

BEWARE OF NAVEL ORANGES

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I teach, among other things, negotiation. I will on occasion conduct training sessions on negotiation for lawyers and business executives. As part of that training, I like to develop an analytic framework—break negotiation down into its component parts, if you will—so that we can approach negotiation systematically. I stress, however, that as much as we try to approach negotiation systematically we can't ignore the social-psychological implications of the process and the more we know about the person we're negotiating with, the better off we will be.

An important part of this training is that the participants actually negotiate against each other. I once did such a program as part of a ten-day management development training program for business executives. On the first day of the program, they had taken the Meyers-Briggs test and were wearing their psychological profiles on their name tags. These were those four letter summary kind of things like I for intuitive, J for judgmental, P for pushover. To this day, it strikes me as funny that they would actually negotiate against each other wearing those name tags.

What follows may be the equivalent of wearing a name tag with too much information for the context. And, since I am soon to become what is referred to in the trade as a serial dean, it runs the risk of offending one school and warning another. In any event, it is a brief (not too reverent) summary of what I have learned over the past six years related to leadership in law schools.

1. *Establish a Set of Principles*

Hodge O'Neal once said a dean should have principles, just not too many. This statement is delightfully ambiguous in meaning. Establishing a set of principles early on and then mostly sticking to them can provide guidance when you inevitably face problems the solution of which is far from certain. The principles need not be many but they should be very broad. For example, where recruitment of students is of the highest priority, it makes life easier to follow the principle that unrestricted gifts go to scholarships to recruit students. When in doubt, follow the principle. Of course, not having too many principles also means you better be pragmatic as well. When the faculty, despite the agreed upon recruitment goal, expresses a strong desire to devote more scholarship money to students who have demonstrated academic excellence after enrolling in law school, swallow hard and try to provide it.

The principles should, of course, relate to more than just the general operation of the law school. These principles, however, should also be flexible. Law school rankings are among those most serious threats to legal education today—ranking

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just below student debt load and just above bar examiners who want to lower the bar passage rate. This belief, however, does not interfere with using the rankings as leverage with anyone or anything that has resources that might affect the school's ranking.

Likewise, I firmly believe that the reason we want to have greater diversity in legal education is first and foremost a need to expand the number of lawyers serving the under represented. If, however, what it takes to withstand constitutional challenge in cases like *Grutter* is that we argue we need diversity because it fosters the robust exchange of ideas within the classroom, I'm all for it—though I have to admit, I can't remember the last time I actually saw a robust exchange in a classroom.

2. *You'll Almost Never Know Whether People Like You Because You Are the Dean or Because of Your Scintillating Personality*

I say you almost never know. Sometimes, however, it can be obvious. It recently became public that I was a finalist for another dean position. The law school's largest donor (and gourmet cook) ran into me at a high school function and I confessed that yes, indeed, I had let my name go forward. She then proceeded to say all the right things about how sorry she would be to see me leave. She then said, "oh, by the way, let me know far enough in advance because I sure as hell am not going to cook for you anymore if you decide to leave."

3. *Actually, You Can Ignore the Last Observation*

People like you because of your spouse or partner. As one faculty member told my wife, Kathe, "we figure if you [Kathe] stayed with him [me] for 28 years, he must be okay." Now, this is not to take away anything if you don't have a spouse or partner, but you can never underestimate the importance of the role your spouse or partner can play in your success as a dean. For example, in six years as Dean, my wife, herself a practicing lawyer, has missed one law school event at which I had to be present and has on numerous occasions accompanied my associate dean to events where for one reason or another I could not attend.

4. *You Better Have a Tough Skin*

The only real talent that is necessary for a dean to have (although it is, of course, not sufficient) is the ability to say (verbally or nonverbally), and act like you mean it, that you have a tough skin. People can really be nasty. You should practice saying to yourself, "It's not me, it's the office."

Actually, having a tough skin requires the creation of a corollary to the value of the spouse/partner observation. Keep your significant other away from some of the nastier types. Your tough skin isn't going to keep your spouse or partner from ripping out the heart of someone who criticizes you.

