

NOT QUITE “THEM,” NOT QUITE “US”: WHY IT’S DIFFICULT FOR FORMER DEANS TO GO HOME AGAIN*

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IN an earlier issue of this annual symposium, I wrote about my swift transition from faculty colleague to administrator.¹ Now, after eight years as a dean—two years at the University of Nebraska College of Law and six years at the University of Houston Law Center—I’m returning to my roots as a law professor.² I’ve been an academic since 1991, but what with having been an associate dean as well as a dean twice over, I’ve worked in administration for ten out of the last sixteen years. It’s time to go home.

And yet I can’t truly go home again. I’ve learned too many things about myself and about the relationship between a faculty and its administration to resume my pre-administrator mindset. The lessons that I learned as a dean have changed me in some fundamental ways. I’m not one of “them” (an administrator) anymore. But I also can’t be among those of “us” (professors) who view shared governance either as a nuisance that gets in the way of their teaching and research or as an entitlement to ride their particular hobbyhorses³ in public. I’m returning to a very specific category of colleagues: those who were always there when the dean needed them, happy (or at least content) to pitch in when needed—those who understood that the best institution was a shared enterprise, rather than a loose collection of independent contractors.⁴ I’ve seen

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** Professor of Law and former Dean, University of Houston Law Center. Apologies to Thomas Wolfe, author of *YOU CAN’T GO HOME AGAIN* (Harper reprint ed. 1998). Many thanks to Whitney Blair, Al Brophy, Bruce Campbell, Paul Caron, Dick Chait, Jim Chen, Pete Egler, Tommy Fibich, Victor Flatt, Cathy Glaze, Debbie Hirsch, Bob Kegan, Joan Krause, Steve Lahey, Bob Lawless, Beth Leibo, Vidal Martinez, Julia McQuillan, Arnold Peter, Morris Rapoport, Rich Saver, Elaine Shoben, Jeff Van Niel, and Pete Wentz (not the one who’s in Fall Out Boy, but *that* Pete Wentz’s dad) for their suggestions and insights.

1. Nancy B. Rapoport, *Going from “Us” to “Them” in Sixty Seconds*, 31 U. TOL. L. REV. 703 (2000).

2. Not only am I returning to my roots, but I’m looking forward to finishing my sabbatical year and then heading off to become the Gordon & Silver, Ltd. Professor of Law at the William S. Boyd School of Law, University of Nevada, Las Vegas, in the summer of 2007.

3. Apologies to LAURENCE STERNE, *THE LIFE AND OPINIONS OF TRISTRAM SHANDY, GENTLEMAN* (Modern Library 1950) (1760).

4. For example, I remember my late colleague, Joanne Murphy, as someone who was always ready to pitch in, cheerfully.

the best and the worst sides of research universities.⁵ In the last essay that I'll write for this symposium, here are some of the lessons that will stay with me.

1. *Administrators are pulled in many directions at once, and their choices always involve constraints.*⁶ *Corollary: In making their decisions, administrators are privy to information that professors won't have and can't get; professors, too, have access to information that administrators won't have and can't get.*

I understand the theory underlying shared governance.⁷ For all of the language that universities use about shared governance, though, I've seen dramatic examples of a fundamental lack of respect on both groups' parts: a cynicism about faculty members and about administrators. Even before I became one of "them," I didn't understand the deep-seated distrust of administrators that some faculty members displayed, although I've seen this behavior at several law schools.⁸ For some professors, administrators are venal, craven creatures who run academic units solely to gratify their own egos.⁹ These professors don't see administrators simply as having a different perspective, with access to different information.¹⁰

Administrators know about personnel issues that they can't share with their faculty colleagues; they may also know about—but not be permitted to

5. For those of you who are hoping for some juicy gossip, you might want to look at Mark Donald, *Rankings Rift Hastens UH Law Dean's Resignation*, TEX. LAW., Apr. 24, 2006, at 1, or you can wait for the book that I'm writing on the governance of organizations with flat hierarchies. The tentative title is *MANAGING BY AMBUSH: WHY UNIVERSITIES CAN'T KEEP PACE WITH THE REAL WORLD* (forthcoming 2007).

6. In administration, in contrast to the realm of ivory-tower theory, the real world always intervenes, and one can't simply "assume a can-opener," as in the punch-line in the old joke about economists:

A geologist, a physicist, and an economist are marooned on a desert island with nothing to eat. A can of soup washes ashore. They ponder how to open it. The geologist says, "Let's smash it open with a rock." The physicist says, "Let's heat it up and blow it open." The economist says, "No, no. You guys will lose most of the soup. Let's just assume a can opener."

Peter B. Lund, *The Dismal Science "Lightened Up": Jokes about Economics and Economists*, <http://www.csus.edu/indiv/l/lundp/humor.htm> (last visited Feb. 2, 2007).

7. The practice of shared governance—more than the theory—puzzles the heck out of me. In *MANAGING BY AMBUSH*, I'll be exploring whether shared governance is truly viable. See *supra* note 5.

8. My friend Victor Flatt has helped me understand the problem of distrust a bit better. Victor suggests that those faculty members who distrust the current administration do so because a former dean or associate dean was truly untrustworthy or because they suspect that the current dean or associate dean is biased against them. E-mail from Victor Flatt to author (Aug. 17, 2006) (on file with author) [hereinafter Flatt e-mail].

9. I wish I were kidding. I'm not. There is a subgroup of faculty members who refuse to recognize that every administrator, even a bad one or an incompetent one, is still human.

