

GOING FROM “US” TO “THEM” IN SIXTY SECONDS*

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IT wasn't that long ago—the summer of 1996—that Gregory H. Williams, Dean of The Ohio State University College of Law, called me into his office. I was then a recently tenured Associate Professor who was serving as Chair of the Admissions Committee. I assumed that Greg was going to ask me to chair that committee for a second year.¹ Instead, he asked me to consider becoming the Associate Dean for Student Affairs. I was stunned, especially since I had only been in academia for five years.

I talked with several friends on the faculty at Ohio State and at other law schools. Virtually all of them thought that accepting Greg's offer would mean career suicide. After all, I was not yet a full professor, and I was engaged in several long-term research projects that would be delayed due to the time that I would have to devote to administration. Still, there was a small part of me that was intrigued by the opportunity to “try out” administration, and I accepted Greg's offer.²

Scarcely a half-hour after the official announcement had been made concerning my appointment, I was at the faculty copy machine, and one of my colleagues walked in. He (mostly in jest, I think) told two other colleagues, who were standing nearby, “Hey, don't talk about that in front of Nancy. She's a ‘them’ now.” And thus it began: the transition from being an “us” to being a “them” in the blink of an eye.³

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** Dean and Professor of Law at the University of Houston Law Center. Normally, in these acknowledgments, I would thank various colleagues for their helpful comments and my research assistants for doing all of the legwork. This time, though, I get to thank the folks who have had to listen to me moan, whine, and grouse about my bad days and gush about my good days: my husband, Jeff Van Niel; my parents, Morris and Shirley Rapoport; and my best friend, Catherine Glaze. They're the ones who enable me to put on a fresh, enthusiastic face as I come to work each morning.

Please note: unless I actually name names or institutions, my observations are derived from a variety of sources, *including but not limited to* my own experiences. Deans talk with each other (commiserate?) a lot, and not all advice in this essay comes from first-hand experience.

1. The traditional reward for decent service on a committee or on other projects is continued or increased service. That's an incentive issue that administrators wrestle with all the time: those faculty members who are the most engaged in teaching, research, and service are also the ones who *get things done*, which is why we depend on them so heavily.

2. My friends turned out to be partly right (I haven't been able to turn out as many articles on bankruptcy ethics as I would have had I turned down Greg's offer) and partly wrong (I left Ohio State for the deanship at Nebraska just as my promotion to full professor was coming through, only seven years after I started my academic career). But they certainly were giving me sage advice, given how hard it is to continue a research agenda when one's days are filled with appointments, emergencies, and paperwork.

3. Henry Rosovsky, former Dean of the Faculty of Arts and Sciences at Harvard University, put it best:

It is always bad form for a professor to admit the desire for administrative office. One of our clichés says: anyone who really wants these posts should be disqualified. Governance is a form of class treason, a leap from “we” to “they,” and a betrayal of our primary mission—teaching and research. For this reason also, it is crucial—once a decanal or similar post is attained—to give evidence of continual suffering. Colleagues will offer condolences (congratulations would be

I'm still a "them," having gone from an Associate Dean at Ohio State to the deanship at the University of Nebraska College of Law and, now, to the deanship at the University of Houston Law Center. I suppose that makes me a recidivist dean. I have found that administration is a particularly satisfying career track for me, although, as I write this, I worry that admitting in print that I like administration dooms me forever to a life of "themness."⁴ I do miss having the large blocks of essentially unscheduled time that I had as "pure" faculty,⁵ but I truly enjoy the *raison d'être* of administration: helping an educational institution and its faculty, staff, and students achieve their goals and then set still higher goals.⁶

For me, deaning provides the challenge of incorporating a touch of reality into the ivory tower. I've often said that the two best training grounds for deaning are (1) having been an only child (a lot of attention focused on the every movement and expressed thought of a single person) and (2) having been a chapter 11 bankruptcy lawyer (not enough resources to satisfy every constituent, and multiple constituencies with competing and often conflicting interests).⁷ The mix of facilitating, negotiating, problem-solving, managing, cajoling, and planning strikes me as a good combination of the best of practice and the best of academia.⁸

For those of us who have made the choice to become administrators, the transition from "usness" to "themness" brings with it several pitfalls for the unwary. In this essay, I'll highlight some of those pitfalls.

a breach of manners) and the incumbent must always publicly yearn for a speedy return to laboratory or library or classroom, no matter what his or her real state of happiness.

