEGAL EDUCATION and the FUTURE OF THE PROFESSION

President, committee, members working to redefine profession's modern direction

Continued from page 1

have moved rapidly to help Schraver shape an active agenda.

"We all understand the crisis," said Kaufman. "Our goal is to see if our committee can recommend some constructive, concrete proposals for change that the bar leadership will endorse." She acknowledged that the shrinking job market, coupled with law students crippled with huge debt require "solutions that are multi-faceted."

Millett noted that "the State Bar is uniquely suited to educating practitioners about their profession, bringing together all of the stakeholders—academia, the bench, the bar and the board of law examiners to recommend effective policy change."

The crisis in legal education is on the minds of lawyers and leaders around the country. During his education bus tour of upstate New York last month, President Barack Obama suggested that the law school model be changed from three years of study to two years.

The State Bar's committee is studying alternatives to the current legal education model and to licensing, but has not weighed in on a two-year curricula.

Among the issues the committee has been exploring are whether skills training should be required for licensing, whether early administration of the bar exam makes sense, and to what extent licensing can and should be linked to a performance-based curriculum.

Schraver's agenda for moving the legal education discussion forward is ambitious. He is planning events that will provide a year-long conversation among several constituencies within the State Bar that will shape a new vision for the future of the profession.

Action items

1. Read all about it: The September issue of the State Bar Journal is devoted to legal education, with articles written by national figures, academics and leading statewide legal thought leaders. [See "A bold new world for educating lawyers" below.]

2. Talk through the suggestions. Although the State Bar's Annual Meeting is still four months away, Schraver and the LEAB already are working on one of two panel discussions at the Presidential Summit, tentatively titled, "A Watershed Moment for the American Bar: Can Lawyers, Employers,

Regulators and Educators Come Together to Address Our Challenges?"

William M. Sullivan, founding director of Educating Tomorrow's Lawyers at the Institute for the Advancement of the American Legal System at the University of Denver, will deliver the keynote address. American Bar Association (ABA) President James R. Silkenat will be the discussion moderator. Phoebe Haddon, dean of the University of Maryland School of Law, Hon. Jenny Rivera, New York State Court of Appeals associate judge, and Kent Syverud, dean of the Washington University School of Law, have signed on as panelists.

3. Identify what is needed. Schraver is working closely with Millett and Kaufman and the committee, as well as members of the New York State Judicial Institute on Professionalism in the Law and others to develop a conclave on the topic in the spring of 2014.

"Different constituencies may have very different views of the state of legal education," Schraver said. "I want us to bring out those different views, because we need to understand them and then figure out how to move forward and address a plan for the future."

He expects a report will be the end result of the conclave discussions.

"I hope to educate our members and to lay a foundation for the New York State Bar Association to be meaningfully involved in the discussion," said Schraver. "I want NYSBA to be a leader not only in New York, but also nationally."

Then what happens?

In the spirit of collaboration between several past presidents, Schraver and President-elect Glenn Lau-Kee, the State Bar will continue the discussion, implementing any recommendations identified during Schraver's term and building on that research for Lau-Kee's presidency that begins June 1, 2014.

The action list is ambitious, but still only a piece of the agenda that is being introduced on a national stage. Schraver and other State Bar leaders have been deep in discussion for some time with the ABA on the education crisis, especially with Silkenat.

Silkenat is the first New Yorker to lead that organization since Robert MacCrate, who is credited with calling the profession to arms on education with the 1992 ABA "MacCrate Report."

The ABA's Task Force on the Future of Legal Education plans to release its report soon. A working paper from the committee recently cited several potential recommendations.

Key themes identified by the task force include: the need for a systematic (rather than a tactical) approach to the deficiencies of law school financing and pricing; greater heterogeneity in law schools and legal education programs; focusing on the delivery of value and on the development of competence in law school graduates.

The working paper also noted "the profound importance of cultural change, particularly on the part of law faculty." Other themes noted are the need for changes in regulation of legal services, institutionalizing the process for assessment and how well legal education prepares students for practice.

Schraver said the State Bar will take those recommendations seriously and work to modify some of them to fit New York's unique professional landscape.

He also is working with the State Bar's CLE Department to create programming that will help members understand and deal with changes in the legal profession and the increasing complexities in the practice of law. Schraver said the State Bar also will study factors impacting the practice of law, such as changes in technology, new vendors of law-related services and the increasing use by the public of law-related services on the Internet. ♦

Sears Doherty is State Bar News editor.

A bold new world for educating lawyers

Months before he became the State Bar's new president on June 1, David M. Schraver enthusiastically discussed the signature initiative of his platform with everyone who would listen: the future of the legal profession and the readiness of law school graduates to pass the bar exam and hit the ground running as newly minted lawyers entering the challenging New York legal world.

That is, how good is a legal education in New York, and how could it be better?

So, Schraver was happy to support devoting the entire September issue of the State Bar Journal to the topic. Several influential leaders were enlisted by the Committee on Legal Education and Admission to the Bar to write thought-provoking articles for the issue.

Topics and contributors

Contributors to the issue include the new president of the American Bar Association, James R. Silkenat, who addresses the employment shortage for young lawyers and his idea for a Legal Access Job Corps to address unmet legal needs.

John Burwell Garvey examines New Hampshire's innovative Daniel

Webster Scholar Honors Program, which he directs at the University of New Hampshire School of Law. Brian Z. Tamanaha, author of "Failing Law Schools," [See July/August 2013 State Bar News: "Recommended Reading"] discusses the broken economics of legal education. Dean Michael M. Martin and Associate Dean Ian Weinstein of Fordham University School of Law tackle ways to harmonize the forces buffeting the legal profession.

Other contributors to the Journal's education-themed issue explore the concerns many in the profession have with the New York bar examination.

Looking at the current version of the New York bar exam are: Diane F. Bosse, chair of the New York State Board of Law Examiners; Mary A. Lynch, director of the Center for Excellence in Law Teaching at Albany Law School; and Kim Diana Connolly, director of Clinical Legal Education at SUNY Buffalo School of Law. Edna Wells Handy, author of "You Can Pass Any Bar Exam," discusses the persistent racial gap in passage rates of the bar exam.

Other writers suggest alternatives that warrant discussion: Adele Bernhard from Pace Law School; Mary Campbell Gallagher, president of BarWrite and BarWrite Press; Professor

Carol A. Buckler, director of the Center for Professional Values and Practice at New York Law School; and William M. Sullivan, founding director of Educating Tomorrow's Lawyers at the Institute for the Advancement of the Legal Profession at the University of Denver.

Contributors Jack Graves of Touro College's Jacob D. Fuchsberg Law Center and Peter A. Joy, director of the Criminal Justice Clinic at Washington University School of Law in St. Louis, look at more cost effective models for legal education, including the costs of a clinical education model.

Hon. Victoria A. Graffeo, senior associate judge on the New York State Court of Appeals, writes about New York's new 50-hour pro bono service rule for bar admission.

Watch this space

The discussion on issues concerning legal education is a natural extension of Schraver's focus on the future of the legal profession. Watch the pages of both the Journal and this publication, State Bar News, throughout the year to see how both conversations are shaping the State Bar's agenda. ♦

—Patricia Sears Doherty