

STRANGER IN A STRANGE LAND· BAPTIST DEAN OF A JESUIT LAW SCHOOL

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IN early 1994 when I was first approached by Santa Clara about being dean of its law school, I had to do basic, very basic, research before I returned their call. (This predated Web pages and my ability to access the technology that then existed.) A university guide book gave me the basics. “A comprehensive private/Jesuit university. Founded in 1851 (oldest university in California). Liberal arts emphasis. 4000 undergraduates. Law school and graduate programs in business, education, and engineering. Location: Santa Clara, California.”

This sent me scurrying to an atlas. Where is Santa Clara? As it is to most non-Californians, the profusion of California communities (and universities) with the “Santa” or “San” prefix was bewildering. Santa Clara is not to be confused with nearby Santa Cruz [University of California at], or Santa Barbara [University of California at], nor with the communities of Santa Clarita, Santa Monica, Santa Rosa, etc. etc. I was relieved to spot Santa Clara in northern California, adjacent to *San* Jose, about 45 miles from of *San* Francisco, as opposed to southern California.

Herein foretold one of the principal issues that would confront me as dean, namely, the lack of national identity or even basic name recognition of Santa Clara. In addition to the absence of an immediate geographical name hook (e.g., South Dakota or San Francisco), Santa Clara has no football team. As a small university, it rarely finds itself in the national sports spotlight. With its undergraduate emphasis, Santa Clara has no major research presence on the national scene. Its graduates tended to come from and settle in California. A few years ago, Santa Clara even had to change its name from University of Santa Clara (USC) to Santa Clara University (SCU) to avoid confusion with the larger, well-known USC in Los Angeles.

Now the Jesuit part. My childhood was spent in a very, very Protestant area of southern Missouri. Attorney General John Ashcroft and I attended the same high school, one year apart, which provides a flavor of the theological bent of the community. I was reared as a Baptist, but in my hometown “Baptist” was considered “high church.” Catholics were scarce and kept to themselves.

At the time of Santa Clara’s call, I had spent my professional life in state law schools. And while over the years, through experience and education, I had learned a bit about Catholicism, my knowledge of Jesuits did not extend beyond a vague impression of black robes in the Canadian wilderness. So, the guide book description of Santa Clara as “Jesuit” sent me to a third reference work, the *Encyclopedia Britannica*. What I read there was the extent of my Jesuit education prior to my first discussions with the administration of the university.

In my initial interview with the president (a Jesuit, of course), wanting to make sure there was no misunderstanding, I raised the religion issue. “Father,” I said, “Do

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you know that I am not Catholic?" His tongue-in-cheek response: "I assume you are not virulently anti-Catholic?" For him that was the end of it. My religion was not an issue with the university administration. But it was, at least a little, with me. Notwithstanding a residue of cautions about Catholicism from my Baptist youth, an agnostic's view of many of Catholic theological positions, strong disagreement with some of the Church's ethical/political stances, and an almost complete ignorance of Jesuits, my feelings over the years had by then evolved into a generally positive perception of the Church. Even so, I was not at all sure I would be comfortable as a Baptist dean of Catholic/Jesuit institution. Would institutional religiousness be pervasive beyond my personal comfort level? When it came to discussion of reproductive freedom or gay rights would there be battles over academic freedom? Would there be awkward religious-like intrusions into the faculty appointment and tenure process? As a religious "outsider," would I be so treated and assigned to the margins?

My interview visits to the university put to rest many of these concerns. Aside from a beautiful, historical mission church, there was no overwhelming (to a non-Catholic) presence of religious symbols on campus. Indeed, the general absence of religious symbolism has been said to make some Catholic traditionalists uneasy. In Santa Clara's law school, for example, the sole indication of the school's religious heritage was and remains a discrete crucifix in a corner of the library.

