

**Transcription of 2013 *Chapman Law Review*
Symposium: “The Future of Law, Business,
and Legal Education: How to Prepare
Students to Meet Corporate Needs”**

**Panel 3: “How to Prepare Students to Meet
Corporate Needs”***

Friday, February 1, 2013

Moderator:

*Chancellor Leo E. Strine, Jr.***

Panelists:

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*Robert J. Rhee*****

*Tania King******

* This transcript has been edited and excerpted. For the full video presentation, visit www.chapmanlawreview.com.

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Lee Cheng*****

Chancellor Strine: We have a great panel. We are going to start with a distinguished professor from the Brooklyn Law School, Brad Borden, who teaches tax, which is about as American a business law subject as you can get. If there is one thing in which we specialize in America, it's trying to avoid tax. Brad has published in all kinds of distinguished journals like the *Baylor Law Review*, *Georgia Law Review*, *Florida Law Review*, *Virginia Tax Review*, and has published in leading tax reviews.

We are also lucky to have Professor Rhee. We both clerked on the Third Circuit. He has done some incredibly important thinking in this area so it's going to be great to get to hear from him.

Tania King is a real-world general counsel who, for sixteen years, has been involved in the business and provides marketing services to, in particular, the food industry. It's a business that also does a lot of Mergers & Acquisitions activity in terms of buying companies for themselves. I think it's going to be fascinating to hear from Tania and her colleague Mr. Cheng, who is general counsel of Newegg and who was previously in private practice. What is going to be most fun about this panel is to hear from real-world lawyers who have to hire talent and who have to deploy it.

Borden: For several decades, business and law schools have been using different versions of the case method as a basis for classroom discussion. In law school, the case method consists of students reading cases and professors asking students questions regarding the cases. This Socratic method helps students develop critical reading and analytical skills. In graduate business schools, the case study method consists of students reading facts about a particular business or business situation and discussing and analyzing the case study with other students and the professor. The case study method provides students the opportunity to apply business skills and knowledge to real-world facts presented in the case study. The client-file method combines the law school case method with the business school case-study method and provides the student the opportunity to study and apply legal doctrine to real-world problems. The term

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“client-file method” avoids the confusion that the term “case study” presents in the law school setting. Too often, law school professors think of the Langdellian teaching method when they hear the case study method, even though business professors use it to refer to the business school model of teaching. “Client-file method” helps dispel such confusion, and it further distinguishes the analytical method business managers use from the method lawyers must use when they represent clients in the transactional setting.

The client-file method of study requires two main resources—the client file and legal resources—which can be compiled in a case book. The client file presents a factual scenario that requires the content of the casebook to address the questions presented in the client file. A fundamental aspect of the client-file method is that it provides students the opportunity to work with a single baseline fact scenario throughout an entire semester. As the semester progresses, the set of facts grows in complexity with changes or additions to the original facts as clients face various business transactions. This method, therefore, helps students begin to understand the scope of complexity that client matters present. For many students, this will be the first time they get exposure to such complexity. That exposure will help them anticipate the amount of work that client engagement will often require and recognize that the work they receive in a law firm will often be a small part of a much larger transaction. That understanding should help them better serve their clients.

The client-file method provides a unique opportunity for delivering material to students. A single author may prepare the client file and the accompanying casebook. An author may, however, create an independent client file that others may use with existing casebooks or treatises. Authors may write casebooks that would be useful generally and nicely complement independent client files and hope for adoptions by professors who have adopted a particular client file. As the supply of client files grows, professors may stick with a particular casebook, but adopt new client files from time to time. They also may develop their own sets of materials and forgo assigning casebooks. The client-file method will, therefore, offer legal instructors great flexibility as they mix and match client files with other materials. As I proceed, consider how the client-file method works by first considering the content of the client file, then considering a progressive casebook format, and finally considering how professors can adopt the client-file method for transactional courses.

The client file should include memos that provide factual background and give students legal assignments. The client file will also include financial information and documents that are relevant to the transaction. Professors may choose between presenting the client file in hardcopy or electronically. The client file could be published as a separate book that contains the relevant information and accompanies a casebook; it could also be incorporated into a casebook. In fact, this is the method I use in a book entitled *Taxation and Business Planning for Real Estate Transactions*, but in subsequent additions I will most likely spin off the client file as a result of the evolving process of developing this method.

The client file could also be electronic. It can be either a web-based file, or distributed by email, or through a class website. The electronic format would permit the professor to control the distribution of memos and other information. A controlled distribution would keep students from seeing the entire file at the beginning of the semester. That may help dispel anxiety to some extent, but has the disadvantage of preventing students from anticipating the extent of work they will do throughout the semester and appreciating the magnitude of the transaction at the beginning of the semester.

