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Can Law Schools Prepare Students to be Practice Ready?

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Panel 1: Can Law Schools Prepare Students to be Practice Ready?*

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

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RIPKEN: The first panel addresses the question: "Can law schools prepare students to be practice ready?"

MYERS: In my years of practice I have worked on a broad range of matters. Currently at Hyundai Capital I am the head of our company's legal team. So, in addition to a transactional practice, which involves reviewing contracts, reviewing shareholder subscription agreements, and advising my clients on new products and new business areas, I also manage our team of lawyers. And one thing that law school doesn't teach is how to manage employees. That's a very important skill.

But, what's very important for in-house attorneys, probably more so than private practice lawyers, is knowing how to *do* the law. The legal department in a corporation is not a revenue producer, and we are part of the overhead expenses. So, the company looks at us as a necessary expense (or they wish it was an unnecessary expense), but we have to prove ourselves and prove our value to the company everyday.

The skills that I need to do my job today are not tools that I learned in law school. Earlier in January, Judge Francisco

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analysis, legal research and writing, and general principles of trial and appellate procedure and advocacy, at Seattle University School of Law. Prior to her teaching career, Professor Rankin worked for the major law firms of Kirkland & Ellis LLP and Sidley Austin LLP, where she specialized in complex litigation. She also served as in-house counsel for a national accounting firm. Professor Rankin received her JD from New York University School of Law and her MEd from Harvard Graduate School of Education. She continues to support the advancement of legal education as an active member of the Legal Writing Institute and the American Legislative and Issue Campaign Exchange, and is on the board of governors for the Society of American Law Teachers. Professor Rankin's research interests include legal education reform and legal skills education.

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Briseno of the Orange County Superior Court stated, "Law schools do not prepare students to be lawyers." As you may know the *New York Times* has done a series of articles on laments of the business community about the fact that law schools are overly academic and do not train students how to practice law. And while this is not true of every law school, and I am sure it is not true of my esteemed panel members, many law professors have not practiced a single day of law, but have worked their entire careers in the halls of academia.

Today many corporations will tell their outside counsel firms that they will not pay for first- or second-year associates to bill on their matters; rather, they expect the law firms to absorb the costs of doing the necessary training for junior lawyers. The legal profession in the United States is the only profession that does not mandate an apprenticeship to teach tools of the trade. In all other professions (medicine, nursing, accounting, etc.), students intern or apprentice as a mandatory part of their training so that when they start working, they have foundational, practical, basic skills.

In all other countries, lawyers are trained by studying legal courses on a much shorter academic path than in the United States. In most other countries around the world, lawyers are trained in the law in their college, their four years of college. And then they apprentice to a lawyer, or a judge, or a prosecutor to learn on-the-job training as part of their education. The lawyers in other countries are typically younger than the lawyers in the United States because we have to go through seven years of training and then begin practicing.

The history of law education in the United States shows that law schools were not even set up to train law students how to be lawyers. Of course, law schools teach students to be able to spot obscure legal issues, but those are primarily directed at teaching students how to learn the curriculum well enough to graduate from law school and how to pass the bar exam. I think I went to a pretty decent law school, but thinking back to the courses I took in law school, I've never had occasion once in my legal career to apply most of the legal principles I learned at Harvard. I've never had an issue that called me to know what was the ruling in *Hadley v. Baxendale.* In all the real estate transactions I have worked on I have never needed to know the Rule Against Perpetuities. And for all the contracts I have reviewed I have never had to know the ruling in *Hudson v. McGee*, which you all know as the "hairy hand case." In fairness, I have to remember that I do look at certain issues I learned. I look at the *International Shoe* case for jurisdictional issues, and I frequently

reach back to the tenants I learned in my U.C.C. secured transactions course.

