

POSTSCRIPT TO A DEANSHIP

*Annette E. Clark**

I. INTRODUCTION

I resigned my deanship of the Saint Louis University (SLU) School of Law on August 8, 2012, just a few months ago, and here I sit at my laptop computer trying to put into words what has happened to me and to “my” law school since that fateful day. I am certain that many of you are thinking that it is unwise to put “pen to paper” so soon after my resignation, that I risk saying something out of anger or hurt that I will regret later. I certainly understand that view and I know that I will gain more objectivity and distance, and perhaps even acceptance as the months pass, but I also fear that much of what I learned by living through the events of the past year, and particularly those last few weeks of my deanship, will be lost if I wait. As I search for some meaning, some good to come out of this debacle, it gives me a sense of purpose and a feeling of hopefulness to reflect on my experiences and to try to discern lessons that might be useful to my fellow deans.

Let me begin this Essay by saying what it will not be about. I said everything I needed or wanted to say about the University’s actions in my letter of resignation addressed to the president and vice president for academic affairs¹ and in the explanatory letter addressed to my faculty and staff.² As the University leadership pursued an aggressive strategy in response—doing everything it could to destroy my professional reputation and claiming that I had lied in stating the reasons for my resignation³—I have refrained from

* Annette E. Clark, Former Dean and Professor of Law, Saint Louis University School of Law. I want to thank my family for their love and unwavering support, which sustained me during this long, difficult year. I also want to dedicate this Essay to my best friend, Professor Eric Chiappinelli, who so generously provided me with wise counsel, advice, and much-needed friendship as I faced the unending string of challenges that defined my decanal year.

1. See Letter from Annette E. Clark to President Biondi and Vice President Patankar (Aug. 8, 2012), *available at* <http://www.scribd.com/doc/102367564/SLU-Law-Dean-Annette-E-Clark-Resignation-Letter-8-8-12> (copy on file with the author).

2. See Letter from Annette E. Clark to Faculty and Staff (Aug. 8, 2012), *available at* <http://www.scribd.com/doc/102368276/SLU-Law-Dean-Annette-Clark-Resignation-Announcement-to-Faculty-Staff-8-8-2012> (copy on file with author).

3. See Memorandum From the Lawrence Biondi, S.J., President, Saint Louis University to SLU Law Faculty and Staff (Aug. 8, 2012), *available at* <http://www.scribd.com/doc/102389655/Special-Message-From-the-President-8-8-12> (“Her emails to Dr. Patankar and me, and to the faculty and staff of our School of Law, demonstrate a lack of a clear and comprehensive understanding of the duties and obligations, autonomy and authority, of a modern-day dean at a large and complex university.”). The president resorted to calling me a liar, claiming in an annual

commenting or answering, in the media or elsewhere. I have no intention of defending that which needs no defense. I spoke the truth. It is the aftermath that I wish to write about here, to describe the days since that have been so markedly different from the ones that came before, as well as the lessons that I learned from this experience.

II. THE BEGINNING OF THE END

I came to Saint Louis University, as I imagine all new deans arrive at their new schools, excited and enthusiastic to have been chosen to lead a law school; one that had impressed me with its genuine commitment to the trilogy of academic excellence, scholarship, and service to others. At the same time, I was anxious about having left my old life behind, and of course concerned about how best to manage and move a law school forward at a time when the very value of legal education is being questioned. I certainly had no intention of being anyone's hero, and I did not wish for, or seek out, my fifteen seconds of fame. My sole intentions in accepting the SLU Law deanship were to find an academic home, a place where my skills and vision meshed with a university's and law school's vision for its future, and to work as hard as I could to advance the interests of the school I had agreed to serve.

What I feel at this point, having done the job for over a year and then resigning from the deanship and from the faculty,⁴ is an overwhelming sense of sadness. The faculty, staff, students, and I were not wrong when we concluded, in the Spring of 2011, that we were a good match for each other, which only makes the outcome that much more tragic. It is such a waste—far more than just a lost year for the law school and for me. All of the school's time and money spent on doing a national dean search, all of the effort that went into introducing me as the new dean and laying the foundation for my deanship, all of the work I put into learning the culture and the people—all of it, wasted. The net result is that the law school will have had five deans in five years (the long-time former dean, an internal interim dean, me, an external interim dean, and whoever takes the position next). The law school's and university's reputations have been damaged, as has mine,⁵ and I am left to regret that I ever took the position in the

letter emailed to the university community that my stated reasons for resigning were untrue. *See* President's August 2012 Message (Aug. 28, 2012) (copy on file with author). The interim dean also joined in the fray. *See, e.g.,* Melissa Meinzer, *New SLU Law Dean Thomas Keefe Says He Is Keeping His Day Job*, MO. LAWYERS WEEKLY (Aug. 10, 2012), <http://molawyersmedia.com/blog/2012/08/10/new-slu-law-dean-thomas-keefe-says-he-is-keeping-his-day-job/> (subscription needed, copy on file with author).

4. I resigned my position from the tenure-track faculty on Aug. 21, 2012, effective on Aug. 31, 2012, and returned to the Seattle University School of Law faculty as of Sept. 1. I want to take this opportunity to express publicly my deep gratitude to President Stephen Sundborg, S.J., Provost Isiaah Crawford, and Dean Mark Niles for facilitating my return to my first "academic home," and to the faculty and staff at Seattle University for welcoming me back with open arms.

