

SO IT GOES

Thomas C. Galligan, Jr

“DO you still miss us?” Tony asked as he began to take the peel off the orange he held in his hand.

“Of course I miss all of you,” Amanda answered.

“All of us?” Tony flicked a piece of the peel into a nearby garbage pail.

“That may be a slight overstatement,” Amanda smiled.

“I’d say And I won’t ruin our time together by naming names.”

“I appreciate that,” said Amanda.

“But you deans are always overstating. Puffing, we Torts teachers call it.”

“I know what puffing is. I prefer to call it enthusiastic leadership.”

Tony waived to a passerby; then, he returned his attention to Amanda. “That guy just presented a paper on the effect of mass tort litigation on the litigation model we traditionally rely upon to teach. Pretty good. In a minute he’ll be surrounded by disciples in some coffee shop. Sorry”

“No problem.”

“You sure you don’t want some of this orange?” Tony asked.

“Positive.”

“I bought it at that little coffee stand. Does the AALS give away fruit? I haven’t seen it. I was at a law library meeting last summer and that was an event. We could learn a little bit from those publishers about how to throw a party” Tony stuffed a wedge of orange into his mouth and wiped some juice away from the corner of his lip. “I don’t mind you deans being upbeat and enthusiastic,” Tony continued. “It’s just that I’m not sure I always believe you.”

“I’m offended,” Amanda folded her arms across her chest, feigning outrage.

“Hi Amanda,” a passerby interrupted. “Thanks for that advice on Alumni Councils; it really helped. Let’s get together later.” Then, the passerby was gone.

“Another dean?”

“Yes.”

“What a club. And there you go with your alumni councils and what not. Do you tell those councils the same stuff you tell your students? And do you tell the alumni and students all the same stuff you tell your faculty? And then what about the Provost or Chancellor or President or whoever it is to whom you report; what do you tell him?”

“Her,” Amanda gently corrected Tony She had grown accustomed, if not adjusted, to Tony’s constant habit of referring to anyone in a position of authority whom he did not know as “he” or “him.”

“Okay, sorry, her,” Tony said, mouth full of orange.

Progress, Amanda thought to herself. When she had first gone into teaching and corrected Tony, he would never have said he was sorry; he simply would have

* Dean and Professor of Law, University of Tennessee College of Law.

shrugged his shoulders or said “whatever.” Now, at least he acknowledged the correction, if nothing more.

“But what do you tell her?” Tony asked back.

“Hopefully, I tell them all the truth.”

“Yeah, yeah, yeah. I don’t think you would ever lie Amanda; I trained you too well for that. But to whom do you really tell the truth? The real truth? Maybe what I’m most interested in is where your loyalties really lie.”

“Where my loyalties lie? You mean who do I work for?” Amanda asked, focusing hard on Tony and trying to ignore the passersby, traveling between meetings.

“I know who you work for; you work for the university. We all do. But, where do you really count yourself; where do you put yourself? Are you an administrator? A fund raiser? A faculty member? Do you care what your students think, besides as possible donors? Are you a representative of the bar?”

“I’m all those things, Tony And, of course I care what students think. You know me better than that.”

“I do. And I recall our conversation at the Recruitment Conference about how you thought teaching was the best thing you’d done as a dean.”¹ Tony paused and wiped the remaining bits of orange juice off his hands. “But which is it? As George Thoroughgood said, ‘Who Do You Love?’”

“All of the above.”

“Amanda,” Tony put his arms out at his sides, palms up, saying her name very slowly.

“Tony,” said Amanda, mimicking his gestures and drawn out tone.

“You know what I’m talking about: alums say the school has to be more practical, right?”

“I’ve heard that,” Amanda said nodding.

“The faculty says that the University doesn’t understand what law professors do, that all the central administration really seems to care about is big buck grants for research—usually scientific research.” Tony raised his eyebrows with a flare of the inquisitor about him.

“I think law faculty feel that way now at every large research university,” said Amanda.

“So, you have heard it?”

“I have.” Amanda nodded again.

“The University is interested in national rankings and making *the* place supposedly better, and they expect you to be the one to get faculty to write more than they have ever written before and to hold everyone accountable. And to recruit better students while they raise tuition without asking you and without providing increased scholarships?”