On my first day of my first law firm job, I thought I was very well prepared with my Harvard law degree to start practice. One of my first assignments was to review a package of loan documents for a bank client, and I was told to review and mark-up the document. I started reading the document and realized that I didn't know what the borrower's business was, I had no idea what the assets described involved, I didn't know what a financial condition was, or what EBITDA ratios were. I also didn't know how to do things like run the photocopier or the fax machine. At the end of my first week of working at my law firm, on a late Friday night, I was trying to send a fax to a client in eastern Canada at midnight California time. No one was at the law firm except for me and I couldn't get the fax machine to work. I tried everything I could think of, but it would not send the documents. Now, you guys probably don't even know what fax machines are, we don't use them anymore, but back when I was starting we didn't have email and so we had to send faxes to get documents sent quickly. We were set to have a conference call at nine o'clock the next morning, Saturday morning, to look over the changes that I was trying to send in the fax. I did not want to call the partner that I reported to and wake him since it was midnight, but I was very nervous that by nine o'clock the next morning we were not going to have our documents. I ended up going home, slept for about three hours, went back to the office early Saturday morning, and when it was about nine o'clock in the morning in eastern Canada I was able to contact somebody by telephone and found out that their fax machine had run out of paper. Law school did not prepare me for that.

Most recently, when I was working at Kia in 2011, right before the All-Star NBA game, I had to call upon my post-law school skills of patience and diplomacy when my marketing clients came to me and asked whether Kia could drive a Kia Optima out on the floor of the Staples Center and have Blake Griffin do a dunk-stunt jump over the vehicle while his teammate Baron Davis threw the ball through the moon roof as Blake ran up to catch the ball. Remembering in law school the "eggshell skull" case in Torts class, my first reaction was, "No! We can't do that!" Of course, my marketing department started then to tell me about all the revenues we would earn from this spot, and that we were not going to have to pay very much for it because Blake Griffin's agent had come to us. So, I had to quickly go through the issue spotting and figure out that we needed to make sure that our contracts had proper indemnifications and

protections, and that our insurance premiums were all paid up.

Practicing lawyers, especially those working in-house, need practical skills and key "soft skills," such as emotional intelligence or "EQ." Successful lawyers are good listeners, are open and flexible, and they have patience and are sympathetic. Law schools can teach their students that it is important to learn and be knowledgeable about your client's business and the industry, almost more so than knowing the law. Students becoming lawyers need to know that clients do not want to know how smart you are or how right you are. They don't want to be told the "whyfors," "wherefore art thous," and "henceforths." They just want to know, and they want to know right now, whether they can do something. What corporate lawyers need to have is a strong business sense. They need to know how to provide legal advice in the business context, and how to speak law to their non-lawyer clients. What I need to know is what keeps my clients up at night and what they're worrying about, not what I am worrying about.

I know that the law schools represented here today are becoming more entrepreneurial and working to add practical course work to give their students the training that will help them hit the ground running when they graduate and pass the bar. I'm hopeful that the legal academic community will keep these foundational movements growing and give their students the tools and skills that I look for when hiring new counsel.

RIPKEN: Ms. Myers, thank you very much for those valuable insights into what clients and corporate general counsels are looking for in new lawyers. Next, we are going to be hearing from Professor James Moliterno, who is the Vincent Bradford Professor of Law at Washington and Lee University School of Law.

MOLITERNO: Thanks very much. I think the thing about teaching at six different law schools just sort of means I can't hold a job. I'm going to try really hard to do in fifteen minutes what I would like to do in forty-five minutes. We'll see how it goes. If you want to learn more about our current reform, there are a couple of places to go. One is the Washington and Lee website, and another good place is a blog called *The Legal Whiteboard* that Bill Henderson does. He actually posted a blog earlier this week that goes into detail about what we have been able to accomplish so far.

I suspect that as the day goes on we are going to hear more from a number of speakers about the crisis that legal education is in right now, the crisis that the practice of law is in right now,

and in essence, the economic transfer that has taken place in moving from a system in which mostly corporate clients willingly paid for training of beginners at major law firms, to a place where we are right now, where the law firms don't really want to absorb the cost that Susan Myers was talking about. Some of them are having to do it, but they don't want to do it; they want to turn to the law schools and say "It's your turn folks, you have to do this for us." So, there is actually an economic transfer that is taking place in moving from a system of training beginners by corporate interests to an effort by law schools to do it. Already, our costs are too high for legal education and our application rates are too low for legal education. It's an enormous problem that we are going to cope with, and I don't think we can do it. We aren't doing it at Washington and Lee, except by forging partnerships with the practicing branch.

I think we are going to hear a lot about that today, about the old pyramid structure breaking down. So I won't do more than what I have already just done on that subject. I will note though that most of the focus on legal education trouble is on the past decade. And it sounds as if this is a result of the economic crisis. That is obviously not the case. This has been coming for a long time, in economic terms and the way legal education has tried to cope with it.

