

## FROM ADMIRAL TO DEAN

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I am, as they say a non-traditional dean. I'm proud of that distinction in spite of the fact I'm always a little put off by descriptions that are essentially negative and exclusive. It's a little like identifying people as "non-lawyers." I guess I'd prefer to be a "real world dean."

In 2000, I retired from the Navy after 28 wonderful years. I retired on a Friday and "reported to my new duty station" as Dean of Franklin Pierce Law Center on the next Monday. These last three years as a dean have been exhilarating, depressing, easy, difficult, fun, frustrating, and satisfying. I'm sure my faculty would be quick to tell you that it has taken me a long time to adjust to my new circumstances.

The timing was such that I missed the new deans' boot camp at Wake Forest by only a week or two. By the time I finally got there, I'd been in place for almost a year. Having survived that year, it made the experience at Wake all the more valuable. I wouldn't necessarily recommend my way of doing it, but it does convince me we would benefit from a follow-up boot camp for deans who have been in place for a year or two. But that's the subject for a different article.

I had little or no contact with any law school since graduating from one in 1972, other than taking an LL.M in 1984. One of the advantages of coming to a deanship cold, so to speak, is that I had no preconceived notions about law school other than a vague memory that most law students (other than me) were a pretty obnoxious group in the late 60s and early 70s. As a new dean, I was essentially a blank slate eager to be written upon.

Where I had a ton of experience was in the military generally, and the Navy specifically. It was that experience that I drew on in the beginning, and still do to a large extent. You might be surprised to learn that there are great similarities between the two vocations. First and foremost, I think in the end, it's all about people. As you might imagine, there are also great dissimilarities. For example, it came as a surprise to me to realize that in many important ways, it is law schools that are conservative and the military that is liberal in the traditional sense of those words relating to willingness or ability to change. It is those comparisons that I want to discuss here.

First, let me say that I love what I'm doing now. I have great respect for this school, its faculty, staff and students. While it is clearly Pierce from which I draw most of my experience, what follows is also based on three years of intense listening and learning. I've attended meetings of all the deans, New England deans, independent school deans, and new deans. Like most of you, I interviewed for jobs elsewhere; I've been on three site visits now; I've attended all the deans' breakfasts, lunches, and dinners in the last three years. I've gained seven pounds.

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Most importantly and beneficially, I've personally talked with many of you. At the first deans' meeting I attended, after having been in the job for a number of months, I didn't know whether to be relieved or concerned. After listening to a number of you, the good news was that I finally realized it wasn't all my fault. The bad news was that it wasn't going to get a lot better. We share the same burdens.

To better understand the comparisons between the military and the law school community, let me very briefly describe the part with which you may not be familiar—the military

### I. MILITARY MODEL

The Judge Advocate General's Corps of the United States Navy consists of approximately 750 active duty lawyers ("judge advocates") and about 400 reservists. The U.S. Marine Corps, which is part of the Department of the Navy has about 450 active duty and 200 reserve lawyers. The Army and Air Force JAG Corps are somewhat larger. The Coast Guard is smaller.<sup>1</sup> Heading the Judge Advocate General's Corps in each Service is the Judge Advocate General (JAG) and the Deputy JAG.

The primary role of these lawyers is to prosecute, defend, and preside over courts-martial. Court-martial jurisdiction extends to all service members, world wide, and to all offenses whether or not the alleged offense relates to military service.

Judge Advocates also deal with environmental law, health care law, tax, admiralty, employment personnel law, international law, law of war, claims (essentially insurance work), and what we call "legal assistance." This last is essentially a general practice with all the domestic relations, wills, landlord/tenant and other legal predicaments that can walk through a general practitioner's door.

Imagine an aircraft carrier on its way to a war zone with 5000 souls on board, most between the ages of 18 and 35, who have left families behind, generally for about six months but often longer. There is an admiral on board, who is responsible for the "battle group" that consists of a number of other smaller ships accompanying the carrier, including a couple submarines, destroyers, a cruiser or two and the like. There is also the Commanding Officer who is responsible for actually fighting and defending the ship. There is an air wing aboard, which consists of a large number of fighter planes and other aircraft. The ship is nuclear powered. It is like a floating city which, by the way, carries on it the most awesome destructive power in the history of the planet. It's sailing into harm's way in a faraway ocean. Suffice it to say it creates legal issues for the two lawyers on board. One lawyer is generally in his or her late 20s; the other, probably early 30s.