5. *See* Phil Pucillo, *Annette Clark and the Situation at SLU*, THE FACULTY LOUNGE (Sept. 15, 2012, 1:17 PM), <http://www.thefacultylounge.org/2012/09/annette-clark-and-the-situation-at-slu.html> (including blog comments) for an interesting (but also surreal, for me, at least) discussion

first place. Surely no one wanted this outcome, although those in the best position to avoid it, the university leadership, seemed oblivious to the likely consequences of their actions until it was too late (and despite my repeated attempts over the course of the year to help them understand).

Much was made by the president that I was about to be fired when I resigned,⁶ but despite the university's attempt to humiliate me by publicizing their plan to replace me, I am not at all ashamed that my reasoned resistance to their actions had led them to that decision. In fact, in the final days of my deanship, I was doing a constant calculus as I tried to get things into place for my resignation while also staying out in front of any action the university might take. It was only because I paid attention to signals from the university leadership and followed my instincts that I was able to act quickly and assert some control over how the end game played out.⁷

I am relieved and grateful that I followed my instinct on this. I had labored for a year in an intensely oppressive environment in which I had been given very little authority as a dean, but once it became clear that I could not continue as a member of the administration, I was determined to at least control the timing and manner of my leave-taking. In addition, in order to make the points I wanted to make, it was important that I act first so that the initial narrative was one of my resignation and the reasons behind it. If I had allowed the president and vice president to make the first move, I would have ceded that power to the university. As a result, anything I said after that would likely have been dismissed as a defensive reaction by a disgruntled ex-dean, and my message would have been completely lost. Or, I might have been able to negotiate a "deal" to quietly walk away, but that would have left the university leadership free to continue its conduct unfettered, as well as ensuring that my criticisms of their actions never saw the light of day.⁸ By making my statements public, I was able to say what I needed to say precisely, accurately, and clearly.

of whether my administrative career has been harmed or helped by the events that transpired at SLU.

6. See Memorandum From the President, Saint Louis University to SLU Law Faculty & Staff, *supra* note 3 ("At 11 a.m. today, there was a scheduled meeting between Prof. Clark and Dr. Patankar, at which time Dr. Patankar and I had intended to terminate Prof. Clark's appointment as dean of our School of Law."). See also Tim Barker, *Discord Rocks SLU Law School*, ST. LOUIS POST-DISPATCH (Aug. 9, 2012), http://www.stltoday.com/news/local/education/discord-rocks-slu-law-school/article_8fd025bf-31e9-58d2-a720-aca2fe74bf8.html (noting that the president had stated in his letter that "Clark was going to be fired anyway.").

7. Upon learning, while on vacation, that the president had canceled, on very short notice, a private dinner with donor prospects that he and I were to host immediately after my return, I sent an exploratory email to the vice president for academic affairs, suggesting that we delay our upcoming one-on-one meeting. When the vice president responded stating that we definitely needed to meet as scheduled, I had a strong feeling that the university was going to make its move at that meeting. I arrived back in St. Louis at 8:00 p.m. on Tuesday night from my vacation and spent the rest of the night finalizing my resignation letter, which I intentionally submitted five minutes prior to the scheduled time for my meeting with the vice president.

8. The significance of the difference between my resigning and being terminated was not lost on the president, who, seemingly without any sense of irony, criticized me for my lack of courtesy in not showing up for the meeting at which he and the vice president for academic affairs had planned to fire me. See Memorandum From the President, Saint Louis University to SLU Law

III. THE SHIFTING NARRATIVE

To say that the story went viral is an understatement. I resigned at 11:00 a.m., and by that evening, my letters and the president's response had been posted on Twitter and, from there, were picked up by media outlets locally and even nationally, and became the talk of the blogosphere. From *Above the Law*⁹ to *TaxProf Blog*¹⁰ to *Brian Leiter's Law School Reports*¹¹ to *ProfessorBainbridge.com*¹² to the *WSJ Blog*,¹³ the pundits had a field day with my resignation.¹⁴ Although I had intended to make the reasons for my resignation known when I notified the faculty and staff, and I surely knew that my letters would not stay within the confines of the individuals to whom they were addressed, I did not expect that the storyline would hold such intense and enduring interest beyond St. Louis and, particularly, within academia. That my resignation letters struck a chord with faculty members was evidenced by the fact that, in the days following, I heard from scores of academics across the country, many of whom I have never met and some of whom were outside the legal academy.

By going on the offensive rather than allowing the university to break the story, I was able to get out in front on the narrative initially, but I soon learned that the story would morph beyond what I had intended or envisioned, as others read it through the prism of recent events in legal education and/or used it to further their own agendas. My story was essentially that the university operated as a mini-fiefdom, in which absolute loyalty was expected and demanded, over which the president and his inner circle reigned supreme, and against whom the "subjects" generally felt (and were in reality) powerless. Thus, my intended

Faculty & Staff, *supra* note 3 ("Prof. Clark did not have the courtesy to honor this regularly scheduled meeting, and instead emailed a letter of resignation to Dr. Patankar and me, in which she resigned as dean effective immediately.").

9. See Elie Mystal, *Law School Dean Blasts University in Passionate Resignation Letter*, ABOVE THE LAW (Aug. 8, 2012, 2:08 PM), <http://abovethelaw.com/2012/08/law-school-dean-blasts-university-in-passionate-resignation-letter/>.

10. See Paul L. Caron, *St. Louis Law School Dean Resigns Abruptly, Blasts University Administration*, TAXPROF BLOG (Aug. 8, 2012), http://taxprof.typepad.com/taxprof_blog/2012/08/st-louis.html.

