

THE DEAN AND THE BUDGET NOT "JUST A BUNCH OF DAMN NUMBERS"

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THE process of developing and implementing a budget is among the most important and least understood responsibilities of deans. When done properly, the budget will move the school toward its goals and promote its mission. When done improperly, the budget will waste the limited resources of the school.

Some deans are convinced that budgets are just "a bunch of damn numbers" and do not take them seriously. They turn the budget over to an associate dean,¹ establish processes so complex that the budget represents political jostling rather than good planning,² or mindlessly distribute increases or decreases evenly among the law school accounts.³

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1. Dean Laid Back would wait until a week before the budget was due in the university budget office to take action. Then he would stop by the associate dean's office to say, "I'm going to be really tied up with finalizing the new faculty appointments for next year, meeting with the Curriculum Committee, and seeing some prospective donors. Would you get with Joyce (the law school's budget officer and dean's assistant) and put those damn numbers together for the university?" They need it next week, and we always are on time with our submission." General Factotum was a very good associate dean, and he and Joyce always had the numbers ready for Dean Back to sign the next week, with several hours to spare before the university due date.

2. Dean A.R. Compulsive's motto was that the budget should be "knee high by Columbus Day," so he religiously started working on the following year's budget the day after orientation. It was quite a process. It began with a twelve-part exercise: assumptions of budget increases of 1, 3, 5, 7 and 10%, budget cuts of 1, 3, 5 and 7%, and no change in the budget. It involved every part of the law school: five faculty committees considered the scenarios (generally sending questionnaires to the entire faculty); the clinic, and more recently the legal writing instructors, formed separate committees; at the dean's urging the students appointed their own committees; the alumni association appointed a committee, too, but, regrettably, it was hard to keep the members involved. Then, in January, the six "Law School Community Hearings" started, ending with a complicated and quite contentious straw poll of what should happen under each scenario. In February, the dean and each of the five faculty committee chairs met to suggest a budget, which was then distributed to the faculty for a final vote at the faculty meeting known as "The Follies." The dean happily celebrated the submission of the budget to the university in April, secure in the knowledge that the budget process was completed for another three months.

3. Dean X. Ternal referred to her method as the "realistic" approach to budgeting. She knew that most years the budget would increase between 2% and 5%, with a lot of parameters set by the university. With so little at stake, it seemed useless to try to do much more than give across-the-board increases to the various parts of the law school. It avoided hopeless wrangling and having to choose among the programs of the law school. So, each spring Dean Ternal went to the budget meetings of the provost and listened (perhaps not too carefully) to the other deans' arguments for more funding, all secure in the knowledge that in the end, a calculator to do across-the-board increases is what would really be necessary to complete the budget. The library, clinics, specialty centers, computer area, faculty support, admissions, student services, and so on through the budget all got their proportionate share.

Whether they do not like to make choices among competing demands, think budgets are only for accountants, or frankly fear figures, too many deans give too little attention to the budget. It is not necessarily that they do not spend enough time on the budget, but that the time spent is not effective in producing a budget that benefits the law school most effectively.

The long-term consequences of this budget carelessness can be significant. Budget inadequacies almost inevitably lead to problems in law school programs. Few law schools have enough financial resources to waste funds through bad budget decisions.

Budgets may be expressed in numbers, but they are no more about numbers than literature is about the letters of the alphabet. They are about the future and direction of the law school. Even without accounting knowledge, a good academic leader can put together an effective budget. In fact, becoming overly fixated on the numbers can be a pitfall.

Every budget year is a wonderful opportunity for law schools and deans to think about and plan for the success of their programs. Deans have the opportunity to lead a school through a successful budget process. If the dean does not show this leadership, then it is unlikely anyone else in the school will do so successfully.

For deans to take advantage of this opportunity, they must focus on the substance of what the school needs to accomplish, how the budget can financially support those goals and implementing a procedure for developing such a budget. This essay first considers the First Principle of Budgets for deans, then discusses procedural issues in developing a successful budget, and finally reviews a number of specific budget issues that law schools face.

