THOUGHTS ON BEING A DEAN

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THE month of August 2000 marked my twenty-fourth anniversary as a law teacher, and of those twenty four years, I have been Dean for eleven. If one adds a year as associate dean for an Acting Dean during a transition period at Emory (1979-80), then half my time in legal education has been devoted to administration. Thus, I can speak with some experience about being a dean in a private university. Two anecdotes have given me two important guidelines.

The first day that I was in office as associate dean, some twenty-one years ago, the building superintendent dropped by to tell me about some plumbing problems. He then said he was leaving on vacation for two weeks and walked out, leaving behind on my desk a heavy-duty pair of work gloves and a large pipe wrench. The moral of this story is: "Never underestimate the range of skills needed for effective administration."

In August 1989 I was all ready to welcome the new first year students at Orientation—my first time doing so as dean. It was a terribly hot late August day with no breeze and sweltering humidity. An hour before the students were to arrive the air conditioning system died. Shortly thereafter, the main elevator got stuck between floors and would not move. And, just as the students filed into the auditorium, a pipe burst in the men's room adjacent to the auditorium and flooded both the men's and women's restrooms as well as the hallway outside. While I put on a game face and did my little welcome, members of my staff miraculously cured all the problems. The moral of this story is: "Always have a good staff."

Indeed, the guidelines go hand in hand. A typical new dean understands the role of faculty and the range of tasks necessary to effective teaching and research. The new dean may not have any idea how to manage the physical structures, make arrangements for events, deal with outside vendors, and perform all the other functions necessary to the operation of a modest sized enterprise. A good professional staff is invaluable and essential in order to focus energies on the primary scholarly and educational missions.

Despite a high rate of turnover, the job of being a law school dean is interesting, challenging, and even a good deal of fun from time to time. Turnover often is the result of disappointed expectations or some misunderstanding of the job. A person becomes a law professor to pursue scholarly ideas, to teach, and to have the luxury of time to do both thoroughly and well. The jobs of law deans are more similar to those of upper level management in a business enterprise. There is rarely the luxury of time for serious research and writing. There are meetings, budgets, development calls, alumni gatherings, university committees, personnel matters, and so forth that demand immediate and constant attention. But with reasonable expectations on all sides, the job is rewarding and manageable. Rather than focus on the details of the job, however, I would like to devote a few pages to thoughts on some issues likely to be troubling in the development of legal education in the next couple of decades.

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In general, legal education in the United States is in good shape. There is a high demand for lawyers or for persons who are trained in the law, and that demand is likely to continue with the modest ups and downs that are normal in the economy. Most law schools do a good job of basic training, and the pool of students who apply to, and are accepted by, the various accredited law schools are talented and have solid educational backgrounds. Because law is a post-baccalaureate course of study in the United States, there is a winnowing process that reduces the pool of applicants to those who already have had some degree of educational success. Nevertheless, changes in the economy and demographic shifts may result in serious problems for some schools or for changes in mission.

I will limit myself to two problems: (1) the "single model" problem, and (2) the problem of costs.

1. The Single Model Problem

The accreditation requirements of the ABA and the membership requirements of the AALS, despite some substantial changes in the past decade, tend to be more directed toward quantitative inputs than toward qualitative measures. Some are very detailed,[1] and others are more general, but the net effect of the regulations is the imposition of a model of a law school that is difficult to alter. The ABA also requires acquiescence in a range of programs before they can be instituted, and conducts expensive on-site inspections on a regular basis. Like most regulatory schemes directed at inputs the result is to create a series of highly similar institutions and a situation in which the costs of substantial innovation can be high.

Add to the regulatory scheme the natural conservatism of faculties and it is not surprising that law schools look virtually identical to an outsider. Faculties naturally tend to resist change in pedagogy and curriculum. Law teachers have substantial investments in their current courses and are accustomed to doing things in certain ways. They have achieved professional success in following particular paths, and, having been rewarded, seek to replicate their successes for themselves and their students.

In the past decade another force for conservatism has entered the picture—the notorious rankings by *U.S. News and World Report* and its copycats. The rankings reinforce the model established by the traditional "elite" schools and reward those which are selective enough to admit students with high LSATs, which place many students in large law firms, which have large resources, and which have high brand name recognition. Yale is perennially number one, and with some minor shuffling from year to year, Harvard, Chicago, Stanford, Columbia and NYU round out the top group. One cannot quibble much. These are excellent institutions with superb faculties, extremely well qualified students, tons of money, excellent libraries, and great placement of graduates. They also produce a large percentage of the persons who teach law at schools all over the country and who seek to replicate their experiences at their own schools.

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1. *See, e.g.*, Standard 304 on course and residence credit; Standard 402 and Interpretation 402-1 on "full-time" faculty.