“More or less,” said Amanda, ambivalently.

“My experience is more than less. Students, God knows, I think it’s the dean’s responsibility to know about the students. So where do you stand?” Tony leaned forward as his voice rose at the end of the question.

1. See generally Thomas C. Galligan, Jr., *The View from the Podium*, 31 U. TOL. L. REV. 593 (2000). Now, I have a footnote. I feel much better.

“You mean, if push comes to shove, where do I stand? If I have some conflict between constituencies ...”

“Now, that is a dean word if I ever heard one!” Tony’s interruption was inspired by glee. “Constituencies,” he enunciated carefully.

“Sorry,” Amanda almost stammered.

“Don’t apologize, I just always thought of myself as a colleague rather than a constituent, but so it goes. But if you think of it in the political context, constituent is an appropriate word. Because, after all, like any good political constituency, we faculty members vote for our leader. At least at most places, we have some meaningful say-so in who will be an acceptable dean. So we do get to vote for dean—who else gets to vote for their boss?”

“I agree with you.”

“What do you mean you agree?” Tony said in mock amazement.

“I agree that the faculty decision on the dean is critical. When you are an outside candidate for dean, like I was, the faculty vote of acceptability means that the faculty is willing to have you join them as a colleague.”

“Your constituents will have you as a colleague, you mean.”

“Very funny. I wish I’d never used that word—constituent.” Amanda smiled. “But, the vote on acceptability as a colleague is pretty important, don’t you think?”

“I do. But I’m a constituent!”

“To get back to the basic question,” Amanda gesticulated with her hand, making a circle, “I view myself first as a faculty member with the responsibilities of a faculty member.”

“So, your ultimate loyalty is with the faculty?”

“I think it is, yes. But, now that means my ultimate loyalty is to and as a faculty member. There are certainly times when my obligation to my students or my university may force me to take a position contrary to the views or ideas of one or more of my colleagues.”

“Sure,” I can understand that. “But the way you describe it, it doesn’t sound like you lead much. It sounds more like you just shepherd the flock. First among equals kind of thing.”

“I’m not sure how much first it is, Tony. And, maybe the way I view the world means I ‘lead’ less than someone with a different style, but that’s me. I think it’s my job to try and make other peoples’ jobs easier—so they can teach, write, do administration, whatever.”

“Amanda, you have gotten philosophical in the last year.” Tony, leaned forward and rested his chin on his curled up right hand. “A real thinker!”

“Very funny. I’m not sure I feel more philosophical. Sometimes I feel like Tennessee Ernie Ford sang, ‘another *day* older and deeper in debt.’” Amanda sang the last little bit.

Tony winced. “I know, ‘you owe your soul to the company store, but you said something about the decanal hiring process. What about situations where the university asks for three names unranked, or four or five?”

“That would be the university’s prerogative,” said Amanda.

“I know they could do it. But should they? Doesn’t the faculty’s vote of approval mean less in that context?”

“Of course it means less. And, I think it adds to the uncertainty for everybody.”

“You mean it makes it all more stressful?”

“That’s exactly what I mean,” said Amanda.

“Tony,” a man in blue jeans interrupted them. “I loved your article on proximate cause in misrepresentation cases. Really well done.”

“Thanks Barney Let’s get a drink later.”

“Great.” Barney smiled as he walked away

“It was a good article,” said Amanda.

“You had time to read it.”

“Well, I looked at it. It looked good.” Amanda smiled at her friend.

“Thanks, but back to you. I’m just a lowly professor. Suppose some great law school called you and the President offered you the deanship because he”

“Or she,” Amanda interrupted.

“Give me a chance—or she—wanted you to come in and help the President shake things up with what the President thought was a staid, under productive faculty. And, suppose the President offered you \$50,000 more than you’re making now? Loyalties change?”

“I’d turn down the job.” Amanda barely let Tony finish his question.

“\$50,000, Amanda. And free tuition and assured admission for your kids in the relevant College.”

“All four of my kids?”

“All four! And agreements with other great schools which your kids can also attend at no or reduced tuition.” He orally dotted the “i”s and crossed the “t”s, reminding even himself a little of the mythic Professor Kingsfield.