5. *Ninety-percent of Your Decisions Are Irrelevant*

When you sit in your dean's office, you are perceived by the staff as one giant, okay, medium size, decision machine. If you are the dean, this is cool.

Most of the decisions you make fall into four categories. First, there are decisions that are either mere affirmations of what your staff, who can actually pay attention to the details, has already decided. I learned this first when I was an associate dean. I knew what needed to be done, I just needed Joe Harbaugh to sign the paper. This fact of reliance on others, of course, means that your success depends in large part on surrounding yourself with good people. With luck you inherit them with the job. If you aren't so lucky, then you have some really hard, unpleasant decisions to make.

The second category of decisions are those for which there is no right answer and, since you make the most money, you have to assume responsibility. Does it really matter whether white and red wine is enough. Should we have that detestable pink stuff too?

Where you really earn your money is on the third and fourth categories. The third type of decisions are the relatively few you make that are both important and truly your own. You are paid to determine which one's are important enough to spend time on. The fourth category deserves its own discussion and follows.

6. *If You Stick Around Long Enough, Everything Devolves into Whether You Should Have Let the Faculty Make a Decision*

Shared governance with the faculty runs on a continuum. At one end of the continuum are decisions that are clearly faculty decisions, though, of course, the dean, as a faculty member, should be consulted. Although the cultures of institutions vary, what courses are required for graduation seems to be at this end of the continuum. At the other end of the continuum are decisions that are clearly the dean's, but which in certain circumstances should be made in consultation with faculty. Again, though there will be cultural differences among institutions, the look and feel of the school's view book would be at this end of the continuum. A decision that seems dead center on the continuum is who should be the Associate Dean for Academic Affairs. The person in this position at every law school I've been at needs the trust and confidence of both the faculty and the dean.

The most likely cause of problems with the faculty seems to be misjudging where on the continuum a particular decision lies. One cannot possibly consult with the faculty on every decision. There are simply too many. You would go crazy and the faculty would not tolerate it. Making the decision obviously does not mean that either party is not obligated to share information and explain those decisions.

While you should survey faculty perceptions, I found it helpful to try to articulate clearly before a decision needed to be made which decisions are for the faculty and which belong to the dean.

7 *The Most Important Thing I Needed to Know about Being a Dean I Learned in Political Science 101*

In my first semester of college, my American Government professor said that there were no problems that couldn't be solved with enough money (This was when I first appreciated that the double negative is not unuseful.) Ok, so it may not be completely true in the real world, but it is in law school.

8. *It Is One of Life's Ironies That it Is a Failure If You Actually Have to First Mention to a Prospective Donor the Idea of a Major Gift. Of Course, If Neither You Nor They Mention the Gift, It's an Even Bigger Failure.*

Most alums know why you visit them. They were, after, all smart enough to get into law school. If you meet them often enough and talk about the strengths and challenges of the school at each point, many of the alums will actually say something like, "so how do you think I can help."

My most perfect example of this concept was with a recent graduate of the law school. I knew the alum when he was a student. As I did with all first- and third-year students, I had taken him to lunch in a small group. He was invited to alum functions. He was asked to come back and judge moot court. Then one day he received a multi-million dollar judgment. I sent a nice note. We tried to set up dinner, but our schedules couldn't get together. Then a short time later the judgment was upheld on appeal. I sent another nice note. We then arranged lunch. A personal problem arose and at the last minute I needed to postpone the lunch. My development officer called the alum, explained the situation and asked if we couldn't meet the following day. The alum explained that, well, he was out of town the next day, but that the development officer should assure the dean that he did not have to be taken out to eat, the school was going to get the money anyway. It's a nice feeling when it's only a question of how much.