There is nothing wrong with aspiring to the quality level of one of the top half dozen schools nor with adhering to a commonly understood series of standards for legal training. My point is simply that taking all factors into account—input regulation, faculty conservatism about pedagogy and curriculum, and published rankings of the "best"—successful innovation and creation of alternative models for legal education is difficult because the costs are high and the rewards are hard to identify in advance. On the other hand, trying to be "Yale" can be terrifically expensive.

2. Costs

The factors that tend toward the "single model" also drive costs. If Yale or one of the other top schools is the benchmark, then quality becomes a matter of faculty/student ratios, support for faculty research, richness of curricular offerings, library holdings, budget support for placement, scholarships, high LSATs (which tie in closely with scholarships), and expensive infrastructure.

There is nothing complicated about a law school budget. Personnel costs are the largest item. Run-of-the-mill professors command salaries in the low to mid-100s. Those with "star" quality earn in the upper 100s to the mid 200s. Junior level appointees often are close to six figures, and their salaries are likely to climb. (Consider a "typical" AALS recruitment conference candidate with an Ivy degree, a federal clerkship and 3-5 years at a large national firm—will the pleasures of the academy outweigh a 50% pay cut?) Add fringe benefits, travel and research support, secretarial assistance, computer hardware, software and support and the cost of an average faculty member can reach $250,000 annually without much effort. A "star" can cost well more than $300,000. In addition to faculty and the traditional cadre of secretaries and librarians, law schools now have large information technology staffs, admissions staffs, placement staffs, student services staffs, and development staffs. Then there are the clinicians, first year writing and research instructors, and adjuncts, all of whom have salaries, fringe benefits, and offices.

If one includes information technology as a library cost, then the total operations of the library often account for the next largest item. Acquisitions costs have risen much faster than inflation, and the advent of information technology, while increasing the availability of information, has not reduced the costs of libraries at all. To the contrary, IT is one of the fastest growing costs and there is little likelihood of a reduction in the rate of growth in the short term.

The third major cost item for private law schools is the discount for some students, otherwise known as scholarships. Discounting allows a school to attract candidates deemed desirable for one reason or another, but is a substantial cost—about 15-20% of the tuition revenues at many schools. As tuition fees rise, schools will see pressures from two directions—more demands for discounts by students who consider themselves worthy in some way and resistance to discounting by non-scholarship students who object to subsidizing the education of peers. (Scholarships from external sources and endowments are a different matter.)

Most other costs are outside the direct control of law schools, but, in fact, law schools that want to remain competitive according to the generally accepted criteria will face continuing pressure to increase scholarships, keep up with the latest

developments in information technology, and respond to competitive salaries from the more expensive schools and from the private sector for the top law professors. For private schools below the top few, there may be price resistance from students who choose, rationally, to attend a lower cost but high quality public institution. That will lead to increased demand for extramural funding through development. Public schools that have low tuitions have room to increase revenues from that source, but only at some political cost in negotiating with the state authorities and in dealing with the public who are accustomed to low, tax subsidized fees. They also will seek extramural funding. (Some, such as Virginia, have done so already with remarkable success.) Some schools will have to increase enrollments, at a cost in quality as measured by LSATs and GPAs, but even that may be a problem if interest in law school plateaus and the number of applicants with basic qualifications falls below the number of available seats.

The pressures of costs will exacerbate the already substantial differences in resources among the handful of top schools and the remainder. Politics will affect the level of state support for public law schools. Some already have a great deal of operational independence and function much the same as privates, but most are subject to the political tides. Deans at private schools will find themselves devoting even more time to development efforts, and will be encouraging faculty to apply for foundation grants and contracts to support research and programs. I would not be surprised to find that private law school deans become even more like "mini-Presidents," with the bulk of their time devoted to external relationships and fund-raising. This may have the odd effect of making the job of associate dean more interesting as associate deans become "mini-provosts" with much more direct responsibility for the academic program.

Some "Fun" Ideas

If there were no need to worry about fitting into an established model and if it were less costly to innovate, law schools might experiment with a few ideas and see where they lead.

- *Calendars*—Universities as well as elementary and secondary schools continue to follow a calendar that is based upon the needs of nineteenth century farming families. Some law schools have summer sessions and a few make use of the entire year, but there could be much more creative use of the twelve months that are available. The culture of long summer breaks plus vacations around Christmas and during the spring would be hard to change, but more efficient use of physical facilities and time could result from using as a model a twelve month curriculum. Faculty could continue to have teaching loads spread around so that there would be adequate time for research.
- *Examination Changes*—There are three basic performance testing models in law school: (i) a student takes a 14-week course and has an examination at the end; (ii) a student takes a seminar, or some variant, and writes a paper that is graded; (iii) a student does a field placement or a clinical project and receives a performance evaluation, often in the form of "pass" or "fail." Of these, the first is by far the most common and the resulting pressure during exam periods twice

a year is substantial. Taking a typical bluebook examination has virtually nothing to do with the reality of practicing law, and the methodology tends to splinter the subject of "law" into multiple sub-specialties which often seem unconnected to one another. Instead of single subject exams, what about periodic comprehensive exams that could be taken when the student decides that he or she is ready to sit for them? Of course, one would have to work out the details, but that approach might reinforce the notion of a liberal education in the law, the interconnectedness of legal issues, and avoid some of the tension and panic of semi-annual exam periods. Comprehensives might become in some states substitutes for the bar exam, something akin to the "baby bar" in California for students at state-accredited but not ABA accredited schools.

