

## YA GOTTA PAY THE PIG

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ONCE upon a time, there was a young, optimistic dean.

Different ideas—terrific, embrace them!

Projects—wonderful.

New challenges; bring them on.

Personality—open-minded, charitable, prepared to think the best of others' motives—  
a true boychik in brutish world.

Colleagues—a chance for celebrating with enthusiasm every eccentric brilliant  
moment.

Students—nothing but bright futures, each one a budding Darrow, Tribe, Harlan, or  
O'Connor.

Staff—nothing but professionals, dedicated fully to institutional goals.

Alumni—motivated troopers, prepared to give, give again, and then give until  
nothing is left to give.

The university—guaranteed to fund every good idea.

The Board (of Regents or Trustees)—full of trust, ready to delegate to us the  
authority to become the best, and upbeat about the great days ahead.

Somewhere along the line she or he (or is it I) changed.

Doubts crept in.

Cynicism felt comfortable,

Sarcasm had a wonderful tonal quality.

Others' motives—bad!

Conspiracies—everywhere.

Paranoia—a necessary survival skill because colleagues, students, alums,  
universities, legislators, regulators, and everyone else is out get us.

It might have been acceptable to keep these thoughts private or share them only  
with other deans. But, no! Too frequently it became easy to take them inside the  
school. Every so often, it felt good to let a little negativity show. A frown here.  
A grump there. How about a laugh at an inappropriate time? Our mythical dean  
could really be snarky (is that a word?; if not, it should be). And, if it could feel  
good alone, it could feel so much better with others, like associate deans, who  
could share in inner grinchiness. Better yet: bring it home, gain a little spousal

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support, have an ally to ready to bite the heads off of the enemy (read everyone associated with the law school).

Perhaps these personality changes are just nature's way of saying: "time to ride off into the sunset, cowboy; your work here is done." But the work is not done. Losing the initial joy of a new job, finding out that all is not rosy, seeing ugly truths, getting a little crusty, having doubts, and even contemplating that it is time to mosey out of town, are just the beginning steps to doing the job. That is the time to press on. It is the time to shed deedly doldrums and look for renewal before it is too late!

This essay ruminates on the forces that sometimes drive deans, especially those who have been at it a while, to begin to doubt whether we have anything left to contribute. It looks at the internal pressures that create negative thoughts, the external forces that produce fatalism, and the consequences of becoming sour and sarcastic. It then suggests how to fight these pressures, first by being somewhat playful, but at least becoming conscious of our negative energy, and finally by reminding us how to recreate optimism and positive thoughts.

So, where to begin? How about the beginning?

A few years ago, feeling washed of enthusiasm, moaning to my associate deans, it dawned on me that renewal is critical for all of us and that we can just as easily lead into the bad isms—skepticism, passivism, negativism, pessimism—as we initially lead with optimism. Sometime in the middle of a senior staff meeting, after the hundredth negative comment, critical of each other, our colleagues, the staff, the students, the alums, or society in general, I had the aha moment—we should banish negative thoughts (or at least keep them to ourselves), think the best of others, focus on the positive, and push forward.

One colleague, with whom I have worked for many years at different schools had an aha moment of his own. At our next senior staff meeting, he placed a pink plastic pig on the table at the beginning of the meeting. On its side sat the now immortal words: "1\$ Penalty Pig 1\$." Hence was born a new tradition, insidious in its effectiveness, simple in design, enormously powerful in producing a new, positive outcome. The idea: for each negative comment about others—a dollar. No negotiation. No explanation. A dollar. Think before you speak. If not, the new mantra, spoken in unison: "Ya gotta pay the pig."<sup>1</sup>

So, confession being good for the soul, I come to this essay, contrite, ready to accept responsibility for past transgressions, going back to the righteous path each time I stray, occasionally still paying the pig, but confident that progress depends on a positive attitude. Since I have no pulpit from which to preach (and I still retain the vestiges of a career committed to writing), I will take advantage of Toledo's kindness to offer this reflection on our jobs.

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1. The concept is actually much more sophisticated than described above. One colleague pays in advance—more like a debit card than a cash payment. Another likes to accumulate bad thoughts and then spew them in bulk, rather than paying in small increments. A Catholic colleague pays for his bad thoughts (which we Jewish folks do once a year). Check out our next Dean's Report in which the P.I.G. fund appears as a donor (the only sensible use for our penalty payments). I know I've read it somewhere: Some Pig!

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*The Path to Negativity*

How does it happen that we sometimes lose perspective, see the glass half empty, and doubt whether it is all worth it? Perhaps the problem is that we cannot separate ourselves from our ideas, and that we begin to take things personally. Perhaps it is a lack of empathy. Perhaps it is impatience. Or anger? Or frustration? Or boredom? It might even be that those around us are in fact lazy, ignorant, venal, slothful, arrogant or a hundred other things that stand in the way of progress. It just doesn't matter. Turning to the dark side of our personalities cannot move our schools forward (even if whining feels great!).