I. FUNDING PRIORITIES

The First Principle of Budgets is that the school should fund its highest priorities, and those priorities should efficiently implement the goals and long-term plans of the school. The universe, however, conspires to prevent implementation of the First Principle.

Any good budget process should begin with a discussion of the priorities of the school, not with budget numbers. It is the true priorities of the school that are important, not the immediate "budget priorities" that often appear only at the time the budget documents are being prepared. The priorities of a law school have their bases in the *school's* mission. From that mission, a thoughtful school develops a plan that clearly identifies its direction and priorities. It is from this set of plans and priorities that budget decisions can flow naturally. These priorities of the school, of course, extend for multiple budget cycles.

A law school that has not reached some reasonable consensus on its mission, direction, and strategic plans will find it difficult to make rational budgeting decisions. Without such a plan, almost any budget process is likely to produce a series of short-term, inconsistent, and directionless expenditures. During a planning process, the dean should emphasize that the mission, plans, and priorities that are developed will drive budget decisions for several years. This will emphasize to the law school community that planning is a process to be taken seriously. It will also

be “fair warning” that the budget process will be driven by the mission and priorities of the school.

Once the school has agreed on its mission and a strategic or long-term plan, a law school dean is obligated, in good faith, to implement the resulting priorities. Indeed, there is a fiduciary obligation to honestly implement the plan through the budget process. The same obligation applies, of course, to others who undertake responsibility for the budget.

It is startling, but not uncommon, to see law schools state one set of priorities in their long-term plans and, five to seven years later, find they have funded entirely different programs. To complete the irony, after seven years, the school may again restate the original priorities and blame external forces (the university, the state, or donors) for budget failure. This blame may occur despite the fact that the law school itself has not moved resources from low priorities to higher ranked priorities. For example, a school that determines that recruiting scholarships for students and law library research collections are top priorities, but in fact places its resources in additional clinics and new faculty positions, unlikely will have achieved its primary priorities and objectives. The point is not that any of the items funded is bad or unworthy, but rather that matters of lower priority receive funding at the inevitable expense of higher priorities.

There are many things that interfere with turning goals and priorities into budget realities. Bad process, university policies, and unrealistic goals are examples of the problems that can divert a law school from a sound budget. Those issues will now be discussed.

Bad process leads to bad budgets. Good budgeting is impossible where short-term problems and immediate political considerations drive budget decisions. Taking a plan seriously can be difficult because the short-term considerations at the moment a budget is put together often seem more pressing than the long-term goals established by the school through its planning process. Yet, avoiding immediate discomfort at the expense of achieving long-term goals is a recipe for failure. The next section discusses process issues in some detail.

It is generally important that the university accept, and share enthusiastically, the law school’s mission, goals, and strategic direction. The university plays an enormously important role in the law school budget, not just in the level of resources the law school has, but in the school’s ability to manage and allocate its own funds most effectively. One of a dean’s roles is to help the university understand the plans developed by the law school. Where the university officers and the law school have disagreements about the plans for the school, the dean can serve a critical role in developing a consensus about the most vital priorities for the law school.

University policies sometimes can interfere with making rational budget decisions for the law school. A university decision requiring a minimum percentage increase in the library acquisitions budget during a time when the law school is determined to move to more electronic-based information is an example of such a university policy. That is one reason why it is so important for the law school to work with university officials to ensure that whatever money the law school has can be placed toward its long-term priorities.

Another serious disconnection involving resources and goals can occur where the goals of the law school are completely inconsistent with the level of funding

available to it. For example, the law school that has a goal to become one of the top ten law schools (whatever that means) in the southeastern part of the country, but has funding in the bottom quartile of the region, is unlikely to succeed in reaching the goal. Goals and plans that are so inconsistent with the financial resources of the law school create an inherently unstable condition that will eventually cause real problems for the school and its dean. The budget process may be one time to raise issues of the congruence of resources and goals with the university, the faculty, and others.

