

# CULTURAL MUSINGS OF A NON-TRADITIONAL DEAN

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TWO years are now behind me as dean of a law school. In a prior life, I belonged to a large law firm for almost three decades. It has been back to school after 28 years in private practice. Has this caused culture shock?

At the threshold, it *was* culturally shocking to abandon a partnership in an elegant institution where I had spent a generation and been enormously involved. When the letter resigning from the firm hit my desk, it had to cool for several hours before I could brace myself to take it up and sign.

If not actually shocking, it was jarring upon arrival at school to discover just how non-traditional a dean I was thought to be. "Non-traditional" seemed to have dual meanings: (1) "not having evolved naturally out of the academy" and (2) "having spent a disquieting amount of time among practicing lawyers." In a related vein, people constantly took my pulse during the early decanal months to be sure I wasn't slipping into culture shock (being "non-traditional"). Among alumni especially, there was concern I might simply bolt back to my old haunts.

In reality, there have been few cultural challenges. How could this possibly be, since the gap between practicing lawyers and academics is supposed to be so yawning? The more I think about it, the less it seems that the gap between partners and professors, and between large law firms and law schools, yawns all that fiercely.<sup>1</sup> It's also true that, even while a full-fledged big-firm practicing lawyer, I had deeper ties to the academy than typical of practicing lawyers. To be precise, six "anti-shock" factors have eased my passage across the cultural divide.

First, I have always been around schools. Both my parents and all four of my grandparents were teachers. I grew up on college campuses. My father was president of one of them. Deep in the mists of time, I actually taught law students for a year and have since been on the boards of a university, a theological seminary, a preparatory school, and a foundation that deals heavily with higher education. In combination, these experiences laid bare most academic mysteries before I showed up for duty in Williamsburg in August 1998.

Second, I'd once been managing partner of my law firm. The nuts and bolts of what a law firm MP does on a daily basis bear real similarity to what a law school dean does on a daily basis. Further, in my view, the most basic responsibilities of each are the same. An MP and a dean must: (1) try to understand how the institution is now operating (its people, programs, finances, facilities, and decision-making processes, as well as the context in which it does its thing); (2) however the institution is now operating, help figure out how it can operate better; (3) beyond simply improving existing operations, work to identify the institution's significant unrealized potential; and (4) help figure out how to realize this latent potential and get people moving toward it.

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1. My sense is that the gap is larger between law schools and the law departments of corporations and agencies. The gap also seems larger between schools and sole practitioners or small private firms. I offer these conclusions (and many more on pages to come) with the robust abandon of a commentator asked for his opinions and freed of any obligation for supporting notes.

This is not to suggest that practicing lawyers—and teacher/scholars—who suddenly find themselves trying to manage and lead their institutions (with little or no prior experience managing and leading) don't sometimes go catatonic. It can happen. The same fate, however, should not await a law firm managing partner who becomes a law school dean. It's more "been there, done that." Indeed, the scholar turned dean, who suddenly lacks the time "to write as before," may prove far more frustrated and anxious than the MP turned dean, who has already experienced an inability "to practice law as before" and has no illusions about where a leader's hours go.

Third, my experience as a trustee and board president of the Virginia Museum of Fine Arts was right on point. The Museum is a "public/private partnership," utterly dependent for its success on both taxpayer support and private donations. It is a state agency, fully subject to the rigors and vagaries of state regulation, bureaucracy and politics, and fully entitled to taxpayer dollars. The Museum is simultaneously dependent on a powerful, purely private foundation, which persuades people, corporations and foundations to give generously to a state-owned operation. The resulting public/private partnership is quite strong and extremely complicated. William & Mary Law School has the same public/private strength and complexity.

Fourth, before casting my lot with William & Mary, I had been helping raise money for many a moon. If a law school dean finds passing the cup an alien way to spend time, then his or her decanal life is going to be brutish and short. There must be some thrill of the chase in development work for a happy dean.