- *Shorter and Longer Courses*—Some subjects might lend themselves to short, intense coverage; others might fit better within more leisurely formats. Schools do experiment with course variations, but the specifics of ABA regulations and the customs of two semester calendars tend to discourage variations on the 14 week course.
- *Shared Courses*—The improvements in the technology for interactive video and other distance learning makes it possible for one teacher to be in several locations at once. Why not share experts in various areas rather than duplicate them on faculties? We have had a good experience with distance learning from Europe (a local class taught from Dresden) and we are working with another law school on a shared distance learning project—one of ours will teach here and by video there and vice versa. TV monitors and computer screens are not substitutes for the "real thing" but they could be used to a much greater extent and at much less expense than hiring a full time visitor or flying in an adjunct for a couple of days a week. The same might work for a student who is physically absent from campus working on a special project. Again, current regulations and customs tend to discourage rather than to encourage such experiments.
- *Foreign Programs*—There are dozens of summer law schools abroad and they have fine programs, but most of them do not involve real immersion in a foreign culture beyond that likely to be gained from any intensive tourist experience. The courses are taught in English; most, if not all, the students are Americans; most, and often all, the faculty are Americans. There are a few semester abroad programs. Changes in the practice of law demand graduates who have some knowledge of comparative law and who understand cultural differences. A graduate with multiple language capabilities often is in high demand. ABA regulations impose very substantial costs on the development of semester abroad programs, and tend to discourage experimentation and innovation. The better approach would be to scrap the ABA regulations altogether and simply make the review of any foreign programs part of the ordinary inspection and review process. Of course, that would eliminate all the expensive trips to Europe, Asia, and Latin America now undertaken by persons chosen by the ABA Consultant on Legal Education to "inspect" foreign programs.[2] (One colleague in Leiden complained some years ago that he was inspected four separate times in one year

2. There is an initial site inspection, and if the program is approved, an additional site inspection every five years—not every seven years as for the J.D. Program.

because Leiden had programs with four different American law schools at the time.)

- *Tenure*—The protection of academic freedom is fundamental, but whether tenure protects academic freedom or is simply a job security device is a good question. There already is external pressure on universities to re-consider the culture of tenure, and that will increase, first in the public universities and later in the privates. No other profession enjoys such protection, which, when coupled with the prohibition of mandatory retirement, amounts to life tenure. The track to tenure tends to channel the energies of young teachers into narrow confines and to discourage innovation. Better to do the tried and true two or three dense articles in standard law reviews with hundreds of footnotes and nothing too far "out of line" than to write a creative essay, or get started on a book (which might take 3-5 years), or be "too creative." We all have anecdotes about persons turned down at one school who become leaders in the profession and about others who follow the safe course, get tenure and never do anything much for the profession or for learning in general. Contracts with periodic reviews make much more sense. The first step in that direction is post-tenure review, which is a reality at a few places and will undoubtedly become more common. Law faculties would do well to devise their own approaches to these issues before they have to respond to decisions made elsewhere by legislatures, Boards of Regents, or Trustees.
- *Extramural Funding*—Law faculties are well paid by most university standards, but few law teachers generate any of their own incomes in the way that faculty in the sciences, public health, and medicine do. As the demand for resources increases, deans and senior administration officials are going to look more closely at the opportunities for gifts, grants, and contracts to support the work of law faculty in the way they support the work of other professional faculty. Law teachers and law schools should explore the options with much greater vigor.[3]

Another dean will have many more suggestions, but I conclude simply by saying that the job is a good one. Something new happens every day, and the cause remains one that is worthwhile. American lawyers are critical to the functioning of our democracy. We have many problems in the administration of justice and in the continuing development of the American experiment, and well trained lawyers are essential to our collective ability to deal with problems of justice and the maintenance of democracy. Thus, what we are about will continue to be important, but how we go about our tasks need not remain static.

3. One of my colleagues has done so with remarkable success. He has led a group who in the past decade have secured something on the order of $17 million in extramural funding for current programs and for endowment. While that level of success is unusual, law faculty have not begun to tap into the sources that are available.