11. See Brian Leiter, *SLU LAW Dean Resigns Abruptly*, BRIAN LEITER'S LAW SCHOOL REPORTS (Aug. 8, 2012, 10:59 AM), <http://leiterlawschool.typepad.com/leiter/2012/08/slu-law-dean-resigns.html>.

12. See Stephen Bainbridge, *My Condolences to SLU Law Faculty and Students*, PROFESSORBAINBRIDGE.COM (Aug. 9, 2012, 9:37 AM), <http://www.professorbainbridge.com/professorbainbridge.com/2012/08/my-condolences-to-slu-law-faculty-and-students.html>.

13. See Jennifer Smith, *Dean Resigns in Row Over Law School Autonomy*, WSJ BLOG (Aug. 8, 2012, 5:55 PM), <http://blogs.wsj.com/law/2012/08/08/deans-noisy-resignation-sheds-light-on-battle-for-law-school-autonomy/>.

14. Perhaps the most poignant moment for me in all of this was when my son, a young adult just a few days away from starting his own law school studies, felt the need to defend me on *Above the Law* when a commenter criticized me for having graduated from a non-elite law school. See Jordanc620, Comment to Elie Mystal, *Law School Dean Blasts University in Passionate Resignation Letter*, ABOVE THE LAW (Aug. 8, 2012, 2:08 PM), http://abovethelaw.com/2012/08/law-school-dean-blasts-university-in-passionate-resignation-letter/#disqus_thread.

narrative was one of the use and abuse of power, albeit in an academic (and strikingly feudal) setting.¹⁵

In my experience of the events, what happened between the law school and the university over the course of the year that I was dean had almost nothing to do with the admissions, fiscal/budgetary, bar passage, and employment-related issues that we currently face in legal education and was only tangentially related to the age-old debate over law school autonomy within a university administrative and budgetary structure. I was thus bemused when I was first portrayed in *Above the Law* as a model dean, someone who was fighting the good fight for students against an evil university that was using the law school as a cash cow, only to be followed the next day by a completely different portrayal, such that I was now the classic disgruntled ex-employee trying to get revenge against my former employers by publicly denouncing them.¹⁶ That neither of those perspectives was consistent with the reality of the situation was, of course, irrelevant in a world where the goal is to drive readers to a blog site.

In a more academic vein, two of my faculty colleagues shifted the narrative themselves, intentionally diverting attention away from the specifics of what had happened between the university and the law school. Instead, they used the events to stimulate debate and discussion over the current model of legal education, Brian Tamanaha's controversial new book, *Failing Law Schools*,¹⁷ and the value of scholarship to the legal academic enterprise and to our students.¹⁸ Other than this commentary on the larger (and inapposite, in my

15. One of the challenges I have grappled with in trying to distill lessons that will be of some use to other deans is the relatively unique set of circumstances we were dealing with at SLU, although perhaps every law dean is convinced that the problems that he/she is confronting are unique, and more difficult than, those at other universities.

16. Compare Mystal, *supra* note 9 ("Law students who read this resignation letter should ask themselves if their law deans are going to the mattresses for them every day, or if the deans are just rolling over and submitting to university pressures while trying to hang onto their jobs...."), with Staci Zaretsky, *University President Claims He Intended to Terminate Ex-Dean's Appointment, Hires Personal Injury Attorney as Interim Dean*, ABOVE THE LAW (Aug. 9, 2012, 3:32 PM), <http://abovethelaw.com/2012/08/university-president-claims-he-intended-to-terminate-ex-deans-appointment-hires-personal-injury-attorney-as-interim-dean/> ("Now that the dust has settled a bit, we've found out that Clark's passionate letter may have been penned in one of those 'can't fire me, I quit' type scenarios.").

17. BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* (2012).

18. See, e.g., Anders Walker, *Enter the Practitioner Dean*, FACULTY FLOW: A BLOG FOR ASSOCIATE DEANS (Aug. 12, 2012), <http://www.slu.edu/colleges/law/slulaw/facultyflow> (discussing the need to educate the practitioner interim dean on the value of scholarship); Anders Walker, *Tamanaha's Revenge*, FACULTY FLOW: A BLOG FOR ASSOCIATE DEANS (Aug. 19, 2012), <http://www.slu.edu/colleges/law/slulaw/facultyflow> (invoking Brian Tamanaha's new book, *Failing Law Schools*, and suggesting that the situation at SLU was "now morphing into something very different, a Tamanaha-esque audit of legal education in its current state, including questions about tuition, faculty resources, and the merits of scholarship"); Brian Tamanaha, *I'm the Villain*, BALKANIZATION (Aug. 20, 2012, 9:49 AM), <http://balkin.blogspot.com/2012/08/im-villain.html> (expressing his sympathy for the SLU Law faculty and distancing himself and his book's thesis from the events at SLU); Walker, *Tamanaha's Revenge*, *supra* (reiterating that Tamanaha's book would be read and potentially used by "by university presidents, trustees, and others eager to cut cost, strip faculty resources, and stick it to law professors"); Marcia McCormick, *Job Security, Law School, and the Bigger Picture*, WORKPLACE PROF BLOG (Aug. 14, 2012),

view) picture carried on by two of my former faculty colleagues under their own names, the public conversation following my resignation has been strikingly devoid of any formal response from the tenured faculty in the law school, either individually or as a group—a silence that has been noted and commented upon by others within the legal academy.¹⁹ A few brave souls from the law school faculty ventured out into the blogosphere anonymously to make comments on the underlying factual situation or to try to explain the lack of a public response from the faculty,²⁰ but in general, the faculty's silence has been deafening.²¹

IV. THE SOUND OF SILENCE

I acknowledge up front that there is a piece of this that is both personal and painful for me, because the faculty's failure to break its silence in the aftermath of my resignation has left unchallenged the president's and interim dean's attacks on my competence and professional reputation.²² It has left me hanging, with no one who had first-hand knowledge stepping forward to either substantiate my claims or publicly offer their support for me.

http://lawprofessors.typepad.com/laborprof_blog/2012/08/job-security-the-changing-face-of-legal-education-and-the-bigger-picture.html (noting the extent to which the blog comments have situated the events at SLU within the ongoing critique of legal education, defending the value of legal scholarship, and calling for a deeper, more transparent discussion within the academy of “what it is a law school should be doing for students, what they need to know or have mastered by the time they leave, who else is served who wouldn't be if we didn't exist, and how to structure it all to serve those constituencies”).

