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A Causerie on Selecting Law Deans in an Age of Entrepreneurial Deaning

Jack M. Weiss*

“Before I built a wall I’d ask to know
What I was walling in or walling out. . . .”¹

Imagine if you will a law school course intended to introduce future law teachers and would-be law school administrators to the issues they may face if they pursue a career in the legal academy. Imagine further that it is exam time, and one question on the final, in the time-honored tradition of law school exams, reads as follows:

You are a tenured professor of law at the Ames University Law School (“Ames Law”), a mid-sized (500 to 700 students) public law school ranked in the top 100 law schools by *U.S. News and World Report*. State funding for Ames Law has been cut by thirty percent in the last three years. Private contributions to Ames Law are down by twenty percent over the same period and the Ames Law endowment has declined twenty percent in value since August of 2008. Tuition at Ames Law has increased fifteen percent over the same period of time. The dean of Ames Law, who has served since 2005, has announced her retirement effective at the end of the 2010–11 academic year.

The President of Ames University appoints you to the search committee to find a successor dean. At the initial meeting of the search committee in May 2010, the committee members decide that their first task should be to prepare a short memorandum in narrative form describing and briefly justifying the preferred qualifications for the next dean. Recognizing the analytical skills that you have acquired in

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* Chancellor and Professor of Law, LSU Paul M. Hebert Law Center; A.B. Yale University, 1968; J.D. Harvard Law School, 1971. Within the framework of the Louisiana State University System, the Paul M. Hebert Law Center is a separate campus. The title of the chief executive of the Law Center, like that of the other LSU System campuses, is “Chancellor.” The Chancellors report to the President of the LSU System and to the LSU Board of Supervisors. Notwithstanding these important structural features, the job of the Law Center Chancellor in many respects closely resembles those of other law school deans. For purposes of this Essay, I make no distinction between my responsibilities and those of law school “deaning” generally. The author thanks Erin Percy (Class of 2010) for her excellent research assistance and the *Louisiana Law Review* for soliciting this essay and the accompanying piece by Duke Law Dean David Levi.

1. ROBERT FROST, *Mending Wall*, in NORTH OF BOSTON (1915).

more than twenty years of law teaching and scholarship, and your familiarity with the role of the Ames Law dean, the search committee asks you to prepare a draft of the qualifications memorandum. Prepare the memorandum.

What follows is not that memorandum, but a series of admittedly non-comprehensive, personal reflections—a *causerie*²—on some of the salient qualifications for law school deaning circa 2010. Regrettably, the public law school described in the hypothetical exam is not so hypothetical; indeed, the barebones outline of its circumstances may seem all too familiar to many of my fellow deans of all stripes, public and private. My goal, likewise, is not too far removed from what was asked of the hypothetical law professor in the exam: to offer what I hope will be some relatively objective and familiarly analytical observations about the role of the modern law school dean. I offer these observations in the further hope that an actual search committee might want to consider them in the course of its work.³

In particular, my aim is to bring to light some of the principal roles of today's law school dean and to question whether the long prevalent bias in favor of selecting "traditional" deans—those chosen from the tenured ranks of the legal academy—and against "non-traditional" deans—those whose career paths have been primarily outside the academy⁴—is supportable, and, if so, to what extent. Today's law school dean is reminded daily that he or she is at the helm of an *enterprise* and that, perhaps above all else, the dean's success or failure will turn on his or her ability to function as an *entrepreneur*. Any doubt about these related perceptions has been swept away by the precipitous decline in state funding at many public law schools and the near universal decline in law school and university endowments caused by the economic crisis.⁵

2. A "causerie" is "a short, informal essay, often on a literary topic." The literal meaning in French is a "chat" or "conversation." Encyclopedia Britannica Online, <http://www.britannica.com/EBchecked/topic/100452/causerie> (last visited Feb. 12, 2010); cf. Alvin B. Rubin, *A Causerie on Ethics in Negotiations*, 35 LA. L. REV. 577 (1975).