Few of the dean's tasks are more critical than helping the institution come to a reasonable consensus on priorities and then helping it stay committed to making the priorities a reality. The budget is a central element for achieving improvements in the institution as outlined in its plan. Even in budget years with small or no increases, the dean should seek to help the institution find ways of funding high priority items. This is hard work; it may be more popular in the short run to fund priorities of a lower rank. The hard work will pay off in the long run, however, as the budget becomes a way for the school to achieve its goals.

II. BUDGET PROCESS

Before beginning the process of considering a budget, a dean should gather information that provides the background for budget decisions. It is helpful to have many kinds of information in preparing for the budget process, but three kinds are immediately relevant: an understanding of the school's true priorities, a sense of the university's financial practices, and detailed information about the law school's finances. It takes some time to develop this information, so the dean should begin preparing for the budget process well before the formal process is underway.

It is, of course, critical that the dean clearly understand the priorities and plans of the school. If those have not been examined and formalized recently, it is very important to undertake a discussion of priorities before the formal budget process begins.

The dean should also have as much of an understanding of the university's financial status and budget as possible. This information should be sought well in advance of the formal budget process. The source and usefulness of this information greatly depends on the philosophy and circumstances of the university, but understanding the financial history and circumstances of the university will pay enormous dividends during critical budget discussions with the university.

The dean must also understand the law school's budget and budget history. Deans who are ignorant of the sources of revenue and the details of expenditures of their own budgets are living dangerously. Even an experienced dean will find it profitable to spend time studying and thinking about the budget and actual expenditures of the law school.

In addition to the formal university budget reports, one convenient source of information about the law school expenditures and revenues is the Fiscal Section of the ABA's Annual Questionnaire. Each school completes this questionnaire annually, and most schools subscribe to the ABA "Take Offs," which give useful information about other law schools. The software for the ABA's Site Evaluation

Questionnaire (available to all law schools) can be used to display the prior three years' actual expenditure and revenue history.

With the appropriate background information in hand, the dean will also want to think carefully about the budget process before it actually begins. For most schools, there are actually two budget processes: an external (university) process and an internal (law school allocation) process. The dean's leadership role in these processes varies from institution to institution, but requires some thought before plunging in.

The external process for most law schools is critical in determining the level of funding that will be available to the law school. A new dean is well advised to meet quietly with deans from other units in an attempt to get a sense of what *really* happens in the budget process at the university: who makes decisions, what the considerations are, what the timing of decisions is, and how new programs and improvements are funded. For example, in some institutions, the provost or president makes commitments throughout the year that essentially eat up all the budget flexibility; in others, almost all budgetary decisions are made at one or two points in the year. Understanding what will happen during the budget cycle is crucial for the dean. In addition, some public institutions have two funding cycles: one for the operating budget and the other for the capital budget.

Even where additional funds may not be available through the university, there are important matters that the dean should pursue with the university during the budget process. One important example is the issue of flexibility. That is, whether the law school can be given additional authority to pursue its highest priorities. In some instances, this will require that the law school be given an exception to broad university policies. Such exceptions require careful discussion, and it is important to develop a strategy to pursue such policy questions, as well as the level of dollars for the law school. Many law schools have used this strategy successfully, even during tight budgetary times. Some, for example, have provided for law school tuition increases above the university-wide increase, with the "excess" tuition going to law school priorities.

It is also important to develop a strategy for the external budget process before that process actually begins. The strategy obviously will depend on university procedures and priorities, but the dean should have a strategy in place that can be implemented as the budget process unfolds.

The internal budget process must respect and take account of the culture and customs of the law school. Nevertheless, most schools have sufficient flexibility to allow deans to develop processes that are consistent with their management styles and the external budget strategies with the university.

There is a risk both in too little process and too much process. Too little process can produce a budget that is a quirk of the moment and too dependent on the whims of the dean. Too much process can lead to a political document that does not reflect the long-term priorities and goals of the law school, but is a series of compromises of the immediate interests of the various constituencies of the law school. Neither is effective in maximizing the value of the budget.