19. See, e.g., Phil Pucillo, *The SLU Law Faculty: What Now?*, THE FACULTY LOUNGE (Sept. 24, 2012, 10:21 AM), <http://www.thefacultylounge.org/2012/09/the-slu-law-faculty-what-now.html?cid=6a00e54f871a9c8833017ee3bffa7c970d>; Phil Pucillo, *The SLU Law Faculty: What Now? (Part 2)*, THE FACULTY LOUNGE (Sept. 28, 2012, 9:36 AM), <http://www.thefacultylounge.org/2012/09/the-slu-law-faculty-what-now-part-2.html> (asserting that the faculty has a duty to detail the relevant facts and produce a corporate judgment as to the appropriate remedy for the law school's situation).

20. See, e.g., SLU LAW Prof, Comment to Gerald Magliocca, *The New Interim Dean at Saint Louis University Law School*, CONCURRING OPINIONS (Aug. 9, 2012, 6:54 PM), <http://www.concurringopinions.com/archives/2012/08/the-new-interim-dean-at-saint-louis-university-law-school.html> (attesting to the truth of my assertions about the university's actions and criticizing the new interim dean as unqualified to run a law school); SLU Law Prof, Comment to Phil Pucillo, *Annette Clark and the Situation at SLU*, *supra* note 5 (Sept. 15, 2012, 9:14 PM) (asserting that the SLU Law faculty had been aware of the issues with the university for years, that they had chosen not to challenge the administration out of fear of backlash, that my public resignation, rather than motivating the faculty to act, has engendered further fear and reluctance to speak out, and that a meaningful response from the faculty is unlikely); Anon. SLU Law Prof, Comment to Phil Pucillo, *Annette Clark and the Situation at SLU*, *supra* note 5 (Sept. 24, 2012, 4:52 PM) (stating that the SLU Law faculty have not been inactive, but that they lack consensus on whether publicly fighting with the administration would do more harm to the law school than good); Concerned SLU Law Faculty Member, Comment to *id.* (Sept. 25, 2012, 12:02 AM) (suggesting that the faculty's failure to speak out demonstrates “the current meaningless of tenure at Saint Louis University”).

21. I did, however, receive a number of expressions of appreciation and support from SLU Law faculty (as well as staff, students and alumni) in-person or through notes, emails and phone calls, for which I am grateful.

22. See *supra* note 3.

Winter 2013]

POSTSCRIPT TO A DEANSHIP

309

I have come to realize, however, that as much as I would have preferred the faculty to defend my performance as dean and to protest the circumstances that forced me to resign, it is not the faculty's role to be the dean's friend or savior.²³ In an instance such as this, where the dean has taken an action that is as significant and irrevocable as making a public resignation, their fiduciary responsibility now runs not to the former dean, but to the institution (and to themselves, individually and collectively). Thus, I am slowly coming to terms with the painful lesson that the faculty owed me no duty of loyalty, if you will, no obligation to come to my defense once I had submitted my resignation.

The faculty's silence has also caused me to question in my own mind whether I should have handled my resignation differently. I clearly owed no one a duty to continue to be a part of an administration that I no longer trusted or had faith in, and any obligation I had to the university had been negated by the central administration's conduct. However, I gave then (and continue to give) a great deal of thought to whether my actions, which I took because I believed them to be in the best interests of the law school, will in the long-run have caused more harm than good.²⁴

After a year spent living and working within the university setting, I was very aware that the administration was well-defended and protected, and I was not so naïve as to believe that my public resignation would necessarily or even probably lead to personnel changes within the upper echelons. I did ultimately conclude, however, that the seriousness of the conduct and its likely continuation weighed strongly in favor of bringing the issues out into the open, as did my sense of the importance of "speaking truth to power" under these circumstances. Still, I have no definitive answer to the question of whether I should I have gone "gentle into that good night," other than to note that administrative resignations unaccompanied by genuine explanations for why the persons stepped down seem to have been the norm at Saint Louis University for years, and I do not believe

23. I mean absolutely no disrespect to my former colleagues in making this claim; I count a number of the SLU Law faculty as good and hopefully lifelong friends, individuals who warmly welcomed me to the law school and to St. Louis, and who regularly expressed appreciation for the work I was doing on their and the law school's behalf.

24. I was in the process of preparing to consult with several leaders on the faculty, having composed a document (on file with author) outlining the questions and considerations of leaving quietly, resigning publicly, or exploring other options, when I surmised that the president and vice president for academic affairs were planning my ouster and decided that I needed to act quickly in order to preempt them. *See supra* note 7. The timing thus prevented the consultation with colleagues that I had been planning.