3. This, too, is not so hypothetical. As of March 10, 2010, nineteen U.S. law schools had vacant permanent deanships. Posting of Dan Filler to The Faculty Lounge, <http://www.thefacultylounge.org/2009/09/law-dean-searches-200910.html> (Feb. 19, 2010, 10:45 EST).

4. As I will discuss, this distinction is not precise. See *infra* pp. 930–32. Nevertheless, to facilitate discussion, I will employ it here unless I indicate otherwise.

5. See, e.g., Louis Lavelle, *University Endowments: Worst Year Since the Depression*, BUS. WK., Jan. 28, 2010, http://www.businessweek.com/bschools/content/jan2010/bs20100127_360651.htm; *Rowdy Protests Target Funding Cuts at U.S. Campuses*, WALL ST. J., Mar. 5, 2010.

There is little reason to believe that legal academics are more likely to be successful in the entrepreneurial part of the dean's job—so critical in today's environment—than deans selected from other outside, relevant pursuits, including sophisticated law practice. At the same time, important characteristics of the non-academic experience (including practice-based experience) are highly relevant to a law school dean's role in fostering change, defending core institutional interests, managing conflict, integrating practical and theoretical instruction, and promoting employment opportunities for the school's graduates in a rapidly changing legal economy.

It is true that the dean's leadership of the academic side of the house calls for different insights, different personality traits, and a different base of personal experience than those the dean must demonstrate in the roles of entrepreneur, change agent, institutional defender, conflict manager, practice maven, and chief-employment-officer. It is too easy to assume, however, that non-traditional deans are less able to lead the law school's academic mission. In my view, the chief advantage traditional deans have as academic leaders is the credibility and affinity with colleagues that traditional deans derive from having "come up through the ranks". Traditional deans may be better teachers or scholars by virtue of their academic experience, but those skills are not critical to effective deaning. These same traits may be found in more than adequate measure through the experience of many non-traditional dean candidates.

Although this discussion will have some general applicability, the considerations I discuss, like the job of deaning itself, surely will vary from institution to institution.⁶ My experience has been acquired exclusively at a public law school that is part of a larger "flagship" state university. My perspective has been shaped and limited by this experience, although discussions with a wide spectrum of my fellow deans over these last two and a half years do lead me to believe that there is considerable commonality in the challenges we confront.

6. Bill L. Williamson, *The "Art" of Deaning*, 36 J. LEGAL EDUC. 227, 232 (1986) ("There is no one generic type of law school dean. Some schools need fund raisers; others need procurement officers or construction supervisors, business managers or curriculum designers, schedule makers or academic standard setters, public relations experts or program/conference organizers.").

I. A BIT OF HISTORICAL PERSPECTIVE

In reexamining the dean's role, I have found it helpful to look back briefly at the history of American legal education. Several aspects of this experience are relevant to this discussion.

First, the education of lawyers in a university setting, taught mainly by full-time law professors whose predominant experience is scholarly and not pragmatic, is a fairly recent phenomenon. Well into and beyond the mid-nineteenth century, most American lawyers were trained and admitted to the bar through the apprenticeship system of legal education. The Founding Fathers never attended a law school.⁷ The apprenticeship system involved a combination of private study and training as an apprentice with a practicing attorney.⁸ Although the apprenticeship system has been much criticized, at least one leading historian of legal education argues that:

[A]t its best, elite legal apprenticeship had both a pedagogy and a curricular structure that was far from random. It was neither "local" nor necessarily "practical" in its forms. . . . This education may not have been ideal, nor uniformly excellent, but given a good tutor and a good student it was rigorous enough to explain the strong sense of legal professionalism to be found in America before the Revolution.⁹

The apprenticeship system prevailed until well after the Civil War; indeed, Abraham Lincoln, Daniel Webster, William Wirt and other pillars of the mid-nineteenth century political and legal establishment were trained, and admitted to practice, through that system.¹⁰