Unlike the eponymous TV show, "JAG," that's what Navy lawyers typically do. They also change jobs every two to four years. The change is not only geographic, it is also often a job completely different from what they were doing last or will do next. For example, as a young lawyer I first prosecuted and then defended courts-

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1. The difference is made up by the Navy's larger Office of General Counsel (civilian lawyers), which does the great bulk of contract work for the Navy. This work is done by uniformed lawyers in the Army and Air Force.

martial in Texas for two years, then served as the only lawyer for a Naval Air Station in California for two years, taught law at the Naval Justice School in Newport, RI for three years, and then lobbied Congress in Washington for three years. That's five jobs at four locations in ten years. In 28 years, my family moved 15 times, which is pretty typical for a Navy family

Promotion opportunity is very limited in the military. The opportunity for promotion is finite because the number of people in each rank is limited by Congress. Moreover, if you aren't promoted, you must leave the Service. . . "up or out."<sup>2</sup> Simple arithmetic would indicate that fewer than 30% of those who enter the service and hope to make captain (in the Navy and Coast Guard) or colonel will ever achieve that. In fact, the selectivity is much more intense than that because many good career-oriented officers leave the Service early because they fear they aren't going to be promoted. They haven't had the right jobs or they were "dinged" on a fitness report. Better to leave under your own power than be told to go. (Are you starting to see some differences from the law school model?) You are considered for captain or colonel at about the 20-year point. That is when you're about 45 years old. The personnel profile in the officer corps of the military is a very steep pyramid. This competition ensures two very positive things. One is that everyone strives to "be the best you can be." The other is that among these, only the very best progress, i.e. are promoted.

## II. MISSION

When everyone who is important to the success of the enterprise understands the mission and agrees on the method to achieve it, or at least accepts it and supports it, success is almost assured. To the extent that is not the case, the chances of success are diminished.

Perhaps surprisingly, most law schools have a somewhat clearer view of their mission than does the military. For example, the mission of Franklin Pierce Law Center is to "provide our students with the skills to lead and serve and to meet the emerging needs of a global society." As usual, the devil is in the details of precisely how we accomplish that, but we know what the mission objective is.

Over the years, the military has enjoyed a widely acclaimed mission orientation. Unfortunately in more recent years, that reputation has not been entirely justified, certainly not at a national or strategic level. What kind of military a nation employs, and how it deploys it, depends on how its civilian leadership defines the mission. During most of my time in the Navy that was defined as the ability to simultaneously fight and win two major conflicts and one smaller one. We often considered such potential hot spots as Korea, the Middle East and, of course, the USSR and China.<sup>3</sup>

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2. The promotion rates are roughly as follows (in the Navy rank structure): from ensign to lieutenant = 100%, from lieutenant (junior grade) to lieutenant = 95%, lieutenant to lieutenant commander = 80%, lieutenant commander to commander = 70%; and, commander to captain = 55%.

3. In an effort to reduce it to simpler terms, military personnel often just describe the mission as to "kill people and break things."

Today the mission itself is unclear. As you shall see below, at a national security or strategic level, the role of the military has evolved. For years, the military leadership mightily resisted the urging of the civilian leadership to take on other paramilitary missions such as anti-drug operations, border patrols and, yes, anti-terrorism. The reasons to resist included the risk of diverting valuable resources, inappropriate training for military personnel for paramilitary missions (shoot to kill or shoot to warn?), and, frankly, the risk and consequences of shooting down some innocent dentist in a private plane coming home from the Bahamas. A new role in Homeland Security will only muddle the issue more.

After the fall of the Iron Curtain and domestic economic woes gutted the mission of the military and threatened its budget, military leadership engaged in a strategic retreat and wholeheartedly embraced the new missions. Bad idea. It wasn't too much later that two Marines patrolling the border between Texas and Mexico shot a young goat herder whom they mistakenly believed was a drug runner.

With the All Volunteer Service having now been in place for several decades, one would think that individual soldiers, sailors, airmen and Marines, more or less, understood and supported the mission. One would be wrong. The "Law of Unintended Consequences" once again raises its ugly head. Individual motivations for joining the military vary widely and undermine the chances of mission accomplishment. For example, many service members enlist only because they are looking for education or educational benefits. When the "balloon goes up" and it's suddenly time to deploy and go in harm's way, their enthusiasm for the military way of life is sometimes challenged.

Vietnam may be the classic example of the consequences of a confused, undefined or misunderstood mission, but it's certainly not the only one. Was the Civil War fought to save the Union or destroy slavery? Even Lincoln wasn't sure. It started as a war to preserve the Union and evolved, as reflected by the Emancipation Proclamation, as an effort to end slavery. In the early years of the war the South was successful largely because it better understood why it was fighting.