HENRY ROSOVSKY, *THE UNIVERSITY: AN OWNER'S MANUAL* 243 (1990). See also David Porter, *A College President Rediscovered Teaching*, CHRON. HIGHER EDUC., June 30, 2000, at A60 ("And it took just 24 hours as president, at a college where I'd taught for 24 years, to realize from words said and not said, and from colleagues' body language, that I'd crossed the divide and was now an outsider."). Sociologists and social psychologists have long recognized the us/them phenomenon: "Studies do suggest that the tendency to view the world in terms of 'we' and 'they,' with at least a working hypothesis that 'we' are somehow better and more deserving, is a rather basic aspect of social perception." LEE ROSS & RICHARD E. NISBETT, *THE PERSON AND THE SITUATION: PERSPECTIVES OF SOCIAL PSYCHOLOGY* 40 (1991).

4. I'm only half kidding. See *id.*

5. "Pure" in terms of not being a faculty-administrator. "Pureness" in any other context is not within the scope of this essay.

6. I still believe that there is no better life than the life of a law professor. Where else can you get paid for reading what you want, writing what you want, (usually) teaching what you want—and all on your own schedule? (And law faculty are, on the whole, paid more handsomely than most other members of the academy.) My husband refers to the life of law faculty as the "great loophole in life," and he's right. See *infra* note 11. The opportunity to inspire and train law students while conducting important research is truly a privilege. It's also a heck of a lot of fun.

7. Fortunately, I fit both of these criteria.

8. There are tradeoffs. I write shorter pieces. I have less time for long-term research, so the long-term work that I do takes several years instead of one or two summers. Although my husband disagrees with me, I only vaguely recall having much more free time as a faculty member. And I seem to remember lower dry-cleaning bills.

I. REJECT THE US/THEM DISTINCTION AT YOUR PERIL

There are two types of administrators: "internal" (those who come from the institution's own faculty) and "external" (those who come from another institution).⁹ When I was an Associate Dean at Ohio State, I was "internal." Since then, I've been "external" at two institutions.

In one sense, the distinction doesn't matter at all, because you will be treated as a "them," either at your current institution or at your new one—even if you were an "us" only yesterday.¹⁰ In another sense, the distinction matters a great deal. As an internal administrator, you're more likely to understand the hidden motivations and just-beneath-the-surface animosities that drive your colleagues. You know their "history." On the other hand, they know yours as well. The "baggage" game works both ways.

As an external administrator, you can offer the benefits of a clean slate, since everyone's "history" begins with you on day one of your administration. That's both good and bad. Sometimes the clean slate theory lets people try on (and occasionally retain) new attitudes and forge new relationships. But you also will be left clueless as to why, at faculty meetings, an innocuous comment that you make will cause some of the faculty to glare at each other while other faculty will smile and nod smugly. At different times, being an external or internal administrator will have its particular advantages. In any event, though, your "themness" is still a constant and will underscore much of what you do.

What does your "themness" mean on a day-to-day basis? For one thing, it means that your perspective about life within the institution will change. Your colleagues on the faculty will seem to have a lot more free time than you do, and they'll seem to be a tad naive about how the institution actually runs (everything from how the budget is created to how the mail is distributed). They really don't report to anyone, even to you as dean.¹¹ You, on the other hand, have a clear reporting line to the chief academic officer of your university. Occasionally, you'll find yourself gazing at your faculty colleagues and their unscheduled time with envy; they'll return your gaze with baffled amusement, wondering how on earth *you* spend *your* day.¹²

9. Actually, "internal" and "external" have also been used to mean "concerned with the day-to-day workings of the school" and "primarily a fundraiser," respectively.

10. See *supra* note 3 and accompanying text.

11. Rosovsky again:

Another critical virtue of academic life—I am thinking of tenured professors at, say, America's top fifty to one hundred institutions—is the absence of a boss. A boss is someone who can tell you what to do, and requires you to do it—an impairment of freedom. As a dean—i.e., as an administrator—my boss was the president. I served at his pleasure; he could and did give me orders. But as a professor, I recognized no master save peer pressure, no threat except, perhaps, an unlikely charge of moral turpitude. No profession guarantees its practitioners such a combination of independence and security as university research and teaching.

ROSOVSKY, *supra* note 3, at 163-64.