10. The same can be said of administrators who ridicule professors.

disclose—impending university actions related to budgets or personnel; and they have had to sift through mounds of information provided in meetings, memoranda, and hallway conversations. They also know what other parts of the university are causing problems within the law school, but they may be powerless to bring about any change.¹¹

Professors, too, have information that the administration (especially the dean) isn't likely to have, especially if the dean has come from outside that faculty. When I was a faculty member and then an associate dean, I wondered why my dean didn't know more about his staff: who worked hard and who didn't, who played well with others, who guarded his turf zealously, and the like. When I became a dean, I realized how rarely I received complete information about others' behavior. Most people certainly took pains to present a positive picture to me, even if they were not always so positive to others (or positive *about* me, outside of my hearing).¹²

There's no good way for the dean to get full information before she has to make decisions. Faculty-elected executive committees or dean's advisory committees certainly help, especially if those committee members also spend time caucusing with their constituencies. Other suggestions that I've heard about getting more information don't ring very true to me, based on my own experiences and my own biases. For example, several people have extolled the virtues of "managing while walking around." Being visible in the hallways is useful—though difficult, given any hard-working manager's daily schedule. The idea of dropping in on people's offices to chat as a way of taking the institution's temperature, however, has its own, built-in flaws. For one thing, the game of "telephone" always feeds the rumor mill.¹³ For another thing, the drop-in visit always felt very artificial to me. I always sensed the role differential. For the staff, I was always the boss. For the faculty—even for those who thought of a dean as only "first among equals"—I was, at the very least, the "equal" who made the final decision on raise recommendations. Looking back, I think that some of the proponents of drop-in office visits tended to think of those visits as identical to the drop-in visits that they'd do with their colleagues. The real equivalent for a dean's drop-in visit, though, is a drop-in visit to a colleague dean.

Even a dean who comes from the faculty and who likely has decent information about others' behavior has to force herself to give everyone a clean

11. For example, at two of the three institutions I've experienced as a faculty member, part of the problems with certain student affairs matters came from restrictions at the university level, not the law school level. Some of the law school staff, then, may have looked less-than-stellar, but it truly wasn't their fault. On the other hand, some of the comments about incompetence at every institution, everywhere, are true. See, e.g., LAWRENCE J. PETER & RAYMOND HULL, *THE PETER PRINCIPLE* (reprint ed. 2001).

12. One of the nicest things about stepping down as dean is finding out who's still nice to me, especially since I'm a short-timer: on sabbatical this year and then gone. It's gratifying to find out who my true friends are, although I'd have preferred not to have gone through a crisis to get to this point.

13. One of my favorite university presidents refers to the gossip at his institution as highly efficient but highly inaccurate.

slate when she becomes the dean. People can and do change—if they want to.¹⁴ So there’s probably only a slight informational advantage for deans who come directly from the faculty.

Here’s one way of looking at the information asymmetry:¹⁵

Deans	Professors
More likely to understand the school’s multiple short- and long-term needs.	More likely to understand the needs of individual faculty members.
More likely to have data about the university’s and law school’s budget and about the university’s short-term and long-term plans.	More likely to have information about various individuals’ behavior over time, and in a variety of situations (e.g., who takes committee work seriously, who can be trusted to work independently).
More likely to have information about how various sub-units interact (e.g., the needs of various departments within a law school, the budgetary limitations of each).	For professors who have been at the institution for a while, more likely to have information about why certain proposals haven’t worked well in the past and about how best to move a proposal forward (how best to respect the community’s process of decision-making).
More information about the regulations and costs associated with various proposals.	More information about what would make their jobs easier (but less information, probably, about the costs associated with improving the conditions).
More likely to have short deadlines for making decisions.	More likely to have some uninterrupted time to think about an issue from a variety of perspectives.
More likely to have information from alumni and other members of the legal and business community, due to regular interaction with those communities.	More likely to know how the institution has changed internally over time.

Rich Saver has helped me to better understand this information differential by pointing me to the literature on gainsharing: to the extent that the people closest to the performance of particular operations can provide advice, decisions improve.¹⁶ For example, the users of a classroom should have a chance to

14. My favorite joke is still the light bulb joke: “How many psychiatrists does it take to change a light bulb? One, but the bulb really has to want to change.” Nancy B. Rapoport, *Eating Our Cake and Having It, Too—Why Real Change Is So Difficult in Law Schools*, 81 IND. L.J. 359, 369 (2006) [hereinafter *Cake*].

15. Note that there are also information asymmetries between the dean and her staff, among full professors, associate professors, and assistant professors, between the dean and the university, etc.

16. E-mail from Rich Saver to author (Sept. 4, 2006) (on file with author) [hereinafter Saver e-mail]. For some wonderful discussions of gainsharing and the information differential in a variety of contexts, see, e.g., Richard S. Saver, *Medical Research Oversight from the Corporate Governance Perspective: Comparing Institutional Review Boards and Corporate Boards*, 46 WM. & MARY L. REV. 619 (2004); Richard S. Saver, *Squandering the Gain: Gainsharing and the*

provide input into classroom designs.¹⁷ Rich is absolutely right, and the key is to determine both what information the decision-maker needs and if and when the decision-maker can get access to that information.¹⁸ For deans as well as for professors, there's a tension between getting access to a sufficient amount of good information and the need to make a timely decision.¹⁹ Making decisions on incorrect or insufficient information is frustrating and sometimes risky, but waiting for all possibly relevant information can cause “paralysis by analysis” for professors and deans alike. When faculty members forget the information differential and the time differential, they may tend to view administrative decisions as wrong-headed or, worse yet, actively malicious.²⁰

It's not surprising to note that the more collegial the community, the more likely it is that people will seek out opportunities to cooperate and share information. The more cooperation among the various groups at the law school, the better the decision-making. The flipside is also true: the more painful it is to

Continuing Dilemma of Physician Financial Incentives, 98 NW. U. L. REV. 145 (2003); Donald C. Langevoort, *The Human Nature of Corporate Boards: Law, Norms, and the Unintended Consequences of Independence and Accountability*, 89 GEO. L.J. 797 (2001); Melvin A. Eisenberg, *Corporate Law and Social Norms*, 99 COLUM. L. REV. 1253 (1999).

17. I recall finding out, at a site visit of a law school with a relatively new building, that some of the custodial staff members were asked what would make the building easier to clean. Now *that's* gainsharing.

18. See discussion of shared governance, *infra*.

19. There's also the related problem of people putting different spins on the information that they receive. For a discussion of how different groups can interpret the same signals differently (and why, therefore, these groups won't ever agree), see Daron Acemoglu, Victor Chernozhukov & Muhammed Yildiz, *Learning and Disagreement in an Uncertain World* (MIT Dep't of Economics, Working Paper No. 06-28, 2006), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=939169. Bob Lawless told me about this paper, which was presented at a faculty workshop at the University of Illinois College of Law. Depending on how people interpret the information that they receive, they may even end up disagreeing more when they receive more information. See e-mail from Bob Lawless to author (Oct. 15, 2006) (on file with author).

