

HOW DOES THE DEAN RESEMBLE THE ISLETS OF LANGERHANS?¹

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IN this essay, I suggest an admittedly bizarre analogy between the roles played by an effective dean and the functions of an obscure component of the human body. My last seven years as a dean—at the University of Maryland, where the law school is on a campus otherwise committed to the health sciences—probably helps to explain the peculiar choice for this analogy.

I am not the first to suggest an analogy between an organization or community and the human body, or between the leader of such a community and a part of the body.² In fact, the leader of any organization is often referred as its “head.”³ Others, probably overly enthusiastic alumni not aware of the true state of their institution, sometimes refer to a dean as the “heart and soul” of the law school.

My own analogy is more modest and therefore, I think, less troubling to those faculty reluctant to ascribe to the dean any haughty status. Instead of comparing the dean of a law school to the head, heart, or soul of the human, I choose to make the analogy to the lowly pancreas, and more specifically, the islets of Langerhans, the insulin producing cells within the pancreas.⁴

1. Many readers probably are lost already and prone to move on to the next essay. But remember, presidents of universities frequently encourage law school deans to urge their faculties to engage in interdisciplinary research. As a returning faculty member, at least I have tried here to create an interdisciplinary analogy. If you need a “lifeline,” call your medical school colleagues.

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On a more serious note, I do want to take advantage of this opportunity to acknowledge my appreciation to the University of Toledo College of Law faculty, particularly Professors Bill Richman and Howard Friedman, for teaching me most of what I truly understand about legal education during the five years I spent as a “wet-behind-the-ears” faculty member at Toledo from 1979 through 1984. I want to thank Professor Richman and Dean Douglas E. Ray of Widener University, another former Toledo colleague, for their helpful critiques of this essay.

2. I know I’ve seen this kind of analogy somewhere in the work of the ancient Greek philosophers or the political theorists of the 17th or 18th century. My retirement as a dean is sufficiently recent, however, that I have not yet found my way back to the areas of the library containing the ancient Greek texts. [Editor’s Note: *See generally* PLATO, *THE REPUBLIC* (Paul Shorey trans., Harvard Univ. Press 1978)].

Ah yes! I had forgotten that this is what law review editors are supposed to do! In the experience of many deans, what law review editors actually do is to request more space, a better computer system, 24-hour library privileges, \$5,000 for yet another end-of-the-year student organization banquet, permission to publish a fifth annual issue, authority to raise money from their alumni independently of the law school’s development efforts, absolution from fifteen-month delays in the publication schedule, or a reference (after all the preceding) for a federal court of appeals clerkship.

3. *See supra* note 2. Universities, at least public universities, increasingly seek quantifiable measures of faculty productivity. I want to pad this brief essay with as many footnotes as possible.

4. The legal realists and deconstructionists also would point out that my choice of the islets of the Langerhans as a point of comparison probably has something to do with my personal experience

Why such a bizarre analogy? And more importantly, what can pancreatic islet cells possibly teach us about deaning? The contemporary law school dean performs three roles in the law school community that are analogous to functions of the pancreatic islets in the human body. The dean:

- *Sustains the law school community* by enabling the “cells” of the law school body—the faculty, students, staff, and programs—to use resources;
- *Monitors the external environment and leads the law school in responding to changing conditions*; and
- *Preserves balance and harmony within the law school organism.*

With the lowly islet cells as a guide, we will examine these three critical roles of the dean.

I. SUSTAINING THE LAW SCHOOL COMMUNITY

Let us begin by examining the most important and obvious role of insulin in the human body and, by analogy, the role of the dean within the law school. All cells of the human body require nourishment, in the form of glucose, to function. Glucose in the blood cannot be absorbed through cell walls, however, without the hormone known as insulin produced by the islets of Langerhans. Without an adequate supply of insulin in the bloodstream, all cells in the body would be deprived of nourishment in the form of glucose, starve, and eventually die.

Whether deans like it or not, their most important role is to provide nourishment to the cells of the law school known as the faculty and programs. The most tangible form of law school nourishment is financial resources. Whatever a new dean thought her role would be prior to becoming a dean, she soon discovers that funding is her dominant concern and the one that takes the most time. Obviously, fundraising from alumni and other donors is a large part of this mission, but so are negotiations with the university president or provost, initiating and overseeing a program to increase grant-funding for faculty and programs and, at least for the public university law school dean, lobbying members of the state board of regents and the legislature. For contemporary law school deans at many schools, finding a sufficient supply of qualified and diverse tuition-paying students also is a major resource issue.

