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Keeping Current and Competitive: 21st Alumni Convocation Unfolds a Map of the Future of Law Practice

UB Law Forum
Keeping Current and Competitive

21st Alumni Convocation unfolds a map of the future of law practice

If you don’t know where you are going,” says an old African proverb, “any road will take you there.”

Nowhere is that lesson more true than in the legal profession. Changing expectations by clients, changing competition and changing technology have made the practice of law vastly different from the profession as it was only a couple of decades ago. It’s a buyer’s market, and law firms are feeling the competitive squeeze as they try to stay busy and profitable.

That was the background behind the 21st Annual Alumni Convocation, held Nov. 2 at UB’s Center for the Arts. Attendees heard speaker after speaker describe the brave new world of the law business in the ’90s and beyond and warn of dire consequences to those who refuse to adapt — and find themselves left behind in the marketplace.

The convocation, a joint project of UB Law School and the UB Law Alumni Association, was followed by a luncheon in honor of the Hon. Samuel L. Green ’67, 1996 recipient of the Edwin F. Jaemcke Award. The program chair was Joyce Fonda ’83, and moderator was the Hon. Vincent E. Doyle Jr. ’56.

“If change,” joked the first presenter, Jeffrey M. Freedman, “is what you’re left with after you pay your advertising agency bill.”

Freedman knows that from experience. His firm, which specializes in bankruptcy and Social Security disability practice, was among the first in Buffalo to advertise widely. His now-familiar face has been seen in newspaper and television ads and in the Yellow Pages.

“My ad agency tells me that it makes my ads more effective to have me as a spokesman,” Freedman said.

“A law firm has to be managed. You do not have to be a large law firm to need management. Someone needs to be able to take the lead, to make recommendations to progress this firm.”

“But you do lose your privacy in the process. When I’m standing in line at Tops on a Sunday morning, there is always somebody who tells me I’m better-looking on TV.”

Since the 1977 U.S. Supreme Court ruling striking down restrictions on attorney advertising, “at no time have we totally resolved the issues of taste and ethics in marketing,” Freedman said. Indeed, with 60 percent of all firms doing some marketing, there are some tacky excesses.

Freedman cited a TV ad by one attorney out West who emerged from a pond in scuba gear, saying, “If you’re in over your head, call us.” Then the attorney would pull his secretary up out of the water by her hair: “And Ethel will type your papers!”

No one in Buffalo has gone to that extreme, but issues of tastefulness are always a judgment call. “We still need to be mindful of the way we communicate,” Freedman said.

Now, said Freedman, who has six offices in Buffalo and Rochester, “I integrate all the marketing tools at our disposal. We’ve attempted to establish an effective array of communication tools that not only get results, but present a positive image.” The process, he said, is: Define the audience; devise and execute a marketing strategy; measure the results of that strategy by asking new clients how they heard of the firm; and emphasizing quality control in surveys that clients are asked to complete after disposition of their case.

“Is client service part of this mix? Absolutely,” Freedman said. “There is no degree of advertising that is any match for good client service.”

Maryann Succomando Freedman, head of the matrimonial and family law practice at the Buffalo firm of Cohen & Lombardo, spoke about how lawyers can decide whether to move from one work situation to another, even after decades in the same firm or position. The move might be from a public to private position, or vice versa; it might be from one firm to another seeking job security, or advancement, or a position with less stress and more time for family life.
Hon. Joseph J. Trafficanti, standing, and Hon. Vincent E. Doyle Jr. '56
She offered some advice for preparing for a switch, stressing that most moves are accomplished through talking with other lawyers. "You have to go where the lawyers are, open your mouth, be seen and heard," she said. "You really need to be involved in your legal community, so that when you're ready to make a move you know who is ready to accept that move." The wise lawyer knows where his new client base will come from, she said. "One of the best places to start is with referrals from other lawyers. But take a cue from the political candidates - go out on the stump and make yourself seen and heard."

She also stressed the value of continuing legal education courses in the area you wish to practice in, and suggested that ambitious attorneys write on the subject in professional journals - another way to get one's name around.

"One of the great things about the law is that there's always something new coming down the pike," Ms. Freedman said. "You need to choose your area of concentration very carefully." She listed a dozen practice areas "at the threshold of their hotness." These include: elder law, international law, environmental law, administrative law, in-house corporate counsel, retirement and pension benefits, biogenetics and bioengineering, alternative dispute resolution and computer law.

Dan D. Kohane, of the Buffalo law firm Hurwitz & Fine, spoke enthusiastically about the potential that computer technology offers to law firms and individual lawyers. He suggested some technologies that every firm would do well to adopt, and pointed to others that are only now emerging.

For example, he said, "There is no question that e-mail is crucial. Communication by electronic medium is the wave of the present. Virtually every court and every agency in the nation is moving in the direction of electronic filing and electronic communication." In some Rhode Island courts, for example, paper is no longer accepted at all - everything is filed electronically.