Most schools grapple repeatedly with defining the appropriate role of the faculty, department heads, deans, and other constituencies in developing the budget. Here, a dean must be especially cognizant of the customs of the law school. At the same

time, deans have the responsibility to ensure that a budget process is effective in developing and promoting the long-term objectives of the school. Where there is a dysfunctional process, an effective dean has little choice but to seek improvements in the way the budget is developed.

A wide range of internal procedures have worked successfully in law schools. It is clear, however, that neither budget despotism nor democracy is very effective. A dean who develops a budget without careful consultation with others in the law school probably ensures that the budget will not have the respect and support of those who must implement it and are affected by it. By the same token, throwing the budget open for general vote and amendment by the law school community would likely produce a budget driven by logrolling rather than long-term priorities.

The most successful budget process is likely to involve consultation with the various constituencies in their areas of expertise, with a budget document developed by a dean (or a very small committee) who is willing to be held accountable for demonstrating that the budget has been true to the priorities and long-term plans of the school.

III. BUDGET ISSUES

Most deans will face a variety of issues on a recurring basis. The following is a brief catalog of those issues.

A. *Revenue*

Law schools too seldom focus expressly on sources of revenue. The budget process is a good time to consider not only private fund raising, but the degree to which grants and contracts, the sale of law school goods and services, and innovative or entrepreneurial efforts may benefit the law school. The efforts that will increase the revenue available for the law school, of course, will be more appealing than those that develop additional revenue flowing to the university without the law school receiving much benefit. Revenue rules within universities are often subject to discussion, and deans should always consider such issues in developing a budget.

B. *Commitments*

The double-edged sword of commitments appears regularly at budget time. On one hand, the law school may have made commitments with which the current dean disagrees or finds difficult to implement. It is not uncommon, for example, for a prior dean to have made firm commitments which the new dean is asked to honor. By the same token, the dean will have commitments from the university that the law school will want to have honored.

Deans and universities take differing views of commitments. The university president who announced, "That was not a commitment, that was just a promise," is one, unfortunate, approach. The more ethical approach is to honor commitments and expect them to be honored. Higher education ultimately depends on its integrity and respect. The dishonesty associated with breaching commitments tears at the

very fabric of this integrity. At the same time, it is legitimate to ensure the commitments were actually made, and to discern carefully what the commitments were.

C. The Difference Between Continuing Annual Requirements and One-Time Expenditures

Among the most dangerous confusions in budgeting is the difference between a budget item that will recur in future years and one that can be covered one time from current funds. For example, hiring a new permanent faculty member (a continuing annual requirement) from non-recurring funds (a one-time gift from a donor) will create real problems in future years. Many institutions have tried to develop accounting mechanisms to prevent such errors, but they still occur too frequently.

D. Overhead

Overhead or indirect expenses are the charges imposed by a university (or paid directly by the law school in a few instances) for debt service, contributions to general university services and offices, "goodwill" charges, facilities maintenance and operation charges, and the like. The Fiscal Section of the ABA Annual Questionnaire, if completed properly, provides a handy mechanism for determining what the indirect or overhead charges are for a law school.

In fairness, the law school's contribution to overhead should be offset in part by a reasonable share of undesignated general university revenue. For example, the investment return on pre-paid tuition and gifts, given without restriction or designation to the university as a whole, are the kind of revenue in which the law school fairly should participate.

Many deans have struggled with the question of what the fair overhead rate should be for a law school. In truth, it depends on the individual circumstances of the school. It remains an important budget issue, because, by definition, overhead diverts funds from the programmatic efforts of the law school. In extreme cases, it amounts to little more than an unjustified charge to law students (who are borrowing the money) to fund other university offices or programs.

Because the effect and legitimacy of overhead charges is so uniquely tied to each law school and its parent institution, it is impossible to state a single overhead percentage that is appropriate. My sense, however, is that as a general principle, where total overhead and indirect expenses exceed 15% to 20% of total revenue (net of the law school's fair share of undesignated revenue), problems develop in the budget of the law school that affect the academic programs of the law school.