Intellectually we know to a certainty that being upbeat is critical to success and that our schools take their clue from us. But is it a mystery why we nonetheless are tempted by the negative? First, there are the internal forces. By its nature, the dean's role is often solitary. It requires knowing the details of every operation in the school and unfortunately the details of the lives and careers of too many others.<sup>2</sup> Like Santa Claus, the dean sometimes knows who's been naughty and who's been nice. But, leaving a lump of coal most often isn't enough. We are stuck with each other for the long haul, punishment just exacerbates negative behavior, and the presents we have are too small to make people feel good anyway. It feels more like Luke Skywalker confronting Darth Vader: knowing that there is still good inside the shell.

While knowing too much can be a problem, there is a worse, second issue: we come to understand that some of the best people with whom we work are more focused on themselves than on their school. Sometimes their goals are fundamentally at odds with our mission. The very students in whom we invest our recruitment efforts and scholarship dollars are working hard to transfer. The faculty who receive teaching reductions, summer stipends, and sabbaticals are trying to get famous to find the next job. The wealthy graduate we have honored with awards, lunches, and invitations now is interested in self-aggrandizement and recognition, not in what is best for the school. The bar leadership we have cultivated with speaking engagements and adjunct teaching assignments now sees law school bashing as a way to gain power. Add to the mix that many members of the public mistrust us, that too many of our graduates cannot succeed in reaching their goals, and that the President wants to know why we are not in

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2. Knowing too much can be a burden. Keeping information private can be corrosive—especially in those situations in which we have little or no sympathy with colleagues who pore out their hearts about some situation or another and we “know” the situation could have been handled better. But, because some information is private, and no one else can know the whole story, we are left covering tracks and sometimes being resentful. At other times, however, the temptation to share information becomes too great to contain. We participate tacitly in the gossip and wink and nod knowingly. But what we know is no one else's business and that more frequently requires turning away or defending what looks indefensible or even appearing contrarian. Confidentiality involves respect for others and forgetting this—even when you really feel like laying into someone else's defective personality—is just too dangerous to risk. But at the end of the game, it can become easy to speak negatively in other contexts and bring others along for the ride. Consequently, like many other aspects of the job, deans as confessors must respect confidences and not let them color other discussions.

the *U.S. News* top tier, and it's clear why we sometimes find cynicism comforting.

In other words, the good days seem to be when the news is merely uninspiring and the bad days are downright depressing.

But, perhaps this is all is merely a matter of perspective. After all, the job of dean is unique in the university. We are of the faculty—minutes away from similar absorption in our own work and relatively cushioned from the need to think about the institution first. We are also of the university, mere mid-management, beholden to priorities that run counter to what our schools need (a role in which we play the faculty—seeing our presidents and boards much like the faculty look to us—self-centered and unconcerned with the greater good). Gloomy gusism must be natural adaptation.

And, of course, we risk killing our own optimism because we forget the incredibly self-constrained nature of governance in law schools. Our policies usually reflect history, tradition, political horse trading, conflict management, interest balancing, and scores of other trade-offs. We generally act only when consensus has been reached, and then only after painstaking negotiations and argument. Nonetheless, once we adopt policy, we expect to move forward, with relative ease. What a mistake! We ignore the reality that no policy in law school is ever permanent, that relitigation is endemic to schools, and that interpretation of any policy ensures great variations in its implementation. Mix two parts individual pathology, one part civil disobedience, three parts obliviousness, and a pinch of incoherence, and you substantially reduce the likelihood of creating governance haute cuisine.

External forces weigh heavily as well. Why do deans decry the *U.S. News and World Report*? Because it is a reminder that what we do with our schools is largely irrelevant to others. No matter what improvements we make, they do not seem to be recognized by others. Worse, we see that really bad behavior can be rewarded. Outright lying seems to be a productive way to improve admissions and placement statistics. And, the other tricks of the trade have become legendary: like employing one's own graduates in "jobs" before and just after graduation; or, admitting scores of "part-time" students, whose statistics are not reported in LSAT ranges, and then miraculously making them full-time before their second year of school; or, calling graduates, and leaving them messages that if they do not call back, you will assume that they are employed.

Cynicism is invited by ends justifying any means. When our counterparts succumb, shouldn't we—especially if it seems to hurt our school that we do not?

