

LAW SCHOOL/CENTRAL UNIVERSITY RELATIONS. SLEEPING WITH THE ENEMY⁺

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THERE is a pervasive attitude among law school faculty that they are neither understood nor appreciated by central administration, and that the central university is robbing the law school blind. This sentiment finds expression in a number of colorful bromides, such as that the powers above perceive and treat the law school as a "cash cow," or regard it as a "mere vocational school." In truth, these feelings, if perhaps somewhat exaggerated, are not entirely without justification. Many central administrators, themselves rising through the ranks of traditional doctoral programs in the liberal arts and sciences, do see the law faculty and professional schools in general as somewhat impure academically if not outright inferior.¹ Moreover, there are many legendary (and public) stories of law school deans battling with their universities about the appropriate amount of law student tuition that should be forked over to pay for centralized services,² and law schools on the whole rarely fare well in university resource deployment and allocation strategies, although typically for reasons that are devoid of nefarious ulterior motive.³

+ In the 1991 Jack Reuben directed thriller "Sleeping With the Enemy," in order to escape an abusive marriage, a woman (played by Julia Roberts) fakes her own death and finds a new life and lover only to be found out by her husband. As far as I know, no law school dean has yet to go to those lengths to avoid having to deal with the central administration.

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1. The Council of the Section of Legal Education and Admissions to the Bar, the approved accrediting agency for U.S. law schools, has issued a Statement, in the context of employment practices, suggesting an equivalency between the J.D. and the Ph.D. degrees. Law faculty who do not hold a Ph.D. may find this statement of some comfort, but university administrators don't buy it. For example, at Tulane's unified commencement ceremony, in which law students participate, a statement to the effect that this is the "highest" degree conferred by the university usually prefaces the awarding of the degrees to Ph.D. candidates. In this respect I rather doubt Tulane is alone.

2. Most people will recall the thankfully unsuccessful efforts of Georgetown University's president to remove Dean Judith Areen several years back. See generally Cynthia Cotts, *No Good Dean Goes Unpunished*, NAT'L L.J., May 11, 1998, at A1 (speculating on the role that the issue of sharing law school revenue with the central university played in the controversy). Standard 209(c) of the STANDARDS FOR APPROVAL OF LAW SCHOOLS, promulgated by the ABA Section of Legal Education and Admissions to the Bar, provides: "The resources generated by a law school that is part of a university should be made available to the law school to maintain and enhance its program of legal education." It was speculated several years ago that at least fifty private law schools are charged a "tuition tax" above the twenty percent cap informally suggested by the ABA. See *Law School Deans Fired as Job Pressures Multiply*, HR ON CAMPUS, May 1998 (LRP Publications). My own anecdotal evidence suggests that this number has, if anything, increased in recent years. Of course, the ABA's ability to do much about this as part of the re-accreditation process has been severely hampered by the prohibitions imposed under the consent decree entered in *United States v. American Bar Association*, 934 F. Supp. 435 (D.D.C. 1996) (Civil Action No. 95-1211).

3. Among other considerations, as relatively autonomous units, law schools frequently replicate

This presents a certain conundrum for the law school dean who, on the one hand, is looked upon by the faculty as their advocate and champion with university administrators, but who is also a member of and serves at the pleasure of that same central administration.⁴ A dean who is either seen by his or her faculty as weak with central, or perceived by central as quarrelsome or parochial in his or her outlook, will enjoy neither a happy nor probably a very long decanal career. Perhaps this suggests that most fortunate are those chosen to become deans of freestanding law schools, but personally I don't believe so. For me at least, there is an enormous advantage to being a part of the larger academy⁵ This manifests itself in a number of ways ranging from access to more robust library collections, to opportunities for interdisciplinary collaboration, to the easy availability of intercollegiate athletics, to just the pure intellectual and spiritual pleasure of walking across a college campus populated with students and faculty of every stripe and interest.

This suggests that it is worth exploring the reasons why law school deans often find themselves on the horns of this dilemma in order to determine both the causes for the conflict and its inevitability. Make no mistake, some nonquantifiable but significant share of the culpability quite properly belongs with the central administration. By demanding excessive and ever-increasing resources from the law school, insisting on salary limitations based on comparisons with other schools and departments in the university rather than peer law schools, micro-managing law school decision-making, imposing irksome clearance hurdles in development, and so forth, senior administrators in every university at some times can deservedly earn the animosity of both the law school faculty and administration.

In fairness, however, I think we, as law school deans, must shoulder our fair share of the blame for the "us against them" attitude of law school faculty towards the central university, an attitude that frequently undermines the full integration of the law faculty into the academy. To begin with, the demonization of the central university that typically punctuates chatter in the law school is often unwarranted and almost always exaggerated. In addition, and of greater moment, it is invariably self-defeating and harmful to the best interests of the law school. I will address briefly both of these points, because, in my judgment, the person most often responsible for the former is the same person who suffers the greatest from the latter; namely, the law school dean.

on their own budgets as direct expenses the costs for services that are also part of the general and administrative or centralized costs which are allocated, formally or informally, in determining the extent of the law school's and other academic unit's contributions to the central university. On the other hand, for exogenous reasons having little to do with intrinsic quality, the law school is generally well treated in terms of faculty compensation, prerequisites, and facilities as compared with other disciplines in the university. Therefore, it should come as no surprise that when there are additional fish and loaves to distribute, the central administration rarely places the law school at the top of the list.