Fifth, an "anti-shock" reality of fundamental importance for me has been the nature of the main players in both large law firms and law schools—partners and tenured professors. Whether in firms or schools, partners and professors think like lawyers because, of course, they *are* lawyers. They share other crucial traits as well. On the whole, they are smart, ambitious (both personally and institutionally), hard working, and sensitive (sometimes amazingly sensitive). They are prone to have views on many subjects that they share freely and vigorously. Most do not shrink from complaint. They insist on being consulted about matters affecting the institution and resist simply being told what to do ("don't tread on me" being a banner widely flown above both partnerships and faculties). They are of two minds about committee work and other forms of institutional citizenship, being very reluctant to spend the time but equally reluctant not to be among the decision-makers. These common characteristics produce many similarities in how partners and tenured professors operate. They certainly shape the ways to manage and lead both groups effectively.

There are also similarities between law firms and law schools. Teaching, research, and writing matter to law firms. Consulting and other fee-generating endeavors matter to law faculties. A desire to traffic in, and be known for, "cutting edge" law characterizes firms and schools alike. Most lawyers, whether in firms or schools, feel the need to spend some of their time and talent in *pro bono* activities, broadly defined.

From time to time, students and alumni act like clients. This is not surprising. Schools invite students and alumni into relationships with them, just as firms invite clients. Indeed, "invite" states it too chastely. Transcending even the persistence and technique of large law firms in full client cry, schools court students and alumni,

especially those graced with attractive characteristics. Like firms with clients, schools charge students money for services rendered, and they solicit alumni for contributions to fund more and better things on campus. Like clients, students and alumni want to get what they pay for, on time and well done. As with law firms and clients, there are ethical standards governing the relationships between schools and their students and alumni.

By dint of common interests, law schools pull in harness with other parts of their universities. They also compete with them. Governance within the whole is complicated and subtle, sometimes rooted in unwritten custom more than formal structure. Ultimate authority can be distant and preoccupied. This describes not just play within a university but also relations among offices, departments and miscellaneous satrapies within large law firms.

Annually, firms and schools hurl themselves into recruiting and promotion rites. These time-consuming, expensive, precedent-driven mating dances, performed with a weather eye on the competition, become peculiarly elaborate, demanding and traditional when partnership and tenure are at stake.

A passion for "productivity" is not limited to law firms. There are uncanny parallels between how schools look at scholarship and firms look at client representations—how large and demanding is the project, where is it publicly displayed, how nationally or internationally important is it, how successful is it in attracting desirable attention for those involved and their institution? Most scholarship and most client representations, even if key to personal and institutional reputations in the short term, and even if very satisfying pieces of craftsmanship, lack enduring significance.

Few professors or partners come to a dean or managing partner asking to teach more courses or log more billable hours. Quite to the contrary, they seek approval to do other things with their time, even while most professors and partners do believe that, whatever else law schools and law firms do, they should see that their students are well taught and their clients well served.

When I began practicing law, if you became a partner, you settled in for life at your firm. While there were occasional exceptions—producing so-called "lateral inserts" in the receiving firms—they were unusual.<sup>2</sup> Without compelling cause, it was simply not seemly to leave one partnership for another. Now partners trade in one firm for another with the same ease that professors have traditionally moved from school to school, and no one thinks the lesser of them for it. For both partners and professors, there is decreasing commitment to particular institutions and increasing commitment to mobility within the profession nationally in order to maximize personal opportunity. From the standpoint of most firms and schools, the costs of this trend outweigh the benefits.

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2. As "lateral insert" suggests, both law firms and law schools have their jargons. To mention a few, for law firms: billable time, functional equivalent of billable time, non-billable time, hard non-billable time, billing lawyer, time accounting, time tickets, associate, counsel, partner, equity partner, salaried or limited partner, profits per partner, leverage, draw; for law schools: meat market, research agenda, course package, job talk, podium visit, look-see visit, tenure-track, non tenure-track, post-tenure review, adjunct, top twenty journal (or school or whatever else needs identification at the top of the food chain), scholar (a term used generously among those who write; cf. "artist" among those who entertain). Jargon says a lot about what's most on our minds.