As I write this, the war in Iraq is winding down. It was a clear military success, but that's because we were fighting a paper tiger. Our involvement in Iraq is a long, long way from over and we are a long way from victory. We won the war handily, but it's not at all clear that we will win the peace because the mission was never clearly defined. Is success ousting Saddam? Is it finding and destroying weapons of mass destruction? (Did we believe Iraq's WMD included nuclear weapons or "just" chemical and biological? Does it matter?) Is success installing a democratic government? Peace in the Middle East? It's hard to achieve success when you don't know what that is. We won't know when the journey is over because we don't know where we're going. I think there are parallels for legal education, writ large, in the U.S.

For any organization to achieve success, its leadership must know and be able to explain its mission with crystal clarity. This applies equally to both the military and to law schools at both a strategic (national) level and a tactical (individual school) level.

To the extent the mission is defined, the military can tell you with pretty fair accuracy how many bombs, bullets, and bodies it will take to accomplish it. They

can devise a successful overall strategy and implement the necessary tactics. Although no plan survives first contact with the enemy in an exact way, careful planning will maximize the chances of success. The military are great planners and great executors. They understand the value of logistics and war-gaming. They practice and train constantly. They give orders, and they execute orders well. As a consequence, in a real battle the execution is generally very good.

In summary, the military has been a little confused in recent years about what its mission is, but, by golly, it could figure how to accomplish it if it only someone would more clearly articulate what it is. Law schools understand the mission pretty well, we're just not quite sure how to do it.

### III. WILLINGNESS TO CHANGE

In spite of strident criticism to the contrary from Capitol Hill and the media, I found the military to be very willing to change or try new things ranging from weapon systems to accepting the new (ill-defined) mission. On the other hand, educators generally view change with suspicion and skepticism. We compete for the same applicants, who will later compete for the same jobs. How and what we teach is all fundamentally the same. It hasn't changed much over the years. The ABA, AALS, USN&WR, bar exams, and employers all cause us to look very much alike and to be very risk averse. Of 185 deans, about 180 of us are "traditional." In many very important ways, it's the military that's liberal and the law schools that are conservative.

The willingness or ability of the military to change is the result of several factors. One, its civilian leadership changes constantly. Presidents, especially new ones, bring in their own people. Of course, when the White House changes parties, the changes are wholesale and immediate. The "ins" aren't just good bureaucrats who have risen in the ranks. They range from fundraisers and contributors to philosophical soul mates. They include successful business people, politicians, and government employees from different agencies. The result is that the military is accustomed to change at the very top at least every four years, and often more frequently and change is also constant at the lower levels as people come and go. This brings fresh ideas and new energy.

Also, the Congressional leadership, with hands on oversight responsibility for the military changes parties, members, and philosophy with great regularity.

Another change agent is the fact that uniformed military personnel "rotate" every two-four years, top to bottom. A third of the crew of that aircraft carrier I mentioned above changes every three years so the entire crew, Captain to boot seaman will turn over completely every three years. That would be like Bob Clark, all the janitors and every faculty and staff person changing at Harvard every three years. You think that wouldn't result in change through time? The Navy manages the change in personnel by rigorous training, pass-down manuals, comprehensive Standard Operating Procedures and the like. Change is inevitable and welcome.

Not to be overlooked is the fact that world events drive change. Enemies come and go. Technology advances. How and why wars are fought changes. These changes dictate how the military is structured to best respond. In fact, the military laments that they can't react to change even faster. They tend to fight the next war

with the last war's tactics. That's why the technological advance from muskets to rifles was so devastating during the Civil War. The more recent evolution from linear warfare between nation states to asymmetric war against terrorists and guerillas is another challenge driving change. One law school analogy might be if all the major law firms decided that what they really needed were legal philosophers, and the firms would train them on the actual practice of law. But compared to law schools, change comes to the military at breakneck speed.

The most important reason the military eagerly embraces change is that lives depend on it. Winning wars depends on the ability to revise tactics and doctrine. We're not just talking about failing the bar exam, but about dying. We're not talking about going from one tier to the next, but the outcome of a battle. That's real motivation.

#### IV GOVERNANCE

When I "reported on board" as dean, I had heard something about this thing called governance. I knew it would be an issue, but I wasn't quite sure what it all meant. I figured it couldn't be too hard to learn. I'd just find the book that explained it and learn the rules. I'm still looking.