Although I'm not going to parse through the calculations in *Learning and Disagreement*, the paper's conclusions make intuitive sense to me. I remember reading somewhere that people tend to attribute to themselves the most benign of motives and to attribute to others more suspect motives. (Apologies to the law students cite-checking this article—who probably won't be able to find the cite for this statement.) Skeptics in the university setting may interpret a statement, meant at face value, as “proof” of something sinister. See, e.g., *supra* notes 6-12 and accompanying text.

20. See Flatt e-mail, *supra* note 8. I'm sure that the perception of decanal malfeasance has several causes, including the historical, the psychological, and the sociological. It is frustrating, though, to be on the receiving end of distrust, and most deans have, at some point, been on the receiving end (whether or not such distrust was deserved). It's especially annoying to be on the receiving end of criticism of decisions by those professors who rarely volunteer to devote the time necessary to master the same amount of information before weighing in on the decision.

Faculty members may also use their own experiences to project other negative characteristics onto the current dean. Cf. *supra* note 19. For example, I've heard a professor routinely point to one of my articles in an earlier deans' symposium—Nancy B. Rapoport, *Of Cat-Herders, Conductors, Fearless Leaders, and Tour Guides*, 33 U. TOL. L. REV. 161 (2001)—to illustrate my lack of respect for the faculty because I had used the cat-herding metaphor as an illustration of a style of deaning. Ironically, I tend to think of myself as more of a conductor than a cat-herder. Moreover, I'm an ailurophile.

seek cooperation, the less likely it is that the decision-makers will take the time to get the additional information.²¹

One of the reasons I'm such a fan of Bob Kegan's work is that he has developed a useful framework for discussions within a community. In *HOW THE WAY WE TALK CAN CHANGE THE WAY WE WORK: SEVEN LANGUAGES FOR TRANSFORMATION*,²² he and his co-author, Lisa Lahey, walk the reader through why it's so difficult for a community to change its behavior over time. People complain only when they care deeply about something, so it's possible to discover what underlying value is reflected by the complaints.²³ Therefore, in order to be able to change, a person must first uncover his reasons for *not* changing—and those reasons likely involve a deeply-held value that conflicts with the value reflected by his complaints.²⁴ In order to accommodate the change-resistant value, then, the person has to have a rational hypothesis about why change isn't in the person's best interest.²⁵ The only way to create lasting change would be to test that hypothesis incrementally, in safe ways, to see if the change would be as bad as the hypothesis suggests.²⁶

For example, if I'm frustrated by the lack of input before I make a decision, I might say that I value gathering timely information. (Step 1: Identify the value underlying my complaint.) But I clearly don't value that information enough to brave drop-in office visits. (Step 2: My contribution to the lack of change.) Therefore, I must hold a competing value—the value of not wanting to subject myself to conversations that might become extremely uncomfortable. (Step 3: Identify my hypothesis that keeps me from wanting to change—in this case, that

21. Said a bit less tactfully, when a decision-maker gets few volunteers for input on a timely basis and hears mostly after-the-fact complaining, it is less likely that the decision-maker will seek out input in the future.

22. ROBERT KEGAN & LISA LASKOW LAHEY, *HOW THE WAY WE TALK CAN CHANGE THE WAY WE WORK: SEVEN LANGUAGES FOR TRANSFORMATION* (2002). Bob Kegan also has a lovely write-up in Wikipedia (which, in itself, demonstrates his inherent coolness). See *Robert Kegan*, Wikipedia, The Free Encyclopedia, http://en.wikipedia.org/wiki/Robert_Kegan (last visited Feb. 2, 2007).

23. See KEGAN & LAHEY, *supra* note 22, at 13-32.

24. See *id.* at 33-66.

25. See *id.* at 67-81.

26. See *id.* at 81-88. I strongly recommend reading this book, especially if your community (work, home, other) is struggling through issues of dysfunction. Near the end of my deanship at Houston, I was tempted to bring Bob Kegan in to help us figure out why we were fixating on fighting through what I called "nastygrams": for example, sniping e-mails that criticized some people's teaching philosophies. I did ask Bob to lead a session at one of our ABA Deans' Workshops. Even though I was roundly teased by some of my friends for having such a touchy-feely session, virtually all of the deans who attended it appreciated it. For more information about Bob Kegan and his work, see Robert Kegan Profile, http://www.gse.harvard.edu/faculty_research/profiles/profile.shtml?vperson_id=318 (last visited Feb. 2, 2007). For another way of looking at change, see, e.g., Robert E. Quinn, Gretchen M. Spreitzer & Matthew V. Brown, *Changing Others Through Changing Ourselves: The Transformation of Human Systems*, 9 J. MGMT. INQUIRY 147 (2000). The article highlights a discussion among executives that wanted to change an organization: "Executives spent 1½ days articulating changes that other people would need to make. In that time, never once did the management team look at itself as needing to change." *Id.* at 148.

some of the conversations might be so uncomfortable as to truly upset me.²⁷) If I truly want to change, I would have to test the hypothesis, perhaps by dropping in only for a few minutes or only with a very specific discussion in mind. Only by testing the hypothesis incrementally would I be able to determine if I'm really willing to change.

How does Bob Kegan's work play into my first observation about deaning? It's perhaps a partial explanation for why the administration and the faculty don't always pull together in decision-making. Both sides may care deeply but have very strong beliefs about why cooperation might not be in their best interest. What I particularly like about Kegan's theory is that it acknowledges that everyone in a community bears some responsibility for the community's interactions.

A new dean has to build up her reputation in her institution over time.²⁸ That reputation is, in turn, composed of countless interactions, including numerous decisions, some of which may be hastily made (and some of which will invariably be wrong, in retrospect). No dean can avoid bad decisions. But those who criticize the bad decisions should also acknowledge the information and time differentials and their effects on decision-making. Precisely because some of the administration's decisions will suffer from not having access to more complete information, it's important for the administration to explain the reasons for a decision (or to explain why those reasons can't be made public). Even if the decision, in retrospect, was wrong,²⁹ an explanation might help in demonstrating the decision-maker's good faith.