Second, when apprenticeship did give way to the institutionalized teaching of law in the nineteenth century, the first institutions to offer legal instruction were not university-based, but rather practitioner-run, proprietary law schools. The Harvard, Yale, and Columbia law schools all trace their origins or success to proprietary law schools that were "way stations on the path to

7. Daniel R. Coquillette, *The Legal Education of a Patriot: Josiah Quincy Jr.'s Law Commonplace*, in 2 *PORTRAIT OF A PATRIOT: THE MAJOR POLITICAL AND LEGAL PAPERS OF JOSIAH QUINCY JUNIOR* 3 (Daniel R. Coquillette & Neil Longley York eds., 2007).

8. John H. Langbein, *Blackstone, Litchfield, and Yale: The Founding of Yale Law School*, in *HISTORY OF THE YALE LAW SCHOOL* 19 (A. Kronman ed., 2004).

9. Coquillette, *supra* note 7, at 6.

10. See ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* (1983).

university legal education.”¹¹ The proprietors of these predecessor law schools were practitioners and judges, and they became the first faculty members of the newly-absorbed university law schools when those schools were founded in the nineteenth century.¹²

Indeed, long after the founding of the first university law schools, and into the early decades of the twentieth century, practitioners continued to populate the faculty ranks, even at elite schools like Harvard and Columbia.¹³ John Chipman Gray, appointed the first Story Professor of Law at Harvard in 1875, founded the leading Boston firm of Ropes & Gray before his appointment and continued to practice law actively throughout his academic career.¹⁴ Gray taught actively through 1913, when he took emeritus status.¹⁵ Felix Frankfurter graduated from Harvard Law School in 1906 and spent some eight years between his graduation and his appointment to the Harvard faculty in private practice, as an assistant United States attorney, and as a lawyer in the War Department, arguing six cases before the United States Supreme Court.¹⁶ Moreover, in 1910 Ezra Ripley Thayer moved directly from eighteen years of law practice in Boston to the deanship of the Harvard Law School.¹⁷

Third, it was a practitioner, not a professional law teacher or scholar, Christopher Columbus Langdell, who, as dean of the Harvard Law School, “conceived, designed, and built the system of

11. Langbein, *supra* note 8, at 23, 29. Harvard was founded in 1817 based on a bequest by Isaac Royall, but “had dwindled by 1829 to only a single student” and was “effectively refounded in 1829” when it merged with the Northampton Law School. *Id.* at 23.

12. “The characteristic Law School faculty of the middle and latter part of the nineteenth century was staffed by active judges and practicing lawyers who gave part of their time to teaching.” ARTHUR E. SUTHERLAND, *THE LAW AT HARVARD 182* (1967). In 1883, the first Dean of the Faculty of Harvard College, Ephraim W. Gurney, wrote to Harvard President Charles W. Eliot, urging Eliot not to allow young scholars wholly to supplant experienced practitioners on the Harvard Law faculty. Gurney wrote that he had been awake during the night and had worried that if the Law School “commits itself to the theory of breeding within itself its Corps of instructors and thus severs itself from the great current of legal life which flows through the courts and the bar, it commits the gravest error of policy which it could adopt . . .” *Id.* at 188.

13. See STEVENS, *supra* note 10, at 54–55 (1983) (“Even the Harvard Board of Overseers made certain that the practical, or perhaps pragmatic, approach was evident at the law school by maintaining a balance between the schoolmen and the practitioners holding posts as practitioners.”).

14. SUTHERLAND, *supra* note 12, at 190 (“Gray somehow managed to be a full-time teacher and a full-time lawyer simultaneously.”).

15. *Id.* at 234.

16. *Id.* at 241–42.