We've seen that the military requires change. It's inevitable and good. It's made easier by a clear chain of command. They literally wear their ranks on their sleeves, collars, and shoulders. There is an old joke—except that it's true—that the first thing a group of Marines who are all the same rank do when they first meet is compare dates of promotion to determine who's senior and who's junior. It's efficient and avoids a lot of confusion. The Marine who's senior, even if only by a few months or even days, commands those Marines. Indeed, he or she would command in combat if necessary. The poor Marine who is the most junior is the mail orderly.

The theoretical disadvantage is obvious. Perhaps the senior Marine isn't the best leader. By the time they figure out who the best leader is, the battle may be lost. Perhaps the most important point, however, is that all the other Marines will ensure by their dedicated "followership" that the leader excels. While not all good followers are good leaders, all good leaders are good followers. The military has an abundance of both. Everyone subscribes to the mission of the unit and works as hard as he or she can to ensure its success, carefully obeying the orders of superiors. Just like the law school model (NOT!).

Bringing the faculty together as a cohesive unit is the fond hope of every dean. I remember at one of my first deans' meetings, one of you remarked that he felt like he had the reins of power in his hands. He just wasn't sure if there were any horses at the other end. It's important to all of us that the faculty and staff work together effectively and willingly to complete the mission.

Governance, or the chain of command as I formerly thought of it, that is blurred or disputed makes leadership difficult. Leadership is the ability to take people where they would not otherwise go. This applies equally to law schools and rifle companies.

One of my favorite quotes about leadership is: "An army of stags led by a lion is a more formidable foe than an army of lions led by a stag." Law school governance issues make stags of us all.

Admiral Rickover created a nuclear power program that is still the envy of the world. Leadership was critical to its success. A commander is given the authority and responsibility to lead. He or she may delegate the authority but they can never delegate the responsibility. A commander who leads badly is removed. A dean isn't given the same clear authority. In law schools, authority and responsibility are often separated. Even though there are many instances of deans being summarily removed, the reality is that if the dean leads badly, how can you tell?

## V DECISIONMAKING

Governance is really nothing more than a way of trying to decide who makes the decisions. In the military, if an issue exists and a meeting is called to resolve that issue, everyone at that meeting knows two things: a decision will be made and who will make it. That knowledge tends to remove the temptation to filibuster issues to death and to argue over process.

While in the Navy I attended many meetings when we were literally dealing with life and death issues. That's not a euphemism for "important." I'm talking about body bags. On innumerable occasions we dealt with issues that were on the national evening news for weeks or months at a time. I still now occasionally see news reports about issues I considered when I was on active duty three or more years ago. Seldom were voices raised. Virtually never did you hear an ad hominem attack. You made your point as convincingly as you could and you moved on. Decisions were made and everyone knew who was responsible. The decision maker willingly accepted that responsibility.

I think most of you would be surprised to know how collaborative and free-flowing decision making is in the military, particularly in the JAG Corps. Generally, everyone who wants to express a thought or make an argument is welcomed to do so. The weight of the argument stands on its own merits and doesn't depend on the rank of the proponent. I remember a meeting I attended chaired by the Secretary of the Navy. It was on a very contentious issue, and I was the most junior person in the room as a lieutenant commander working in the Office of Legislative Affairs (read: lobbyist). I knew my position was 180 degrees off from that of the Vice Chief of Naval Operations, a four star who was speaking for the Chief of Naval Operations. The Vice Chief spoke forcefully on the issue. The Secretary then turned to me and with a smile said, "John, what do you think of what the Vice Chief has said?" With great respect, I disagreed with him completely. My position prevailed.

Another anecdote helps make a point. A friend of mine retired from one of the services and took a job as an administrator at a law school. A group of faculty were meeting but were disturbed by noise from some construction nearby. The substance of the meeting turned to a long discussion about what to do about the noise. Finally, in frustration and near desperation, a faculty member summoned my friend to see if he had any ideas about what to do. Relying on his military training, he opened the window, called out to the workers and asked them if they could work

somewhere else for an hour or so. They said "sure" and the problem was solved. Sometimes issues aren't as difficult as we make them out to be in the law school setting.

## VI. TENURE

Another of you once remarked about tenure that, "Those who need it don't deserve it, and those who deserve it don't need it." I described earlier the "up or out" policy of the military. Over the course of your career, perhaps as long as 35 years, you must continue to be promoted in order to stay in.

This has some very interesting effects. One, people continually volunteer and try to stand out. They are forced by the "up or out" policy to take some risks. The military loses some good people who take a risk, fail in some way, and are then forced out. On the other hand, it ensures that those who do make it are good. They fight for the hardest, most demanding jobs. No one wants to recede to the norm. The reward for outstanding achievement is a mention in the next fitness report, which will eventually be considered by a promotion board. That same motivation continues throughout your military career.