2. *Shared governance in universities and colleges should mean the proper division of responsibilities between the faculty and the administration in order to nurture an institution, but it often just provides a forum for turf wars and maintenance of the status quo.*

I've read about and seen many different definitions of shared governance, and I've written about shared governance in law schools:

The faculty best understands the core missions of teaching and research/creative activity—hence, shared governance traditionally gives the faculty the authority to control issues of admissions, faculty hiring, and curricular change, subject to the administration's veto power relating to issues of process and budget. Those issues that relate to keeping the place running (budget, facilities), thriving (fundraising,

27. There's actually another step that comes into play: identifying what would be so bad about having an upsetting conversation. In my case, the "Horrible Thing" that might be part of my hypothesis would be that I might become so upset that I would lose my ability to control my emotions in that conversation.

28. Here, too, Victor Flatt wisely recommends transparency in decision-making as part of the foundation for trust. See Flatt e-mail, *supra* note 8.

29. Or, as Joe E. Brown (as Osgood Fielding III) says, at the end of *Some Like It Hot* (MGM Home Entertainment 2001), "[n]obody's perfect." See *Some Like It Hot* (United Artists 1959), <http://www.imdb.com/title/tt0053291/quotes>.

keeping various internal and external constituencies relatively happy), and on the good side of the law are within the jurisdiction of the administration.³⁰

Based on my experiences, I've isolated at least two problems with the division of authority in shared governance: first, most important issues are difficult to define as purely "faculty issues" or "administrative issues," because the issues affect both groups, albeit in different ways;³¹ second, people in both groups often confuse the ability to provide input to the decision-maker with the actual authority to make the decisions.³²

To illustrate the first problem—the difficulty of defining an issue as one for the faculty to decide or one for the administration to decide—let's take the issue of curriculum development. Traditionally, curriculum issues are within the faculty's purview, because the faculty is most likely to be up-to-date on the development of theory in its discipline and the appropriate courses (and appropriate order of courses) to offer to students. But curriculum decisions also have budgetary implications, and the curriculum as a whole has to comply with university regulations, accreditation standards, and (for state institutions) state regulations. So the faculty's curriculum decisions are bound by administrative constraints.

Let me give you an example of how something that starts off as an issue for the faculty segues into an issue for the administration. Let's assume that a faculty has revamped its curriculum *and* has decided to spend more of its scarce resources focusing on increasing the quality and quantity of its scholarship. Both of these decisions relate to core faculty areas. Now let's assume that the faculty decides that it should also vote on the allocation of course loads so that it can best implement its decisions on the curriculum and on the production of scholarship. If the faculty voted to move from a four-course load to a three-course load, then the law school would experience all sorts of backlash from a variety of constituencies: the university's and law school's budget officers (reducing the number of courses would create a loss in revenue), the Associate Dean for Academic Affairs (accreditation issues; issues of fairness in allocating "credit" for large-enrollment classes over small-enrollment classes and over seminars, both of which require extra work; leave and scheduling issues), the Provost (failure to meet the university's workload policy), the adjunct faculty corps (a change in their workload), the students (fewer "specialty" courses), and so on. Thus, the faculty's vote on course load infringes on the administration's area of responsibility.

Traditional administrative decisions (e.g., space allocation, budget) likewise affect the faculty directly. Cutting the summer school budget to free up faculty

30. Nancy B. Rapoport, "*Venn*" and the Art of Shared Governance, 35 U. TOL. L. REV. 169, 174-75 (2003) (footnotes omitted). There are countless good articles on shared governance. Susan Liemer has a particularly interesting take on it. See Susan P. Liemer, *The Hierarchy of Law School Faculty Meetings: Who Votes?*, 73 UMKC L. REV. 351 (2004).

31. Moreover, all of the deans I know think of themselves as faculty members, too.

32. I discuss the issue of faculty behavior in shared governance more fully in *Cake*, *supra* note 14.

time for research will affect those students who are trying to take summer courses, and it will affect those faculty members who enjoy teaching in summer school. A space catastrophe that occurs over the summer (for example, a violent storm that wipes out the facilities) will require quick administrative decision-making in order to reconfigure the space in time for the fall semester, but those decisions will affect the ability of the faculty to teach and research comfortably when everyone returns.³³ As with most interesting problems, oversimplification masks the cause of the problem: there are no easy divisions between "faculty issues" and "administrative issues," and yet some reasonable division is necessary.

With respect to the second problem of shared governance—the confusion between input before a decision and the authority to make the decision—I don't want to establish a false dichotomy. Input is *always* useful before a decision. A dean who makes decisions about the physical facilities without input from the faculty (for example, from an elected faculty Executive Committee or a Facilities Committee) may find professors frustrated with a remodeled classroom or a reconfigured meeting space. A faculty that mandates the shutoff of a wireless network within a classroom may inadvertently trigger a procession of disgruntled students whose wireless network connections don't work in the hallway outside that classroom. But the decision-maker retains the right to listen to the input and yet decide to go a different way.³⁴

To make matters worse, the "buck" has a very one-sided "stop."³⁵ When the dean is the decision-maker, the buck does stop in the correct place. But because the faculty as a whole includes tenured and tenure-track members, the buck for the faculty's decisions doesn't stop with the faculty. The faculty can't get fired for making bad decisions, but the dean can.³⁶ Only when shared governance includes the same consequences for decisions can we really say that there is a true division of responsibility between the administration and the faculty. Until then, all we have is shared faculty and administrative decision-making, but with the responsibility allocated entirely to the administrators.

33. Remember, for most types of decisions traditionally made by administrators, there are very real time constraints on the decision-making process. My guess is that those faculty members who have never served in administrative capacities tend not to think of those time constraints, because academic decision-making is much more contemplative and deliberate.

34. I don't always take the advice that my friends and family give me, either.

35. Cf. Harry S. Truman's famous desk sign, "*The BUCK STOPS Here,*" available at <http://www.trumanlibrary.org/buckstop.htm> (last visited Feb. 2, 2007).

36. Even in the worst possible situation—a dean who cannot make a single good decision during her deanship and who leaves the institution—the buck doesn't stop with the faculty left behind. The faculty may be left with the aftermath of the bad decisions, but it doesn't bear the final responsibility for those decisions. There's only one place where the buck stops in an academic unit, and that place is the dean's desk.