4. Law school deans are not alone in this position. Football coaches, I suppose, face the same challenge in retaining the confidence and loyalty of their players while also answering to a general manager and an owner. On the other hand, law school deans rarely get shoe contracts or their own radio shows.

5. This should come as no surprise. While placing no credence in its validity, and for that matter without acknowledging that I even read it, the "top 50" law schools in U.S. NEWS each year are routinely law schools that are part of a university.

Senior university administrators, of necessity, have to adopt a more global view of the academic enterprise and its needs than the law school dean is ordinarily required to indulge; just as the law school dean must be responsive to several different constituencies,⁶ and thus, has to have a broader outlook on the role and positioning of the law school than the typical faculty member. We often lament the faculty's inability to empathize with our plight in this respect, but then fall prey to the same myopia when judging central administrators. Further, presidents and provosts quite properly spend a disproportionate amount of their time focused on undergraduate education and the liberal arts and sciences, which traditionally are at the core of most quality universities. To misinterpret this focus as reflecting a lack of understanding, or worse a deliberate marginalization of, professional education is no less a distortion of reality than when faculty accuse the dean of being insensitive to the issues that affect them most directly or which they care about most deeply.

One deleterious aspect of these over-generalizations about the central administration, its actions and attitudes, is that they run the risk of isolating the law faculty from the wider university. More troubling, they reinforce a perception that the law school's problems are not of its own making and, thus, beyond the ability of the law faculty to resolve. Understandably, the sense of lack of control or helplessness can encourage some law faculty to seek their professional gratification outside the building, whether through law practice, consulting, or other activities that redound to the law school's benefit in only the most attenuated sense if at all. The detrimental effects of the "blame game" do not end there. If the law faculty believes that the school's problems exist only because the sinister university administrators have raped the school, then there is also no collective sense of obligation to take ownership of those problems and responsibility for trying to ameliorate them. To use the much overused and high-sounding term, the law faculty have been disempowered.

In short, my point is that hostile, adversarial, and distrustful attitudes between the law school and the central university, even when not entirely unwarranted in some objective moral sense, rarely end up operating to the benefit of the law school or its long-term interests. Moreover, as noted, the chillier the climate between the two, the hotter the dean's seat becomes as his or her effectiveness hinges critically on working cooperatively with both cohorts. That said, ironically, it is frequently the dean who, consciously or not, sours the milk by trashing senior university administration. The effects of doing so are compounded by the fact that most faculty have no other regular contact with these administrators to inform their judgment or counterbalance what they hear from the dean.

I once heard a wise dean candidate, who already had several years of service as a dean at other institutions, state that, "while I assure you that I will advocate on behalf of the law school as forcefully, persuasively, and effectively as I can, the one thing you'll never hear from me is a bad word about the central administration." This statement, which I have since appropriated on many occasions without

6. See, e.g., Frank T. Read, *The Unique Role of the American Law School Dean: Academic Leader or Embattled Juggler* 31 U. TOL. L. REV. 715 (2000) (identifying at least seven different law school constituencies with which the dean must form a relationship).

attribution,⁷ resonated with me on several levels, not the least being that, in my experience, it represents a radical departure from the typical behavior of many deans, and indeed from my own occasionally as an associate dean. It is interesting to speculate why this quite sensible and prudent recommendation is so widely and routinely ignored in practice. In truth, I suspect there are several reasons for the tendency of law school administrators to deprecate their counterparts across campus and, having been subject at one time or another to all or most of these impulses, I do not recount them as personal shortcomings or as examples of weaknesses of character.

First, there is the frustration factor and the need to vent. Preparing and responding to reports and other paperwork from the central university can consume a great deal of the law school dean's and the administrative staff's most precious resource, time. Much of this paperwork, and the seemingly endless meetings that precede and follow it, can be perceived, and frankly often are, busy work that does little to advance the law school's strategic goals. One coping mechanism is to whine about the incursions into one's time. That's natural and understandable, but I recommend finding a dog or a sympathetic spouse because when the dean unloads on faculty individually or as a group, faculty often take it more seriously than intended, and this inevitably erodes their confidence in the efficiency and judgment of the senior leadership in the university.

A second explanation for the dean's tendency to fan the flames of discontent is less charitable but still I think real; namely it deflects responsibility for unpopular policies or the dean's own inability to deliver on a particular promise or assurance. A genteel sort of "scapegoating," it signals the faculty that whatever went wrong, "it's not my fault; those SOB's tied my hands." This behavior is particularly self-defeating since the faculty rarely excuse the dean anyway, but nevertheless readily accept and internalize the portion of the explanation that paints the university as indifferently, if not maliciously, hampering the law school's progress. Once again, whatever grain or even sack of truth exists in the charge, the very act of making it further widens the chasm between the law school and the university, and that never serves the law school well in the long run. It is an axiom of effective leadership that the dean must accept responsibility for whatever goes wrong, whatever the reason. To do less is to lose the ability to inspire confidence in others or to obtain their buy-in for the need to make the sacrifices necessary to overcome whatever obstacles stand in the way of reaching the school's goals.

