

## LEADERSHIP IN TIMES OF INSTITUTIONAL CHANGE

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**D**URING my eleven years as dean, I was privileged to participate in a lengthy period of profound change at my law school, which is now known as the Thomas Jefferson School of Law. When I was appointed acting dean in 1994, the law school was a branch campus of a non-American Bar Association (ABA)-approved, for-profit university called Western State University College of Law (WSU)<sup>1</sup>. Eighteen months later, we separated from WSU. Seven months after that, we became the first for-profit law school to receive provisional ABA approval. Five years later, we became the first for-profit law school to receive full ABA approval. And within two months of gaining full ABA approval, we became the first ABA-approved, for-profit law school to convert to a not-for-profit institution. In short, over the course of seven years, we changed from a branch campus of an unaccredited,<sup>2</sup> proprietary law school to a free-standing, nonprofit law school with full ABA approval.

Along the way, the law school became an outstanding academic institution. We doubled the size of the faculty, quadrupled the size of our library collection, added a second building, and raised the minimum LSAT score of our entering classes by about 15 points. Applications for admission increased more than tenfold, and we became second only to Stanford among California law schools for the percentage of our entering class that came from out-of-state. As of mid-2005, the Social Science Research Network ranked our faculty 55th in the world for the number of downloads of our scholarship from the network.

This experience taught me some things about leading a law school through a major transformation. In my contribution to the symposium, I would like to provide a brief narrative about the process through which we went and then

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1. WSU was a university in the sense that it was a union of three law schools located in Fullerton, Irvine and San Diego. Each law school had its own campus, faculty, and dean and set its own academic policies. The university had a central administration housed at the Fullerton campus, which was the oldest and largest of the three campuses and which was regarded as the main campus. The San Diego campus separated from WSU in 1996 and WSU closed its Irvine campus not long thereafter. WSU continues to operate in Fullerton as a stand alone, for-profit law school with provisional ABA approval. Press Release, Western State University College of Law (Feb. 14, 2005), *available at* <http://www.wsulaw.edu/WSUPressReleaseABA.doc>.

2. The law school was accredited by both the California Committee of Bar Examiners and by the Western Association of Schools and Colleges (WASC) in the 1970s and so it technically was not an “unaccredited” law school. I use the term to refer to its lack of ABA approval.

discuss some of the lessons I learned about leadership during the past eleven years.

### I. TRANSFORMATION AT THOMAS JEFFERSON

It was with enormous ambivalence that I accepted an offer of a teaching position at the San Diego campus of WSU in 1991. As a law student on the East Coast, I had heard about all those unaccredited law schools out in California, but I never imagined that I would be on the faculty of one. After I spent my first year on the faculty complaining continuously to the dean about our lack of ABA approval, she retaliated by asking me to serve as associate dean. In April 1994, a few weeks before the end of my two-year tour, she notified me that she was resigning as dean and asked me to serve as acting dean for a year pending a search.

It seemed that if I were going to be the dean for a year, I should use that year to try to persuade the shareholders of the law school to let us separate from the university and apply for ABA approval. When I was given an opportunity to meet with them in September, I presented them with an 84-page feasibility study that I had written over the summer and that was intended to persuade them that the law school would be more successful as an ABA-approved law school. I also gave them a unanimous resolution from the faculty and a petition from the students in support of the proposal. They responded that the ABA would never approve a for-profit law school and cited their unsuccessful attempt to obtain ABA approval for WSU in the 1980s.<sup>3</sup> I told them that I was convinced that the San Diego campus met the standards for ABA approval and that we would succeed if we applied. I urged them to hire consultants to visit the law school and verify our readiness to apply. A few weeks later, they agreed to hire the consultants.

A problem arose when the WSU president informed me that because of plans by two other institutions to open new law schools in Orange County,<sup>4</sup> if an application for ABA approval were to be made, it would be on behalf of one of the Orange County campuses and therefore the consultants would not be visiting

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3. The ABA Standards at that time actually prohibited approval of a for-profit law school. In the 1970s, the ABA had suspended that standard and stated that, if a for-profit law school demonstrated that it met the remaining standards, the suspended standard would be abolished. In the mid-1980s, WSU sought to become the first for-profit law school to obtain ABA approval, but was denied provisional approval on its first application. An appeal to the Council of the Section on Legal Education and Admission to the Bar was denied. The shareholders decided at that point not to reapply. The standard prohibiting approval of a for-profit law school was abolished in 1996 as part of the consent decree signed by the ABA with the Department of Justice in settlement of an antitrust action brought by the Justice Department against the ABA. *See United States v. Am. Bar Ass'n*, 934 F. Supp. 435, 436 (D.D.C. 1996).