Also, Kohane said, computer technology has made legal research faster and cheaper. The Internet, he said, "allows lawyers to do research at a cost so low that it's hard to believe - $15 or $20 a month." Among the material available by modem: New York State Court of Appeals decisions for the past six years; every federal court decision in that same period; decisions of the highest courts in more than 30 states; and the state codes of 37 states.

In the courtroom, Kohane said, "real-time reporting" displays a witness' words as he is testifying, and computers in court have become commonplace - from laptops for note-taking to bigger machines displaying evidence and exhibits.

And in the office, such advances as CD-ROM discs reduce the voluminous space devoted to law books, and computerized billing streamlines the
collection process.

How to incorporate all these technologies into a law practice? Kohane recommended taking an inventory of the firm's current technology resources, developing a plan for improvement, appointing an office "computer guru" for training and troubleshooting, and developing a budget for bringing the firm up to date.

Then, he said, get ready for the next wave of innovation: "The technology is changing all the time. It's like the Golden Gate Bridge — you continually have to repaint."

Joel A. Rose, a nationally known consultant on law office management, pointed to the increasing numbers of attorneys nationwide as a prime reason for the increased competition in the marketplace. In 1950, he said, there was one lawyer for every 741 persons; by 1992, that figure was one lawyer for ever 318 persons. "This is a problem that will continue," he said.

Additionally, he said, lawyers are more mobile from firm to firm these days, and when they move they can take a significant amount of business with them. "Management has to be concerned about what we must do to retain the rainmakers," he said.

The solution to profitability, Rose said, is the same for law firms as for any other business: "A law firm has to be managed. You do not have to be a large law firm to need management. Someone needs to be able to take the lead, to make recommendations to progress this firm. Where should the firm be going? What should we be doing? And then that committee or partner must be willing to implement and prioritize these recommendations. It requires someone to follow up. That's much harder than just talking about it."

Rose spoke in favor of participatory management as well, saying that peer expectations and individual recognition are very powerful motivators. "There needs to be some tinkering, either with the compensation system or the management system itself, to make sure people have a chance to participate," he said.

On the always difficult issue of compensation, Rose said, "The days of lockstep advances in compensation are long gone. Today, attorneys must be compensated according to their total contribution to the firm. And each firm must be able to identify an appropriate balance between billable and non-billable work."

Finally, he argued that law firm management has a responsibility to plan for an orderly succession after the firm's senior partners retire or pass on.

The Hon. Joseph J. Traficanti spoke on government regulation of lawyers, and argued compellingly for a return to civility and professionalism in the legal community.

Recent federal court decisions, he said, have taken a hands-off approach to the profession. One decision eliminated the traditional minimum fee schedule, and attorney advertising is now virtually unrestricted. As one example, he said, you never used to see a lawyer's name on a billboard.

As a result, Traficanti said, ours has come to be more of a business than a profession. "...It should be a public service," he said, "because in lawyering we can do good and do well, too. We should not be ashamed of making a good living."

Traficanti sees "a very high level of professionalism" among lawyers in New York State, but said that record has been tarnished by such failings as lack of civility. "That has to stop," he said. "We need to reorient this profession and this Bar to re-emphasize courtesies. Advocates do not need to be enemies. The bottom line is, resolving disputes between people is what we exist for."

The courts, he said, have made tremendous progress in reducing their backlog of cases, and he urged his listeners not to delay in filing and responding to motions. "Delay is an enemy to success, and it always has been an enemy to the court system," he said. "Matrimonial cases, especially, need to be resolved in an expeditious way. We owe that to our clients. These cases tear families apart, and tear people's hearts apart. Also, the facts are changing every day. They don't get easier."

The final speaker, Paul Ivan Birzon of the Buffalo firm Birzon & Zakia, spoke of one of the hottest trends in the legal profession: alternative dispute resolution (ADR). "We have been committed for years," he said, "to the comfortable fiction that from a clash of adversaries will come truth. This is a fiction. Ninety-five to 98 percent of cases, criminal and civil, are not resolved by the trial process. We have come to realize that going to trial is costly, it is less than totally effective, it is time-consuming, and it does not include to a sufficient extent the participation of the very people whose lives and property are at stake."

In many cases, he said, ADR is a better way. He detailed a pilot project studying the use of ADR in matrimonial cases, to determine "what class of cases is susceptible to solution by ADR." The project involves "neutral evaluators' rather than mediators. These evaluators are trained attorneys, volunteers with at least five years' experience in matrimonial law, who undergo 10 hours of mandatory training in the law, procedures and ethics. The evaluators can be assigned by the court or requested by the parties. After the first session, either the evaluator or either party can terminate the process.

Confidentiality, Birzon said, is a hallmark of the process. No matter what happens, the only statement the evaluator makes to the judge is that the process either succeeded or failed.

It is a promising program, he said — one that bears careful examination as attorneys continue to adapt to an ever-changing profession.