One of my own fields of scholarly expertise is the study of negotiation.⁵ Yet, after twenty years of studying negotiation and ten years of deaning, I fear I have very little wisdom to share regarding how best to negotiate with presidents and provosts. Faculty understandably assume that if their scholarship, reputation, teaching, and service to the university are all superb, it should be easy for the dean to claim an entitlement to a larger pool of funds from the university. Sooner or later, a dean realizes that the faculty’s accomplishments *sometimes* affect the allocations

as a diabetic. A surprising number of diabetics have served as deans of American law schools. I wonder what epidemiologists would conclude from this.

5. For someone who only recently left the world of deaning and returned to teaching and scholarship, the temptation to use a string of self-citations is powerful here. I will resist the urge.

of university resources, but are not nearly as important as assumed by a group of legal scholars who spend their time studying justice and fairness, entitlements, arguments, and building a case.

The law school dean's ability to influence the overall funding of the university is usually quite limited, so the dean generally competes with her decanal peers for a larger slice of a fixed pie. It is a rare university president who comes to the position with a predilection to increase the funding for the law school. Usually programs such as computer technology, engineering, and business are higher on the list of priorities. Many presidents still remember the days when the American Bar Association (ABA) accreditation process, in their view, "bullied" them into giving their law schools more resources than they believe were warranted. The university president may have celebrated the Justice Department-initiated attack on the most blatantly mercenary aspects of the ABA accreditation process and may now seek to even the score. Further, as a rule it is neither wise nor collegial for the law school dean to minimize the exciting new programs being promoted by her colleagues in the schools of engineering, medicine, or biochemistry just because they compete with law school initiatives. Besides, how easy is it to claim priority over a new medical school research program guaranteed to cure cancer or another deadly disease within the decade or a business school program promising to bring lasting economic miracles and an end to poverty? Yet the overall level of funding available to the university and the strength of competing claims for resources obviously greatly affect the funding available to the law school.

Is there anything the law school dean can do to further the law school's prospects in her budget negotiations with the president? Here a few tips that *might* help *occasionally*:

1. *Every oral or written communication with the president or provost is a part of budget negotiations.* The dean's ability to deliver funds at the end of the year depends greatly on the credibility she has established during the academic year and the president's understanding and appreciation of the law school's contributions and needs.
2. *Listen constantly.* Somewhere during the preceding eleven months, the president will have hinted in writing, orally or non-verbally at the aspect of the law school's programs that most interests him and, accordingly, what he may be willing to fund.
3. *It's personal.* The dean's personal relationship with the president will influence considerably the outcome of the budget negotiations. As a dean, it is a critical part of your job to maintain a good personal relationship with the president, even when (and perhaps especially so) you are pushing the president very hard to address the law school's needs.
4. *When the issue is of major importance, use your key alumni.* One of the greatest assets of any law school is its alumni. They have power, influence, and fundraising potential disproportionate to their numbers. Occasionally, on a major issue such as the inadequacy of faculty salaries, the dean should arrange a meeting so that the alumni leaders can lobby the university president on behalf of the law school.

5. *Make the case in writing.* It is one thing to claim that "our faculty are underpaid and we need three more professional people in our admissions office." It is another thing to present a written explanation with the need, together with an analysis of how these areas are funded at 10-15 "peer" schools.⁶ Remember, though, this is a negotiation, not an argument in the court of appeals.
6. *Do not express your post-negotiation frustration publicly.* It is a rare negotiation when a law school dean, or anyone else for that matter, gets everything she wanted. The natural human reaction is to lash out verbally at the president or university. Do not. It will not help your credibility as dean to let the law school community know that you think you failed in this important negotiation. Nor will it help faculty morale, student morale, student recruiting, alumni relationships, and development efforts if the law school community knows that you believe the university is not supporting the law school. Further, your remarks will get back to the president, and that will not help you or the school.

Though the negotiations with the university for most law school deans account for the vast bulk of their budgets, there are other sources of nourishment for the "cells" of the law school. Grant-funding traditionally has not been a major source of funding for legal education.⁷ Increasingly, however, interdisciplinary programs sponsored by law schools in areas such as law and health care or environmental law are attractive programs for foundation and government grants. The dean should identify existing staff or faculty to assist faculty in writing such grants, sponsor presentations to the faculty on this topic, and meet personally with representatives of funding organizations considering major grants to your law school.