We're still trying to figure out how we get to the place where legal education really is about training lawyers. It's been a difficult road; it's taken over a hundred years now, but we're getting closer to it. I've been in the legal education reform business, if you will, for thirty years now. And the only thing I'll say to you is for all the reasons why it's a bad time for legal education, it's a great time to be a legal education reformer. Everybody is mad at law schools and wants us to do better. From the *New York Times*, to prospective students, to alums, to the practicing branch, to corporate interest, everybody wants us to do better right now, and we have to. So it's a good time to be a reform person, when everyone is behind your efforts.

We're also, I'm sure, going to hear some things about lowering the cost of legal education. I'm all about that. The idea of lowering costs very much resonates with me. I think we are going to see a reduction in the discount rate for legal education this year, next year, and the year after that. The sticker price might not go down, but the discount rate—what students actually end up paying—is going to adjust to the drop in applications we're seeing this year and projects out to future years.

I don't oppose what some people advocate as the "major cost

reduction technique," which is to cut law school to two years instead of three. I don't oppose that, but in the meantime, our approach at Washington and Lee and mine has been, "We got three years, let's do something with that third year. Let's not just continue to have it be a sort of wasteland where they bore you to death. Let's do something better for the students we have right now."

What do I mean by better? For me, it's about a better designed, better implemented, wider ranging experiential education; education in the role of lawyer. Let's put the students in the role of lawyer. Let's train them up to do a lot of the things that are needed in practice.

If you think about the path that we've been on for about one hundred years, legal education only taught one skill: it taught how to analyze appellate opinions and it did it brilliantly. It still does it brilliantly, and it's not something we should stop doing, but we don't need to do it for three years. That was the one skill that was taught. Beginning in the seventies and eighties we started getting more clinical courses and we, in particular, got courses on writing, interviewing, negotiating, mediation, trial practice—that's a basket of skills we started to teach in the seventies and eighties in addition to the one skill that we taught for over a hundred years. And we have to keep teaching those, too. But they're far from enough.

What beginning lawyers really need these days are problem-solving skills. They need business sense and savvy. They need to know how to work as a member of a team. They need to know how projects are managed, and how they fit the role of a person on that team, and eventually how to be one of the managers of those projects. There's a wide range of what students need to know to be a successful lawyer. And what we're trying to do at Washington and Lee is essentially give our students a head start. But what we don't expect to happen is that our students will be practice ready. That's a term that's been thrown around a lot and I think it is too high of a hurdle for any law school to expect that they are suddenly going to produce law graduates who are third-, fourth-, or fifth-year attorneys. That's not going to happen in the time we have and with the resources we have. But we can give them a head start. And what we are really trying to do at Washington and Lee is give the students a jumpstart on the process of becoming valued in practice. If it used to take them three years to develop, maybe they can get it in a year, maybe a year and a half now, after they graduate and they move on in practice. We want to give them a head start.

All we've really done in our program is allocate a year to

experiential education. It's really simple and pretty straightforward. First and second years are largely unchanged. We added a few new courses to our first year on international law, administrative law, and professional responsibility; they are now first-year courses for us. But in essence the first and second year look a lot like they have for a very long time. But the third year involves students being involved in a full credit load of experiential education all in the role of lawyers.

There are some people who have come to the conclusion that we're experiential start to finish, that we don't do the first-year traditional thing. That's not the case. We're still doing the things that have been really brilliant about legal education in the first and second year. At the middle, what happens to students in this third-year curriculum is that they learn law the way lawyers do. They're not just learning a basket of skills.

We have a course, not called "Bankruptcy," but called "Lawyer for Failed Businesses." In that course, the students still learn bankruptcy law, but they learn it the way lawyers do to solve a client's problem. That's how lawyers interact with the law. They don't learn law after they graduate in order to take an exam, right? And so our students still do the "student thing" for two years. But then they are in a transition time for their mental pathways in that third year. They are moving from being the student to being a lawyer and thinking like it.

So, we're now in our second year of required participation. We had two years of phase in. It was optional in those first two years, but very popular and we've done a lot of studies to learn how it's gone. We did a very early extensive review with lots of student evaluations, focus groups, and so on. We had a faculty vote and gave it a vote of confidence with one minor adjustment that I'll mention in a minute.