While I have seen nothing in the blogs or commentaries to suggest that there are large numbers of faculty who believe I should have resigned without making my assertions public, I have certainly heard through the law school grapevine that that sentiment exists, and there are a few faculty members with whom I worked closely who have not contacted or spoken to me since my resignation. I can only surmise (perhaps incorrectly) that their silence reflects their dissatisfaction with my handling of the situation. *See* Anders Walker, Comment to Phil Pucillo, *The SLU Law Faculty: What Now? (Part 2)*, *supra* note 19 ("Some [faculty] clearly believe that Clark's resignation was a heroic act that warrants some kind of direct action. Others support Clark's decision to go public, but remain ambivalent about what its impact has been on the school and what the best way to move forward is. Yet others find Clark's public exit to have been ill-advised and embarrassing.").

that resignations conducted in that manner have turned out to serve the longer-term interests of either the law school or the university.²⁵ In fact, such resignations have served to increase the president's already formidable power.

Although I accept that the faculty did not owe me a duty of loyalty under these circumstances, the faculty surely has a continuing obligation to exercise its governance powers in the best interests of the law school. In my view, that obligation applies particularly to the senior, tenured members of the faculty, who have the most freedom to speak up on important matters affecting the law school and its future. The question becomes, then, whether the SLU Law faculty's silence regarding my resignation and the underlying events (including the appointment of an interim dean who has himself precipitated public controversy)²⁶ is in the law school's best interests.²⁷

I want to approach my thinking on this question with as much humility as I can, in part because none of us yet knows the answer as to how all of this will play out for SLU, and in part because those of us on the outside—and I am clearly an outsider at this point—should be cautious about making judgments or

25. I, for one, would have greatly benefited from knowing the full story of the prior dean's decision to step down from the deanship before I accepted the position. At least now, when the next person accepts the permanent position, he/she will have more complete information about the history of the troubled relationship between the law school and the administration.

26. I have watched with some interest the public missteps of the interim dean who the president appointed to lead the law school after I left. Thomas Q. Keefe, an alumnus of the law school and Illinois personal injury attorney, has presented himself as what I colloquially refer to as the "anti-Dean," someone who glories in wearing old t-shirts and shorts rather than a suit to work, whose stated plan was to retain his lucrative litigation practice while acting part-time as dean, whose work email address is ISueDocs77@gmail.com, and who proudly described himself as being "nuttier than a fruitcake." See Melissa Meinzer, *supra* note 3. Then, in response to questions about his relationship with, and independence from, the president of the university, Keefe proclaimed in another interview, with both crudeness and insensitivity, that he was "not [President] Biondi's butt-boy." See Melissa Meinzer, *Interview with SLU Dean Tom Keefe: I'm not Biondi's 'Butt Boy,'* MO. LAWYERS MEDIA (Aug. 24, 2012) (subscription required, copy on file with author). See also Elie Mystal, *Law Dean Denies that He Is Priest's 'Butt Boy,'* ABOVE THE LAW (Aug. 27, 2012, 11:15 AM), <http://abovethelaw.com/tag/thomas-q-keefe/>. Interim Dean Keefe's statements and actions have perhaps served to add credibility to my assertion that there are significant problems at SLU, but they also have garnered further negative press for the law school and are an embarrassment for those of us who value professionalism in legal education.

27. The blog post on *The Faculty Lounge* in which Phil Pucillo asserted that the SLU Law faculty had an obligation to make a public pronouncement on the events that had occurred provoked an interesting exchange in which Brian Tamanaha and Brian Leiter criticized Professor Pucillo for essentially lacking standing to make such a claim from outside the situation, while two anonymous SLU Law professors thanked him for staking out his position. See Brian Tamanaha, Comment to Phil Pucillo, *The SLU Law Faculty: What Now? (Part 2)*, *supra* note 19 ("[I]t strikes me as distasteful for someone not at SLU to repeatedly raise the subject of the unfortunate events at SLU, and to assert that law professors there have a 'duty' to take a public stand against the administration."); Brian Leiter, Comment to *id.* (Oct. 1, 2012, 10:03 AM) ("Who is Phil Pucillo, and why is he writing these bizarre posts? Why is Faculty Lounge hosting them? This whole thing is an embarrassment for Mr. Pucillo and this blog."). But see Worried SLU Law Prof, Comment to *id.* (Oct. 1, 2012, 10:21 AM) (thanking Pucillo for raising that which cannot be raised internally due to the poisoned atmosphere and lack of leadership in the law school); Unprotected SLU Prof against changing the subject, Comment to *id.* (Oct. 1, 2012, 2:59 PM) (welcoming Pucillo's voice and defending those who post anonymously out of fear of retribution by the SLU administration).

Winter 2013]

POSTSCRIPT TO A DEANSHIP

311

casting aspersions on individuals who are doing the best they can to navigate extremely trying circumstances. At the same time, I feel that I need to say something on this matter lest I be accused of ignoring the proverbial elephant in the room.

It is my sense that there are a number of elements at play here. These include: substantive reasons why a faculty might stay silent or speak out under these circumstances, a process component by which a faculty *qua* faculty goes about making the decision of whether or how to respond, and cultural factors that are likely affecting both the substance of the faculty's reasoning and the method by which it makes its decision.

Although I feel less than completely confident speaking about the law school's culture since I was still relatively new to it, I want to start there because I think the cultural overlay is relevant to any attempt to tease out why the faculty response has been so muted. The faculty at SLU Law is as collegial a faculty as I have ever encountered in the academy; the collaborative, caring culture is definitely one of the aspects that attracted me to the school and that made my time spent within the law school enjoyable and gratifying. As we faced a number of challenges over the course of the year—not all of them related to the larger university—I also perceived a stoicism among the law school faculty;²⁸ a view that there is value in literally gutting out difficult circumstances and in not airing one's dirty laundry in public.