Interview conversations with the law faculty and senior law school staff further eased my concerns. I discovered that academic freedom, promotion, tenure, hiring, and the like had never been an issue at the school. Indeed, a written "Constitution" insured the school's autonomy in these matters, and I have found that the constitutional guarantees were honored without challenge. Even a Jesuit attorney or academic would be appointed to the faculty only following procedures applicable to any other faculty appointment.

Then, as now, it is my impression that there are on the faculty at least as many non-Christians as Catholics. That no religious census is taken spoke volumes about religious tolerance. Certainly there was no informal Catholic quota in operation. There were gay and lesbian faculty members, a recognized gay student organization, non-Christian organizations, as well as a wide range of ethnic and political diversity on the faculty and in the student body. As in any American university, issues surrounding reproductive rights, legal protection for sexual orientation, euthanasia, the death penalty, and cloning were discussed and written about from all perspectives at university sponsored conferences and in law school publications. Clearly there was a separation of church and education. Church doctrines quite simply were not intruding into the academic institution or limiting in any way full and open debate. Indeed, my experience now is that there are greater, more frequent attempts to intrude into academic freedom in a state school by political leaders (often) than I have found in my seven years as dean at a Jesuit school (never). I have seen deans at other schools being forced to defend academic freedom actively and to protect faculty from retaliation. I have never had to go on the defensive at Santa Clara.

To the extent religion is present, I have found it positive. There is an ethical underpinning and a social commitment that is a part of daily life. Such focus and attention often had been on the margin at state institutions. (It is, for example, no

constitutional sin at Santa Clara to ask for divine guidance at a university event. By tradition, however, such prayers are non-denominational.) Religion is present for those who want the comfort and support it provides (chapel, campus ministry, religious counseling), but religion does not intrude into the lives where it is not welcomed. Certainly, my background would make me ultra sensitive, if it were otherwise.

By coincidence one of my interview visits to campus coincided with a university awards ceremony to which I was invited. One of the honorees, receiving the highest award of the university, was an openly gay physician who had dedicated his career to serving inner city victims of AIDS. He and his partner were present and were embraced by a standing ovation. That suggested in strong terms that theological doctrine did not infect the business of the university.

As a closer, I asked myself, could a university be bad if it not only served wine at official functions, but had its own wine label?

The more I have learned about Jesuits and their view of education and their active involvement and commitment, the more I suspected there was a distinction between "Jesuit" and "Catholic." While all Jesuits are Catholic, and committedly so, clearly, at least to my eye, not all Catholics seem fully comfortable with the tolerant, "liberal" view of "theology" and the social activism practiced by many Jesuits, a liberalism that fits quite well in most law schools and their faculties. I could see that one might feel a bit ill at ease in a Catholic institution, yet be quite comfortable at a Jesuit university.

This observation seemed to be confirmed anecdotally soon after I became dean. At a "Red Mass," a celebration organized by the Thomas More Society, a representative of the Society described it as one of "Catholic lawyers." He quickly corrected himself by saying that the Society was open to all, and that in fact many members were not Catholic. The President of the University followed, issuing his general welcome to the dinner. He continued by stating that he was quite sure the Thomas More Society welcomed non-Catholic members. Tongue-in-cheek, he opined that he knew of at least a few members of the Society who were Jesuits.

So, seven years ago, making my Baptist mother somewhat nervous, I was very comfortable, even excited about undertaking this new experience—a first time dean, a first experience in a private law school, and a first exposure ever to Jesuits. In the seven years that have followed, I have not regretted that decision.

Since their founding by Ignatius Loyola, Jesuits have been committed to secular engagement. They were never cloistered, but are of the "real world." From their inception, they were committed to education and founded some of the oldest and most academically rigorous universities in the world. The education they envisioned, revolutionary at the time, was to be, not for scholastics, but "real world practical," drawing from and providing it to people who lived in society. Coupled with this real life education of engagement was a commitment to improve the quality of life for the less fortunate.