17. *Id.* at 231.

academic meritocracy that became the normative model of professional education in the United States.”¹⁸ When Langdell arrived at Harvard in 1870, the curriculum involved “a cycle of elementary courses, and the classroom teaching consisted of transmitting content to receptive students.”¹⁹ Langdell introduced “three fundamental innovations” into the Harvard Law School curriculum: he began sequencing coursework by providing for foundational courses and advanced electives; he introduced case method teaching and the use of the casebook; and he invented the form of law school examination “requiring students to respond in writing to complex hypothetical problems concerning specific situations.”²⁰ Notably, these extraordinary innovations in legal pedagogy came not from an academic, but from a practitioner who came to Harvard directly from sixteen years of practice in New York City. Langdell’s extensive experience in practice directly shaped his vision of a reformed and revitalized American legal pedagogy.²¹

Finally, long before my own time in law school in the early 1970s, and certainly since, the proper balance between doctrinal and practical (skills and clinical) instruction has been, and continues to be, a central subject of debate in the legal academy. As Robert Stevens sums up a century and a half of American legal education:

Despite all the rhetoric, the American law school was founded and developed as a professional school stressing the knowledge needed to pass the bar examination and to succeed in practice. Although some elite schools had gone beyond these objectives, most law schools retained this fundamental, practical orientation. Legal education’s heritage was one of an inherent conflict between the professional and the scholarly.²²

18. BRUCE A. KIMBALL, *THE INCEPTION OF MODERN PROFESSIONAL EDUCATION: C.C. LANGDELL, 1826–1906*, at 2 (2009).

19. *Id.* at 6.

20. *Id.*

21. *Id.* at 5. Langdell did produce scholarly work after he assumed the deanship, but his scholarship has been “pilloried in the standard historical account of American legal theory.” *Id.*

22. STEVENS, *supra* note 10, at 266. Indeed, Francis Bacon, writing in the late sixteenth and early seventeenth century, deplored the disconnect between theory and practice in legal education and advocated a balance of “both learning and research, freed from rote forms dictated by the past, that focused on ‘the actual application of laws in practice and their constant improvement.’” Daniel R. Coquillette, *The Purer Fountains: Bacon and Legal Education*, in FRANCIS

Whatever the outcome of that debate or its resolution within a particular law school at a particular time, it is clear that practical training will remain a part of every law school's curriculum for the foreseeable future. Indeed, the American Bar Association (ABA) standards of accreditation mandate such instruction.²³ And the demand from the practicing bar for "client-ready lawyers" grows ever more insistent as clients resist paying for the cost of training newly-minted lawyers.²⁴

The message to be drawn from these historical vignettes is that the balance between the practical and the scholarly in the leadership as well as the focus of American law schools has evolved over time in light of the needs of the day and the needs of a particular school. Undoubtedly it will continue to do so. Effective leadership in this mixed universe may well draw upon the differing perspectives that comprise the universe itself, i.e., the perspectives of both academics and practitioners. The case of Langdell, which stands out dramatically because of the broad and enduring influence of the Langdell reforms on the legal academy generally, is probably by no means unique. I suspect that, given world enough and time, many of our modern law schools could trace critical moments in their development to the leadership of a man or woman whose experience was not predominantly in the academy, or who at least had gained experience outside of the academy that was critical to his or her contribution.

II. DEFINING "TRADITIONAL" AND "NON-TRADITIONAL" DEANS

The line between "traditional" and "non-traditional" deans is not as clear-cut as the terminology suggests. Certainly, we can identify paradigms: the "traditional" dean who, after a brief period in practice or government, typically as an appellate law clerk, joins the legal academy as a tenure-track professor; writes and teaches; achieves tenure; perhaps serves as an associate dean, for academic

BACON AND THE REFIGURING OF EARLY MODERN THOUGHT 153 (Julie Robin Solomon & Catherine Gimelli Martin eds., 2005).

23. SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, AMERICAN BAR ASS'N, STANDARDS FOR APPROVAL OF LAW SCHOOLS ch. 3, Standard 302(a)(1) (each student must receive skills training), 302(b)(1) (school must provide "substantial opportunity" for "live client or other real-life practice experience").