4. Whittier Law School, then located in Los Angeles, had announced that it was relocating to Orange County. Meanwhile, Chapman University, a private university in Orange County, had announced at about the same time that it was opening a law school. Fullerton and Irvine are both in Orange County and, thus, these two new law schools would be in direct competition with WSU's two Orange County campuses.

the San Diego campus. After further discussion, that decision was reversed. The consultants visited all three campuses and recommended an immediate application on behalf of the San Diego campus. In June 1995, the shareholders finally consented to allow the San Diego campus to separate from WSU<sup>5</sup> and apply for ABA approval. They asked me to stay on as permanent dean to spearhead the process. Meanwhile, a few weeks earlier, while I was out of town, the faculty had met and adopted a resolution recommending that I be offered the permanent deanship.

On January 1, 1996, the San Diego campus opened its doors as the Thomas Jefferson School of Law. It was no longer part of WSU, though it was owned by the same individuals. We worked feverishly to set up offices on the San Diego campus to handle all matters that typically are handled by a central administration and that had been handled by the WSU central administration. At the same time, we purchased a second building and began the process of renovating and occupying the new building. The following month, we were visited by an ABA site inspection team. On August 6, the House of Delegates granted provisional approval to Thomas Jefferson. We set our sights on obtaining full ABA approval by 2001, the end of the five-year period that typically elapses between provisional and full ABA approval.

In early 2000, the shareholders came to my office, closed the door, and told me that they had decided that they had been in the law school business long enough and that they intended to sell WSU and TJSJL to a publicly traded company in the education sector. They had engaged an investment banker to find a buyer and expected to close the deal by June.

This seemed to me a unique opportunity to convert the law school to a nonprofit, if only a nonprofit buyer could be found.<sup>6</sup> As soon as they left my office, I got on the telephone to every university within a hundred miles looking for one that wanted to acquire a law school. Some were interested, but no one was in a position to close a deal by June.

As it happened, much of my scholarship had been in the area of international investment law and I was familiar with debt-equity swaps. It occurred to me that we needed to do the opposite, which was to swap equity for debt. That is, we needed to find someone willing to lend us money to acquire the law school from the shareholders. My Chief Financial Officer, Nancy Vu, with whom I had frequently discussed my hopes of eventually converting to a nonprofit, put me in

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5. It was necessary to separate from WSU because we did not believe that the ABA would approve a law school that was legally and financially inseparable from a second law school that was not ABA approved.

6. The initial resistance of the shareholders to applying for ABA approval was so strong that for a time during the 1994-95 academic year, I had thought that the more likely route to ABA approval was to find a nonprofit that would purchase the law school from the shareholders and allow it to apply for ABA approval. I found just such a buyer and the shareholders agreed to sell, but then the deal fell apart over some fairly minor details. Shortly thereafter, the shareholders abandoned their opposition to applying for ABA approval and that brought my efforts to find a nonprofit buyer to a close. I hoped to resume those efforts once we had full approval.

touch with an investment banker she knew at Bank of America who could underwrite a bond offering.

Meanwhile, disaster struck. The shareholders notified me that they had signed a contract with a company called Argosy Education Group to purchase both TJSL and WSU. The deal was subject to obtaining ABA acquiescence<sup>7</sup> by June and was expected to close by August. The Argosy President came to San Diego to meet with me and to lay out his vision for the law school. The vision horrified me and after he left I called the shareholders and told them that I could not agree to the acquisition. If necessary, I would resign as dean and urge the ABA not to acquiesce in it. Shortly thereafter, the Accreditation Committee sent the shareholders a letter stating that further investigation of the acquisition was necessary and that the matter was being taken off the agenda of the June meeting. This violated one of the conditions of the purchase agreement and allowed the owners to cancel the sale.<sup>8</sup> Nancy and I presented the proposal we had developed with Bank of America and the shareholders decided to accept it.

The proposal called for setting up a nonprofit corporation, selling tax exempt bonds through the California Statewide Community Development Authority and using the proceeds to purchase the school from the shareholders. When we put the bonds on the market, however, there were no takers. It was clear that the ability of the school to service the debt would depend upon retaining ABA approval, but we had only provisional approval. The bond purchasers wanted an assurance that we would receive full approval before they would purchase the bonds. Meanwhile, when we appeared before the Accreditation Committee in summer 2001 in connection with our application for full approval, the committee wanted to know, quite reasonably, whether the law school would be operated as a nonprofit or a for-profit school and who would exercise ultimate control, questions on which we could not provide any firm assurances. Ultimately, the committee recommended full approval and the council granted it. A few weeks later, the bonds sold<sup>9</sup> and the transformation to a nonprofit was complete.