E. Salaries

It is common for universities to set a salary and staff increase pool that is a given in the law school budget. Even here, in special circumstances, the dean may be able to negotiate some exceptions for the law school. Where there is not an institution-wide policy on the percentage of salary increases, a major issue in budget discussions will be the degree to which other budget priorities are offset against the

salary pool. This is a particularly difficult problem because almost everyone involved in the decision has a direct, immediate interest in its outcome.

The absence of reliable data on law faculty salaries, which resulted from the Justice Department's intervention in the ABA process, has made it especially difficult to approach salary questions in an informed, rational way. As is usually the case when market information is unavailable, the absence of reliable data has resulted in inefficiencies, with deans left to rely on fragmented, partial and inadequate information.

F The Problem of Squeaky Wheels

In too many institutions the squeaky wheel does, in fact, get the grease. In a university where this is the process, of course, the law school will want to be a squeaky wheel: ideally, a nice squeaky wheel. Within the law school, it is a mistake to use squeaky-wheel budgeting. It results in misallocation of resources and too often rewards bad behavior. The difficulty is, it is human nature to respond to those who press a little aggressively for their needs. One appropriate response by the dean is to urge the squeaker to make a formal budget request that can be considered with other priorities during the budget process.

G. Reallocation

Every budget process should include some mechanism for considering internal reallocation of funds. The fact that the current budget has an allocation to certain services does not mean that the allocation is correct. It may be an accident of history, or an allocation based on priorities that are no longer relevant. There should be periodic consideration given to discontinuing activities that are no longer a high priority and reallocating their resources to other projects. Such reallocation considerations and discussions must be done with enormous care. It can scare the daylights out of some faculty and staff, result in disruption of ongoing programs, and create unproductive havoc. At the same time, it is unnecessary to continue all of the budget lines at their historic levels.

H. Expectations

Satisfaction often depends on expectations. It is a careless dean who raises high expectations for the next budget cycle. In some institutions, raising unreasonable expectations has been developed nearly to an art. The streets will be paved with gold and every member of the staff decked out in the latest technology, if only we can hang on until the next budget. It is much more sensible to create reasonable expectations. There seldom is as much money when a budget is implemented as people expected nine months before. A dean need not be pessimistic to caution against expecting too much in any budget cycle.

I. Accreditation

Accreditation interests do not generally play a major role in law school budgeting. Occasionally, the law school or university has made commitments to accrediting agencies. In other instances, the funding for some programmatic areas of the law school may have fallen so dangerously low that they threaten to violate accreditation standards. In these special circumstances, the dean must pay special attention to those areas of the budget. At a minimum, the failure to meet the accreditation commitments that have been made, or to correct the funding deficiencies, threatens the integrity of the institution.

J. Think Ahead

A budget is made for a single year, but it is part of a continuing process of allocating resources. A dean should always be considering future budget years when going through a budget process. The very nature of focusing on priorities, of course, has the effect of providing a long-term perspective. It is generally useful to have a long-term strategy for the budget as well.

IV IMPLEMENTING THE BUDGET

A budget is, in one sense, “just a bunch of damn numbers.” Only if it is actually implemented is it an effective instrument of resource allocation. In some schools, there are routinely huge differences between the budget that is adopted and actual expenditures. In some cases, this is because the university has an arcane method of budgeting which leaves a dean to prepare a budget as a fiction that will never be implemented, and then to make substantial reallocations to operate the law school in a reasonable way. In reality, this is an institution operating without a true budget.

Absent such strange institutional policies, the art of being a dean is to know how to be reasonably flexible so that the budget is not a silly constraint, but sufficiently rigid to ensure that priorities are actually implemented. If the budget decisions do not constrain the day-to-day operating decisions to funnel money to priorities rather than to immediate, if temporary, diversions, then it has not served its primary purpose.

CONCLUSION

A good budget is not a bunch of numbers. It is the future of the law school and the place where dreams meet reality. The budget process provides the opportunity to ensure that the most important things are done, search for additional funds to do the important work of the law school, efficiently use every dollar students and donors entrust to the law school, and ensure that the shared vision of the direction and future of the law school can become a reality. Deans should welcome the opportunity, which is renewed almost every year, to undertake such an important, challenging and, yes, creative activity.