So, what is it? Each semester starts with a two-week skills immersion. In the fall, every student in the third-year class is in a litigation immersion. They represent a person in a simple piece of litigation from start to finish. We have them interview the client, draft the pleadings, do a little bit of discovery, do a little bit of motion practice, negotiate, counsel with their client, and eventually they take that simple case to a truncated trial at the end of the two weeks.

In the spring, they do a transaction immersion and, again, all of our third-year students participate. Every single one represents the buyer or the seller in a transaction for the sale of a five- or six-million-dollar furniture manufacturing business that we've made up from whole cloth. Basically, we created all

the documents and everything about the company. Every student winds up representing someone who is another student role-playing the client. We just finished it; it's a lot of fun, but it's a lot of work.

Then, each student enrolls in at least two twelve-week experiential courses. Four of them total for their third year. Most students have taken five, actually. One of those four or five has to be a clinic or externship. It has to be a live client experience where they actually represent real clients. The others we are calling "practicums," courses like the Lawyer for Failing Businesses, The Litigation Department Lawyer, Poverty Law Litigation, Corporate Counsel. You will notice that each of these is built around a practice setting. We have some of our regular faculty teach these courses, and some are taught by wonderful lawyers who come in and essentially teach what they do. They put the student in the role of the litigation department lawyer, if that's their practice unit. We have an M & A practice unit from Hunt and Williams law firm in Richmond, and a higher education practice unit from McGuire Woods and on and on and on.

There's room for one traditional course per semester, if the student wants to take it, and most students do take one of the traditional courses.

This is really quite doable, it's rather shocking to see it. It's not a top-to-bottom redesign of the curriculum. There's room for a lot of faculty to do as they've always done. I call it the "leave us alone" factor. Lots of my colleagues, about half of them, think that this is a great idea, but they don't want anything to do with it. They just still teach the course they've always taught in the first- and second-year curriculum and they're sort of left alone. It's really just a statement that experiential education is just as important as the first year. Every law school has clinics, every law school has at least some courses that we would describe as practicum courses, maybe not quite enough to make them a requirement, but everyone has the resources in place to do this, and its really just a matter of saying, "The way we require you to do the first year, we require you to do experiential education in the third year: it's just as important."

I mentioned all of the lawyers and law firms that are coming over to teach these courses—they teach those courses for next to nothing, quite frankly. They teach it for the love of doing it, and they're teaching students who are not only students at their big law firm, they're teaching whoever signs up for the course at Washington and Lee. And so, some of the resources that the practicing branch is not able to give to their beginning lawyers

anymore, they're giving it to any law student who signs up for the courses. We couldn't afford to do it otherwise. Look on Bill Henderson's blog if you want to hear more about this.

Our applications are up 33% rather than down 19% over the last five years since we started this project. The national numbers are down 19%, but ours are up.

I want to show just a couple of our statistics. So, there's a survey called the Law School Survey of Student Engagement. And it asks questions of law students about how wrapped up they are in their studies: How much time do you put into your studies? How often do you show up for class without preparing? How many papers do you write of different lengths? How often do you work with colleagues or other students on projects? How much of the time do you spend applying what you learned to real world problems? We ask a lot of questions like this.

In 2008, 28% of our third-year students said that "often" or "very often" they came to class without completing reading assignments. Our peer schools had almost exactly the same number in 2008 and they still have the same number in 2012. Now, none of our students come unprepared anymore (only 4.5%). The third-year students can't afford to come to class unprepared anymore; they don't do it!

What else is happening? They are collaborating with one another more. The survey asked: How often do you work with other students on projects? Our students, 11% of them, used to say they did that "often" or "very often" in 2008 before the new curriculum. Peer schools had almost the same number (13%). Now, 33% of our students say: "I work with other students often or very often" or "I'm doing that all the time!"

One thing they don't do more of, which I'm kind of happy about, is that they don't memorize things any more than they used to. Notice that it's not that all of our numbers just went up between 2008 and 2012. Memorizing facts—they don't do this any more than they used to. It's not what the new curriculum is about. They don't need to memorize any more than they ever did. We're not teaching them to memorize any more than they ever did. We're teaching them to use information, not just pack it into their brains.

What else are they doing? They're writing a lot. How many written papers of twenty pages or more? It used to be that 16% said, "I never did one." Now, they all are doing papers twenty pages or more, whereas our peers have stayed the same from 2008 to 2012.