24. See generally D. Van Zandt, *Client-Ready Law Graduates*, LITIG., Fall 2009, at 11.

affairs or the like; and then is appointed to a deanship.²⁵ Conversely, we can posit the case of the “non-traditional” dean who comes to the deanship with near, or altogether, exclusively professional experience (say, private practice or government service) with no significant prior connection to the legal academy, except as a J.D. student, and with no tenure-level publication record.

In fact, a recent, 2009 roster of American law deans suggests that mixed in with these paradigmatic “pure bred” are a host of half-breeds that combine academic and non-academic experience in varying degrees and circumstances.²⁶ Not surprisingly, there were a significant number of paradigmatic “traditional” deans with no identifiable practice or non-academic experience (21 of the 103 deans²⁷), and another thirty-three “traditional” deans with fewer than five years of practice or related experience. Yet approximately 40 of the 103 then-sitting deans had dedicated significant portions of their careers to both academic and non-academic pursuits, including law practice and government service. There were eight deans with a predominately non-academic base of experience but with some pre-deanship academic experience as well (for example, as in my case, in adjunct teaching) and one with no apparent prior academic experience at all.²⁸

While these calculations are not precise, and I do not hold them out as such, they are important because they raise the question whether the traditional–non-traditional dichotomy tends to understate the extent to which the law school deanship marketplace has for some time been attributing value to practice and other forms of non-academic experience. In any event, given that deans with substantial outside experience comprise a sizeable portion of

25. There is also a growing cadre of “serial” law school deans who have served at multiple schools and who may constitute a “new class of professional deans.” See Frank T. Read, *The Unique Role of the Dean in American Legal Education*, 51 J. LEGAL EDUC. 389 (2001).

26. Using the *U.S. News & World Report* rankings of the top 100 law schools of 2009, and the online biography and the curriculum vitae of each school’s dean, it is possible to categorize broadly each dean according to his or her professional experience.

27. Because of ties in the rankings, the top 100 includes more than 100 schools and thus more than 100 deans.

28. To illustrate the imprecision of the analysis and of this categorization generally: I am aware from other sources that this dean for more than a decade chaired the board of trustees of a major private university: query whether that extraordinary and relevant experience should be scored as academic experience or not. Certainly, as a matter of common sense, I myself would afford the experience, however categorized, great positive weight in evaluating this person’s qualifications to serve as a law school dean.

the deanship population, their numbers surely bespeak caution in assuming that the “traditional” model of experience remains purely or even heavily academic.

Suppose that we refine and simplify the terminology and define “traditional” to refer to deans who, at the time of appointment or at any time before, have held a tenured professorship in the legal academy and “non-traditional” to refer to those who have not. This framework actually may reflect the legal academy’s own common understanding of the traditional/non-traditional dichotomy. To me, however, the tenured/non-tenured classification obscures, rather than elucidates, better understanding of the actual reasons for which deans are being chosen today. Given that so many deans come to the deanship with a wide variety of non-academic experience, to focus exclusively on one credential among many—the pedigree of tenure—does not really help us to understand the *relative* importance of that credential vis-à-vis other experience that may be driving the dean selection process. And, that, indeed, is what we, and search committees, should be trying to understand.

III. THE DEAN AND THE LAW SCHOOL ENTERPRISE

The description of a modern law school as an enterprise surely will come as no surprise to anyone occupying a dean’s chair circa 2010. *Merriam Webster’s Online Dictionary* defines an enterprise as “a unit of economic organization or activity.”²⁹ Although all law schools aspire to norms that transcend simple economic success, all law schools likewise conduct their operations (including management of the academic program) with careful regard for the revenues and expenses of the operation. Additionally, law schools and their leadership are accountable to a variety of constituencies for the responsible and successful economic performance of the school. These constituencies include management boards, central university administrations, alumni, corporate donors, state legislative and executive officials, faculty, and even students, who understandably keep a keen eye on how the law school is “pricing” the service of legal education.

