Commentary

Edward Rubin†

First of all, I want to thank Kellye and Seattle University for organizing this event. I think it is a terrific idea because it’s extremely useful to hear about a job before you take it. Since you are all in academia, you obviously know something about this issue, but I still think it’s a very useful idea.

The first thing I did when I was trying to decide whether or not to take the job was to talk to people who have been deans about what their actual experience was like—what it felt like on the ground. I think that’s extremely important.

What I want to talk about in a bit of detail are the first stages of being offered this position, like whether you should negotiate over the title and things like that. Of course, the idea of negotiation suggests a certain level of adversariality, which is a phenomenon we’re all familiar with, but I think that is suboptimal. What’s optimal in terms of your presentation of yourself to the central campus administration with whom you are negotiating is to move out of the context of the zero sum game and into the realm of vision. It is enormously important to have a positive vision of what you want to do as dean of the institution. Your negotiating stance should not simply be a question of—“Well, I want these resources; what are you willing to give me?” Rather, it’s a question of what the institution can do for the university—how it can fit in to the larger institution, how it can advance that institution’s programs and how that role will in turn make the law school stronger. When talking about change strategies, you should focus on developing a narrative, a story that you can convincingly tell about what it is that you want to do, where the law school should be headed, and what it should become.

The second question in this topic, which I’ll refer to more briefly, deals with that same issue of vision. When you start the job, that same narrative is the first thing you want to present to the constituencies within the law school, the faculty, the staff, the students, and alumni. I would

† Dean, Vanderbilt Law School; John Wade-Kent Syverud Professor of Law.
agree very strongly with Dave that your relationship with central campus is crucial to the success of the deanship. Therefore, to establish that relationship on aspirational grounds—on the idea that you can do wonderful things for the university—is very important.

My own story involved changing the curriculum. I’ve done a lot of thinking about C.C. Langdell, who created the curriculum that I was trying to change. He represents the old stuff, but at the same time, I’ve come to be extremely impressed with him as a visionary. What he did was actually rather forward looking; it’s just that he did it 130 years ago, and being au currant in the 1870s isn’t the same thing as being au currant today. But the more I’ve read, the more I realize that Langdell’s relationship to Charles Elliot, who was the president of Harvard, was actually crucial to his success. There are two aspects to this relationship between Langdell and Elliot. The first was that Elliot gave Langdell the resources he needed, and continued to support him through the hard times that inevitably followed. Because Langdell’s program was much more rigorous than its predecessor, the enrollments at Harvard Law School dropped precipitously after his changes were implemented. Think about how the central campus administration would react to you under those circumstances. But, Elliot stuck with Langdell. And he stuck with him for over ten years until the enrollment started to rise again.

It is so easy as a dean to be circumvented and undermined if people on the faculty or staff can go to the administration and that he or she is screwing up. Even the slightest receptivity to that sort of complaint will open the floodgates to it. One of the things about being a dean is that you have a lot of things you need to do, and relatively little hierarchical authority over the faculty, the students, or the alumni. You are not a CEO. You don’t have a lot of power, and so there’s a mood of leadership that you have to establish. That can be easily punctured if people can appeal over your head to central campus, if they get any kind of sympathetic hearing about complaints that you are making too many changes. It’s not that people on the central campus shouldn’t be willing to talk to people on the faculty or the staff, it’s just that when they talk to faculty and staff, they really have to supportive of the things you are trying to do.

The other thing is that a good central campus administration will consist of experienced educational managers and educational administrators who can be a lot of help to you. It was Charles Elliot who was the real educator; Langdell had no background in education, legal or otherwise. But Elliot was one of the leading, if not the leading, college and university level educators in the United States at that time. Elliot was
one of the people who started the notion of electives, and he told Landell, “Hey, if you have three years of these mandatory courses, you are going to create a curriculum that’s so rigid you’re not going to be able to manage it.” It was really Elliot who advised Langdell to move to the model that almost everyone follows now because it was so successful, which is a first year of required courses and then two years of electives. So that kind of advice and that kind of suggestion—“I’ve been in this game for ten years let me tell you what you ought to be doing and not doing”—is enormously valuable. Of course, these two ways that central campus can be helpful to a law school dean fit with each other. If you can get advice and be collegial (rather than hierarchical) with the central campus administration, then I think you’re likely to get more support, and if you get support, you will be more inclined to be collegial.