The faculty culture and inclination was also to be risk-averse and to take the long view, to have the patience to wait out difficult circumstances and to even sometimes deny their existence. This comes perhaps from long practice and the knowledge that this moment is but one small point in time in the history of a law school that is the oldest one west of the Mississippi. I had also learned in my time there that strong faculty governance had not been the norm,²⁹ at least in recent years. This lack of experience in self-governance was exacerbated by the relatively rapid growth in the size of the faculty in the last few years, making the process of self-governance more complex, along with the addition of a number of entry level faculty members who did not yet have a fully-formed sense of what faculty governance is, why it might be important, or how it can be effectuated. It was also clear that the university had become increasingly oppressive over time, but in an incremental fashion. Thus, the institutional problems I perceived as someone coming in from the outside were perhaps less striking to those who had been working within and adapting to that culture for years. Finally, and perhaps most salient to this inquiry, is the culture of fear that permeated the campus (something that I personally experienced).³⁰ This culture developed in direct

28. I might identify the stoicism as Midwestern, except that many of the faculty do not originally hail from the Midwest.

29. The law school had operated very successfully before my arrival under what I would characterize as a "strong dean" model, with much of the work done through committees and approved via faculty consensus.

30. See, e.g., *St. Louis University Student Government Group Votes 'No Confidence' in Biondi*, ST. LOUIS POST-DISPATCH (Nov. 1, 2012, 5:00 AM), http://www.stltoday.com/news/local/education/st-louis-university-student-government-group-votes-no-confidence-in/article_d8c82c74-1ce9-5648-b367-0c53ba73c6dc.html (describing the Student Government Association's no

response to the strongly authoritarian and top-down central administration, and has led to a sense of hopelessness and longstanding feelings of powerlessness among many faculty members across the campus.

I would characterize some of these cultural incidents as positive and admirable, and some less so, but I believe that these cultural forces, taken together, predisposed the faculty to try to accept and work within the circumstances in which they found themselves rather than going public with the crisis that resulted from the university's actions and my subsequent resignation. Let me add to that picture by positing some reasons why the faculty might choose to avoid a public fight with the administration, with the understanding that this exercise is something akin to an attempt to discern the intent of Congress when it passes legislation: there is no one reason, but rather, many individual reasons that coalesce into a particular choice of course of action.

First, the SLU Law faculty takes its obligations to its students very seriously, and given the timing of my resignation less than two weeks before the start of the academic year, there was a very real risk that some sort of public protest or demand for an explanation by the faculty would result in chaos at the law school, to the clear detriment of the students. Second, there was a strong sense, informed by past experience, that speaking out would be met by retribution, visited on both individuals and the law school itself. The faculty likely perceived the very real possibility that, if faced with organized resistance, the president and board of trustees might literally shut the doors of the law school. In this context, quiet diplomacy and an attempt to work the problem from within is an approach that would have considerable appeal. Third is the belief, again informed by the history of the university and its exercise of power, that challenging the administration would be futile³¹ and would serve only to further publicize the discord. The result would be even greater harm to the law school's and the university's reputations, directly impacting not just faculty, but also staff, students, and graduates long into the future. Fourth, a number of faculty at SLU have spent their entire academic careers building up the law school and its reputation for excellence in teaching, scholarship, and service. To blow that up, to throw gasoline on the fire that I had already lit by my resignation, without any assurance that doing so would cause anything other than additional harm, is likely more than some of the faculty could contemplate. Taken together, these are obviously not small or insignificant considerations when a faculty is trying to conduct a cost-benefit analysis and make a decision of this magnitude.

The idea of a cost-benefit analysis brings me to the issue of process. It is always challenging to manage a full-fledged, participatory decision-making process within an institutional structure, but much more so when that institution

confidence vote against the president based, in part, on the "culture of fear" fostered by Vice President Patankar and President Biondi).

31. As one of my former colleagues so cogently put it when the faculty was discussing whether or how to respond to the university's unilateral decision to move the law school downtown (paraphrasing): "If we go to war with the university, all of the blood on the floor is likely to be ours."

Winter 2013]

POSTSCRIPT TO A DEANSHIP

313

is in crisis and its faculty is in shock. It did not help that my resignation occurred at a time when a number of faculty members had not yet returned for the start of the academic year, and the decision-making setting was further complicated by the fact that the president had made the strategic move of immediately installing an interim dean. This individual had made it clear that he was working for and closely with the president, with the result that the law school was neither physically nor electronically a safe space for faculty to gather and strategize.

Thus, I watched as communication quickly went underground; people were concerned that their email communications were being monitored by the university, so texting, the use of private email accounts, and closed-door and off-site discussions became the norm. It is my understanding that the faculty managed only one group meeting before the interim dean's arrival, a meeting that was run by two faculty associate deans, one of whom had little administrative experience and neither of whom could have anticipated finding themselves in these difficult circumstances. The position taken from the beginning by the law school leadership was that the faculty could not "win" by fighting,³² and that the most risk-averse course was to work with the university administration, including the interim dean, rather than against them.³³ Once stated, the default position, although clearly (and perhaps understandably) not the result of a full deliberative process undertaken by the faculty as a whole, became the de facto course of action. And once begun, that course of action has proven difficult to overcome for the minority who are of the view that the faculty should have spoken up and advocated publicly on behalf of themselves and the law school.³⁴ Of course, as time has passed, the opportunity for the faculty to take any public stand has faded away.³⁵

V. THE COST OF SILENCE

Given that all of these factors—substantive, procedural, and cultural—were likely operating in a complex and complicated set of circumstances, it is perhaps not surprising that the faculty has remained silent in the aftermath of my

32. This position is difficult to dispute if one accepts the definition of "winning" as besting the central administration.