Jesuits are thus trained for the secular world as astronomers, physicists, biologists, mathematicians, political scientists. The president of Santa Clara University, for example, in addition to his theological training, has a doctorate in accounting and was a professor in the school of business before moving into administration. Jesuits become lawyers (a dangerous combination); one currently is on the law faculty

This fundamental commitment to engaged education for a just society provides a beacon that removes much of the ambiguity about the role or mission of the law school in a Jesuit university. Such a law school does not have to search for an answer to the question, “why are we here?”

Then there is the historical Jesuit commitment to academic rigor. Pushing policies of rigor will never raise an official eyebrow. Indeed, any step that compromises rigor is frowned upon. Most deans that I know are comfortable with that.

The Jesuit tradition of independent thinking demands that we examine critically, question, challenge, probe and inquire. This is precisely what we in legal education believe we do in training lawyers. So another comfortable fit between legal education and Jesuit philosophy

Because a critical approach to education is part of the Jesuit tradition, the administration of the university, and even the order itself, defend and protect academic inquiry from interference regardless of the source. In my experience, Jesuits are academic freedom’s ultimate and strongest advocates. Thus, a dean at a Jesuit law school (at least this one) is not forced, as are deans at some law schools, to defend the scope of their faculty’s inquiries and the dissemination of their ideas. Academic freedom is not an issue here, and if it became an issue, that freedom would be defended much further up the chain of command than from the dean’s office. It’s nice for a dean not to have to worry with that.

There is a comfortable consistency between legal education and the Jesuits’ view of real world engagement, teaching and learning through real life experiences. As we know, there is nothing more “real world” than the study and practice of law. With today’s increased emphasis on experiential learning in law schools, the Jesuit models of education fit precisely what we are about in the modern law schools. Again, a comfortable convergence.

Santa Clara, as many other Jesuit law schools, was founded about a century ago in large part to provide access to the legal profession for the children of recent immigrants. For reasons of culture, language, economics, and no doubt prejudice, these first generation children of the Irish and Italians could not secure admission into the then existing “elite” law schools. The Jesuits responded by creating law schools to educate those new minorities, many of them with evening classes to allow them to live while going to school. In Santa Clara’s case, the early law classes were predominately comprised of the children of Italian farmers and merchants who had settled in what is now “Silicon Valley.” As succeeding waves of immigrants came to the area, the demographics of the school changed. Greater numbers of Santa Clara law students had parents from Mexico and Japan, and now, most recently, from Southeastern Asia and the Middle East. This defined role, with its unambiguous commitment to broadening educational access and greater diversity in the legal profession, is another fixed beacon that is inherently part of being a Jesuit institution.

When reviewing concrete factors of being a dean at a Jesuit Law School, perhaps the greatest to my mind is the virtual absence of “politics” in the worst sense of the word. Having spent years in state law schools, occasionally in administrative roles, and having observed from a safe distance at other times, my hat is off to every dean of every state institution in the country. I couldn’t deal with it. I will leave it to

them to describe their jobs, but it seems to me that the posturing, blustering, threatening, and bullying by elected officials (executive and legislative), forces deans to spend a great deal of their time protecting the school and its community from the ravages of neo-know-nothingism. This critical political constituency in control of not only purse strings but existence requires of such deans a high tolerance for nonsense and diplomatic skills that would put to shame the skills of the pinstriped crew at the State Department. Many of my colleagues rise to the challenge and are good at it. I would abhor it and would do it terribly.

To say that there are no politics in a private school would be untrue. Certainly, there are faculty, alumni, a board of trustees, university hierarchy, et al. But these folks are well informed, well-meaning pussy cats who are genuinely concerned about the institution, which stands in stark contrast to the self-serving half-wits in state legislatures who pander to the lowest level of their constituents playing the "let's kill all the lawyers" theme. Dealing with them, even being nice to them, would drive me mad.