Parenthetically the same type of carping in front of alumni can lead to even more disastrous consequences for the institution. Law school alumni, by and large, tend to identify more with the law school than with the university as a whole. This can be a very good thing for the law school dean when it comes to development. But accompanying this sentiment often is the suspicion that financial support for the law school may be diverted to university-wide activities and initiatives toward which the donor is indifferent or even hostile. If true in a particular school, as it is in mine, that every gift designated for the law school stays at the law school, this must be

7. I am not making attribution here either since I don't want to embarrass anyone, but at least I'm not taking credit for the originality of the statement. I guess that counts as moral progress of some sort or another.

made crystal clear to alumni. If the situation is more nuanced, it is just as important for the dean to be able to articulate clearly the congruence of interests shared by the law school and the university at large. In either case, the one tactic guaranteed to deflate financial support for the law school is to reinforce the mindset that the school is being milked by central or even that the two are in competition.

A third reason accounting for the dean's self-destructive behavior is the unfortunately common, but less than flattering, quality we all exhibit from time to time of making ourselves feel better about ourselves by disparaging others. Born of inferiority, misplaced ego, or zealous protection of his or her autonomy, stature, and control, the law school dean is particularly susceptible to this impulse in relation to the central administration, which, by its very existence, poses a threat to the dean's independence. However, anyone who does or aspires to steward an institution, including a law school, must be sufficiently self-confident to avoid the urge to belittle superiors, or find another line of work. There is enough petty bickering and internecine squabbling in any organizational structure, public or private, that when the person who is supposed to remain above the fray is reduced to commiserating with some about the inadequacies of others, the opportunities for real transformational changes vanish.

My point in making these observations is not to offer an apology for central administrators or to imply that the relationship with central is an easy one to manage. Neither is it meant as my application for a job on the dark side (I harbor no such aspirations) nor to suggest that university leadership universally values and supports legal education appropriately. Likewise, I fully recognize that there are times, more often frankly than should be necessary, that the dean has to show backbone and sand in protecting the interests of the law faculty and students from policy imposed at the university level.

What I do mean to propose, however, is that rarely, if ever, is there much upside in making these battles public or drawing attention within the law school community to the sense of frustration and disgruntlement that the dean sometimes experiences in dealing with central. By now, the reasons for this recommendation should be obvious, and they have nothing to do with insulating university administrators from criticism that may or may not be quite justified. Rather, they have everything to do with protecting the dean from becoming caught between Scylla and Charybdis and, in the process, undermining the dean's effectiveness. The most a dean who openly takes on central can hope for is a Pyrrhic victory, because ultimately a mutually supportive and constructive relationship with the central university is a crucial ingredient in the recipe for a successful deanship. This does not mean that there cannot be honest disagreement about particular issues, but at the end of the day the law school and the university are joined at the hip and must share a common set of goals and interests.

It is hard to be a great law school if you are part of a lousy university. The reputation of one hinges critically on the perception of the other. Intuitively, I think most law school deans recognize this and seek out a good working relationship across the campus, understanding that the alternative will probably translate into less support for their school. Indeed, what law deans want most for their schools is to become better, both in terms of the substantive quality of its programs and its image and prestige in both academic and professional circles. University

administrators want the same thing, but, like it or not, the mission of training bright, young law students to be competent and ethical practitioners is only part, and at best a secondary part, of the university's broader mission to create and advance knowledge. Expectations of the relationship with and support from the central university have to be established in this context and then communicated effectively to the law school community

Nothing can undermine this effort more quickly or more thoroughly than the existence (in fact or even just in appearance) of a confrontational and adversarial relation with the central university. Deans can get upset at provosts, vice presidents, or presidents over specific issues and get over it because there is an ongoing working relationship and personal rapport that prevents the discord over these discrete issues from permeating the overall association. It is far less easy to quell the outrage of faculty, students, and alumni once ignited and it is the rare case where it is likely to do you much good anyway over the long haul. The natural combative metaphors that have historically tended to dominate the way we think and talk about law practice are of little use, if not actually counterproductive, when employed within the academy

So my advice to new deans is do not view your role as that of gladiator for the law school; the body on the floor of the Coliseum is most likely to be your own. Demagoguery may play well in the dean search interview with faculty already inclined to feel under-appreciated and devalued, but you are only sowing the seeds for your future undoing. For sitting deans, it is not only important to inculcate a sensitive understanding of and appreciation for the broader role of the university as a whole, but also to publicly support it. In sum, be mindful of what you say about central except to a very very small and trusted group of advisors, and remember that faithfulness to your institution sometimes means you have to sleep with the enemy; it's difficult enough to have a foot on both sides of the fence without shooting yourself in both feet first!