12. When I was a new faculty member, I had no idea what the dean did, besides provide me with

Going from an “us” to a “them” also means that, unless your friends on the faculty are very special people, your relationships with them will change. You are now in charge of some work-related areas that can make their jobs worse or better, easier or harder. (Think “class scheduling” or “course assignments” if you’re the Associate Dean for Academic Affairs; think “U.S. News & World Report” if you’re the Associate Dean for Student Affairs; and think “salary” if you’re the Dean.) Even if you never raise this power differential with them, it’s there. You’ll feel it, and they’ll feel it—not necessarily every minute, but often enough to alter the relationship. You’ll watch your words more often than you used to, and you’ll know more about some issues than they will.¹³ Your knowledge and your responsibilities will create an invisible barrier of sorts.

This invisible barrier is exacerbated if you’re an “external” dean. As an internal dean, your friends on the faculty might give you the benefit of the doubt, because they know you as a person, and not just as an administrator. But when you come from the outside, the faculty, staff, and students are learning about you in your role as “The Dean,”¹⁴ and only later will they get to know you as a person.¹⁵ They will read all sorts of things into your tiniest gesture or your most offhand comment.¹⁶ Deans have to be pretty thick-skinned to handle the ramifications of unwarranted assumptions, and they have to actively encourage direct discourse to dispel those assumptions.¹⁷ The willingness of the faculty, students, and staff to look beyond the dean’s status as a “them” can go a long way toward making the deanship both more effective and more pleasant.

an annual raise and with funds for research and travel, presumably raised at those long, leisurely lunches and dinners with alumni.

13. An administrator will necessarily know some things that the faculty will never know. And there’s a reason: there are privacy concerns that prevent disclosure, and sometimes there are even safety concerns that call for a low profile. I remember that one of the most difficult things that Greg Williams had to endure during his first year as Dean at Ohio State involved a racial incident among the students. He investigated, *sotto voce*, but he was accused of not reacting quickly enough to address the incident publicly. Had he revealed that he was investigating the matter, the whole point of conducting the investigation (trying to track down the person who initiated the incident) would have been lost. So he absorbed the criticism without comment. That’s one part of the job of deaning that, if you do it right, no one will ever know.

14. Sometimes, I swear that I can hear the initial capitalization when I’m being addressed. And I know for a fact that the word “Dean” can, if used with the right tone of voice, be, as we say in Texas, a cuss word.

15. I refer to this phenomenon as the “Dean as Icon” syndrome. The good news is that people aren’t really angry at you when they react to your policies. They’re angry at “The Dean.” (This is especially true for external deans, since those who are angry at you probably don’t know you well enough to like or dislike you as an individual. They only know you through the policies that you represent.) The bad news is that The Dean is still person being yelled at, and that person is human.

16. I’m writing this the summer before I assume the deanship at the University of Houston Law Center, and I rather hope that the faculty there will give me the benefit of the doubt. (So far, all signs are positive.) One of the lessons I learned from my first deanship is that it’s important to encourage people to go to you directly if they are unhappy and not to assume that you intended to make them unhappy.

17. There’s a chicken and egg problem here. Until people trust that you won’t retaliate when confronted with unpleasant news or with opposition to initiatives that you’re proposing, they aren’t likely to come to you at all. And until they do, you don’t have an opportunity to prove that you won’t retaliate.

II. ADOPT THE US/THEM DISTINCTION AT YOUR PERIL

Some of the bristling between the "us-es" and the "thems"¹⁸ can be overcome if the dean can blur the edges of the us/them distinction. The dean is, after all, a faculty member as well as an administrator, and the more that the dean can reclaim the "faculty" part of her status (when appropriate), the more empathetic she can be. And empathy *is* important. It's an easy trap to assume that one's own job takes longer, is more important, and requires more skill, but those are false assumptions, and they create a dangerous trap. After all, there are educational institutions that can probably muddle through without deans. No educational institution can muddle through without its faculty.

I firmly believe that deans have to continue to do what other faculty members do, at least to the point that they remember that being a member of the faculty involves hard work. We might write less than we used to, but we need to continue to write so that we remember how important uninterrupted blocks of time are to the creation of good scholarship.¹⁹ We might not teach very often, but we need to remember the intensity of class preparation time and the "on stage" feeling of being in the classroom. (Remembering the service part of a faculty member's mission is, of course, not a problem. Deans = service.)