This to me is even more significant, because in law practice

you don't write that many twenty-page papers; you write a lot of five-page papers and ten-page papers. Again, in 2008, 27% said, "I haven't done that at all this year." Now, nearly all of them have done five-page papers. But our peers have not improved.

What's really happened is that students are spending more time being more productive on things that will matter for them as lawyers. That's what our new curriculum has meant to us.

RIPKEN: Thank you very much Professor Moliterno. That was fascinating information. It gives us something to think about.

Our third presentation will be from Professor Michael Cassidy. Professor Cassidy teaches at Boston College School of Law and he is a national expert on prosecutorial ethics and criminal law.

CASSIDY: The topic of my presentation is law school affordability, and you might think that they placed me on the wrong panel: "What's he doing on a panel about how to make students more practice ready, when he's really concerned about affordability?" But I have also written about making students more practice ready. I recently have written an article in which I advocated for a change in law school pedagogy including things like more problem-solving skills, more group projects, more oral presentations and exams, and more multidisciplinary courses. Today, I'm going to move away from pedagogy and talk about the economic model of legal education. The way this is related is that the premise of my essay is that there are things that you can do to make law schools more affordable that would also improve the learning outcomes for our students. That is, I think we don't have to falsely assume that every good change is an expensive change. There are some cost-saving devices that would actually be an improvement.

I will just highlight a couple of things that motivated me to write the essay I'm writing, and that is the application drop in law schools. Between 2010 and 2012, law school applications dropped 25%. This year alone law school applications for next year's entering class have dropped 22.3%. Given this three-year double-digit drop, law schools are reacting one of two ways. They are either reducing the size of their classes, or some of the top-tier schools that don't need to reduce their class size are attracting students to fill their seats by offering a greater amount of tuition remission. Those are the two models: (1) reduce the size of the class, or (2) offer more tuition remission. Either model you follow you need to reduce costs at your law school, because we got less revenue coming in. If you reduce your class size, you got less

money coming in. If you give more money in scholarships, then you're discounting the tuition dollars: you've got less revenue coming in. You've got to find a way to curtail costs.

My essay is about how we can curtail costs at the same time that we are improving the education of our students. That's a very difficult conversation that law school deans, admissions, and faculty face. It's a conversation that's really important to all the students in this room. But, you know, we can't fiddle while Rome is burning. Literally, the time for change is now. The legal academy, the legal profession, is conservative in nature; it reacts slowly to change. But we either change now or many law schools are going to be defunct in my view. People are comparing right now the legal academy and the legal profession to Detroit in the 1970s; to the steel industry in Pittsburg in the 1980s. It's that serious. So you either change or you go home.

So what I'm writing about in this essay is eight changes to legal education that I actually think will improve the learning for our students and cost less money. I don't have time to talk about all of those eight changes now, but I'm going to highlight three of them.

One is that I think we should vary the model of the three years of legal education and give students a choice of what model to follow. Offer a two-year option, a three-year option, or a four-year option.

Brian Tamanaha's great book, *Failing Law Schools*, is very provocative; it's been instrumental in encouraging a lot of the debates we've been having right now. His overall conclusion is that law schools need to differentiate among themselves. We should have research law schools where the primary focus is scholarship, and we should have law schools where the primary focus is training practicing lawyers. I don't necessarily disagree with that premise, but I think that for schools that want to do both, for schools that might be in the middle, there is a way to let the students self-differentiate. That is, they should offer different paths for students of how to complete their degree. And one of those paths will be more cost-effective and less expensive.

Under my model (the "two-three-four program"), we would offer students the ability to complete law school in two and a half years. We would primarily offer that to students who are interested in going into government and public interest. We would spend the entire first summer, after the first year, which would essentially be their third semester, taking primarily online courses—that would be an incredible cost saving for the law school and we would charge less for those courses (per-credit,

rather than a semester of tuition). You would take your first year of law school, and you would take the summer (conceivable while also having a job) where you take an online course in some very common second year courses like Evidence, Corporations, Professional Responsibility, or Administrative Law. You would take fifteen credits in the summer and then come back in your second year and take seventeen credits both semesters and be done with law school in two years. But you would have essentially spent less than two and a half years worth of law school tuition—the amount of money you spent taking online courses would be charged at a lower rate, because it would be more cost effective for the law school to do. That would be one opportunity we could offer for our students. And, again, it would be primarily for the students who want to go into government or public interest work and who want to try to avoid having massive debt.