A single client file may be appropriate for more than one course, with slight tweaking. For example, a client file that works for a partnership tax course might also work for a course on limited liability entities.

The client file will generally include several memos. The memos will imitate memos that a senior partner would write to an associate regarding a project assignment. Each memo will represent facts and give the students an assignment. For example, in a partnership tax course, the first memo may introduce the parties that have approached a law firm seeking legal help in forming a tax partnership. The memo could assign the students the task of considering what type of legal and tax entities would be most appropriate for the partnership. Subsequent memos could build upon the facts of the first memo. For example, subsequent memos could reveal that some time after forming the partnership the original partners are considering raising additional capital. The memo could present relevant facts and assign students to recommend whether the client should raise capital through borrowing or admitting additional partners. Memos could also anticipate problems that may arise such as the death of a partner, which would require students to reexamine decisions that were made earlier in the course. For instance, if an earlier memo asked students to

consider an LLC operating agreement that contained buy-sell provisions, students could test those provisions with real life events, such as the death of a partner that the memos will reveal later in the semester.

The client file could also include financial information that supports the facts and the assignment in the memo. For example, if the first memo covers the formation of the partnership, the file could include financial information about the assets that each partner will contribute and the liabilities that the partnership will assume. If a subsequent memo considers raising capital, the client file should include financial information that students may need to consider to answer questions asked in the memo. For example, a lender may require certain financial information about the partnership and the partners before it provides a loan. Attorneys should be familiar with that information and be able to help the client obtain and provide appropriate information as the case may be. Furthermore, a partnership liability cannot affect the tax situation of the partners, so an attorney must be prepared to give advice with respect to such effects. If the partners wish to admit a new member, they may require that the partner provide some financial information to avoid the headaches of having a bankrupt partner and to ensure the partner can provide the required capital. If a memo presents facts about a property acquisition, the file may include financial information about the property. Even if the information is not critical to the legal analysis, exposure to such information will help students appreciate the type of information that clients consider when making business decisions and help them begin to think about how business people make their decisions.

The client file should also include transactional documents. A significant part of the law governing transactions is in documents. For example, an operating agreement generally governs many aspects of the relationship that members of the LLC have with each other, with the LLC, and with the third parties. Similarly, loan documents contain the law that determines many of the rights and obligations of the borrowers and lenders. Not only do provisions in documents affect the rights and obligations of parties to an agreement, they may also determine tax consequences. By gaining exposure to the documents in a transactional course, students begin to appreciate the importance of good drafting and how documents affect the analysis of other areas of law. Documents contained in the client file may be models of good drafting, but they may also contain flaws. Either way, they provide students with an opportunity to consider the documents, discuss the strengths and weakness of

provisions within the documents, consider how those provisions affect the application of other laws, and recommend changes or improvements as needed. To illustrate, the core of partnership tax is the allocation rules and an important part of most LLC operating agreements is the allocation provisions. Tax law often influences the allocation of economic items, such as cash flow and gains and losses from the dispositions of property of an LLC. And the application of tax law often depends upon the structure of the allocation provisions. Examples of allocation provisions can help students understand how tax rules affect the allocation of economic items and how those rules affect the members' rights and obligations.

The legal and other instructional materials that accompany the client file are a critical part of the client-file method. An innovative progressive casebook could be the most effective form of accompanying materials. One function of the casebook that accompanies the client-file method is to provide information that students should obtain outside the class. That information will provide them with background knowledge that they will need to solve problems that the client file presents. Students and the professor can then use class time to discuss issues, analyze problems, and find solutions to those problems. The classroom thus becomes a problem-solving forum instead of a place where one person disseminates information to a passive audience.

The casebook should include a discussion of non-core law. Non-core law is not the primary focus of the course. For example, the law governing LLCs is not the core of a course on partnership taxation. It is, however, relevant to the application and analysis of partnership taxation. Discussions of non-core law should include a background discussion to establish context. For example, a discussion about legal entities might explain the types of legal entities and why business owners might consider using a particular type of business entity. Such a discussion might cover the legal attributes of business entities that attorneys should consider when drafting an entity's governing documents and laws governing transfers to and from entities. More specific topics could include liability protection, transferability of interest, and management flexibility. The casebook would use treatise-like footnotes, which practitioners encounter in practice. The discussion of non-core law should also include examples that apply concepts, and diagrams that illustrate transactions. A discussion of basic concepts, such as contributions to an LLC, helps students appreciate the difference between a sale and a contribution, and that such transactions require proper documentation. The discussion of non-core law in

the casebook enables students to focus on learning the core law and doing the relevant analysis, instead of devoting class time or extensive discussion to such law or requiring additional research. Discussion of non-core law in a transactional text must also include ethical issues. The transactional attorney provides advice in a setting that implicates ethical rules. Because the client-file method requires students to apply the law in a transactional setting, it provides an excellent opportunity to discuss ethical issues that arise in transactional law.