Another unwritten, but generally accepted custom in the military, is that if an officer is told by a superior flag or general officer that the time has come to retire, the officer simply does that. Military officers serve at the pleasure of the President, and the practical effect of that status is to leave the Service quickly and willingly if told to do so. Basically it is a matter of honor. This understanding reduces the number of officers who have "hit the R.O.A.D." (Retired On Active Duty). If that happens, very shortly thereafter, they get a request from the Admiral to come by for a talk.

In my opinion, ironically and perhaps counterintuitively, the security of tenure tends to stifle rather than to energize good people.

## VII. PERSONAL INTEREST

In one very important way, being a dean is much easier than being the Judge Advocate General of the Navy. As the Dean, I make all my decisions based on my own self interest. That's simply because my self interest is the continued well-being of the Franklin Pierce Law Center. My decisions may not be popular with one or more of the many constituencies we all try to satisfy.<sup>4</sup> The decision may not even be the right one. Time may prove me to have been in error. But whatever I do, I do what I believe to be, overall, in the best interest of this law school. That's always good for me and my future career here. My personal interest here is perfectly congruent with the success of the school.

As a senior military officer, occasionally issues come up in which the best result for the Service is not necessarily the best thing for the officer. The three-tiered decision matrix in the Navy is: (1) Needs of the Navy; (2) Career needs of the officer; and (3) Personal desires of the officer. For example, for two long years, I

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4. "If you try to keep everyone happy, someone's not going to like it."—Donald Rumsfeld, Secretary of Defense.



was a “geographic bachelor” in Washington D.C. while my family stayed in Newport, RI so my daughter could finish high school. The “Needs of the Navy” required me to leave Newport early to take a job in D.C., even though it certainly wasn’t in my personal interest. I could have declined to take the job, but that would not have been in the best interest of the Navy or my career

We all know the stories of heroic deeds at great personal cost. I never had to throw myself on a hand grenade to save my shipmates, so perhaps the best personal example I can offer is my own decision to retire. I could have stayed on active duty but I was the capstone in that “up or out” pyramid that I mentioned above. As long as I stayed, promotion for others would stagnate. When I left, good people bubbled to the top to fill the voids. I loved the job. It wasn’t in my personal interest to leave but in my opinion as the JAG, the Needs of the Navy were better served by my departure.

I believe it is simply because the law school is smaller than the Navy but now any decision I make to move the school forward is also good for me. That painful realization that “it may be good for the Navy, but it’s not good for me or my family” is but a distant and sometimes painful memory

#### VIII. DELIBERATION

One of the difficulties I experienced in securing this job was that I hadn’t written scholarly articles for publication. As I told the search committee, I applaud scholarship, I’ll support it as dean, but I haven’t done it. In the Navy, I was writing for a different audience. Brevity and speed were key. Anything over a page or two was probably too long. More than a day or two was too late. As the JAG, I remember calling subject matter experts in various offices with complicated and important questions and telling them, “I need your best ‘off the top of your head’ answer, and then your best end-of-the-day answer, and then your best two-day answer. Thursday will be too late.”

The opportunity for scholarly deliberation is a wonderful luxury in an academic setting. In the Navy, we weren’t trying to change laws or even analyze them critically. We just applied them as best we could. Obviously, that stifled scholarship, and probably even deep thought. Once the crisis was over, you moved on to the next crisis and generally didn’t reflect on the prior one. Frankly that’s one of the reasons the military gets in legal trouble. The time frame for legal analysis and decisions is driven by unfolding events, the media, politics, and other outside pressures, not by when the best, most thoughtful answer will be available. The enemy doesn’t wait while the battlefield lawyer opines to the commander whether shooting the enemy comports with the Rules of Engagement. Demonstrations on the island of Vieques didn’t await our analysis of the legal issues. Happily, law faculty don’t have to take their best guess and hope for the best.

## CONCLUSION

There are many other interesting comparisons between my old life and my new life. Fundraising and alumni relations are certainly prominent examples. Also, *U.S. News and World Report* never ranked the military services. Most of you deal with a “central administration” that is very much unlike what I saw in the Navy (and, thankfully, don’t have to worry about now). Two final examples sum up the difference for me. One is that it used to be that when I walked in a room, everyone stood up. Now, they often don’t wake up. The other is that as the Navy JAG, when I came up with a bad idea everyone gave me a hearty “aye-aye, Sir” but I’d eventually realize that the order never quite got carried out. I’d been “slow-rolled.” Now when I offer up a bad suggestion, the faculty just looks at me and says, “Nah, we’re not going to do that.” There is an admirable honesty to that.