3. *No administrator (and no professor) can do everything well, and neither should ever try to achieve the impossible.*³⁷

Everyone at a research university seems to have been charged with the responsibility of being all things to all people. Professors are supposed to conduct and publish meaningful research while perfecting their teaching methods and serving their academic units and universities well. Deans are supposed to be superb fundraisers who can interact smoothly in the legal and business communities (with alumni and non-alumni alike), and they're supposed to promote a challenging but reachable vision for their schools, while maintaining faculty, staff, and student morale. Moreover, deans are supposed to be able to have all of these skills without any significant training or (sometimes) significant prior experience.³⁸

But no one can do everything well. Certainly, no one can do everything well at one time. Professors' interests can ebb and flow, and gearing up to study new fields will take some time away from teaching and service. Major research projects can generate 60+-hour weeks (in addition to a professor's normal work schedule). Preparing a new course can also dramatically increase a professor's work schedule. Some types of university and college service will take inordinate amounts of time. And no dean will be good at juggling internal and external constituencies every day. The best that a dean can manage is to use her strengths and delegate those issues relating to her weaknesses to trustworthy colleagues.³⁹

For example, those who know me know that my strengths tend to make me more of an external dean, and that I entrusted much of the day-to-day management of the two law schools at which I was dean to my associate and assistant deans. I know that I disappointed those faculty colleagues who wanted me to spend more of my time internally, rather than leaving the day-to-day operations to others. I chose one internal issue each year on which I'd concentrate,⁴⁰ and I would spend the bulk of my internal time on that single issue. When I had trustworthy and talented associates and assistants, and when those associates and assistants held the faculty's respect, things ran well. When I didn't, serious discontent ensued. Sometimes I could change out a member of my executive staff; sometimes, for various reasons, I couldn't.⁴¹ But I never intended to be all things to all people—and I certainly wasn't.

37. This lesson reminds me of the old saw about why one doesn't try to teach a pig to sing: it doesn't work, and it annoys the pig.

38. Among other ironies, most deans have been faculty members beforehand, and many have not had a significant amount of training as administrators. Therefore, even "doing deaning" well is tricky, because we've not studied the art of management in the same depth that we have studied our own fields of research—unless, of course, our research is *in* the area of management.

39. Yes, the dean can't rely on total delegation to others and must stay involved. But a micromanaging dean is doing two jobs—her own and those of the person to whom she has delegated responsibility—and is therefore doing neither job well.

40. For example, one year, my issue was the curriculum and, for two years, my issue was strategic planning.

41. Many of my colleague deans bemoan the lack of faculty colleagues who are (1) willing and (2) able to serve as associate deans. When you're lucky enough to find a talented volunteer, you

4. *The life of a full professor has all of the privileges and little to none of the risk that others face in their careers. Corollary: full professors can do more than they realize for their institutions when they lead by example.*

Tenured professors lead lives that are unencumbered by unreasonable demands. Full professors are supposed to continue the types of research that led to their national or international reputations in the first place;⁴² they are also supposed to teach well; and they are supposed to do their fair share of service. Tenured associate professors are at least well on their way to attaining national or international reputations as scholars. The popularity of post-tenure review policies⁴³ stems in part from those few faculty members who have abused the freedom of tenure.

Some of these professors have—to put it nicely—“retired in place.” They haven’t published in years, they don’t teach well, and their service to their school, their university, or their profession (if it exists at all) is spotty. Many of these professors were hired when teaching, not research, was the top priority for their schools. The fact that they’re not pulling their own weight under changed circumstances may have a slight negative effect on overall faculty morale, but not enough of a negative effect to warrant a full-court press to remove them.⁴⁴ Most deans would prefer that these professors change with the changed priorities of the school,⁴⁵ but there may be few formal mechanisms for encouraging such revitalization.

To the extent that the dean has the authority to put “retired in place” professors under a post-tenure development plan, such a plan may actually help with issues in teaching and research. Certainly, the dean can encourage greater service with strategic committee assignments. But when the dean doesn’t have such power—i.e., when the post-tenure review policy requires the faculty as a whole to place a colleague into a post-tenure development plan—it is the rare faculty that will take such a step, even in egregious cases. Not surprisingly, there’s a tendency for the rest of the faculty to be patient with retired-in-place professors, on the “there but

start feeling very guilty about derailing that person’s academic career. There’s never a good solution to the tension between wanting to work with a talented associate dean/faculty colleague for as long as humanly possible and worrying about that person’s long-term career.

42. Based on my experiences in various law schools, I’m assuming that most research universities require a national or international reputation as a condition precedent for promotion to the rank of full professor.

43. Although policies of post-tenure review exist at many universities and colleges, I wonder how many of those policies actually have teeth. For an interesting blog on post-tenure performance, see Jeff Harrison, *More on Post-Tenure Scholarship* (Sept. 13, 2006), <http://money-law.blogspot.com/2006/09/more-on-post-tenure-scholarship.html>.

44. I have heard that the morale of some less-senior professors do suffer from the discrepancy between productivity and reward. I believe that, and I also believe Dick Chait’s view that professors don’t do research because of the raises that they might receive—they do research because they’re driven to do research. For more information about Richard Chait, see Richard Chait Profile, http://hugse9.harvard.edu/gsedata/resource_pkg.profile?vperson_id=312 (last visited Feb. 2, 2007).

45. In the “real world,” there are real-life pressures for workers to adapt when the market changes.

for the grace of God go I’ theory. Instead of a formal process, then, some senior members of the faculty may exert informal peer pressure to step up the pace. For the faculty that strongly values full participation in teaching, research, and service, that peer pressure does exist and may help. It’s possible for either the dean or the faculty to strike the right balance of kindness and fairness, but there are still few real risks for professors who want to take life easy before they retire.⁴⁶

There are also few social risks for shockingly bad behavior.⁴⁷ Although I’ve heard stories about uncollegial professors being denied tenure, I haven’t seen any university rules that force professors to be civil to each other.⁴⁸ Different faculties have different cultures, and some cultures are more tolerate of idiosyncrasies than are others. I once spent a very pleasant coffee break at an American Association of Law Schools annual meeting visiting with a colleague at a different law school who told me that, when she was bored in faculty meetings, she passed the time deciding which of her colleagues most reminded her of Eeyore, Owl, Christopher Robin, and Pooh.⁴⁹ Others have attempted the

46. Such professors may receive smaller raises than their peers or receive fewer other perks but, on an hourly basis, they’re quite well-compensated.