## II. LESSONS LEARNED

One of the critical elements in our string of successes was that the faculty and staff alike were fully united in support of what we were trying to accomplish. We were inspected by the ABA seven times during my deanship and by WASC<sup>10</sup> twice. Every single team that set foot on the campus commented on both the

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7. Under the ABA Standards, a law school approved by the ABA cannot make a major change, such as a change in ownership, without ABA acquiescence.

8. They cancelled the sale only as to Thomas Jefferson. WSU was sold to Argosy, and Argosy was later acquired by another company.

9. The bonds were scheduled to be sold at 10 a.m. Eastern time on September 11, 2001. The events of that day are well known and, of course, the bonds did not sell that day. It appeared for a time that the sale would be doomed by a post 9/11 "flight to quality," meaning that investors were avoiding high risk deals, which ours was perceived to be. Ultimately, however, the deal did close.

10. On WASC accreditation, *see supra* note 2. Like the ABA, WASC reinspects its accredited institutions at regular intervals.

very high level of enthusiasm about, and the depth of commitment to, the law school shown by both the faculty and staff. Much of what I wish to discuss concerns how one generates and maintains support for institutional transformation.

*You Can Build Consensus By Listening*

It is hard to overstate how divided our faculty was in the early 1990s between those who wanted to pursue ABA approval and those who did not. A WASC team that visited the law school during the 1993-94 academic year observed that the faculty was sharply divided into two camps on virtually every issue before it and that every debate was seen as a proxy for a larger debate about whether to seek ABA approval. The division was largely generational. Those who had lived through the failed accreditation attempt by WSU in the 1980s were battle scarred and did not want to relive another humiliating denial. They feared that the school would not survive another attempt. Newer faculty were more confident that an application by the San Diego campus alone would be successful. Nearly everyone saw this as a battle for the survival of the institution. One group thought the school might not survive if we applied and, as they anticipated, were turned down. The other group thought the school might not be worth saving if we did not apply.

My first priority upon my appointment as acting dean in 1994 was to try to create a consensus with respect to that issue. Almost immediately, I scheduled individual meetings with every member of the faculty and asked each of them to describe for me their ambitions for themselves and for the law school. The ambitions varied. Some wanted more support for scholarship, some wanted better students, some wanted lighter teaching loads, and some wanted higher pay. In these discussions, I tried to determine to what extent members of the faculty understood that obtaining ABA approval would further their ambitions for themselves and for the school. By the end of the summer, we had a consensus in favor of seeking ABA approval. For the next ten years, that initial consensus was the foundation for everything we did. Having essentially unanimous agreement on our underlying goals gave us a cohesiveness that was critical to our success. The key to building that consensus, however, had been to engage members of the faculty individually and to listen to what they were saying.

Consensus building in favor of change is not entirely a matter of persuading people on the merits. It is also a process of creating personal comfort with impending change. I really had to do very little persuading. When faculty found that I was listening to them, they began to believe that the direction in which I wanted to take the school would not leave them behind. By listening to them I earned their trust, then their confidence, and then their support.

*Consensus Often Requires Building A Big Tent*

Change is enormously threatening to many people, particularly law professors. For reasons I have never fully understood, law school faculty, taken as a whole, seem to be an especially insecure lot. Any proposed change generates fear that it

will diminish their position, either absolutely or relatively. The problem with disabusing members of the faculty of this notion in the case of profound institutional change is that they are very likely correct. Transforming an institution almost certainly will diminish someone's position, at least relatively speaking. For example, the shift from an unaccredited to an ABA-approved law school raised the stock, relatively speaking, of our most prolific scholars. It was important, therefore, to make clear to the faculty that the direction in which we were headed would improve everyone's circumstances substantially. To build a consensus, the change needed to be structured so that it would in fact be advantageous to as large a segment of the faculty as possible.

