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WHAT IS A DEAN FOR?

Robert Gilbert Johnston

THE question “What is a dean for?” first came to mind when I was elected by my faculty colleagues to a decanal search committee consisting of trustees, alumni, faculty, and a student. Sam Maragos, the chair of the committee and vice president of the trustees, appointed me as secretary of the committee. Sam and I met to discuss the organization of, and the procedures for, the committee. Once the organization and procedures were settled, Sam asked what the faculty wanted in a dean. I was prepared for the question. I gave Sam the job description for dean that the faculty as a committee of the whole drafted. Sam quietly and dutifully read the job description. He then posed the question, “What is a dean for?” He first pointed out that from the job description the faculty principally wanted to hire a prestigious professor and secondarily an administrator. He then pointed out that the trustees wanted to hire a chief executive officer to administer the school. He finally suggested the job description was so broad that, in his opinion, no one could fulfill the requirements. He wondered if we could find a candidate who met the requirements, and if we found one, whether the candidate, if hired, was doomed to fail because the breadth of the description could create unrealistic expectations on the part of the various constituents and individuals at the school. Sam then assigned me the task of setting out priorities and explaining them to assist the committee in choosing a candidate for dean and protecting the candidate chosen dean from unreasonable expectations based on an overly broad job description. Thus my quest to understand “What is a dean for?” began in earnest.

Fred Herzog was then dean of the school. He had a wealth of experience in private practice, government service, and academics. He is an erudite, gentle, fair person. I thought surely Fred could answer the question. After all, he fed, clothed, and comforted me. I scheduled lunch with Fred to pose the question. Lunch with Fred is an intellectual, scintillating experience. He speaks about history, politics, soccer, opera, and, at times, his experience as a judge in Austria before the Nazis drove him out. He seldom speaks about business at lunch. Nevertheless, I posed the question to him at lunch. He smiled an enigmatic smile and spoke about the future of soccer in the United States and the upcoming opera season in Chicago. I continued my quest.

Over the next few years I intermittently pursued the question. I again was elected to a decanal search committee and again appointed secretary. Later I accepted the position as associate dean for academic affairs. I now earnestly pursued the question. I read articles on the subject that provided me with much information but no more comfort than Sam’s question and comment and Fred’s enigmatic smile. I pursued the question as acting dean and finally as dean. I read articles in the *Journal of Legal Education* and the *Toledo Law Review*. I read the *AALS Law*

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Deanship Manual. I attended seminars sponsored by the American Bar Association and the Association of American Law Schools. I listened to formal presentations by deans and joined in informal conversations with deans on the art of deaning. I soon arrived at some conclusions.

The articles and presentations were uniformly informative. Most described a job of enormous proportions. Some were delightful and humorous; others were intellectual. Most, at least in part, were confessional or advisory.¹ Some addressed the substance of legal education providing direction to the art of deaning.² The articles and formal presentations tended to be more positive than the informal conversations. The most comforting thing about the articles, presentations, and conversations was the constant recurring theme of how to improve legal education and individual schools. I was impressed by the commitment of my fellow deans and pleased to be among their ranks.

Deans tend to reflect their background and current environment.³ They come from varied backgrounds. Some deans come from the academy and others from the practice. Some come from public universities and others from private universities. A few come from independent law schools. All come from law schools that are unique but share similar characteristics with other schools. Common threads recur in the writing, speeches and conversations of law school deans. The most common thread is the need to balance the often competing and conflicting interests of the various agencies, constituents, and individuals that affect the law school. Compromise becomes a way of life. Or, to put it another way harmonizing (if possible) competing and conflicting interests of various constituents and individuals is a major part of the dean's function.

Among the agencies and constituents that assert competing or conflicting interests are government and nongovernment agencies, the school's governing authority, the faculty, the alumni, the students, and the bar and the judiciary. Government and nongovernment organizations provide law school deans with a lifetime of reading material. Legislatures pass statutes and agencies pass regulations that directly and indirectly affect law schools. Accrediting agencies pass standards that affect law schools. Commissions and agencies make decisions applying those statutes, regulations, and standards to a vast range of fact situations. Law school deans must at least be conversant with those statutes, regulations, standards, and decisions in order to manage the day-to-day operations of the school and plan ahead. Depending on the particular law school, the dean gets varying support on these matters from central administrators or private counsel. Even a correct decision by a dean may be financially and politically costly. An incorrect decision may create havoc. Rather than correct or incorrect, most decisions may be characterized as the best choice among those available.