But the holy grail of *U.S. News*, even if it is reached, matters only a little when we face up to the core of our jobs. For many of us, we bring in students, charge them a very high price for education, and put them into a world in which it will take them years to dig out of the hole they have created. This activity is barely moral, if we are not explicit in telling the students about the risk they take on. But even with full disclosure it surely creates anxiety in every conversation with a graduate who is sorry that he or she came to law school and depressed over such a miserable career choice.

We often meet successful graduates. Frequently they tell us that their education changed their lives. That is therapy that cannot be duplicated. But

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sometimes even they regret their choices, disdain the school we once were, and lament the costs (psychic, fiscal, and physical) that they incur to become successful. In face of such concerns, is it a wonder that we who must promote legal education to the next generation may feel some doubts?

Yet these doubts may even understate the angst: they ignore the lawyer jokes, the bad press, the unethical behavior, and the misguided acts of members of our profession. They brush aside the brutal nature of big firm practice, the questionable ethics of many lawyers in business, and the politicization of working for the government. They ignore the petty jealousies of other schools in the university, the quiriness of our bosses, and the never-ending stream of regulatory demands of the ABA, the AALS, the city, the state, and the feds.

Together these internal and external forces drive in the same direction—to think badly of others, hunker down with our buddies, and become venal in preserving the good life of the dean: nice salary, good food, respect of others, and minor triumphs here and there. Once on this path, a negative landing is almost certain.

It cannot be.

It comes down to this: we owe it to our schools to remain upbeat. We owe it to our students to find their best qualities. We owe it to the staff to grow with them and prod them forward. We owe it to the faculty to continue to listen, to invest in their priorities, and to gently persuade them to change when it is necessary. We owe it to ourselves to wake up excited about the job, confident that the best is yet to come, and ready to have some fun!

*Hence the Pig*

New York Law School has been engaged in continuous planning and change for the last six years. Every year has brought new priorities and a commitment to better performing on existing commitments. Among the most important of these commitments has been one to customer service. Customers, as we define them, include the usual externals—students, alums, the public, etc.—and also include internals, each other. While it is easy to identify the ways we fail to provide each other with great service, it is clear that without accepting personal responsibility, it is easy to fall into the bad habit of finding easy blame on the personal foibles each of us possess.

Hence the pig—a reminder to move forward with a plan accommodating the individuals with whom we work. “Ya Gotta Pay the Pig.” Funny at first; less funny later, but a mantra to reign in our worst impulses, a kind of think first, dump later button on our own voices. Skinner would have been proud: avoiding the penalty pig and negative reinforcement works . . . at least for a while.

But, like rats getting shocks, sometimes the joy of getting the cheese (or laying into a colleague) overcomes the shock (of paying the pig). This inevitably leads to the need to supplement pig payments with more positive forms of reinforcement (and behavior). The list is simple: (1) stick with the plan; (2) celebrate success; (3) be proud, always; (4) look down the road, but keep an eye on the rear view mirror; (5) don’t take it too seriously; (6) laugh a lot; and (7) know when to hold ‘em; know when to fold ‘em.

*Stick with the Plan*—Every day brings ups and downs. Ups are easy, but taking the downs sometimes depends on seeing them in context. If they seem like relentless, recurring problems, they can overwhelm. But in context, they can be managed and overcome. This depends on having a plan.

The amount of writing on strategic planning is mountainous. Thus, I have no desire here to lay out the need for and techniques of planning. I do want to focus briefly on one of the unintended consequences of robust planning. It can make the day-to-day bumps of the job easy to take. In context, these are trivial; they can be dealt with one at a time, and when they are overcome, the school can go right back on plan. If there is a strong vision for the school, the things that might otherwise sour the dean and the dean team, can be ignored. There simply is no time to go negative—the plan must be achieved. The expressions come from other disciplines: keep your eye on the ball (or on the prize); visualize the outcome; work with a purpose; etc.

*Celebrate Success*—When it comes down to it, academia is a very lonely, virulently independent business. Faculty members generally work alone; we rarely co-author or co-teach. Many of us work at home, do not like to socialize, are introverted, and gain joy from working out puzzles in solitary confinement. Similarly, we require students to work alone as well and most often grade them solely on their individual efforts. In such an environment, we celebrate individual successes alone or with those close to us. And, while such successes may be claimed by the school in its literature or press releases, they sometimes are treated as if they are expected and “just part of the job.”

If we treat successes—new publications, the winning of awards, recognition by the bar, moot court team victories, terrific speaking programs, conferences, etc.—as occasions to celebrate, we raise up the spirits of the whole school. We force ourselves to look to the best in each other. We share a positive experience. We reflect on successes and their relationship to the plan—and thus reinforce the very thing that can keep us positive. Partying on—what a concept!