47. Al Brophy has reminded me that some of the people who get their jollies from fomenting trouble may simply have too much time on their hands. If their hands were less idle, perhaps they would do less of the “devil’s work.” See e-mail from Alfred L. Brophy to author (Dec. 9, 2006) (on file with author) (discussing the reason behind the Elizabethan Poor Laws—premised on the idea that “idle hands are the devil’s workshop”).

48. I did read, with some surprise and much gratification, the University of Nevada, Las Vegas Bylaws, which include collegiality—defined as “the ability to work productively with colleagues, staff and students”—as one of the criteria for appointments and promotions. See Nevada System of Higher Education Governing Documents tit. 5, ch. 6 (Univ. of Nevada-Las Vegas Bylaws), § 16.3(B)(4) (one of the criteria for appointment at the Assistant Professor rank is “[c]ollegial potential, which is the potential ability to work productively with colleagues, staff and students”), available at http://system.nevada.edu/Board-of-R/Handbook/Title-5/t5-CH06.doc_cvt.htm#t5c6c3; *id.* § 16.4(B)(4) (associate professors); *id.* § 16.5(B)(4) (full professors).

Although I have no idea how a faculty would measure collegiality in the abstract, and although the measurement of the absence of collegiality has its own difficulties, I’m intrigued by the incorporation of collegiality into the standards. Of course, collegiality and civility are not synonymous. One can “work productively” with colleagues without necessarily being civil, and one can be civil and so wildly uncooperative (via, perhaps, a passive-aggressive streak) as not to be collegial. And “collegiality” can also be used as a mask for other, less noble standards, such as conformity with a school’s dominant philosophy. But there’s something to the idea that, in a work environment, people should try to work together as best they can. For a cross-section of views on the use of collegiality in promotion and tenure decisions, see, e.g., Mary Ann Connell & Frederick G. Savage, *Does Collegiality Count?*, <http://aaup.org/publications/Academe/2001/01nd/01ndcon.htm> (last visited Feb. 23, 2007); Ann Hartle, “Collegiality” a Criterion for Tenure? *Why It’s Not All Politics*, http://www.emory.edu/ACAD_EXCHANGE/2004/decjan/hartle.html (last visited Feb. 23, 2007); Anonymous, *The Neglected Importance of Faculty Collegiality*, http://prawfsblawg.blogs.com/prawfsblawg/2006/08/the_neglected_i.html (Aug. 23, 2006, 01:34 PM); Jeff Harrison, *Jim’s Utopia*, <http://money-law.blogspot.com/2006/10/jims-utopia.html> (Oct. 18, 2006, 01:50 PM). There’s plenty of writing on the use of collegiality in promotion and tenure decisions, but these cites will get you started.

49. For a complete list of characters, see A.A. MILNE, WINNIE-THE-POOH (reissue ed. 1988).

matching of faculty archetypes with diagnoses from the DSM IV.⁵⁰ In all seriousness, though, I have heard about (and witnessed) public misbehavior of a grand scale, and to my dismay, the rest of the community seems to tolerate such behavior or at least just suffer it in silence.

There’s a status differential at play, of course. Abuse can flow from peer-to-peer or from peer-to-subordinate. Full professors can abuse each other or someone of lesser status; but it would be the rare assistant professor (or staff member) who would engage in a full-out attack on a full professor. Worse yet, when a full professor attacks someone with less status (e.g., pre-tenured professors or the staff—or the dean), there’s no real defense, unless the professor’s peers decide to take matters into their own hands. Deans who punish the worst offenders are buying themselves a charge of retaliation or of violating the miscreants’ First Amendment right to free expression. Without a culture of civility in place, bad actors will escalate their attacks unless their colleagues—*never* the dean—choose to speak out against such behavior.⁵¹

Paul Caron suggests a related point:

[A decision to ignore the problem in the hope that it goes away creates a] “Stepford” law school [where] Deans and faculties . . . pretend there is no conflict, where nothing is discussed openly. The pot keeps boiling and eventually explodes. A good dean and faculty openly acknowledge conflict and deal with it in a healthy way.⁵²

Schools don’t have to become “Stepford” law schools in order to perpetuate a culture that lets bullies flourish. Victor Flatt describes the problem in this way:

[Addressing inappropriate faculty behavior] may be difficult to do because the ability to escalate and de-escalate attacks is asymmetric. Often, those who may believe that they are doing a good job by not going “public” [about] a colleague’s

50. AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS DSM IV-TR (4th ed. 2000).

51. In a recent CHRONICLE OF HIGHER EDUCATION issue, the paper’s “The Faculty” section discussed a recent vote of no-confidence against a law dean, mentioning specifically that only tenured professors were allowed to vote, and observing that the pre-tenured professors were prohibited from voting in order to avoid putting their careers at risk. See Samantha Henig & Katherine Mangan, *Michigan State U. Law Faculty Wants to Oust Dean*, CHRON. HIGHER EDUC., Sept. 1, 2006, at 8.

The activity surrounding the decision of Gallaudet’s board of trustees to terminate Dr. Jane Fernandes’s presidency—even before she took office—shows the powerful effect when people take university matters to the public. Protesters blocked access to the Gallaudet campus, and pro- and anti-Fernandes forces argued for weeks about whether Dr. Fernandes should become Gallaudet’s next president. See, e.g., Diana Jean Schemo, *At College for Deaf, Trustees Drop New Leader*, N.Y. TIMES, Oct. 30, 2006, available at http://www.nytimes.com/2006/10/30/education/30gallaudet.html?_r=1&ref=todayspaper&oref=slogin. See also Nancy Rapoport, *What Now, Gallaudet (Part I)?*, <http://money-law.blogspot.com/2006/11/what-now-gallaudet-part-i.html> (Nov. 4, 2006, 01:17 CST); Nancy Rapoport, *What Now, Gallaudet (Part II)?*, <http://money-law.blogspot.com/2006/11/what-now-gallaudet-part-ii.html> (Nov. 5, 2006, 01:22 CST).

52. E-mail from Paul Caron to author (Sept. 2, 2006) (on file with author) [hereinafter Caron e-mail].

bad behavior may be enabling [that behavior], but “going public” may also escalate or mimic bad behavior. This asymmetry need[s] to be addressed. A frank discussion among faculty about acceptability of behavior and consequences of not doing that may lead to a thoughtful way to address that situation.⁵³

Victor is correct about the problem of asymmetry. I learned this problem the hard way,⁵⁴ and I plan to use my own experience to help others deal with faculty bullies.