1. See Nancy B. Rappaport, *Going From "Us" to "Them" in Sixty Seconds*, 31 U. Tol. L. Rev. 703 (2000) and *Of Cat-Herders, Conductors, Tour Guides, and Fearless Leaders*, 33 U. Tol. L. Rev. 161 (2001), both delightful blends of confessional and advisory.

2. See Frank T. Read, *The Unique Role of the American Law School Dean: Academic Leader or Embattled Juggler?* 31 U. Tol. L. Rev. 715 (2000).

3. See Harry Haynsworth, *The Similarities and Differences Between Independent and University Affiliated Law Schools*, 34 U. Tol. L. Rev. 87 (2002).

Congress and most state legislatures have passed various civil rights statutes. These statutes were passed understandably to correct persistent and pernicious practices. However, even a well-meaning dean may be caught in statutory conflict among competing constituents. The by-laws of the Association of American Law Schools clearly encourage affirmative action programs that for years seemed a favored approach to correcting the wrongs of racial segregation. After costly and protracted litigation in various courts, affirmative action programs of sorts have mixed blessings from the United States Supreme Court. However, actions by the Office of Civil Rights and private individuals make these programs a controversial if not a risky venture. The choice to pursue what seems a morally correct decision may embroil the law school in a financial and political wrangle that is at least distracting if not debilitating. Resources and energy defending the morally correct decision that may be at odds with the language of the statute may well be better spent on other programs. However, the decision whether to divert the resources and energy from an affirmative action program engenders ill will no matter which way it goes. Nevertheless the dean must balance the competing and conflicting interests and make the decision.

In addition to the civil rights statutes, a plethora of other statutes and regulations exist. These statutes and regulations require recording and reporting facts and figures. At times various agencies visit the law school to review in detail the recording and reporting to be sure the school complies with the required procedures. Warnings requiring further reporting and sanctions may result from infractions. Most law schools are dependent on student loans for tuition. The regulations regarding student loans are comprehensive and at times somewhat ambiguous. However, law schools must comply to the satisfaction of the government in processing the loans. Failure to satisfy the government may result in financial assessments being made or sanctions imposed on the school. One of the sanctions is loss of loans to the students at the school, for most deans a nightmarish thought. In large part most trustees and faculty are unaware of these statutes and regulations and their implications to the school. They often believe that the dean's strong reaction to some policy or practice proposed or even implemented that violates a regulation that jeopardizes student loans is unwarranted and the result of a timorous nature. Regardless of what others may think, the dean must balance the competing and conflicting interests and make the decision.

The nongovernmental agencies that most directly affect law schools are those that accredit the schools. The ABA Section on Legal Education and Admissions to the Bar most directly affects law schools. Regional accrediting associations such as the North Central Association that accredit universities and colleges affect law schools through the university or college accreditation process.⁴ The accreditation of a law school is important for many reasons. Without accreditation, law schools are at a disadvantage in attracting students. ABA accreditation of a school makes the school's graduates eligible for admission to practice law in all 50 states. Without proper accreditation, students at a law school are not eligible for federal student

4. At the last count I made of the independent law schools, only Vermont Law School and The John Marshall Law School were accredited by both a regional accrediting association and the American Bar Association.

loans. Obviously lack of ABA accreditation deters students from applying to a school.

The accrediting associations must adopt standards to measure the quality of the education offered at educational institutions. The agencies constantly seek to improve the quality of education. The standards themselves measure the quality of education in different ways. The theoretical underpinning of accrediting standards has shifted over the years from objectively measuring quantity to subjectively measuring quality to output assessment. In a legitimate effort to improve education the agencies may adopt standards that make that very quality education unobtainable to deserving students. They may exercise an understandable caution in venturing into new fields.

The caution may inhibit innovative or imaginative programs. The areas of legal writing, advocacy, and clinical education at one time were barely recognized, if at all, in legal education. Today, the standards of accreditation require all to some degree. The change in legal education because of the adoption of legal writing, advocacy and clinics is dramatic. Graduates are much better prepared to practice law. However, the cost of legal education has increased substantially in part because of these changes. For some deans, decisions balancing the highest possible quality of legal education with access to a legal education for all segments of society are difficult ones.