Finally, if law schools lag behind many of the other schools in obtaining research grants, they often excel at another means of providing nourishment to the "cells" of the law school—raising funds from their alumni and other donors. Perhaps no aspect of law school deaning is more important today than alumni relations and development. Within the past decade, the amount of time devoted by deans and their professional staffs to fundraising probably has tripled, and the amount of money raised probably has increased by at least 1000%. It is not unusual to hear a law school dean, particularly one from an elite institution, say that she spends one-half or more of her time on development and other external activities.⁸

6. As every dean knows, a "peer school" is any law school ranked at least one full tier higher in what is usually referred to as the "g*d d****d *U.S. News & World Report*" and which spends 300% more in any given category than one's own law school.

7. When I was a law school dean at the University of Maryland, I used to hate getting the quarterly reports from the Vice President for Research showing that the medical school had received tens of millions of dollars in research funding at the same time the law school's grant contributions to university finances were sometimes recorded with a goose-egg. Far more pleasing was the column in the report a year later noting the percentage increase in research funding since the prior year, assuming any research grants to the School of Law at all in the new year.

8. It may seem surprising at first to learn that elite school deans spend more time fundraising than other deans whose schools are more resource-starved. Perhaps, to extend our insulin analogy, elite schools simply are on a high carbohydrate diet.

Many law school faculty have little understanding of what a dean does to raise significant funds, except to note that it must involve considerable amounts of good food and wine and golfing. For the record, I do not golf and cannot even remember tasting food during any of the meals when I raised money for the law schools. The nature of the assignment is better characterized by the comment of my then thirteen-year-old daughter—the second night after my term as dean had ended—when she said, in a state of amazement, “You mean you are going to be home for dinner *again tonight*, Daddy?”

What is not widely appreciated is how much work is involved in the development activities of the law school dean. It is very rare to ask for a significant gift during a first meeting with a prospect and, if the dean does so, she is likely to fail or at least receive a much smaller gift than she should. In addition, while any dean raising money probably should have a batting average higher than the Mendoza line,⁹ if she receives a gift every time she asks for money, she does not have high enough goals. The reality is that there is plenty of money in the alumni and university bloodstreams of the law school body. Only the insulin produced by the pancreatic cells (the dean in our analogy) can convince that money to pass through the cell wells and enrich and nourish the law school faculty and programs.

II. RESPONDING TO A CHANGING ENVIRONMENT

An amazing aspect of the islets of the Langerhans in a healthy, non-diabetic patient is that they indirectly read the external environment and adjust the amount of insulin secretion automatically so that the body is always functioning at peak efficiency. The islet cells react to the amount of glucose in the blood, which is affected by a wide variety of factors including the amount and nature of the food consumed, level of exercise, and stress. Thus, the islets are extremely sensitive to changing conditions in the external environment and alter the metabolism of the body instantly. Similarly, the effective dean must be constantly aware of the external environment and lead the law school through changes in its direction, programs, and priorities.

The other cells in our law school body, the faculty, often are experts in determining changing conditions in the external world in their own fields of expertise. For example, the constitutional law professor perhaps can predict how the next major Supreme Court case will be decided, and the professor teaching international human rights can tell his colleagues about progress in the prosecution of war crimes in Bosnia. Yet, some of these professors are not nearly as knowledgeable about changes profoundly affecting legal education—the new demographics of the applicant pool, new teaching technologies in an emerging era of electronic distance learning, and the evolving market for the products of law

9. As the former dean of a law school within four blocks of Baltimore's beautiful Camden Yards ballpark, I know that the “Mendoza line” is a .200 batting average named for some long lost, obscure ballplayer that the editors of the *University of Toledo Law Review* will no doubt track down. [Editor's Note: The Mendoza line is defined “the figurative boundary in the batting averages between those batters hitting above and below .200.” See generally Al Pepper, *The Curious Origins of the Mendoza Line* (visited Oct. 11, 2000) <<http://members.tripod.com/~alpepper/mendozaline.html>>.]

school education, the graduates. Even when they are aware of changes in the external world, sometimes it is exceedingly difficult for law school faculty to change what they have been doing for twenty years in response to new realities.¹⁰

It is incumbent on the dean, therefore, to guide the law school through the changes necessary to take advantage of these new realities. However important this role has been in the past, it will be even more important in the coming decades. Legal education is approaching a time of unprecedented change. Yes, there have been remarkable changes during the past generation. Women and persons of color have transformed the academy. Law is no longer conceived as a monolith, but is seen from a variety of ideological perspectives. Clinical education and other experiential learning programs complement classroom instruction. The legal education industry has grown enormously.