The third-year model would stay the same as it currently is.

The fourth-year model I'll call the "apprentice model." Under the fourth-year model, what I would recommend law schools consider is having students in for a traditional two-year curriculum, then having them take a year off. Think of a gap year for people before college or before law school. They are taking a year off and they are apprenticing for a law firm, legal services agency, or government law office, and that apprenticeship is set up by the law school. The law school agrees to freeze their tuition at the time they step out of the track to gain this apprenticeship experience, and then they come back for their fourth year of law school, which is essentially their third year of law school, a year later. They come back guaranteed they will receive the same tuition rate as when they left. But when they come back, they come back more focused on the area of law they want to practice. So, the third year doesn't become boring someone to death. They spend a year as an apprentice in an organization, and they get a better sense of what kind of law they want to practice, then they come back to take courses in that area.

Now, the way I envision this model working is that the law school would partner with mostly small to mid-sized firms, perhaps some general counsel offices, in setting up these apprenticeships. The law firms and general counsel offices would have an economic incentive to take on these apprentices, because they would be getting someone who has two years of legal training under their belt. So they're certainly more qualified than a paralegal, but less expensive than a first-year associate. They might pay them fifty to sixty thousand dollars to do this one-year

apprenticeship and get valuable services. After which, the student would come back to law school. And, maybe, if the relationship worked out and the firm was interested in hiring the student they might have an arrangement where the law student came back for the fourth year and went to class at night. That's all possible. But I think this four-year arrangement, with the apprenticeship year in the middle, would help keep costs down for law students because they could actually earn money while they're attending law school.

So that's idea number one.

Idea number two is actively being debated in the academy. I think those of us who are in favor of change really need to get behind the movement, and make it happen; and that's to allow pay for externships.

Right now, the ABA does not allow law students to both receive credit and be paid for an externship. It's either pay or credit. That requirement in the ABA standards has dated back to 1979, and the last time it was seriously debated was 1982. Jim Backman from BYU has done some interesting research on this. It turns out that law schools are one of two professional schools that have that rule. It's law schools and pharmacists. No other professional school limits the ability of a student to get credit and be paid for the same job. It's done in accounting, engineering, business schools, and it's very common.

The reason the ABA set that up as a bar in my view is twofold. One, it was done at a time when legal services clinics at many law schools were just beginning in the seventies, and we did not want to distract student interest from legal service to the poor by saying, "You could work in the legal service clinic for free, or get paid money at a law firm." We didn't want to drive student interest away from the neediest segment of our economy, and, politically speaking, those clinics were on unfirm footing in terms of funding and political status at law schools. We didn't want to send a message to those in-house legal clinics that we were driving resources away. I don't think that reason stands anymore. Legal aid clinics are now a very firm part of our curriculum. Students love it; it's a different career path for our students. But I don't think that career path is going to change if we offer students with an externship at Hyundai the right to earn money and keep their debt down in law school.

Critics argue that we shouldn't allow credit and pay for the same externship because it would detract from the education experience. That is, if law firms or general counsels can bill their externship students for the time they're working in the

externship, they're only going to give them work that they can bill and they're not going to give them the other experiences that are really important educational experiences, like the shadowing experience, sitting in a deposition, or shadowing a negotiation: "I'm not going to bring you to that, because I can't bill you for it so stay back and do some research." I think that criticism is overblown, and I think that it can be taken care of by the commitment letters that most of us who have been involved in externships do when we set up an externship program. We meet with the supervising attorney at whatever venue the student is going to work in, and we discuss the goals and objectives of the externship, we draft a follow up letter with the terms and conditions, and if it doesn't work out and the student gets work that is not appropriate, then we don't continue with that general counsel's office or law firm in the externship program. I think we have come far enough as law schools now that I think we have that ability. So that's my idea number two: allow pay for externships.

The third idea is that we need to diversify our model of faculty status and faculty responsibility. Scholarship is very expensive, libraries are very expensive, research is very expensive, summer research support is very expensive—and Brian Tamanaha's book has illustrated very clearly that it's students who are paying for the writing of law review articles and books in the summer. They pay for that with tuition dollars.

We're at the point in the academy where there are two types of professors. Many law schools have been better than my own at merging these into one track. But at many law schools, like Boston College, there are two tracks. There's the tenure track; and there's the clinical or experiential learning track, who under ABA standards have the security of position, but at my law school and many other law schools it's not tenure.