A dean must be conversant with the accrediting standards. The day-to-day operation of the school must satisfy the standards that at times may be, or appear to be, at odds with the goals of programs at the school. Reporting compliance with the standards for accreditation purposes requires knowing the standards, understanding how to collect the relevant data, and applying the standards to the data. Even more, planning programs and establishing budgets requires that anticipation of changes in the theoretical underpinning of accrediting standards and the standards themselves is imperative.⁵ Somehow the dean must harmonize the goals and programs at the school that are established by trustees, central administration or faculty with the current and anticipated standards.

The governing authority of a law school that the dean must report to varies from school to school. At a university-affiliated law school, most deans report to the provost, chancellor, or president. At an independent law school, the dean deals directly with the president or chairman of the corporation. The dean at an independent school is *de jure* or *de facto* the chief executive officer with all the responsibilities and power that go with that position. Based on personalities and institutional organization, the uniqueness of a law school is most likely manifested in the relation of the dean to the governing authority. The dean based on political or social skill or institutional organization may have broad discretion. Broad discretion allows the dean latitude in making decisions. It allows the dean to make major decisions and exercise creativity. However, it makes the dean directly responsible for the decision—whether that decision is correct, incorrect, or the best choice among those available.

5. See Steven R. Smith, *The Dean and the Budget: Not "Just a Bunch of Damn Numbers,"* 33 U. Tol. L. Rev. 203, 211 (2001).

Decisions at law schools are seldom secret, and if secret, not for long. Thus, incidental to the decision itself is the question of to what extent a dean seeks permission, advice, or consent before making it. Some decisions involve embarrassing personnel matters or competitive issues. Decisions of substantial financial or political import must be shared with or reported to the governing authority or at least some part of the authority. However, needless involvement in the operation of the school by the governing authority invites micromanagement. It also may lead the governing authority to lose confidence in the dean as a decision-maker by asking for an excess of input by the authority. When the governing authority that the dean reports to is a board or committee, a risk arises that the individual members of the board or committee may disagree about any decision. When the authority is split between the constituents such as the trustees and the faculty the constituents may disagree about the decision or the process used to arrive at it. The decision to create an academic program and to finance it may require the agreement of the faculty and the trustees. The faculty and trustees may have conflicting or competing interests in the program that the dean, when such a situation occurs, must harmonize.

Faculties are, and should be, an integral part of law school governance. However, the power of governance presupposes that the power will be exercised wisely. Like trustees, faculties should not try to micromanage the school.

The principal function of a faculty is to teach, publish, and engage in public service. Their governance function in current legal education includes appointment and hiring of persons to academic positions, promotion of academic colleagues, and establishment of the curriculum. Each of these areas of governance, shared with the dean, creates a plethora of views reflecting the various interests of individual faculty members. To engage in the academic and the governance functions is a time-consuming task. Too often the faculty exercises the governance function without fully exploring the facts and consequences of a decision. Sadly, at times the governance function reflects the self interest of an individual faculty member in which colleagues acquiesce. At times the motive is to get some benefit at the expense of the school or to interfere with the work of a colleague.⁶ The result of an incorrect decision, or even a hotly contested correct decision, is that the process by which the decision was reached, and the decision itself, is revisited all too soon.⁷ The revisiting of decisions is time-consuming and at times divisive.

A dean must somehow harmonize the competing and conflicting interests among the faculty and between the faculty and other constituencies. The dean must persuade the faculty to be academically productive and exercise the governance function wisely. The dean must protect decanal functions such as making course assignments and awarding salaries from incursion by individual faculty members or faculty committees. Balancing the conflicting and competing interests of the faculty and its members is one of the major tasks of the dean. It is indeed a task that

6. See Richard A. Matasar, *The Ten Commandments of Faculty Development*, 31 U. Tol. L. Rev. 665, 671 (2000) ("We have too much to do to justify interfering with work produced by our colleagues. We have too much to do to try to control every aspect of the law school.").

7. See *id.* at 672 ("A necessary consequence of living and letting live is to give up on past battles. No battle is worth relitigating every year.").

“in too many cases [makes the dean] little more than an embattled, dispirited juggler.”⁸

An active alumni association is a great value to a dean. It can contribute to fundraising, recruiting students, hiring graduates, and generally assisting in marketing the school. These are areas essential for the well-being of the school and the dean. A moribund alumni is of little value to the school or the dean. The best that can be said of a moribund alumni association is a dean does not have to balance competing or conflicting interests within the association and between it and other constituents.

