HITTING FOR THE ACADEMIC CYCLE

Paul R. Verkuil[*]

COMPLETING the cycle of professor to dean to president has a familiar ring in baseball,[1] but it is more like a triple play than a double play since it occurs infrequently. Add in a return to law deaning and then a trip back to the faculty and you have the makings of a professional odyssey, a journey that deposited me at the place where I started. In these circumstances, some degree of reflection is permitted. At any rate, that is my less than Homeric assignment and I am pleased to fulfill it.

Let us start with the obvious question: Why would an otherwise contented and productive faculty member at a solid place like the University of North Carolina become a dean in the first place? Not so hard to answer, really. My dean, Dickson Phillips, whom I admired, had just been named a federal judge and the search process became entangled in the familiar inside/outside dean candidate debate. That debate produced a faculty lounge full of armchair experts about the character of the next administration. But participation in a law school hot stove league has one advantage over the baseball variety—you can actually get on the playing field.

Criticism of those in the arena always made me uneasy Who knows what pressures and limitations a dean really faced and, anyway, was I qualified to judge? I was reminded of a poem by the bullfighter Domingo Ortega that Ted Sorensen wrote was a favorite of President Kennedy's. It goes like this:

> Bullfight critics ranked in rows
> Crowd the enormous Plaza full;
> But only one is there who knows–
> And he's the man who fights the bull.[2]

Could I in fact do any better? It was time to find out.

Fortunately, Tulane Law School was willing to take a chance. I arrived in New Orleans a determined skeptic. I knew what tough critics law teachers could be. Could I anticipate and meet some of the faculty's objectives? More importantly, could I manage to convince others at the University to meet some of the faculty's objectives. And finally, was my life as a scholar over, on hold, or still possible?

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* Professor of Law, Cardozo Law School, Yeshiva University; Visiting Professor, University of Pennsylvania Law School. Dean of Cardozo, 1997-2001, Dean of Tulane Law School, 1978-1985. President Emeritus, The College of William & Mary.

1. The double play combination of Tinkers to Evers to Chance was made famous for me as a student at Virginia Law School by my favorite professor, Charlie Gregory, who used it as a heading in his Torts casebook. Hitting for the cycle in baseball means stroking a single, double, triple and home run in the same game, a rare occurrence compared with my cycle. (Perhaps it would be more equivalent if I had also served as Provost; but who has the time.)

2. THEODORE C. SORENSEN, KENNEDY 336 (1965) (the poem was translated by Robert Graves). I also love the double entendre on "bull," which law deans (and college presidents) must fight on a regular basis.

I found it relatively easy to organize faculty in productive ways. In fact, connecting faculty contributions to the success of the law school has an inspirational dimension. The first task is to define faculty productivity productively. Productivity starts with scholarship and teaching, but it also includes other valuable services such as committee participation, academic planning, public service, attending alumni and donor affairs, and so forth. The trick is to get the right fit between the assignment and the particular individual's strengths. The objective is to minimize and ultimately dispense with the concept of "deadwood." There must be a job for everyone in a good law school, especially where tenure percentages are usually high. As to tenure, going forward, the faculty had to commit to a hiring and promotion program that projected all new candidates above the mean level of quality represented by the existing faculty.

Most faculty are open to leadership efforts if they can see a payoff. With the average term of deans around five years, however, many senior faculty have been there before; some have become cynical and detached. Thus, results must follow exhortations in fairly quick order. The big challenge was to gain support from the central administration. Fortunately, I had Robert Stevens as Provost and Sheldon Hackney as President, savvy academic administrators with high standards. While resources were tight, they were willing to listen and to deliver incremental support if they in turn saw an institutional payoff. They had their own set of quite reasonable priorities: greater scholarly productivity, no close calls on tenure decisions, and (not surprisingly) resource production from the alumni.

With these understandings in place, it became easier to mobilize the faculty. My priorities were simple and direct: there are two kinds of law schools in America, those that are serious about their academic mission and those that are not.[3] Placing scholarly demands on colleagues clears the air, creates a joint sense of mission and purpose, and works to everyone's advantage. Generating scholarship both invigorates the faculty and stimulates the classroom. It is a "free good" in that it yields a high return in morale and recognition at little or no cost. In fact, the only cost is one any law school would gladly pay—higher salaries to keep talented scholars. Moreover, scholarship is a non-zero sum activity.[4] It does not produce winners and losers. The entire academic community is improved by the knowledge produced through scholarly efforts. This community dimension of scholarship is also an effective way to reinforce the dean's position. Attendance at faculty colloquia and commenting upon drafts of articles are opportunities for a dean to participate in the law school's intellectual life and also to stay connected to new developments.[5]

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3. My guess is that no more than 1/3 of ABA accredited law schools could honestly say that they ran a serious tenure process—one that objectively reviewed (by outsiders) the scholarly contributions of their candidates and made that review the determining factor in promotion. Those schools that are "serious" are not necessarily ranked in the same order as the traditional rankings produce.