The casebook should also explain finance and accounting concepts. The transactional attorney invariably encounters financial and accounting concepts. Attorneys generally do not provide financial or accounting advice, so they do not need expert skill in these disciplines. Nonetheless, the clients of transactional lawyers use financial and accounting information to communicate business concepts and to make business decisions. Furthermore, contractual terms often include financial and accounting concepts.

The casebook should also include a description of the core law. The research process for most attorneys requires first going to a treatise, finding the primary source law in footnotes, researching the primary source law, and drawing upon the primary source law to do the analysis. So, the casebook will provide the discussion of core law and citations to primary source materials. Using the client-file method is just a simple illustration of what happens. The client file presents a factual situation and provides the accompanying financial information and documents. The casebook provides the resources needed to address the problems presented in the client file.

The client-file method provides an opportunity to employ a rigorous learning cycle. The cycle generally works most effectively in classes with no more than twenty-five students; therefore, the client-file method may not be appropriate for large classes. Using the client-file method empowers students to learn by doing the analysis and receiving feedback. The cycle begins with the memo. Students read the memo, come to class, present the analysis, and the professor provides feedback regarding the student's analysis and thinking.

One remaining aspect of the client-file method is that early in a course there will be more of a description about the law and background as students develop skills and abilities. The amount of description may decrease and the complexity of the problem may increase as students develop their skills.

Chancellor Strine: Thank you Brad [Borden]. It's

heartening to see someone who cares so much about teaching and has done such deep work, because this kind of approach doesn't just come about easily. It takes a real dedication to wanting to help your students.

We are going to turn it over to Robert [Rhee] and then we are going to get into a discussion with two real business lawyers about what they want from you all, and that includes professors.

Rhee: Thank you. I was given a topic by the nature of the symposium, which was how to prepare business lawyers. The proposal has to be taken in context—the context of training business lawyers—so that's what I thought about.

My proposal is basically a proposal for a JD and what I will call an MBL. An MBL is not a degree necessarily. It's just an idea tag for a concentration in business. So, here is what we tend to think of the traditional law school curriculum: the typical curriculum that teaches “thinking like a lawyer” is litigation-centric, and in the upper-level curriculum we have a broad curricular menu that starts with administrative law and ends with zoning law. The students basically roam the curriculum as 2Ls and 3Ls. Basically, in a business law curriculum, we should focus on contracts, on institutions and how complex institutions work, on markets, and on business concepts and how businesses work. In two prior writings, I had little thought fragments: Is there a way we can squeeze in business training? And, is there a way that we can provide interdisciplinary education? I left these questions as thought fragments. I had not really thought through the entire process of what that would mean in terms of a curriculum for business training.

There is some evidence in the market that business training is needed. For example, Skadden Arps has a partnership with the Harvard Business School, and Reed Smith has a partnership with the Wharton School. A number of law firms send their senior people to get some business training, as well. So, there are some data points out there in the market. We have been told that law is a very flexible degree, but I don't agree with that. I think there is little in the JD education that prepares the student for a business law career beyond thinking like a lawyer. Our mission has been solely to teach “thinking like a lawyer,” but there are other things. Nothing in the general JD education prepares students for a business career as opposed to a business law career. Legal education is not the reason why some lawyers become, for example, CEOs or become investment bankers or transition into other types of business careers, as opposed to a career as a lawyer.

So, what do I think about training business lawyers? There are many different components: thinking like a lawyer—obviously, that’s foundational; substantive, core business law courses; and then transaction-oriented tools to understand how businesses work.

There are some things that law schools do really well. And there are some things that I think business schools can actually provide some training and education in. That is basically the idea of an interdisciplinary-type program that gets business schools involved. We say, “Well, why not a JD/MBA?” The short answer is that a JD/MBA is very costly. To do it on an accelerated program, you might have four years of a joint JD/MBA. If you do it separately, it’s five years. Obviously, there are tuition costs and time involved. And, quite frankly, business lawyers don’t need an MBA. There are wonderful business lawyers out there that don’t have an MBA. So, if that’s the case, and if our ambition is to become a business lawyer, why go out and get an MBA? Following the Goldilocks principle, we need a little bit, but we don’t need the entire, full MBA. On the other hand, the generalist JD education doesn’t really have as much. Is there something that is right in the middle? That’s basically the proposal.