Now, having said this, I’ll concede that there is an inevitable element of adversariality in negotiations with the central campus. Ultimately, even if the pie is growing, it has to be allocated, and that involves negotiation. There is always an element of negotiation in human relations, even with the family members you love. I remember sitting at the ballpark with my daughter, who was seven at that time. I was desperately interested in getting her to be a sports fan since my two older sons were out of the house. After the fourth inning, she turned to me and said, “Dad, I want to leave.” Thinking that I could of course outsmart a seven year old, I said, “Okay, let’s negotiate. I’ll tell you when I want to leave, you tell when you want to leave, and we’ll come to a compromise.” She agreed, so I said, “I want to leave at the end of the ninth inning.” And she replied, “Okay, I wanted to leave at beginning of the first inning.” So we left right then.

It’s obviously important to be an effective negotiator for your school. Part of this is that knowing what the university needs, and knowing how the law school can fit in with the needs of the university. This will obviously make you a better negotiator. The other trick is to know what the law school needs and know what to ask for. There’s kind of a golden moment when you’re being recruited where you have a greater opportunity to ask for things than you ever will again. Knowing what to ask for at this juncture is particularly difficulty if you’re an outside candidate. I think that’s one of the most crucial things to learn during the process of interviewing for the position.

One possible response to the complexities of negotiating with central campus is to make relatively obvious demands. You can always fall back on the golden oldies: “We need more resources, we need more faculty, we need another building, we need new staff, etc.” But if, instead, you can identify what will really make a difference in the institution and
ask the administration for that, then that becomes part of your narrative to your constituencies. The fact that you are able, right at the outset, to attain something that was perceived as a need by the faculty, the students, the staff or the alumni, will get you off on the right footing. And as I said earlier, if you can frame your request as part of a cooperative non-zero sum relationship, you are more likely to get a positive response.

Another thing about being a dean that everybody knows, but that comes as a kind of a visceral shock if you’ve been a faculty member, is that there’s no tenure as dean. I know one candidate who asked for tenure as dean. He was told, “In that case we don’t want you.” I think the administration responded that way because the request revealed a lack of understanding about the position. As a dean, you serve at will, and that means that you have to acclimate yourself to a more hierarchal setting than you’ve been used to as a faculty member. But there’s another aspect to it as well. Because you do have tenure as a faculty member, you’re in a good position to resign if you have to, and that gives you a bargaining position that most organizational managers lack.

My first reaction to the Erwin Chemerinsky thing was to wonder, how could the chancellor of UC Irvine, upon being asked to tell Erwin, “We’re firing you for your politics,” not say, “Well, thanks very much for giving me that assignment. I’m going to go back to my office to draft my resignation letter and it will be on your desk tomorrow morning.” That’s your greatest power as a dean. Because you’re in a hierarchal relationship, it’s very important for you to be willing to say, “This does not correspond to my vision; this is not part of the narrative that I presented to you.” You can tell me to do it, but it’s my choice whether to remain in this position.

That also suggests something about negotiation. Because we all live in a practical world, you’re negotiating on two levels when you’re talking about accepting a deanship. One is, of course, negotiating for the law school, and that’s what I spoke about before. The other is negotiating for yourself. I’m not talking about making sure you have more money than last year, although that’s terrific. Rather, the point is to craft a position where it doesn’t hurt quite as much in practical terms if you have to resign. Your salary should step down gradually, rather than revert immediately to a non-dean level; your position on the faculty should be clear. In addition, you should have a leave transition period because, inevitably, you will get behind in your field when you’re dean. Obviously, you will never forget how to do what you’ve been doing for 10 to 30 years. But I have observed that if someone who has been a dean is going to go back to the faculty and is going to be a scholar again, there is a process of recalibrating or reorienting oneself, of getting back in the
rhythm of being a scholar. Negotiating for those pragmatic things is not just good for yourself; they also equalize you with the administration because they put you in a position where you’re more willing to say, “No, I’m not going to do that; instead I will resign.”

In closing, the first panel talked about how, when you first arrive as a dean, it’s extremely important to understand the culture of the place. What was the former dean’s stance? To what extent was he or she making a lot of decisions? To what extent was the former dean a conciliator, and how did the people in the faculty react to that? That culture is obviously easier to discern if you’re an internal candidate than if, like me, you came from the outside. But in either case, the thing that will help you overcome that culture in the areas you want to change is a narrative, a sense of having a purpose, of having a vision and being able to convince both the administration and the faculty that it makes sense. In a way, it’s a somewhat similar negotiation, not in terms of resources, but in terms of the working atmosphere you establish in the institution. No matter how many people say, “We need a new spirit here; we need new leadership,” the fact of the matter is that the way that things had been done in the past is what people have become acclimated to. So no matter how anxious they are for change, it’s going to come at some cost to them. But the more they can think of that cost as contributing to forward motion, the more willing they will be to pay to price. Thanks.