*Even A Big Tent Won't Necessarily Make Everyone Cozy*

Even the strongest consensus is likely to include a few who are somewhat reluctant or skeptical members. The choice is to exclude them or to try to accommodate them. As I have suggested above, building a consensus in support of change generally requires attempting to accommodate those who feel that they will gain the least (or even lose) as a result of the change. Further, attempting to include everyone is what the faculty as a whole will likely expect the dean to do. Any time that a dean gives the impression that he or she does not value a particular faculty member, that individual tends to become an object of sympathy for the rest of the faculty. Unfortunately, attempts to bribe skeptical faculty into joining the consensus do not necessarily leave those faculty satisfied. You simply cannot please everyone all the time. The realistically achievable goal may be not to make a particular faculty member happy with the proposed change, but to accommodate him or her enough to prevent that faculty member from being perceived as a victim by the rest of the faculty.

*Decisions Will Be Judged Procedurally As Well As Substantively*

Many faculty care as much about process as results. For them, the issue is not whether the right decision was made, but whether they were adequately involved in making the decision. In ordinary times, it may be possible to consult with the faculty about important decisions. During times of profound institutional change, however, events can move quickly and it may not always be possible to consult with the faculty. Failure to do so will be greatly resented, even if the decision was the right one. When Lucifer proclaimed that it was "Better to reign in Hell, than serve in Heav'n,"<sup>11</sup> he apparently had just come from a law school faculty meeting.

*Build Relationships*

A dean leading a law school through profound change may have to ask the law school's constituents to make sacrifices or take risks that go beyond the ordinary.

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11. See JOHN MILTON, *PARADISE LOST* (1667).

The dean can explain the importance and necessity of these steps, but time will not permit a lengthy discussion of these issues with every single member of the faculty or staff. Similarly, individual faculty and staff will have concerns that the dean is unlikely ever to hear from them directly for any of a number of reasons. Both of these problems can be addressed at least in part if the dean has strong relationships with members of the faculty and staff. Faculty and staff who trust the dean can help to build bridges to those with whom the dean does not have the time to speak extensively. Thus, a dean needs to build strong relationships with faculty and staff to whom the dean can turn when he or she needs information or support. Fortunately, a dean leading a law school through institutional change has natural allies in those individuals who are most deeply committed to the success of the change.

#### *Earn Trust*

A dean during times of profound change occasionally must ask for support without always being able to explain all the reasons. The support is more likely to be forthcoming if the law school community trusts the dean. Obviously, dealing honestly with others is an important way to do earn their trust. But other practices can also build trust. As noted above, simply listening to others tends to win their trust. Sharing information is also very helpful in earning trust. I have, for example, written long memoranda to the faculty explaining how I awarded merit pay raises and how I made committee assignments. I called periodic meetings of the entire administrative staff to update them on changes at the law school and to give them an opportunity to ask questions, an opportunity that the faculty had at our monthly faculty meetings.

#### *Consensus Must Be Continually Nurtured*

A problem created by profound institutional change is that it alters the circumstances under which the consensus in favor of change was created. As the circumstances change, the consensus that was forged in those circumstances is put in danger of disintegrating. In a sense, the consensus must be constantly reestablished. People must be regularly coaxed back into the tent. Relationships and trust must be continually reinforced.

#### *Dissension Is Inevitable*

Another problem that arises in trying to maintain consensus is that members of any faculty differ in how they balance their commitment to the institution with their personal ambitions. Talent and energy levels also differ. For these reasons, as the institution undertakes the work involved in any major transformation, some faculty inevitably contribute more than others. If their efforts are not acknowledged and rewarded, they become discouraged. If their efforts are acknowledged and rewarded, others start to regard them as the dean's favorites and begin to feel unappreciated or marginalized. Thus, even where there is unanimous agreement on the ultimate goal, the differing contributions and levels

of commitment of faculty to that goal can become a basis for division with the faculty. Again, building strong relationships and trust are the best antidotes.

*Be Optimistic (Or Pretend To Be)*

No matter how bad things get, the dean must remain the picture of sunny optimism. You cannot hire very many people without hiring a number of pessimists and cynics. Every law school has a coterie of people determined to believe the worst. They generate a perpetual flow of rumors all of which place the worst possible interpretation on the latest news. The dean must be the counterweight. Few people want to commit themselves to a failing enterprise. It is assumed by everyone that the dean has information that others do not have. If the dean does not appear to believe that the institution is succeeding, no one else will believe it is either.

*Persevere*

Many problems can be solved only with considerable determination. If there was any central theme to my narrative above, it is that our road to ABA approval and nonprofit status was filled with obstacles any one of which could have doomed our efforts. All of them were overcome, often by little more than a refusal to accept defeat. Leading an institution through a major change is very hard work and one must bring to it a deep reservoir of determination.