[The following discussion refers to graphs presented via Powerpoint.]¹

The curriculum for the first year is pretty standard, except for a few courses—put in Math Camp and Excel Camp. Those would be for the philosophy and political science majors. The courses coded in blue are taught at the law school, perhaps with some adjuncts, and those coded in yellow are business school courses. Students would go to the business school and take the courses there. So, we start with general management class and financial accounting. Those would be the changes in the first-year curriculum. In the second-year curriculum, students would take the core concentration of business law courses, along with several law school courses. By this point, the students would have training in accounting and training in corporate finance. Those are business school courses; that’s six credits right there. I would also propose a course on business communications, which would be separate from legal research and writing. I put in a course called litigation and management, beyond the civil procedure issues dealing with complex litigation but as well many of the business type of considerations and concepts that

¹ See Robert J. Rhee, *Specialization in Law and Business: A Proposal for a JD/“MBL” Curriculum*, 17 CHAP. L. REV. 37 (2013).

general counsels actually face, including cost management.

In the third year, there is a little more curricular flex. We see the electives coded in red in the Powerpoint slide, and we see a couple of other core courses—Administrative Law, Professional Responsibility, and Intellectual Property. There could be a course on corporate counsel, which is separate and would cover all the complexities that corporate counsels are involved with these days. A couple of business school courses: Entrepreneurship, Leadership and Teamwork, and Strategy; and then you have two courses coded in blue. It's a yearlong sequence and the yearlong sequence takes over six credits. We have Business Advising, divided up into Early Stage Business and Mature Stage Business; and we take a look at everything from venture capital funding, to mergers and acquisitions, to sales. We would use a mix of pedagogy here. It is not a course that is conducive to the traditional casebook type of material, but there can be a mix of pedagogy. We can have a little bit of doctrinal analysis of mergers and acquisitions; we can have case studies that Professor Borden was talking about; and we can analyze cases. It would be a mixed pedagogy course that takes us through, perhaps, the life cycle of the firm.

One of the things you will note immediately is that we are getting to the electives in the third year. Look at the courses coded in red—the electives—two to three credits in the fall, and four to five in the spring. That doesn't leave a whole lot of room; there is a point of choices here. We are involved with tough choices in this situation—how do we make the best use of three years? Everybody has a view, and everybody has a very strong view, but if we give everything to everybody's view, then basically what we are looking at is a six- to seven-year legal education. I don't think anybody is proposing that, so tough choices have to be made in something like this.

How do I see the three-year curriculum going? Well, there are different layers of knowledge and different layers of skill—thinking like a lawyer, core business law, quantitative competencies, general business skills, ethics leadership, and capstone and problem solving. I am trying to layer different types of skills into this program. On the one hand, it is a long three years; and on the other hand, it's a short three years.

There is no such thing as free choice, so there has to be some sacrifices. Some sacrifices might come from these areas, which I will just put up there as well. I know Chancellor Strine has a very strong opinion about this, but these credits have to come from somewhere. This is an issue. There is an opportunity cost; once again, we are talking about choices here. There is subject

matter expertise on one hand, and there this intellectual enrichment on the other hand. Where does it fit in that sliding scale? That's just really a choice.

Let me talk about the problems of implementation. First, we might have a lack of consensus in the faculty room. What we are talking about here is pretty significant changes to curriculum, and curriculum changes are always going to be difficult.

Another problem is that if you build it, they may not come. What I mean by this is that part of the choices and sacrifices here is that we take away a lot of the electives. We make difficult choices. Also, the curriculum is pretty rigorous in terms of what the core business courses are—students will be taking core components of the business school education—so we might have a lot of students who may be interested in the beginning and also lots of students who may drop out. How do we manage that process, because that presents a huge resource allocation issue when it comes to curricular design? You have to have cooperation; you have to have a partnership. It is an interdisciplinary project so you have to have a partnership between the law school and business school.

What I'm proposing is that there is merit to high specialization, and if that's the case, then there has to be, as I suggested, some cuts. But if we need a specialist, if a business lawyer is a specialist—let me put it in the medical context, suppose we need brain surgery—do we want to go to a generalist or do we want to go to a specialist? That's the thought here.

Chancellor Strine: We want to turn to Tania [King] first, and then Lee [Cheng], to really talk about—as consumers of law schools and people who need to train qualified lawyers and deploy them—their perspectives.