Tenure! It is vibrantly alive in law schools, awarded after a much shorter gestation period than that through which an associate must pass en route to partnership in a large law firm. It used to be that partners, once anointed, enjoyed *de facto* tenure. While this is no longer true, most large firms still deal gracefully and graciously with their fallen (“unproductive”) brothers and sisters. They are not treated merely as failed units of production, though neither are they sheltered by the exquisitely articulated and wondrously lengthy procedures of the academy’s post-tenure review.

National rankings in *The American Lawyer*, *U.S. News & World Report* and lesser indices are never far from most firms’ and schools’ minds. This is because the rankings, whatever their infirmities, affect institutions’ capacity to get and hold people and resources important to their future.

Enough similarities! There are, of course, differences too. The reinvigorating “seasons” of the academic year, the periodic remembrance by schools of their origins and core values, and the symbols used by schools to entertain and unite the whole (from academic regalia and processions to football games) are not often found in law firms. By the same token, these firms’ willingness to contemplate institutional change, think like entrepreneurs, act quickly when circumstances so dictate, and avoid unproductive entanglement in “process” are virtues less fully developed in schools.

It is much easier to get an associate’s spot in a large law firm than a tenure-track job on a law faculty. There are precious few new faculty members who would not be snapped up eagerly by large firms. On the other hand, countless law firm associates, and even partners, suffer unrequited desire to join law school faculties. Once you have cut your way onto a faculty, however, your progress toward full professorship and tenure at most law schools is a piece of cake compared to an associate’s pilgrimage toward partnership in a big firm. The likelihood of surviving the pilgrimage is not great, and the way is not easy, nor the burden light along the way.

Equity partners earn more, sometimes stunningly more, than law professors, but the latter are freer to chart the flow of their careers and schedules, sometimes astonishingly more so.

Though some law firms offer sabbaticals, they provide nothing remotely comparable to the steady flow of study leaves and visits to other schools with which law faculties water and renew themselves. After two years on the job, I am no longer nonplussed to see valuable members of the faculty moving over the horizon to take a leave or pay a visit (when there is so much the dean would like to get done back at the ranch!). The benefits of leaves and visits are clear, but their profusion in the law school world is striking by any other standards that come to mind, including the habits of arts and sciences faculties, to say nothing of law partnerships.

Law schools, more than law firms, are still able these days to retain their sense of community. Huge law firms spread around the world cannot know themselves as they did when most of their people were in one office and sufficiently few in number to actually call one another by name. Law faculties can still truly know one another. This is their great good fortune.

Let me end with a sixth, and final, “anti-shock” factor that has eased my passage into the academy. During my last year in law school, the constitutional war powers

of the President and Congress wrapped me in their mysteries. I was fascinated and, over the next 15 years, I spent a lot of time (including 13 months away from my law firm) researching these elusive powers and writing about them. I experienced the delights and demands of serious scholarship. Time to write about the war powers during most of these years had to be fit in the occasional interstices of a hectic practice. Nothing except an irresistible drive to write and publish could explain this use of those interstices. I do understand why the desire to pursue intellectual interests—and write about them—lures people into the academy. A subset of lawyers wants insistently to do it and can't make sufficient time while practicing law.

Practicing law, of course, can also push you to the limits intellectually, entail extensive writing subject to intense peer review and public scrutiny, and squarely affect issues important to society. Practicing law for me was neither boring nor socially insignificant. Helping other people's companies pursue their opportunities and deal with their difficulties, however, did begin to pale in comparison with the prospect of "being the client myself," with the chance to focus on my own institution's progress.

If not culturally shocking to move from 28 years in practice to William & Mary's ancient academic village, it has been meaningful. It has also been fun, most days. The challenge is bracing. The competition among law schools for faculty, students and glory; the tensions among teaching, scholarship and service; the quest for excellence in each; the frayed ties between schools on the one hand, and the bar and bench on the other; the need to find ways to help lawyers (especially young ones) keep contributing to society just as lawyers traditionally have contributed to society; the search for ways to remain relevant to alumni; and the drive for financial strength rooted in a powerful public/private partnership—all this and more keep life lively for a non-traditional dean.