4. *See* ROBERT WRIGHT, NONZERO: THE LOGIC OF HUMAN DESTINY (2000) (describing society's progress in terms of the presence of non-zero versus zero sum activity).

5. I am most proud of the numerous casebooks, treatises, and articles that have over the years been given to me with a note of thanks for providing support and even inspiration.

Scholarly interchanges bring the faculty together; they invite broad discussions of the law school's role and purpose. All law schools believe they are "different." But it is not easy to encourage differentiation. Law schools are often classic victims of the law of emulation, the economic proposition that holds competitive institutions will tend to look alike. For law schools that means imitating the schools from which most faculty hold degrees. But discovering what is special about a law school is a necessary condition for its success and maturation. This is a faculty responsibility that cannot be delegated. For example, before my arrival the faculty had deemphasized Tulane's unique civil law traditions (courtesy of the Louisiana Purchase) and gone in the opposite direction—toward emphasizing the more familiar common law in an effort to appeal to a wider student audience. But this emphasis resulted in an alienated Louisiana alumni body and an unsure competitive posture (ultimately, emulation is a sign of insecurity).

By returning to its civil law roots, Tulane achieved a double win—alumni returned, donations went up, and the place became more engaged. New and broad-gauged faculty appointments and a well-endowed center for comparative law were the early benefits, but new resources helped support scholarships and other programs as well. The best news was that all this was done without jeopardizing Tulane s national stature; indeed, its stature was enhanced by the very differentiation that the civil/comparative law focus offered. The emergence of the European Community made our programs more relevant, especially at the graduate level. In a similar vein, the inherent advantage of location, namely, the Port of New Orleans, led to a commitment to the Admiralty bar and offered an additional opportunity to develop an elaborated maritime curriculum and the only LL.M. degree devoted to that subject.

The Tulane experience was also entirely satisfactory from the perspective of maintaining a decanal academic profile. I found it both essential and congenial to continue to publish and do research. It was essential in that it set the tone for the faculty, and it was congenial in that it got me out of the "dean-think" syndrome. Dean think occurs when deans devote themselves to the broader problems associated with legal education and too much time is spent on ABA and bar committees. By knowing when to delegate and when to duck,[6] a dean can make a scholarly agenda possible and compatible with the office. After seven years as dean I did my scholarship no permanent injury; indeed, in some ways it was invigorated by openness to new fields, such as comparative law

But after seven years, something else happened. While spending the fall semester on sabbatical in London (a highly recommended decanal practice), I got wrapped up in a presidential search. This was not any search, it involved my undergraduate alma mater, William & Mary Before long this contented and productive dean was having to ask, why change again? But the opportunity was irresistible. I eagerly succumbed. The presidential position allowed me to test ideas about leadership on a larger stage, but it did not come without misgivings. Law school deans retain contact with their disciplines and colleagues whereas university presidents rarely

6. Delegating and ducking are only possible if a dean has support from outstanding associate deans as has been my good fortune at Tulane (with Harvey Couch) and at Cardozo (with Michael Herz and Stewart Sterk).

have much to do with law schools and lose touch with their colleagues. I insisted on maintaining my academic appointment in law and vowed to teach occasionally and to continue some level of scholarly activity I fulfilled those commitments but cannot claim to have generated many new scholarly ideas; rather, I was forced to draw upon the academic capital I had amassed earlier.

Law school deans had in the past not been called upon to serve as university presidents as frequently as deans of other schools or Provosts. But during my tenure at William & Mary, presidential law deans became more prevalent; for example, one half of the Ivy League presidents in my time were former law deans. While less frequently today, law deans still answer the call of university service. The reasons (for the call and the answer) are varied, but at least a few relate to the nature of legal training. Universities are as much about process as are courts; law deans are the experts in process. In addition, for a president, dispute management is an indispensable skill, which law deans are often better able to provide than others. Finally, as a lawyer, I viewed my institution in a fiduciary way, as a client who needs to be protected and supported. (If one is fortunate enough to be president of his or her undergraduate institution, that feeling is only heightened.) This kind of oversight builds confidence in faculty, alumni, and, most importantly, board members. It gives lawyers an edge as leaders, in my biased view

This is not the place to describe generally what being a college president is about except to observe how that experience relates to law schools. I was fortunate to have the early opportunity to appoint a law dean who shared many of my academic values (Tim Sullivan); he would later succeed me as president. The William & Mary Law School was steeped in history but had long been starved in resources. I was eager to enhance its position, so long as the Stevens/Hackney commitments to academic quality and resource generation were honored. But it was a complicated picture. There were many equally justified calls for increased support on the campus. One problem with a law school in a largely undergraduate driven institution is justifying higher salaries and other perquisites. At William & Mary (which had several equally starved Ph.D programs), this difficulty had held the law school back and created campus jealousies that were counterproductive. Bringing the campus closer together on these issues was an early and unavoidable challenge.