5. *There is a difference between the acquisition and use of power for the status that it conveys and the acquisition and use of power for its ability to serve others. Corollary: There is also a difference between the use of power for the greater good and the use of power for one's private agenda.*

I have seen some people take on administrative tasks because they want to serve the greater good, and I have seen others take on those tasks because they want to become more important—to have more leverage over their colleagues, to

53. Flatt e-mail, *supra* note 8.

54. Some people have suggested that I left the deanship at the University of Houston Law Center because our rankings had dropped over time. That's not why I left, although I don't mind being the poster child for why the misuse of the rankings is a bad thing. See Am I the Poster Child for Why the USNWR Rankings Are Bad?, <http://money-law.blogspot.com/2007/01/am-i-poster-child-for-why-usnwr.html> (Jan. 16, 2007, 10:25 CST); Closure (?) on *National Jurist* article, <http://nancyrapoport.blogspot.com/2007/01/closure-on-national-jurist-article.html> (Jan. 24, 2007, 07:09 CST); Touching a Nerve at *The National Jurist*?, <http://nancyrapoport.blogspot.com/2007/01/touching-nerve-at-national-jurist.html> (Jan. 30, 2007, 14:33 CST). I also didn't leave because of the brouhaha caused by some of our students at the April 2006 faculty meeting. I didn't even leave because of the unconscionable behavior of a handful of faculty members in encouraging certain students to commit career *seppuku* by sending screeds to groups of alumni and posting them on GreedyAssociates.com. (To get a flavor of some of these postings, see generally Postings of Greedy Texas Board to http://www.infirmation.com/bboard/clubs-view-all.tcl?topic=Greedy%20Texas&start_idx=25574 (last visited Feb. 23, 2007) and Postings of Student Revolt at Houston over USNWR Rank to http://www.autoadmit.com/thread.php?thread_id=398291&mc=143&forum_id=2 (last visited Feb. 23, 2007)). Nor did I leave because the brouhaha had been orchestrated (and the student disturbance stoked) by a few faculty members who had tried for years to “persuade” me to leave the deanship. And by “persuade,” I mean “threaten”: last year, one of them sent in a colleague to inform me that, if I didn't resign voluntarily, he would raise such a public stink that my career would be “ruined permanently.”

I left because only one senior colleague publicly challenged the bullying and mobbing behavior. At the end of the day, I decided that the battle for the school's personality was a battle that the faculty, and not just the dean, should fight. For an on-point take on academia and mobbing behavior, see John Gravois, *Mob Rule: In Departmental Disputes, Professors Can Act Just Like Animals*, CHRON. HIGHER EDUC., Apr. 14, 2006, at 10. At Houston, the pre-tenured and clinical faculty could not speak out, and the rest of the moderate senior faculty members either spoke to the bullies in private (or not at all). Of course, I don't mean to say that all of the other faculty members supported me. Some did; some didn't. Most of them just wanted the all-out war to end, so that they could do their jobs well and without unnecessary distraction. I resigned because I figured that, if the faculty was willing to accept such uncivil behavior as a legitimate way to resolve disputes, I no longer wanted to continue there as the dean or as a faculty member. Currently, the contentiousness that had long characterized the Law Center's reputation has calmed down considerably, and I hope that this change lasts.

build their resumes, or to justify a stalled research agenda. After a few weeks, it's easy to tell the difference between these two types of people. Those who become administrators in order to serve others spend a fair amount of time biting their lips and not sending tit-for-tat e-mails every time they're provoked. They're willing to do the less glamorous, time-consuming, and occasionally thankless jobs.⁵⁵ Those who want power for its own sake take active measures to retaliate for real or imagined slights. One of the nicest compliments I ever received was from a colleague who became a dean at another school and told me, "You made it all look so easy." Administration isn't easy; but the secret is to absorb a lot of the stress and complications so that those whom you serve don't see how difficult deaning really is.

6. *Making principled decisions will leave someone vulnerable to anyone who doesn't operate with the same constraints.*

Conflict resolution is never easy. One hopes that both sides play by the rules, but that hope isn't always fulfilled. When I attended the new deans' boot camp in 1998,⁵⁶ several senior deans impressed upon us the principle that the best deans never retaliate. And, by and large, I still believe in that principle. Unfortunately, when the other side to a dispute doesn't play by the same rules, the decision not to retaliate has its particular costs.

I've witnessed people lying about conversations that I've had with them, and I've seen them claim that decisions I made—in accordance with their advice—were made without their input or, worse yet, in opposition to their input. (Blaming the dean for accepting their *sotto voce* advice keeps them on their disgruntled colleagues' good side, but it's a cowardly thing to do.) I've had several opportunities to interact with professors who delight in bad-mouthing deans to alumni. My refusal to link cause and effect probably encouraged them to continue their undermining behavior. I'd love to find a way other than retaliation to deal with such attacks, but I don't know what else might work.⁵⁷

55. Thanks to Paul Caron for mentioning this important point. See Caron e-mail, *supra* note 52. Paul also correctly points out that one way to highlight a culture of servant-leadership is to rotate the "plum assignments ... among faculty so people do not view positions as a sinecure." *Id.*

56. Yes, there is such a thing as the new deans' boot camp. See, e.g., Nancy B. Rapoport, "Venn" and the Art of Shared Governance, 35 U. TOL. L. REV. 169, 173 n.11 (2003).

57. Pete Wentz has suggested that a good way to link cause and effect more clearly, without being accused of retaliation, is to meet yearly with each faculty member and reach an agreement on the faculty member's goals for the year. That way, an unexplained failure to meet those goals would reduce that person's raise for the coming year. E-mail from Pete Wentz to Nancy Rapoport (Sept. 28, 2006) (on file with author). Pete's suggestion is similar to how some land-grant universities operate, by specifying which portion of each professor's appointment should be allocated to research, teaching, and service. I like the idea of adjusting people's work to their strengths, see, e.g., MARCUS BUCKINGHAM, NOW, DISCOVER YOUR STRENGTHS (2001); MARCUS BUCKINGHAM & CURT COFFMAN, FIRST, BREAK ALL THE RULES: WHAT THE WORLD'S GREATEST MANAGERS DO DIFFERENTLY (1999), but I've never been able to persuade a faculty to go along with the idea. One of my colleagues posited that the dean had no right to tell him what to do, ever. It's hard to come up with a mutual understanding of responsibilities under such circumstances.