One might ask, are not the Jesuits or the Catholic Church a remote and meddlesome constituency that must be served? From my experience, I must say no. In my seven years as dean at Santa Clara I have never, not once, received any criticism of the School, faculty, students, or staff from that quarter. My appearances before the University Trustees, a few of whom are Jesuits, have produced informed, well-intended, supportive questions and comments. I have never received a call, note, or cross word from the local bishop, much less from Rome!

I had found admissions to be the second minefield of public schools. Given the fact that admission to a state law school is the functional equivalent of a multi-thousand dollar scholarship, not to mention an envisioned entre into the political world, tremendous pressures were brought on the dean by those in power to intercede in the admissions process. The politicians wanted to deliver law school admission to important constituents (or contributors), a form of political pork. They frequently flexed their purse string muscle to work their will. The request for admission not quickly granted was often followed by threats (thinly disguised, if at all) that a political quid pro quo would be in the offing. I recall in one case where a rebuffed state senator retaliated by calling a committee hearing to examine all of the law school's admissions decisions. Inherently this places the dean in an intolerable position. On one hand, the school is totally dependent on the good will of the political branches of government. But to retain that good will, the dean is often asked not only to subvert the system that would deny admission to a more qualified but less well connected applicant, but to hand over a valuable benefit based on a quid pro quo that is little short of combined bribery and blackmail. The great debate was often whether the dean should have a number of "wild card" admissions to relieve these real world political pressures. Some deans wanted this safety valve that permitted trading of admission for political good will. Others preferred not to have them. As a dean of a private school, I am largely relieved from having to face this very ugly dilemma. No alum who wants an admission favor has the power to disrupt and destroy that of a determined politician.

Another contrast to state schools is bureaucracy, or lack thereof. I recall from my state school experience red tape so thick it could provide a seismic refit for the Golden Gate Bridge. Budget lines, personnel requisitions, expense forms and

regulations budgets that went on for pages, fiscal year spending restrictions, reports that made the ABA seem restrained. I recall, for example, trying to pay expenses for distinguished visitors based on reimbursement rules unchanged since 1955. The political leaders actually believed that academics could, or should, stay in hotels costing no more than \$55.00 and that no dinner an academic would eat should cost more than \$10.50. Liquor on an expense account—forget it! (You had to set up dummy private foundations to get around such nonsense.) Paper work, the bane of deans!

A private school that is relatively small has enough flexibility to be reasonable. It keeps current with economic reality. Therefore, the amount of bureaucracy, red tape, silly rules, unrealistic monetary restraints, meaningless reports, and obsolete policies (perhaps necessary in public institutions) is small.

In many other small ways there are subtle differences. Religious orientation and smallness create a campus ethos of “family” and of friendly support that often is lacking in public or mega universities. Staff members are informally given their birthdays as a “holiday.” Family emergencies warrant bending personnel rules. Campus safety officers seem to emphasize “service” in contrast to officers at larger institutions who often affect an attitude akin to a municipal police force (i.e., parking rules are flexible, and violations often are met with a gentle warning note rather than an officious summons). Reports and expense reimbursement forms do not contain warnings about perjury.

Smallness, architecture, and a tradition of open relationships creates an open access among administrators and between faculty and administrators. If I have a beef with some bureaucratic nonsense, I can walk into the office of the vice president responsible, or if necessary, the president, and within a day, cut through it. It is not unusual for the provost to drop by my office. Administrators all are on a first name basis. By contrast, I recall deans waiting weeks to secure an audience with the university president on Olympus, and they met the provost only at official functions or to resolve an emergency.

When I look back over this list of positives, I believe that I have perhaps the easiest, most enviable of jobs in law school administration. I am free of many of the most troublesome issues that harry my colleagues in state schools. Being a dean of a Jesuit law school has many positive aspects that may be lacking in other institutions, such as clear historical context and compatible well-defined missions. In short, if one is going to be a dean, I can imagine no better place, even for a Missouri Baptist.