King: First of all, thank you. It's a pleasure to be participating in this. My connection to Chapman is through the mentor program, and I am going to talk a little bit about that because I think the MBL program that has been reviewed here is dynamic. It's ever changing, and it's responding to the increased needs of a practical advisor in a legal role in-house. It's imperative. I was asked by a very prestigious private equity partner one question in my interview process when I went in-house and that was: How many tires are manufactured in the United States in a given year? He was not looking for how great a lawyer I was in answering that question. Rather, he was looking at my ability to refine the question and figure out exactly what he wanted to know. He wanted to see how well I could deduct and reason to get to the practical answer that might not be entirely

accurate; nonetheless, he was seeing me in action, watching me think on my feet, and being a practical, solution-oriented advisor to private equity.

One thing I will say is we need the three years, but we need more practical, hands-on knowledge by law students, whether that be through Chapman Law School, for example, working closely with business partners in the community to provide for mentoring programs, externships, and internships. We have a very dynamic internship program at Advantage Sales and Marketing. I am a firm believer in the make-versus-buy model. If you bring in a bright, young associate who really wants to be a general counsel someday, they are going to be very productive in your business environment. You have the opportunity to coach them internally. You don't have the challenges that sometimes can be associated with bringing a law firm partner in-house who doesn't have the in-house visibility and experience and hasn't worked with the various constituencies that we work with on a daily basis. Our problem solving doesn't just revolve around one client on the phone, which is often the case with law firms or advising a board. Our problems and our issues revolve around conversations that may need to take place with a \$10.50-an-hour employee all the way up to the boardroom. You really need to understand and appreciate what is involved with that. I like the fact that those who want to get the practical experience in addition to the law curriculum, and who have the passion for it, are the type to say at the end of the day: "It's nine o'clock at night, I have been working all day, but is there anything else you need before I leave?" That's the type of advisor I want in-house because that person is going to be very dynamic in an ever-changing environment, which is an everyday business environment. Lee [Cheng], I would be very interested in your perspective on this. A lot of in-house general counsels do not hire right out of law school. I found it to be very beneficial and productive. I am proud of the interns who have come in, who are now six- or seven-year attorneys on my staff and have contributed greatly to the success of Advantage Sales and Marketing.

Cheng: Thank you Tania [King]. We, in fact, at Newegg do hire out of law school. We do not have a very large legal department, but two of our better lawyers are home grown. One of them has practiced now for four years, and one of them has been there for two years. I would stack them up very comfortably against any mid or senior associate at any large law firm. Perhaps, that's really actually a reflection of how poorly law firms, especially large ones, train their associates nowadays.

There is a massive waste of talent in the tendency for large firms now to view their associates as billing machines and cogs. In our legal department we are pretty top heavy—I built it from scratch when I joined Newegg about seven years ago and we staffed basically across all of the different subject areas that we needed coverage on. I tended to initially hire lawyers who had a lot of practical experience. All of my senior counsel have practiced for more years than I have. When we started to increase the volume of work at Newegg as the company expanded, we went to law schools. We made a very conscious decision not to search for graduates of top ten or top twenty law schools, because we wanted to make sure that we had people who appreciated the opportunity. Certainly, at that time when I joined Newegg in 2005, the economy was very different. People at the top programs tended to have very poor attitudes and a lot of choices, and actually they still do. We have achieved a lot of success over the last seven years in a lot of different areas that our business relies on us for, largely because we hired people who were very focused on getting the job done.

I am a very firm believer in practical education, and I know I am speaking at such a law school right now. I respect Chancellor Strine's statements earlier about the need for a broad based education, but I do believe nothing teaches as well as doing. I went to pretty good academic programs; I graduated from Harvard College and went to Boalt for law school. Boalt's one of those institutions that awards Ps and Hs, and I only vaguely remember double Hs because I got so few of them. But I think I can safely say that I learned probably more in my first six months of practice about being a good lawyer, about actually being a lawyer, than I think I learned in three years in law school. I think I learned more in the first year of being in-house, being a generalist, being asked to do everything, and being responsible for everything for my first start-up company—which I had an opportunity to join as a third-year associate in Silicon Valley—than I probably did in eight years in private practice. The hands-on education—actually having to deal with clients, having to do the work, and sometimes making the mistakes—there is nothing that teaches better than that type of experience.

I think that law school curriculums tend to focus very heavily on theory. I believe to some extent that law school, and the bar exam itself to some extent, are just barriers of entry that our profession erects to insure that the guild doesn't get overpopulated and income levels can remain relatively high. I think that law schools should focus on more practical education. Students could benefit from taking courses from adjuncts, who

will tell them about what people in private practice and the in-house world on a day-to-day basis actually have to do. I think that will serve them in a very good stead.

Chancellor Strine: Lee [Cheng], I find it remarkable to think that three years didn't ground you in a general way that you are not crediting. What I'm saying is that you said you learned more in six months. I think that's true—you can learn very specific things. That's why I am a little dubious, Robert [Rhee], of this idea that you need, for example, CAPM boot camp in law school because the reality is that you are not going to learn it well enough just in law school. That is the kind of thing you can do in practice.