Yet, I predict that the changes of the coming generation will be even greater. One of the stabilizing—some would say stultifying—forces within legal education during the past generation have been the accreditation requirements of the American Bar Association and the Association of American Law Schools.¹¹ These standards and requirements mandated, at least in the recent past, such details of law school organization and structure as how many courses could be taught by part time faculty, whether classes could be taught at remote sites or delivered by electronic media, the extent to which the law library could rely upon electronic media as a substitute for printed publications, teaching loads, sabbatical policies, and how clinical programs were staffed. In view of actions by the Department of Justice and the federal courts in the mid-1990s, coupled with profound changes in educational technologies now in use in other disciplines, the handwriting is on the wall.

All law schools will not look substantially the same in 2025 as they do now. Sooner or later, an American law school will break the mold. For example, such a school might end its reliance on a large number of classes taught by high salaried faculty members teaching 30 students at a time. Electronic distance learning and videotaped lectures taught by retired high profile elite school professors might be coupled with precept-sections taught by outstanding local practitioners willing to teach a course for one-tenth the cost of a course taught by traditional faculty. As the citadel of traditional accreditation standards falls, law schools will respond to the changing marketplace for legal education, regardless of whether many traditionally-minded faculty approve or not.

Other, even more profound changes are occurring in the legal profession itself and will accelerate in the future. How many years will it be until the largest law firm in many cities is the legal department of a 'big five' accounting firm, or at least a partnership between a law firm and an accounting firm? At the other end of the

10. Occasionally, faculty who vigorously advocate radical economic, political, and social change in the greater world find it considerably more difficult to condense old class notes when the courses they are teaching change from four semester credit hours to three.

11. The objection of the lawyers and leaders of the Association of American Law Schools (AALS) to this characterization of "accreditation requirements" for the AALS is duly noted. I recognize that technically the AALS is a "membership organization" and not an "accrediting body" and that in the new environment such a characterization is important to avoid legal liability under antitrust law. Ask a law school dean, however, what AALS membership means pragmatically for the viability of her school, and the answer will reflect another reality.

practice continuum, what does it mean to legal education when routine personal legal matters are handled on the internet, with or without a live, legally educated professional at the other end of the modem or cable?

More tangibly, and more immediately, American business and legal practice, for better or for worse, became increasingly productive, competitive, and result-oriented during the past decade. In view of these transformations in the larger world, can legal education really expect the trend of the last generation toward lower teaching loads and more generous sabbaticals to continue?¹²

These are issues that many law school faculty members either do not understand or do not think about much, probably for the same reason that those of us living downwind from Washington, D.C. do not ruminate about the possibility of terrorist attacks with biological weapons. It is incumbent upon the law school dean, therefore, to be aware and knowledgeable about these issues and to lead her faculty to a greater appreciation of them. Ultimately, of course, the ideal law school dean needs to lead, facilitate, and guide the process of addressing these coming profound changes in the climate for legal practice and in the nature of legal education itself.

Being aware of the external environment and changes in that external environment requires effort and conscious design on the part of the law school dean; it does not happen automatically. Most law school deans acknowledge the importance of being involved with national legal education organizations such as the ABA Section of Legal Education and Admissions to the Bar, the AALS, and the Law School Admissions Council (LSAC), and the Association of Law Deans of America (ALDA). These organizations provide the dean with the information and insights of others regarding various trends affecting legal education.¹³

The importance of seeking the advice and counsel of wise and distinguished alumni is not as universally appreciated. During my deanships, I instituted and cultivated a Board of Visitors consisting of the most insightful and influential alumni and bar leaders I possibly could recruit. It goes without saying that these Board members were extremely important to our development efforts, career services programs, and in lobbying the university president, the board of regents, and the state legislatures.