So those are the two common tracks for faculty. I think we need to open up a third track. We need to have really experienced lawyers and judges, who are senior in their career, join faculty on a short-term basis, for example, a "distinguished visitor from practice," we'll call it. This is not anything new. Medical schools and business schools already do this. They have distinguished lecturers that come in for two or three years. They might be at the end of their career. Many law firms have partnership agreements where people have to step down from the partnership at age sixty-two. At sixty-two, perhaps at the height of their abilities and influence, they're stepping down from their law firm partnership. Many people get out-of-state government and state judgeships also very early due to the state pension systems.

That's a source of untapped talent for law schools. These people would love to come to a law school and teach students what they know, and they would do it for one-third or one-fourth the cost of a tenured professor. I'm not saying that we should bring in retired judges to tell students war stories. Lots of these people are highly trained people who have already taught at our school as adjuncts. So, we've seen their teaching evaluations, we know they're good, and we know they're committed to teaching and not just telling war stories. We should find a path for them in the legal academy.

Harvard Law School is across the river from me. Nancy Gertner, a prominent federal judge in Boston (before that a prominent civil rights lawyer), just stepped down from the federal bench. She has joined Harvard as a distinguished visitor for the next three years. It makes perfect sense. Why aren't all of us doing it? It would be more cost-effective. As I see it, there's an outcry right now in higher education: "Tenure is dead, tenure is dead!" I don't think tenure is dead, nor do I think tenure should be dead. But I think the amount of people who are in that tenure category over time, due to cost considerations, should narrow. It's just unnecessary; there's a huge source of talent out there that doesn't need or want tenure.

So, those are three of my eight ideas. Maybe throughout discussion my other five will come out, but I'll just close with this. I do think we're facing a perfect storm right now: an oversupply of seats and a shrinking demand for legal services in certain sectors of the profession (NLJ 250 firms are hiring fewer students). That doesn't mean there are unmet needs for poor people throughout America, but there is shrinking demand for certain sectors of the legal economy and unfortunately those are the sectors that have traditionally hired most of our students. In my view, we ignore these two challenges at our peril. This is a crisis in legal education and we can't be blind to it; we can't ignore these challenges, because it would be like walking over a cliff and pointing to someone else as being responsible for the cliff. My view is that schools outside of the top twenty who are able to react most nimbly to these challenges are going to be most deserving of the valuable tuition dollars of our students and that's what we should be thinking about. Thank you.

RIPKEN: Thank you Professor Cassidy. Our final panelist this morning is Professor Sara Rankin. Professor Rankin is an associate professor of lawyering skills at the Seattle University School of Law.

RANKIN: One aspect of my bio that didn't get mentioned is that Mike Cassidy used to be my boss twenty years ago! I have

another confession: ever since I was invited to speak on this panel, I've been uncertain about which education reform issues I should emphasize, because there are just so many important issues we could discuss. I decided not to talk about what I will be writing about for the law review piece. The piece that I will be submitting to the law review essentially maintains that the best way to prepare students for practice, whether private sector or elsewhere, is to require public service. I'm not going to talk about that, I just wanted to throw that out there.

Instead, I wanted to focus my remarks on two points. One is a macro-process point, and the other for lack of a better phrase, I'll call a micro-product point.

The macro-process point is a response to some of the observations that have been made: "we're in a crisis." Here's my biggest fear: I suspect that the normative face of legal education will remain largely unchanged. I wish it weren't true, but that's my belief. We do see some incredible innovations taking place. We have Washington and Lee's program, we have some things happening at Boston College, and in a moment, I'll talk about what we're doing at Seattle University—actually requiring real client experience in the first year. These are important developments, but all of these innovations are really happening on the fringe, while the main stream of legal education remains unchanged.

It's not because these ideas are new. In fact, there's a whole lot of scholarship about the hallmarks of what we know legal education should look like. We've been discussing these hallmarks for over one hundred years. In fact, Paul Maharg wrote a great book about the reform of legal education, and he spotlighted a botched effort in the 1920s by Columbia Law School to make some of the types of legal reforms that we're still talking about today. So, the hallmarks of legal education reform that we're talking about today are not new. We have known about them for years and years and years.