An active alumni association obviously is one that will have varied interests among its members and collective interests that sometimes conflict. It will need support services to operate as a part of the school. It will need to be consulted on the overall goals of the school and the goals of the association. Its need for services to fulfill its goals may create tension. Individual members of the association may compete for the available services to operate the association and may not entirely agree on association goals.⁹ Even if members agree on association goals, those goals may be at odds with the goals of the other constituents. Once again, the dean must harmonize the various interests. Failure to strike a harmonious balance may result in the loss of an active alumni association and its attendant benefits.

The student bodies of law schools vary substantially from school to school. Each school sets its own criteria for admission of students. The criteria involve consideration of the students' academic background and diversity in the broadest sense. The student body based on its background and attitude of students takes on a personality that the dean must be aware of in order to effectively deal with students. Some schools have an active student bar association and active student organizations. The student body as a whole and the student leaders at these schools expect some input into the dean's decision-making process. As in the case of the alumni, an active student body can be an asset to a dean. However, if not properly attended to, it may become a detriment to the school.

An active student bar association can assist the dean in effectively communicating with the rest of the students. It can often be an ally in calming student unrest. It can warn the dean of broad-based complaints and activities that may be embarrassing to the school. It can often assist the dean in working with the alumni or the governing body. At times it can provide sound advice about scheduling and course offerings. It may provide helpful insights into classroom problems that might otherwise go unnoticed and unattended until the problem is a major one. Thus, students may help the dean to make the best decision of those available. Clearly students appreciate being included in the dean's decision-making process. In most cases they will do it in a civil, helpful way and become a good partner in operating the school. However, just as everyone else has interests, students too have interests (at times strongly-held interests) that somehow must be harmonized with those of other constituents.

8. Read, *supra* note 2, at 716.

9. For some alumni, any changes in the school from the school they “knew” is an inappropriate change.

Like an active alumni, the bar and judiciary may be a great asset to a dean. The bar may contribute to fundraising. The bar and judiciary may assist in recruiting students, hiring graduates, and generally marketing the school. They also may provide excellent adjunct faculty and conference speakers. However, if not cultivated, they may be a negative influence. At times the organized bar may believe the schools are graduating too many students. Some may complain of admission standards that are too high so as to exclude applicants they believe as a class or as individuals should be admitted. Others may complain that the applicants who are accepted are unqualified to become lawyers. Parts of the bar and judiciary at times complain that the curriculum is not sufficiently traditional while other parts argue it is not sufficiently attuned to the current or future practice of law.

Faculty and practitioners often seem at odds with each other. The disagreement between or disdain for each other is hard to fathom. Actual conflicting or competing interests are few and narrow. Broad areas of common interest exist. Nevertheless, the areas of disagreement are firmly and deeply held. The dean is often in the position of ameliorating the disagreements in order to get interviews and jobs for the students.

“What is a dean for?” I still am not sure. A dean must be conversant with numerous statutes, regulations, standards, and governmental and nongovernmental agencies’ decisions in order to operate a law school on a day-to-day basis and to plan for the future. To be conversant with this voluminous material is extremely time-consuming and tedious work. I know a dean must often, as Tom Read says, “accommodate increasingly fractious constituencies.”¹⁰ Although these accommodations must comply with statutes, regulations, standards, and agencies’ decisions, balance the competing and conflicting interests of the constituencies and their members, and may be the best decision that can be made under the circumstances, the accommodation may not be the best decision that could have been made for the school or legal education. This knowledge may leave a vaguely (or even not so vaguely) uncomfortable feeling that the “right thing” was not done. I surmise that the most immediate function of the dean is to try to keep the school and legal education from self-destructing due to spiraling costs and misguided self-interest. However, this is not a very inspiring role.

Often obscured by the misguided self-interest of the constituencies and their members are wonderful dreams of students, faculty and alumni. Despite predictions that some students and graduates won’t become outstanding lawyers committed to the public good, some of those students dream they will and do so. Despite obstacles hindering some faculty colleagues from becoming outstanding classroom teachers or scholars, some dream they will overcome those obstacles and do succeed. To assist students and faculty colleagues in the achievement of these dreams is, I believe, what a dean is for. This is inspiring work. It is those successful dreamers that I hope will allow future deans to make inspired decisions for the school and legal education, given the competing pressures.

10. Read, *supra* note 2, at 716.