Now of course, it doesn't always work that way. Or should I say, it almost never works that way. But it gives you the idea. Fund raising, as they say, is friend raising. In the area of major gifts this is even more true. The relationship has to be cultivated to the point that discomfort with talking about money is gone. If the friend is willing to raise the issue all the better. If you feel uncomfortable about asking for a gift, it means one of two things: (1) it's too early in the relationship, or (2) you should look for other employment.

9 *Never Buy Boxed Wine*

Better to do nothing than give the wrong impression. If you are trying to impress someone with the success of the law school, you need a cork. If you're trying to establish a dire need, why have wine anyway?

This principle, of course, applies to things other than wine. For example, symposia and lecture series. If you are going to have a lecture, commit the resources to make it a success. That means not simply working to get a good speaker, a good audience and hopefully, press coverage. A good lecture before an

audience drummed up in the hallways minutes before the speech is as harmful as a lousy speaker in front of a large audience. And, while it may not be the case in religion, in legal education, great things that are noticed are better than great things that are not noticed.

10. *The Amount of Money You Raise Is in Direct Correlation to the Amount of Weight You Gain*

People who feel sorry for you because a dean has to raise money don't get it. As has been said, you have to raise friends to raise money. What could be more fun? There is food and drink. You get to talk about something you love. The potential donors (hopefully) give you, or at least the school, praise. Compare this to dealing with a problem faculty member. There is, however, a downside. I once asked a colleague how long he had been dean and he said, "About 40 pounds."

11. *Show Humility*

One can, of course, only choose to show humility. One can not choose to be humble. As someone once said, the problem with humility is that once you think you've got it, you've lost it. Every faculty member thinks he or she knows how to do your job. Learn to live with it.

12. *You Learn to Hate Everything That You Once Did as a Faculty Member*

Your perspective changes once you become a dean. You find yourself bemused by things that faculty do or positions that faculty take that look uncomfortably like what you did or said before becoming dean. For example, life would be great as a dean if you could convince the faculty that all classes should be 50 minutes long and that the classes should begin at 8:00 a.m. and end at 5:00 p.m. The problem, of course, is that when did you want to teach at any time other than 10 and 2 on Monday, Wednesday and Friday? This came home when a faculty member said to me that she was being a pest because that was how you motivated deans. I once actually told a Provost that it was my job to complain, otherwise things would never change.

13. *Beware of Navel Oranges*

Institutional donors are fond of providing "seed money." You get a grant for a short period of time, with the expectation that the school will absorb the cost at some point in the future. Sometimes this works. Be careful, however. Seed money does not always grow, and, if it does, you still may find that one day you have either navel oranges or a dead plant.

Certainly clinical legal education benefitted from such money as law schools or their parent universities struggled to develop funding for such a fundamental shift in educational philosophy. More often, I've wondered what makes granting organizations think that the school will have money in a year that you don't have now?

14. *Everything You Need to Know about Clinical Wars*

All faculty discussions about faculty status have one major subtext. Depending on the side of the speaker, they are saying either (A) those higher status people don't understand that it is we lower status people who work harder, or (B) those lower status people just don't get it, if the position carried the status they probably wouldn't have been hired. Nobody actually says these things in a meeting, everyone is too polite (or afraid they will get their head handed to them on a platter).

Understanding historical context is important. The fact is, among the more consistent themes of legal education is the debate about whether legal education should be professional education or graduate education. Despite the fact that the war has been won and that almost everyone agrees that it has to be a reasonable mix of both, there remain skirmishes.

15 *Understand What Cynicism Is*

Particularly when leading a group of lawyers, a dean needs to understand the difference between being cynical and sarcastic and being caustic and corrosive. Cynical and sarcastic people should be tolerated. They will often say things that need to be said and which no one else has the nerve to say. Caustic and corrosive people need to be counseled to look for a different line of work.

16. *Be Brief*

As dean you control much of the pace of the school and its events. Keep things short and to the point. For example, graduation is a highlight of the year, but recognize that while everyone there wants formality and to be recognized, they want to go out a celebrate even more. Likewise, when speaking to the entering class, get to the point and get out of the way. They have more important things to do than listen to you.