Law faculties have the highest salaries on campus, and this grates on the arts and sciences faculty. Insulating law schools from this resentment is no easy task; the highest salaries always stand out, even though the academic market dictates the differences. Thus, it is not surprising that the top law schools are almost all located at universities with medical schools,[7] which offer insulation against the "sticker shock" of costly legal salaries.

In order to build alliances between the law school and the rest of campus, a president must counter the inherent insulation of the legal community. Law faculty who teach undergraduates, who serve on university committees, and who do

7 While there are more than twice as many law as medical schools, of the top 50 (really 54) laws schools in the *U.S. News* 2001 rankings, only 7 are part of universities that do not have medical schools. Of the top 25, only two do not. Medical schools soften up the university administrators by posing resources challenges that law schools (or business schools, for that matter) can only dream about.

interdisciplinary research are allies in this effort. A law faculty that views the university faculty and students (especially ones with the talents of those at William & Mary) as intellectual collaborators has a far better chance of building the disciplinary respect necessary to achieve differential funding.[8] Of even more significance is the tenure process where arts and sciences committees often marvel at the thinness of a law candidate's dossier. A law faculty member who exchanges ideas and even writes in publications read by his or her campus colleagues (i.e., university press books) stands a much better chance of prevailing at tenure time and ultimately of enjoying the stimulation of a dynamic university community.

Clearly, law schools that interact with their universities make a president's job much easier, especially a president who is compromised by his academic specialty. My feeling at William & Mary was that as the law school grew in stature on campus, it did the same thing in the public eye. This is not only because respect and resources often go in tandem. Outstanding undergraduates are guided to law schools by their professors. Where those professors feel a kinship with their law colleagues, students make choices accordingly. Even when those students choose different law schools, their favorable impressions help recruit others. In sum, there is no downside to a law school that engages with the broader university community.

After taking a professional break from academics for five years,[9] I had the choice to return to academic life as a faculty member or as a faculty member and dean. I took the latter course, even though it made me a recidivist dean. Why do it again? There was nothing to prove, after all. Perhaps the best reason was simply to find out whether my initial instincts about successful deaning would stand up in another setting. Fortunately, that setting was Cardozo Law School. Cardozo's faculty understood (and internalized) the scholarly values I had earlier promoted at Tulane and William and Mary. I felt very much at home.

Cardozo is a prime example of a new law school that benefitted from scholarly values established by its founding dean, Monrad Paulsen, and protected by the faculty he recruited and the faculty they recruited. Tenure decisions in this setting have been a pleasure to preside over; close calls did not exist.

But this did not exhaust my contribution. The differentiation principle was also pressed in several faculty retreats. Discussion of inherent advantages led to graduate programs in intellectual property and legal theory Also, for a law school under the umbrella of a modern orthodox university, the role of Jewish law became a natural

8. There is a long standing belief among law faculty that law schools are inadequately funded because of higher faculty/student ratios. That premise has always been refuted by one institution, the Harvard Law School, which has been at the top both in quality and high faculty/student ratio since the days of Langdell. This makes the Yale model of a high quality and a low faculty/student ratio a discretionary alternative, not a necessary formula for success. Few presidents could justify a proposal to reallocate core resources to a law faculty in order to reduce its faculty/student ratio in the face of these competitive realities.

9. After William & Mary, I served a three year term as CEO of the largest member based, not-for-profit corporation, the American Automobile Association, focusing on reorganizing this complicated organization. Thereafter, I served as Special Master, appointed by the Supreme Court, in a case brought to resolve sovereignty over Ellis Island. *See* New Jersey v New York, 523 U.S. 767 (1997).

focus that could be approached on a comparative legal system basis.[10] In this way my Cardozo experience was reminiscent of my Tulane experience.

The reassuring thing about Cardozo was that the old tricks still worked, not because they were tricky but because they were true: law schools that do it right—that are serious and focus on their academic mission—will prevail whether they be Cajun or Kosher. To me that was a good reason to have left the security of the faculty way back in Chapel Hill and to have returned to deaning in New York.

I must close by acknowledging, as deans always knew, that faculty prerogatives are what *they* as deans have been striving to preserve, which may be one reason why decanal terms are short. I admire my colleagues who resisted the temptations of academic administration and held to their positions as much as I do those who succumbed. But, having completed the round trip, I can honestly say that I would not have missed the journey for anything.

10. *See generally* Suzanne Stone, *In Pursuit of the Counter Text: Return to the Jewish Model in Contemporary Legal Theory*, 106 HARV. L. REV. 813 (1993).