If you get challenged in the right way during law school for three years, then you have a commitment to addressing problems in a certain way that you can bring to bear when you get the specific thing, and you can draw on the general broad-based understanding of legal tradition. And the concern, frankly, when you say that in your class you get theory, I'm not sure in 1964 you would have gotten theory if you were at law school. I think you would have gotten actual experience. What I mean by that is, if you were in law school and you took a contracts class in 1964, you probably learned from a professor who taught you contracts law and that person learned about the way the world did contracts. Could it be that if the courses were actually taught in a way, where the students confronted those major subjects in the way that real-world decision makers who affect clients deal with them, that would be more relevant? If you were dealing with employment discrimination, you would be focusing on the challenges of actual practice of that. If you are focusing on regulatory law or dealing with that and not someone's theory, would it then be valuable?

Cheng: Chancellor, I guess your point is that it would be advantageous if the courses were taught in a better way, right?

Chancellor: Well, in a real-world way.

Cheng: Well, the answer is absolutely "yes." Reflecting back on my own three years of law school, I think a lot of students end up focusing on getting good grades and they learn for the grade. They will absorb the material and do the work for the grade. I completely agree that I must have picked up something in law school; I sure hope so. I made a lot of good friends, but I don't think what I apply on a day-to-day basis—and what I have been applying and using for the last fifteen years—was anything that I needed three years to learn. And I certainly don't really use what I had to learn in order to pass the bar exam in my daily life.

It probably becomes useful once in a great while; I will think back to some constitutional law principal and, yes, once in a while, since I do now get to manage litigation and strategize, I sometimes can force my outside counsel to utilize some interesting constitutional law theory as a defense they didn't think about. However, I don't think what practicing lawyers need to apply on a day-to-day basis for the most part requires three full years. I do think there is a lot of room since law schools require everyone to go through a three-year program to take a lot of practical coursework on what people actually need to do.

King: I agree with Lee [Cheng], but for different reasons. If you haven't read the book *Indispensable Counsel*, I would suggest you get a copy of it. It really highlights the sea change that the general counsel role has gone through in the last couple of decades. It's by Norman Veasey; excellent book. He emphasizes this change. I think because of this change, which has offered some opportunities for general counsels and hurdles to climb, but because of the advent of Sarbanes-Oxley, Dodd-Frank, and other regulatory emphasis, really the general counsel are having a seat at the executive table and in the boardroom in a way that we haven't in the past. We are able to shape business strategy now in ways that we haven't in former roles. It's not that what we learned in law school isn't relevant; the way we learned to think in law school absolutely is. As a strategist, as one who is evaluating every aspect of a situation, as one who is able to quickly parse through the irrelevant to the relevant—that has caused not only more respect for the general counsel position but for more involvement. It also maybe contributes to the change from being not as tactical as we once were; we are more strategic.

Rhee: Well, I think it's really hard for practicing lawyers to just simply pick up accounting. I don't know how many autodidacts that we have that can just pick up an accounting book and try to figure it out. Formal coursework is needed.

Likewise, I think it's really hard to pick up a book and figure out what CAPM means. Therefore, I do think that formal education is needed to do that. For example, the general skill of reading a form 10-K, reading an annual statement, takes education and it takes very significant education. So, there is a role for education to provide basic foundational knowledge. But I also want to kind of piggyback on what Lee [Cheng] was saying, which is that I didn't really know how to do a DCF analysis, for example. I went to one of the best business schools renowned for finance, and majored in finance. I took a lot of finance classes, but I really didn't know how to do a DCF analysis until I was actually thrown into a live deal and had to do one and construct

one. So, there is something to be said for the practical experience that there are some things that schools can do well—providing basic foundational knowledge—and then there are some things that are difficult to teach. I think that in live-deal situations, everything is organized chaos, there are many, many people involved, and you're a piece of it. Going through that process is tough to replicate in the classroom. Again, I come back to this notion of choice. If it came to, for example, taking three credits of Constitutional Law II or three credits of Accounting, for a business lawyer, I would like to have the business lawyer be able to really understand what they read when they read. For example, in 10-Ks there is a lot of very complex information in there; much of it is financial and much of it is economic. So, these are complicated choices, choices that we have to make in the curriculum.