Less obvious to me initially were the wisdom and experience that such alumni leaders added to the School of Law. Then one morning at a Board of Visitors breakfast, I looked out and realized that those assembled in the room—managing partners of large law firms, investment bankers, congressmen, state supreme court judges, corporate CEOs, and federal court judges—collectively knew much more about the future of the legal profession than I would ever know. Further, they had the capacity to make things happen in a manner that a mere dean never could. I became a much wiser and more effective dean that morning. I recognized that to be a successful dean, I did not need to be the wisest person regarding the future of the legal system or the most politically astute leader in the state, any more than I needed

12. I ask that my present and future colleagues forbear from “shooting the messenger.” I certainly am not opposed to lighter teaching loads, and I am on sabbatical as I write these lines.

13. Some of these same organizations also provide free breakfasts and lunches and occasional trips to places like Jackson Hole, Wyoming, thus making it easier for deans to appreciate the value of the information and insights.

to be the best scholar or teacher on the faculty. I merely was required to identify those people and motivate them to work for the law school.

Much of what has been said about the law school dean emphasizes the external aspects of her role. That is not an accident. Law schools obviously inhabit a very complex world today. In my view, the leadership needs of the law school are much more externally oriented than those of other educational institutions in other times during the past fifty years. In our time, it is not realistic to expect the dean to spend most of her time on faculty development, curriculum, and scholarly leadership. The leadership requirements of law schools in the twenty-first century are different than those of well-endowed private liberal arts colleges in the 1950s. In the contemporary law school world, associate deans and other faculty leaders must assume many of the internal academic leaderships once handled by the dean.¹⁴

To return to the islet cell analogy, the most remarkable aspect of the healthy body's islets of the Langerhans is their ability to be sensitive to changing conditions affecting the organism as a whole and to respond appropriately. So it is with the dean of the contemporary law school.

III. ASSURING BALANCE AND HARMONY

The third and final comparison between the law school dean and the islets of the Langerhans is their respective key roles in assuring balance and harmony. The miraculous islets secrete just the appropriate amount of insulin to keep the amount of glucose in the bloodstream at exactly the right level for the body's optimal functioning. Despite the dean's critical roles as ambassador and fundraiser, as lobbyist and negotiator, the true test of the dean is to keep all the parts of the law school community working together in harmony and law school programs in balance.

Somehow, not even the outstanding workshops for deans sponsored by the ABA prepared me for the various peacekeeping missions that deans must sometimes undertake. How do you tell your leading donor or the editor of the state's leading newspaper that his child has been denied admission to the law school? How do you calm a member of the University Board of Trustees when one of your faculty sues his company? Somehow, I think the islet cells have the easier task here.

And what of balance? The dean must intervene when faculty members want to offer four courses each year on "Law and Film" and make it possible by dropping property from the curriculum. Yes, the deans says to the international and comparative law specialist, I am sure the symposia in Nepal and Belarus are critical to the law school's reputation in your field, but you cannot have a half time teaching load and travel funds in order to attend those conferences. And finally, when the clinical faculty member on the ABA accreditation inspection team argues that the law school must add four new clinical teaching positions, all tenure track, to the eighteen existing clinical teaching positions, the dean must find balance.

14. This argument, however, can be pressed too far. I understand that at some schools, sightings of the dean within the law school building are so rare that they are commemorated with bronze plaques similar to those honoring any alumni who have contributed more than \$1.50.

What the islets of Langerhans do for our bodies every day, without our thinking about it, is analogous to what sometimes keeps deans awake at night: balance and harmony within the organism.

IV. APPRECIATING ISLET CELLS AND DEANS

If those of us in legal education are not overly modest, we recognize that our faculties include many individuals of “extraordinary”¹⁵ intelligence. In short, there is no shortage of the human organ known as the “brain” in legal education. We are also blessed with many “outstanding” teachers whose commitment to their students and devotion to their teaching demonstrates considerable “heart.” No one but the dean, however, can serve the crucial functions of providing sustenance, serving as a conduit to a changing world, and preserving balance and harmony within the organism. Thus, while no one is an island,¹⁶ the dean, at least, must serve as an “islet.”

15. “Extraordinary,” along with “outstanding,” are the two most common words in a dialect known as “Deanspeak.” Some faculty members are able to calculate their merit pay increases immediately following the annual performance evaluation conferences with the dean by counting the times these two words were spoken during 30 minutes. It generally takes about 20 “hits” to beat inflation.

16. Apologies to John Donne.