*Be proud, Always*—Lawyers generally are good at finding weakness and obsessing about shortcomings. It is our training—probing for soft spots and focusing on possible bad outcomes. In institutional terms it means we can find things in our schools about which we are embarrassed—our *U.S. News* rating, a relatively low bar passage, the weakness in our donations, the poor job prospects of our students, the deplorable state of our students’ writing, blah, blah, blah. Then there are the articles about the latest indicted graduate and even the losing football team.

How about the other side of the ledger? Every law school has multiple things about which it should burst with pride—the accomplishments of its graduates, the fantastic new programs it creates, the scholarship of its faculty and students, the creation of real value for clients of its clinics, the great things that others say about the school in the press or in articles, etc.

Pride begets proud behavior—keeping the physical plant cleaner, dressing for success, bragging on the subways, etc. It also reminds us to be positive and use that as our touchstone for moving forward. Accentuate the positive—I heard that somewhere. It’s good advice.

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*Look down the Road, but keep an Eye on the Rear View Mirror*—One risk of sticking with the plan is that it always forces us to look down the road at the next challenge to overcome, the next project to complete, the next obstacle to leap over, or the next new program to initiate. Knowing that the job is never complete and that we are in a never-ending cycle of constant improvement can be daunting. It suggests that the job is never done, that nothing is ever good enough, and that we are always on the precipice of failure. No doubt, this can exacerbate whatever negativity we shelter just below the surface of our emotions.

That makes it critical not just to look down the road, but also keep an eye on the rear view mirror, looking back on where we have been. The consequence of knowing where we have been is to allow pride to swell over the many accomplishments of the school, the tremendous progress it has made in its quest to improve, the several successful implementations of what were once the new programs or new ideas. Knowing that we have covered a lot of ground makes it easy to know we will get to the next stop on the road, and the one after that, and so on. At the end of every year it is great to step back and ask all that has been accomplished. The accumulation of those yearly reviews tells us that we have gone far in our journey and permits us to indulge real institutional pride.

*Don't take it too Seriously*—Administering law schools is not rocket science or brain surgery. Although the future of our schools is a matter of deep concern, it is always important to keep the job in perspective. We are in a value-added business. Students will get a good education (almost without regard to what we do or how we do it). In spite of ourselves, legal education has an auto-pilot characteristic to it; teaching goes on without much supervision, donations come in pretty steadily, students get jobs, etc. This is not to minimize the real difference that deans can make, but it is a reminder that the school prospered long before we arrived and will succeed long after we have left. The lesson is to know that winning some and losing some others is inevitable, but that our main responsibility is to concentrate on important matters and let the small stuff slide.

*Laugh a Lot*—Not taking things seriously is not the same thing as laughing a lot. There is joy in our jobs and a great chance to laugh at the absurdity of the things that swirl around us in higher education. From the faculty member who needs to call your office to figure out how to use the phone system, to the students caught in a compromising position in the “locked” classroom, to the pitched debate about parking on campus, to worrying about who is moving the furniture, to assuring the students that they will have 24/7 access to study on New Year’s Day, to a hundred other minor annoyances, stepping back is a great occasion to laugh at the strange moments in higher education.

There are priceless moments in every deanship, the kind that allow us to tell amusing stories to our non-higher-education friends. The key is keeping them in perspective and knowing that today’s crisis is tomorrow’s war story.

*Know when to Hold ‘Em; Know when to Fold ‘Em*—Perhaps this point is too obvious to make, but there comes a time at which one can no longer stick to the plan, celebrate, be proud, and look forward and back, a time where everything is taken seriously and laughter comes with great difficulty. When that day comes, it is time to call it quits. Simply put, every dean reaches the point at which he or

she has done it all, seen it all, and heard it all, when everything is personal, and when the pig is being filled daily. That is the day to move on.

*Final Thoughts*

Since writing this essay, I have shared pig mythology with my colleagues here and elsewhere. They are amused and horrified at the same time. Faculty members have a hard time believing that anyone might think negatively about them, but some faculty have no difficulty in thinking negatively about at least one of their colleagues. A few other deans can't wait to make their first deposit—knowing that it is a quick way to raise their annual funds. But among many of our staff members, the pig lives on.

Some of our administrative offices have pigs of their own—to which they make weekly contributions that end up as the candy fund or the holiday party decorations. Even those who have no personal pig experience have been heard suggesting that “ya gotta pay the pig” is the only appropriate response to a negative comment. Maybe this is the start of a new law school trend—pig paying, futures in pig payments, even a pig payment scale to be incorporated into the next ranking system. For me, however, I am prepared to become a post-pigian dean—committed to the positive and only vaguely nostalgic for those whiny days past of pig-worthy comments. But, then again, as I recall *Animal Farm* or even *Charlotte's Web*, pigs always play an important role in utopian cautionary tales!