33. I am indebted to a couple of my former faculty colleagues at SLU Law who have shared with me thoughts and impressions of how the faculty has responded since my resignation. At the same time, I take full responsibility for the views expressed in this Essay, which are mine and no one else's.

34. See SLU Law Prof, Comment to Phil Pucillo, *Annette Clark and the Situation at SLU*, *supra* note 5 (stating that the faculty who argued for a public and unified response were far outnumbered); Anon. SLU Law Prof, Comment to Phil Pucillo, *The SLU Law Faculty: What Now?*, *supra* note 19 (Sept. 24, 2012, 4:52 PM) (asserting that, without consensus on the value of a public fight with the administration, those who want to speak out, cannot).

35. See Anders Walker, Comment to Phil Pucillo, *The SLU Law Faculty: What Now? (Part 2)*, *supra* note 19 (Sept. 28, 2012, 12:23 PM) ("I seriously doubt a corporate, i.e. unified judgment will be reached here at SLU, mainly because our faculty remain divided over Dean Clark's resignation.").

resignation.³⁶ I am also aware that it is a false dichotomy to assume that the only options available to the faculty are public and vocal opposition on the one hand and passive acceptance on the other, and I know that the faculty has been working in less visible ways to assert the law school's interests. In addition, I accept that I was differently situated than my faculty colleagues in that I had greater personal knowledge and experience with the central administration and access to key information that was not available to them. And, unlike some of my colleagues, I held tenure at SLU and so in theory could not be fired from my faculty position on the basis of my statements.

All of that being said, it would frankly be disingenuous of me to say that I agree with the position the faculty has taken. Although I understand that it is their decision to make and that they are in the best position to identify and weigh all of the factors that should inform how to respond to this difficult conundrum, there are institutional costs to the faculty's seeming acquiescence and silence, costs that are perhaps being undervalued by those working from the inside.

First and foremost is the harm being done to the faculty's reputation, which flows from the fact that they are being publicly perceived as operating strategically and expediently, but at the cost of the law school's integrity. If the faculty believes that the description of the conduct I outlined in my letter of resignation is an accurate representation of what actually occurred over the course of the past year,³⁷ then it is reasonable to ask how those who hold the protection of tenure can *not* speak up, even if speaking comes at some risk.³⁸ I obviously believe that there are principles at play here that are worth defending. We teach our students every day that their professional obligation is to hold fast to their principles and to fight injustice and oppression, even if it seems unlikely they will prevail; and, of course, the most powerful form of teaching is to model for our students what we preach in the classroom. That the faculty at SLU has self-governance power that it can wield effectively, when it marshals the will and courage to do so, is apparent in the recent votes of no confidence taken by the University Faculty Senate against, first, the vice president for academic affairs,³⁹ and then the president.⁴⁰

36. I also knew at the time of my public resignation that my former institution, Seattle University, would welcome me back if I wished to return. Thus, I was aware that I would not have to bear the institutional costs that flowed from my public resignation (although I have surely borne significant professional and personal costs from my affiliation with SLU).

37. I have had no indication in my conversations with various faculty members that there is any significant doubt about my credibility or the veracity of my public statements.

38. It is somewhat incongruous that law students and alumni have called publicly for accountability and explanations from the central administration, while the law faculty has not.

39. See Elizabeth Holland, *St. Louis University Faculty Panel Recommends Firing of Vice President*, ST. LOUIS POST-DISPATCH (Sept. 26, 2012, 12:30 AM), http://www.stltoday.com/news/local/education/st-louis-university-faculty-panel-recommends-firing-of-vice-president/article_bbc0730d-6f48-5463-99bf-68328c4478e5.html.

40. See Tim Barker, *St. Louis University Faculty Votes No Confidence in the Rev. Lawrence Biondi*, ST. LOUIS POST-DISPATCH (Oct. 31, 2012, 12:05 AM), http://www.stltoday.com/news/local/education/st-louis-university-faculty-votes-no-confidence-in-the-rev/article_fff13f3b-c8ad-5790-b919-06485a41b61a.html. The primary motivating factor behind these developments is the highly negative response from the university's faculty to new policies proposed and pushed by the vice

Winter 2013]

POSTSCRIPT TO A DEANSHIP

315

Particularly in this larger university context, the faculty's silence in the face of the underlying law school events and my resignation has created a sense of disillusionment and betrayal among some members of the SLU Law faculty. These individuals believe that the injustices and wrongs perpetrated by the university against the law school should be publicly and affirmatively acknowledged and resisted, even if that resistance would be futile and even if it would be counterproductive. Far more than the loss of perquisites such as summer research support or travel funding, it is this sense of betrayal and of not being heard on matters that go to the very heart of what the faculty and the law school stand for that is propelling some SLU Law faculty to seek to continue their academic careers elsewhere. And if these talented, productive, and committed individuals are successful in their efforts to leave SLU, the impact of their departures will be felt by the law school for years to come. Sadly, they have lost faith in their colleagues and in their institution, an outcome that literally breaks my heart, but which I have no power to affect or change.