“You’re tempting me Tony,” said Amanda. “Just don’t tell Jamie.”

“I won’t. But, do you take it?”

“Hypothetically, you make it easier to be noble and say no. I think it’s a prescription for disaster.”

“Because?”

“Because, Socrates, how can I owe my loyalty to a faculty that the President expects me to treat like an efficiency expert treats a business she comes in to pare down and reshape?”

“You can’t?”

“I can’t.”

“So you don’t think there’s any place for an efficiency expert law dean?” Tony asked.

“I didn’t say that. I’m sure there is but “it ain’t me you’re lookin’ for!” And I think that dean should plan on a short tenure. The honeymoon will be short and the pressure will be intense—from both sides. Efficiency experts don’t stay around too long, do they?”

“Well, what about national rankings and all that stuff? Can your faculty loyalty help you improve those?”

“I don’t know I don’t want to compromise what I believe in to improve some uncertain and certainly unreliable national ranking. Walter Gelhorn never became a dean, but I bet he had many opportunities. When I asked him once why he had not taken one of those opportunities, he said, ‘I decided to stay on my own street corner and try to make that place a little brighter part of the world.’”

“Pretty nice philosophy”

"It is," said Amanda. "And even though I've changed street corners to become a dean, I think it's still a pretty good motto. I want to make my street corner better and being supportive of my faculty and their endeavors is how I'll try to do that. Not by worrying about national rankings."

"But, what about unproductive faculty? How can you deal with those as a first, or so, among equals? Don't you have to be the boss?"

"I suppose so. But in my career, I don't think I've run across many truly unproductive faculty members. Most are incredibly productive and hard workers. Some produce in some ways and not others. Others produce in all ways a little. And there are a few amazing people who seem to do it all at once—but only a few—like you. Some faculty came along when expectations were slightly different and that change in expectations requires an understanding by all involved that everyone is never always on the same page. I think it's our joint responsibility as colleagues to deal with people who are having problems performing in one way or another."

"You're being idealistic." Tony accused.

"I'd rather be idealistic on this subject than not. It's not my style to go in shooting and screaming. It just doesn't work well for me." Amanda furrowed her brow. A part of her had always wished she was better at shouting and screaming, but she wasn't.

"That's why I always thought you'd be a good dean." Tony pushed an orange wedge into his mouth.

"Thanks, Tony, you can be sweet. But I'm not sure how good I am."

"Of course I can be sweet, and I bet you're great. Would you take that job if you didn't have to be an efficiency expert and the faculty had ranked you first?"

"I'm happy where I am but you're tempting me Tony," Amanda smiled. "But, in the end, I'm a faculty member first and glad I have tenure."

"Aren't we all?" Tony smiled. "You remember what I told you when you got it?"

"Tenure means never having to say you are sorry"²

"Exactly right." Tony said, giving Amanda a thumbs-up. "You know who the symbol of tenure is for me?"

"Pray tell."

"Indiana Jones," Tony nodded emphatically.

"Harrison Ford?"

"No, not Harrison Ford, the character³. Indiana Jones."

"Explain."

"Indiana Jones was a professor, remember? An archaeology professor I think. Do you think he would have been able to run off all over the world and chase down

2. The quote is actually attributable to my friend and idol, C. Cheney Joseph, Jr., Vice Chancellor for Academic Affairs and Erick V. Anderson Professor of Law at the LSU Law Center (when he is not advising Governors, acting as District Attorney, serving as Interim U.S. Attorney, or sitting as a Judge Pro Tem).

3. Now, I have a colon in the article as well. I am feeling much more at home and comfortable as a legal writer.

those neat artifacts and have all those adventures if he didn't have tenure?" Tony asked.

"I never thought of it," said Amanda.

"The hat and the whip are a huge distraction, I agree. But the guy had to have had tenure. Otherwise, he would have been stuck in some library or lab someplace doing what some department head thought was appropriate. Or, maybe he would have been at some dig site in the Middle West, not that I don't love the Middle West, but there's no temple of doom there. As a dean who professes to be loyal to her faculty, your goal should be to try and make your tenured faculty feel like Indiana Jones. They should feel empowered and free and willing to take a stand."

"I'll think about it. I'll think about it." Amanda grinned. "It's always good to see you Tony."