Chancellor Strine: I am going to challenge you a little bit on this. Every investment banking firm has evaluation boot camp with their post-MBA students. And, by the way, any investment bank that applies a company specific discount, which a lot of them do, knows nothing about corporate finance theory as it's taught in high church because it is irrelevant. I know that because the way I learned valuation is the hard way. I have to give valuations and appraisals, and I don't get to give a freaky wishy little range. I have to come up with a spot estimate, and I can talk to you now—as a political science and philosophy kind of person—about the problems of using exit market multiples and what kind of multiple in a five-year exit, if you use the current trading market, is going to impound a minority discount or not; these are things that a lot of investment bankers actually deal with. I am not sure using law school to be a mini-business school so that you have a compromised MBA and a compromised JD is what is actually best for business. I agree with Lee [Cheng] that teaching the real things in a real way is most meaningful. But when you lose something like constitutional law . . . I think that a lawyer should be a citizen. We have a special role. If you can't at least take one semester in constitutional law, then forget it.

Also, I noticed you still have the one semester of contracts. The thing that lawyers deal the most with almost invariably is going to be agreements with others. Where you screw up as general counsel and outside counsel screw up your clients the most is often in your contracting, and that's where the real can really be taught in a real way by real lawyers, and that's what I am asking. Should we bring the law back in the law school as it is in the world? And then maybe taking these survey courses would actually be useful to general counsels because if you took

rigorous real world relevant survey courses in a real-world relevant way, you can actually help your clients. Brad [Borden], you're a tax guy; that's about as practical as it gets in terms of the effect on businesses.

Borden: This whole concept of practice versus theory presents the challenge of knowing where to draw the line. I teach a very problem-based course and to me this is exactly what lawyers do in practice. They get a problem and they apply the law to the problem. Yet, we have students saying that it is too theoretical. I don't know what that means; we are reading cases, we are reading statutes, we are reading regulations, and we are applying them to the problem. So I do not know necessarily how to draw the line.

Cheng: Actually, Professor, have you ever been in-house?

Borden: I haven't.

Cheng: In a law firm, it's very different, especially if you are only working at a very big New York-based law firm. It's a very different mentality.

Borden: Yes, that might be sort of where I am going with this. I didn't think about two years versus three years in school. I thought about three years versus four years doing an LLM in tax. I didn't think I wasted any time. With tax, you need to know a lot of law. You need to know a lot of tax law; you need to know a lot of business law; you need to know constitutional law; you need to know contract law; you need to know a lot of law. I am perhaps in the school of let's not water down law school. Law school needs to be a rigorous experience that provides students the opportunity to obtain broad knowledge and sophisticated skills.

Cheng: I would actually agree with Chancellor Strine about the desirability of a broad-based legal education. You are in law school taking constitutional law versus a, candidly, very likely watered down introductory accounting course. I took an introductory accounting course and I got a semi-decent grade. It was probably not a double H, but I can also say that I don't remember anything from that course at all. However, as I started to practice, I picked up some accounting rules and regulations and principals because I had to. It's a simple incentive system. In law school, if you don't do well, you get a poor grade. In the real world if you get something wrong, you get fired. I picked up everything I needed to know, and I know a lot of business lawyers pick up what they need to know about reading balance sheets, securities filings, and 10-Ks and Qs, by just doing the work. So, I would definitely agree with Chancellor Strine that there are some basic courses and basic coursework that students

in law school should take.

Chancellor Strine: It would be interesting to take a combination of Robert [Rhee]’s and Brad [Borden]’s ideas. If you imagine the courses taught in the way that Brad [Borden] is talking about, where all these subjects are taught in a way that brings the real-world dynamic. For example, businesses that operate that make any kind of product are going to confront environmental law. It would seem to me that it doesn’t matter whether it’s necessarily environmental law or health regulation law, but actually confronting what a real-world business that’s regulated does in some area. Also, one of the things I noticed in your curriculum, Robert [Rhee], is a little bit of a dearth of comparative law and different systems, which I think is a challenge for some. But Lee [Cheng] and Tania [King], if you taught all the courses in the way that Brad [Borden] was talking about and structure it like Robert [Rhee] is doing, where there are courses being done in a way that puts the students into the situations they face in business, would you get a better product?

King: I absolutely think that you would. I will give a practical example as to why I think that. If one of our lawyers is tasked with evaluating a complex contractual dispute, potentially leading to litigation, and comes with the ability to say, “Here’s our strengths, here’s our weaknesses, here’s my recommendation, and here’s why my recommendations is well founded because here is how it affects the P and L,” if you have that level of experience, which I think you will gain from more of a case-study practical-experience scenario in really playing out real-world business examples, you’re able to come in with the recommendation that not only factors in the discipline in your legal training and your education, but also the practical implications of the business. That is of incredible value to me, the CEO and the board, and ultimately our shareholders. So, the ability to think like that, I believe, is only gained with practical experience, hands-on case-study examples, and role-playing. I think there is tremendous value in adding that component into the academic curriculum.