Retaliation will also chill legitimate complaints, and that long-term cost to the institution is probably not worth the short-term satisfaction to the dean.⁵⁸

7. *Faculty colleagues may see some glimpses of a person's personality behind his work façade, but administrators see very different glimpses, both good and bad.*

I've learned too much about my colleagues' health concerns, relationship problems, quirks, and veracity issues to be able to dismiss that knowledge completely. I'm hoping that my memory dims quickly about the first three categories, but I plan to keep remembering those people who only have a nodding acquaintance with the concept of honesty. Sometimes during my deanships, I would wonder if those people who tended to "act out" in dealing with me remembered that I had my own personality (and my own baggage) as well.⁵⁹ On my charitable days, I assumed that they were reacting to the dean as an iconic figure, rather than to me as a person—and I think that, for virtually all of them, my assumption was correct.

8. *The dean's job can be all-consuming, but those who don't want to be career administrators must find ways to hold some part of themselves back from the job.*

Some of my colleagues criticized me for continuing to write and teach while I was dean, arguing that I should have been devoting all of my time to the deanship.⁶⁰ Had I followed their advice, I might have been a marginally more effective dean, but I would have lost my immediate understanding of what made my colleagues' jobs so difficult.⁶¹ More important, I would have found it harder to walk away from the job. Eight years of just deaning, without my writing or teaching, would have cost me my ability to contribute to my own fields of bankruptcy law and professional responsibility, and I would not have been able to begin my new research in governance issues and ethics. I might have stayed on as dean because I was afraid to be a faculty member again.

58. In order for a dean to be able to deal effectively with miscreants, that dean needs the strong support of the central administration. Without that support, there is very little (if anything) that the dean can do to change a community's behavior. I learned *this* lesson the hard way, too. Private, verbal support from a provost is worth the paper it's not printed on.

59. Cf. Nancy B. Rapoport, *Decanal Haiku*, 37 U. TOL. L. REV. 131 (2005).

60. Now I know where I could have found time to walk the hallways and visit with colleagues. Of course, had I walked those hallways more, I would have had less time to visit with our alumni and the legal and business communities. In talking with a social-worker friend recently, he pointed out that I spent my time where I received the most rewarding interactions. I've noticed, though, that the interim dean at Houston is better than I was at communicating to the faculty what he's been doing as a dean and as a scholar. I've also noticed that the faculty seems more comfortable with the interim dean's travel schedule, which is just as busy as the one I had.

61. It's probably not a great idea to teach and write in the first year of deaning. There's just so much to learn in that first year, both about the job *qua* job and about the institution.

In response to those people who think that administrators should spend all of their time working for the institution, I want to emphasize that any faculty member who participates in administration—by directing a program or serving as a dean or associate dean—is voluntarily sidelining part of his career during his stint in administration. That sidelining is a high price to pay for providing necessary service. Therefore, administrators need to take the time to continue at least some of their research and teaching. Otherwise, their return to faculty status will be difficult or impossible.

9. *The need for the dean to have a public, on-call role can wreak havoc on her personal relationships.*

A deanship is a seventy to ninety hour week for somewhere between forty-five and fifty-two weeks a year. It is well-nigh impossible to do a good job as a dean in only forty or fifty hours a week. And deans are almost always on duty. There's always one more contact that the dean can make, one more speech that she can give, one more memo that she can read (or write). I was not able to balance the job and the personal life well. Thank goodness that I had very understanding family and friends. I'm now in the position of trying to catch up in my personal life for all of those missed opportunities, and I have to overcome years of bad habits. I can't say that I've managed to redistribute the balance between work and personal life completely. I'm still a workaholic at heart, because I find what I do extremely absorbing. But I'm trying to set the fulcrum more in the center than I've done for the past eight years.

There's another risk of the public, on-call life: the risk of suppressing one's own personality. As difficult as it may be for some people to believe, I suppressed my natural ebullience in many of my daily activities as dean. I dressed and acted more formally as a dean than I ever did as a professor. I'm now in the process of finding my way back to my own personality. My clothes reflect more of my own style,⁶² and my demeanor is considerably less buttoned-up.⁶³ I'm more physically fit than I've been in several years, and my stress level has decreased dramatically. My two deanships didn't alter my personality to the core, but they did distort it considerably. I'm still dealing with my reactions to the events of the past few years, including a lingering feeling of vulnerability. It's very hard to incorporate my rediscovered personality into the lessons that I've learned as a dean, but it's a necessary process.

I don't regret serving as an associate dean and, later, as a dean—not for one minute. I had the privilege to help shape three institutions, and I got to befriend people I'd never have met but for my administrative role.⁶⁴ I worked side-by-side with some of the most talented professors, staff members, and lawyers I'll

62. Or lack thereof.

63. My hair is back to its unnatural red color, now that I've returned to my love of ballroom and Latin dancing.

64. New York University President John Sexton calls this phenomenon being a "comma person." You get to travel in circles in which you know why everyone else in the room is there, and you know that you're there because of your role as "X, the dean."

ever have the pleasure to know. And I made some lives better.⁶⁵ For better and for worse, my life has changed, too. And my time in deaning has come to a welcome end.⁶⁶

I used to notice how relaxed most former deans looked. Even those who left under less-than-ideal circumstances looked more at peace, and I used to wonder why. My own experience reminds me of that old joke about country music: what do you get when you play country music backwards?⁶⁷ You get your dog back, you get your house back, you get your job back, and you get your love life back. So what do you get when you leave the deanship? You get your sleep back, you get your calendar back, you get time with your true friends and your family back,⁶⁸ and you get your life back. It's nice to have my life back at last.

65. Of course, I made some lives worse, too.

66. For a marvelous article about how administrators should end their terms, see Kent D. Syverud, *How Deans (and Presidents) Should Quit*, 56 J. LEGAL EDUC. 3 (2006).

67. In a few more years, those of us from the "album generation" will be hard-pressed to explain this joke to the CD-generation.

68. If you're lucky.