Not only does the dean have to blur the us/them distinction when it comes to the faculty, but she constantly has to figure out *which* us/them role she's playing at any given time. It's a bit reminiscent of when I worked with several different partners at my law firm: each of them tended to assume that I was 100% "theirs." It is impossible to be an effective dean if the law faculty operates on the assumption that you are always going to fight to the death for them on everything and if the administration operates on the assumption that you are always going to place the interests of the entire university first. Deans have to compromise, and we have to choose our battles. And yet, I've been caught off-guard on more than one occasion by some faculty members, who really should know better, but who expect me never to "cave in" to the university's administration on even the smallest, least important issue.²⁰

18. See also *supra* note 3 ("wes" and "theys").

19. So far, the only way that I've found to get that uninterrupted time is to schedule blocks of time, typically between semesters, when I work at home. I'm "reachable" at home, in case a crisis comes up (or in case papers need to be signed), but I can devote solid hours to writing.

20. What still surprises me is that many law professors have been lawyers, and lawyers are supposed to know how to negotiate. Maybe *they* come from a tradition that starts out with a scorched-earth policy, but I don't. (Where do you go if you *start* with a hard-line policy?) I go into negotiations assuming that both sides have some valid points, and that the art of a good negotiation is in trying to isolate what the sides really want and to maximize the opportunity to achieve benefits for both sides. See, e.g. ROGER FISHER & WILLIAM URY, *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* (Bruce Patton ed., 2d ed. 1991). Or, as my husband and I are fond of quoting, "Throw me a frickin' bone here!" AUSTIN POWERS: *INTERNATIONAL MAN OF MYSTERY* (New Line Cinema 1997). For you trivia buffs out there, the full quote from the movie is, "Right. OK, people, you have to tell me these things [Charles and Diana were divorced; \$1,000,000 isn't worth as much as it used to be, etc.], all right? I've been frozen for 30 years, OK? Throw me a frickin' bone here! I'm the boss. Need the info."

I do believe that the dean has a fiduciary duty to her law school, but not necessarily to the individual constituencies comprising the law school.²¹ If I go around asking myself, “what’s best for the faculty?” or “what’s best for the students?” I will sometimes get radically different answers. The art of deaning is in balancing the interests of the constituencies by asking, “what’s best for the law school as a whole?” This take on deaning has gotten me into trouble with those who see the dean’s job as primarily one of advocacy for faculty interests. So be it.

Ultimately, the dean’s position requires her to stand somewhat apart from, while standing almost side-by-side with, the faculty, and that’s a tall order.²² Sometimes being a “them” can be very lonely. Sometimes, it can be hilarious. But it can always give you a way to make a mark on an institution—ultimately, to help you leave it in better shape than when you found it. And, at the end of the day, that’s worth a lot.

21. This is where chapter 11 bankruptcy experience is useful. In large chapter 11 cases, there’s always the question of whether the lawyer for the debtor-in-possession (in bankruptcy parlance, the “DIP”—I kid you not) is acting on behalf of the DIP or of the bankruptcy estate itself. In my role as a faculty member, this is my opportunity to provide you with some citations to articles touching on this issue. See, e.g., John D. Ayer, *How to Think About Bankruptcy Ethics*, 60 AM. BANKR. L.J. 355 (1986); Daniel B. Bogart, *Unexpected Gifts of Chapter 11: The Breach of a Director’s Duty of Loyalty Following Plan Confirmation and the Postconfirmation Jurisdiction of Bankruptcy Courts*, 72 AM. BANKR. L.J. 303 (1998); C.R. Bowles, Jr. & Nancy B. Rapoport, *Has the DIP’s Attorney Become the Ultimate Creditors’ Lawyer in Bankruptcy Reorganization Cases?*, 5 AM. BANKR. INST. L. REV. 47 (1997); Carlos J. Cuevas, *The Myth of Fiduciary Duties in Corporate Reorganization Cases*, 73 NOTRE DAME L. REV. 385 (1998); Carl A. Eklund & Lynn W. Roberts, *The Problem with Creditors’ Committees in Chapter 11: How to Manage the Inherent Conflicts Without Loss of Function*, 5 AM. BANKR. INST. L. REV. 129 (1997); Bruce A. Markell, *The Folly of Representing Insolvent Corporations: Examining Lawyer Liability and Ethical Issues Involved in Extending Fiduciary Duties to Creditors*, 6 J. BANKR. L. & P. 403 (1997); Thomas E. Plank, *The Outer Boundaries of the Bankruptcy Estate*, 47 EMORY L.J. 1193 (1998); Charles W. Wolfram, *The Boiling Pot of Lawyer Conflicts in Bankruptcy*, 18 MISS. C. L. REV. 383 (1998).

22. For those of you who know my exact height, no nasty cracks here, please.