Cheng: So, as in-house counsel, our perspective is shaped by the fact that we have to review legal invoices and justify legal invoices, sometimes to our CEOs and CFOs. That’s why we value any approach that teaches aspiring lawyers to be practical, to shoot for legal sufficiency and what’s enough, as opposed to nth degree analysis. Here is an example of what tends not to happen in big law firms, especially those with clients that don’t monitor them well enough. When I first joined Newegg, I walked into a situation where I was looking at a \$25,000 bill for patent

infringement analysis, and the outside counsel who was brought in by the previous general counsel was a partner at a big law firm and he had staffed a first-year associate, a third-year associate, a fifth-year associate, and a seventh-year associate all on this matter to analyze whether or not my company—which is a reseller of product, we don't make anything—infringed on mp3 patents in a product that we sold. I called the outside counsel. The first-year associate had spent tremendous time, a huge amount of time, had become the world's authority on mp3 technology, and had generated this giant memo. I asked the guy, "Why did you do this?" He said, "Well, we needed to find out whether or not you infringed and needed to make sure you did not willfully infringe. It was all technically legally desirable." And I said, "The company asserting the patent and the company who makes the product are both Newegg suppliers. I just made one phone call to each side, and I told them to deal with it or else we would stop carrying their product." And there was silence on the other side. That's the kind of perspective I think that law schools would be well advised to teach—whatever their program, however it's structured, whatever course work they offer—if they want their students to be successful in the practice of law. If their students are successful, then ultimately the law school will increase in reputation, their alumni will donate money, and so on and so forth. That's the perspective I think that law schools will have to teach or need to teach.

Chancellor Strine: As general counsel, are there things you look back on in your law school careers, knowing what you know about it, in order to make room for some of the stuff, worth sacrificing? Because those are the hard choices in life.

Cheng: Casebooks.

Chancellor Strine: Casebooks?

Cheng: Candidly, I didn't open a lot of mine. They are brand new; I still have them on my shelf. A lot of what was required reading was and is useless. It's not the courses themselves; it's not the principles; it's how they are being taught. I think a lot of people just get through law school, and they can become perfectly good lawyers without reading a casebook or joining a law journal, as long as they don't have a desire to be legal academics or to go into the judiciary. I think you can learn just as much from a pretty good outline. So, I think you can shorten a lot of the courses and you can get a lot more packed into law school.

Chancellor Strine: I am looking at what Brad [Borden] presented and it's sort of a casebook. It is a casebook, but what it shows to me is a teacher who cares enough about teaching that

he took a tremendous amount of time to bring to his students something in a real-world way. Is it the incentive systems? Frankly, there is no reward. If you spend all that time, you are not going to get a salary thing, and so you just use the casebook because that's not where your academic garden gets greener. Robert [Rhee]?

Rhee: I just want to jump in on that question because I think that's an important question. Lee [Cheng] mentioned casebooks, and I think that's right and ties in to some of the comments about the third year, those being that the third year is same old, same old. We have the casebook, the same IRAC, the same tests, and Chancellor Strine mentioned that we have an incentive system. I think that's right. There is an issue that law school faculties, at least the tenured-track faculty members, are incentivized to write scholarship. That is just the bottom line. Yet, if we were doing something like Brad [Borden] is doing, if we are spending 100 hours to produce a casebook, not an edited appellate casebook, but 100 hours to produce a teachable case study, using real documents, fact patterns, hypotheticals, memos, orders, and deposition testimonies that we all have to create—and it takes about 100 hours to do this—then where is the incentive system in legal education?

Chancellor Strine: Robert [Rhee], isn't it interesting in the business school world, even at Harvard and Wharton, if you write a case that people can use and teach at other business schools you get credit; it is an academic thing. But in law schools there is no such thing.

Rhee. That's right. One of the things that I think is critical in legal education is the teaching materials. Harvard Business School has a repository of literally hundreds of cases, real-life situations that we can pull in to some select courses. I use these cases myself, but they are not really conducive to a typical law course because there is not a whole lot of law in them. But what Brad [Borden] is doing is spending the time to craft a case file or take a file that you already know about that actually occurred in the law and craft it into something that is teachable. I don't want to toot my own horn but I'm writing an LLC case study that involves a case that I know about and the file is already about 250 pages, and it's going to grow. You teach LLC governance, for example, by actually giving them an operating agreement, by giving them bylaws, by actually giving them the entire statute, and the students work through very dense, complicated facts and significant uncertainties. The problem is the incentives aren't there for the doctrinal faculty members.