For example, there is a long-standing general consensus that our students benefit from experiential learning. We know our students need to grapple with indeterminacy, that they have to struggle with complexity, that they are motivated by working with a real project. We've known this for a very long time. We've also known that we should be engaging them in "active learning," meaning students actually step-up and have some substantive role in the creation and direction of their own curriculum. We have known for a very long time that working collaboratively and in teams is going to benefit students in practice. We have known for a very long time that law faculty need to be able to

differentiate in terms of how we approach our students with different learning styles. We have also known for a very long time that we need to use alternative methods of assessment. All of these hallmarks are kind of baked into a lot of the legal education reforms that we're talking about today. Even though these hallmarks have been repackaged in new ways, our understanding of these hallmarks has actually been around a very long time.

It begs the questions: "Why are these innovations mostly happening at the margins?" "Why has the face of legal education basically remained the same for the last hundred years or so?" There's a reason why the word "status" in "status quo" is the same root as "stasis." Change is difficult. So, I decided to frame my comments today as a warning. We don't want to get too caught up in what I call the "narcotic of discussion." We can sit here and feel really good about talking about legal education reform, but then everyone will go home and do nothing about it. Discussing change can give the false impression that change is actually occurring. That's a common experience; it feels really good to discuss change, and yet, discussing it creates no obligation for us to change what we are doing in any significant way.

Change is also difficult because reform is inherently subversive. Everyone in here; you are all being subversive right now because you're talking about changing the status quo. And when you're engaged in a subversive activity, you have to approach it the same way you would approach a political revolution or a social movement. And these types of perspectives are not new. I'm not saying anything radical. Susan Myers works with people at Hyundai Capital whose only job is to understand change. They have master's degrees in organization change theory. And that's because corporations sell and acquire other businesses, they restructure, they evolve to respond to a volatile, ever-morphing market: successful businesses must be constantly prepared to change. Organization change theory is something that business people understand, but lawyers do not. We know we're really good at curriculum. We're really good at pedagogy. We're not so good at change. So one of the things I would urge us to do as legal education reformers is to organize. I'll be that sixties kid who says, "We need to get together, we need to organize." We do! We actually do, because we are engaged in a subversive activity, and real legal education reform will require the same type of organization and strategic collective action that corporations know how to do and community activists know how to do.

That's the first point I wanted to make. That's the macro-process point. I just don't want us to get too comfortable in the conversation. I would like to see us work more on becoming more engaged in the process of change and on determining what it is going to take to create long-term systemic change. I wrote an article about this not too long ago called *Tired of Talking*. I am happy to talk to anybody about it.

Regarding the micro-process point: the innovations that we're doing on the fringe at Seattle University. I'm one of several "subversive" faculty across the nation who are actually changing the first year to focus on real-client and real-world experiences. At Seattle University, we start by taking advantage of resources that already exist. For example, I teach lawyering skills, which in some places is called legal writing (I don't know why, it's not all about legal writing). I partner with our clinic faculty or with a community organization that has a legal department in it. I take a case from one of these partners, an issue that they're working on, and my first-year students tackle that "real life" legal issue. The students' client is either the clinic faculty and students working on that case, or it's the legal department in the community organization.

To give you an idea of the type of stuff I'm talking about, last year my first-year students' client was the National Coalition for the Homeless in Washington, D.C. The Coalition wanted us to advise them on their legislative advocacy efforts to get the homeless included in a federal statute, the Hate Crimes Statistics Act. The charge of my students, as they're shaking in their boots (none of them knew anything about the legislative process and none have ever had a real client before), was to research, analyze, and draft a document for the National Coalition for the Homeless to share with members of Congress, as well as homeless advocates nationwide. And at the end of the semester, the students taped oral arguments in support of legislative change, which the National Coalition for the Homeless featured on their website. Imagine being a first-year student being able to do something like that: you're interviewing the client, producing a document that's then disseminated nationwide, and then featured on a client's webpage. The experience was terribly exciting for them. My students have also, in our partnership with the clinic, worked on an appeal for a clinic client who was denied state Medicaid coverage for gender reassignment surgery. Some of our students had no idea what gender reassignment surgery was (it was a big eye-opening experience for them), and the impact of that work ultimately resulted in now a new proposed rule in our administrative courts.

It's remarkable what first-year students can do if they're given opportunities—realistic opportunities—to perform, and provided the proper supervision and encouragement to do it.