VI. THE AFTERMATH

Let me conclude my reflections by describing where I am now in all of this. I do not think it is an overstatement to say that the act of resigning was the single most solitary act I have ever performed. One of my fellow deans called me in the days following the resignation and said words to the effect of, "I hope you don't feel alone." I did not say so at the time, but the reality was that I had never felt so alone in all my life. Until 11:00 a.m. on August 8, I was in a fiduciary position, doing my best to steward the interests of a law school within a university that seemed hell-bent on a course of action that I was convinced was neither in the best interests of the law school nor the university. In that one instant, sometime between 10:55 and 11:00 a.m. on that day, everything changed, such that SLU Law was no longer *my* law school and its people were no longer *my* faculty, *my* staff, or *my* students.⁴¹ But what did not change in that moment was my continuing feeling of responsibility and obligation toward the law school, even though it was no longer mine to lead.

My experience was, thus, one of profound cognitive dissonance, as if I had gone from sixty m.p.h. to zero in six milliseconds, with all of the whiplash and

president that would have weakened tenure protections at the university. *See id.* *See also* Audrey Williams June, *Faculty-Review Proposal at Saint Louis U. Would 'Eviscerate Tenure,' AAUP Says*, CHRON. HIGHER EDUC. (Aug. 30, 2012), http://chronicle.com/article/Faculty-Review-Proposal-at/134022/?cid=at&utm_source=at&utm_medium=en. I take some solace in the fact that while my public resignation did not directly prompt the no-confidence votes, it added to a constellation of factors, most of them related to the lack of genuine shared governance, that resulted in the Faculty Senate taking affirmative action against the central administration.

41. Interestingly, it was my staff that I worried about the most. Staff have far less job security than faculty, they have virtually no say in what happens, and yet they are the ones who are expected to accommodate themselves to the demands and expectations of new leadership. In the days following my resignation, "my" staff exhibited the professionalism and competence that I had come to so value in the year I worked with them, and they did a masterful job of keeping the law school going through this crisis.

disorientation that such a complete and sudden stop entails. It is remarkable how quickly everything closed over and moved on, as the university worked to replace me and erase any evidence that I had ever been there. Because I no longer had an office to return to or the work of a dean to do,⁴² I found myself alone at home, living for several days on what the next email or phone call or media article or blog post would bring. My interactions with my colleagues had suddenly become awkward and uncomfortable, in part because no one knew what to say and, in part, because it was dangerous for them to be caught “fraternizing with the enemy,” which is what I had become. The adrenaline rush that came with the resignation itself quickly dissipated, followed by intense feelings of loss and alienation as the academic year began without me, the beginnings of a period of grieving that I am sure will be with me for some time to come.

Thirteen days later, on the day that I submitted my resignation from the faculty, I returned home and sat on my deck, looking up at the sky and watching the clouds drift by and the planes passing overhead, listening to the odd but soothing rhythm of the cicadas singing in the background. I needed to live with and feel the loss, the sense of relief, the devastation and sadness, without cell phone or laptop, without wondering what my colleagues or the media or the blogs were saying about my decision to leave. It was my own very personal and private farewell to St. Louis and Saint Louis University School of Law, and the hopes and dreams they had represented.

VII. LESSONS LEARNED

This has not been an easy Essay for me to write. As I explained at the outset, it will take me a long time and a lot of work to fully process the circumstances surrounding the abrupt and unhappy end to my deanship. I am certain that, were I to write this Essay two years hence, I would realize additional insights and reach some different conclusions, but I hope that my fellow deans and others find these initial reflections to be thought-provoking and useful. I wonder whether I might have the opportunity to revisit this Essay two years from now, in the next Deans’ Issue, to see which of my thoughts and insights have held up with the passage of time and with the increased objectivity that comes from distance and healing. I fervently hope that, should I have such an opportunity, I will return to this subject to find a law school and university that have made it through this present adversity, that is thriving and moving forward, and that is governed by a central administration that recognizes and values the law school faculty, staff, students, and alumni for all that they bring to the university, the legal academy, and the legal profession.⁴³

42. It is not quite accurate to say that I did not have the work of a dean to do. In the tumult of the last month prior to my resignation, I had not been able to complete the annual review letters for each of my faculty members. And so my final act, completed after my resignation, was to say goodbye to my faculty by writing this last set of letters, summarizing their accomplishments and thanking them for their service to the institution.

43. And, if I might be permitted one small reflection on my own future, I hope that my career will not have been defined by the actions of central administrators who failed in their obligation to

Winter 2013]

POSTSCRIPT TO A DEANSHIP

317

And, finally, let me offer my list of the most important lessons that I learned from my year as dean at SLU Law:

I learned how vitally important it is to conduct an intensive and comprehensive assessment of the university-as-employer before accepting an offer to lead a law school;

I learned that one should never listen or give credence to comments made by those who either know nothing about the situation at hand or who are not worthy of respect;

I learned that it is key to have an exit strategy and a good employment law attorney if things go awry;

I learned that the need for tenure for deans continues to exist to ensure academic freedom and the ability to speak truth to power. I am living, breathing proof of that proposition;

I learned that it is essential to have fellow deans and other trusted friends and confidantes who can provide confidential counsel and reassurance that you are not the crazy one;

I learned how ephemeral and transient our place in this world is, and that what we have worked so hard to build and achieve can be gone in an instant;

I learned that the academy is hungry for role models, individuals who try to live their professional lives with integrity and who have the courage of their convictions;

I learned that no deanship is worth compromising the principles and values that make you who you are as a person and as a professional;

I learned that my sons will still love and respect me even though I am no longer a dean; and, perhaps most importantly,

I learned that there is life after a deanship that ended far too soon.

uphold a sacred trust, that of stewarding an institution of higher learning for the benefit of its students and graduates.