To be sure, balancing the books of an educational institution is nothing new. The successful financial leaders of today’s law schools, however, bear more resemblance to the wildcatters who set out to build oil empires from a single well³⁰ than to the

29. Merriam Webster’s Online Dictionary, <http://www.merriam-webster.com/dictionary/enterprise> (last visited Mar. 10, 2010).

30. See B. BURROUGH, *THE BIG RICH: THE RISE AND FALL OF THE GREATEST TEXAS OIL FORTUNES* (2009).

educational bean counters of yore who recorded the cost of pencils in a yellowing ledger book, or to even those of only a few decades ago for whom financial management mainly meant bringing professorial and staff salaries into line with tuition revenues and stable or growing state appropriations. The modern law school dean repeatedly is called upon to be innovative and imaginative in generating new sources of revenue from a wide variety of sources: individual private philanthropy, state and federal government, foundation grants, corporate gifts (and sponsorships), tuition increases, fee increases, school events, and even the creative use of the school's real estate (for instance, for parking or for use for private events). The management of expenditures requires not only prudence, but a refined sense of when the law school should "spend money to make money," for example, on expensive brochures, paid advertisements, hired speakers, or costly web do-overs. Not surprisingly, just as consultants entered and ultimately came to permeate the previously sleepy world of law firm management in the 1970s and 80s, consultants are now taking root in the law school world as deans and boards grapple with the multiple demands of the management task.³¹

It is obvious that a traditional academic base of experience or the credential of tenure, standing alone, provides little assurance that a deanship candidate possesses the entrepreneurial skills needed at most modern law schools. Conversely, many forms of non-traditional experience—for example, service as the managing partner of a major law firm—may be directly relevant.³² Certainly, few would see any basis for a presumption favoring traditional candidates in this aspect of the modern dean's job. At best, perhaps, a tie might go to the traditional "runner" who had served as, for example, associate dean for finance or been heavily involved in a school's development efforts while serving on the faculty.

31. See, e.g., Hanover Research Council, www.hanoverresearch.com (last visited Feb. 12, 2010). Another consultant seeks "partnerships" with educational institutions and urges: "Is your college or university recession proof? Are you maintaining a balanced enrollment performance portfolio? The answer to that question is much like that of an investment manager's balanced portfolio question." Education Strategy, www.educationstrategy.com (last visited Feb. 12, 2010).

32. W. Taylor Reveley, III, *Cultural Musings of a Non-Traditional Dean*, 31 U. TOL. L. REV. 725 (2000) ("The nuts and bolts of what a law firm MP [managing partner] does on a daily basis bear real similarity to what a law school dean does on a daily basis.").

IV. THE DEAN AND LEGAL EMPLOYMENT

In the early days of the Ford Foundation seminars on the media and the law, Arthur Miller lay in wait for unsuspecting journalists who said their job was to report the news and not to worry about the impact their reporting had on the subjects of their reporting or, for that matter, the society in general. “Ah,” Miller would announce gleefully, his prey snared, “the Werner von Braun theory of journalism.” Then, he would add with a mock German accent, “I just build ze rockets and shoot zem up in ze sky. I don’t care where zey come down.”³³

Perhaps there was a time, and not all that long ago, when law schools could take a “Werner von Braun” approach to legal education: the task of law schools was simply to provide students with a solid legal education as a foundation for practice and send them into the world (“shoot them up”) armed with that foundation. Apart from acting as the logistical facilitators of interviews and other contacts between students and employers, law schools spent little time worrying about whether, where, and how students actually found jobs (where they “came down”). The dean’s role was to hire a capable person to manage the career services office. The rest pretty much took care of itself, especially in a major law firm world of an ever-expanding associate corps, summer programs that generated offers of “permanent” (i.e., post-graduation) employment for most if not all of the legions of summer associates, and ever-increasing salaries.

Although this model had begun to show faults long prior to 2008,³⁴ the economic crisis of 2008–09 put to rest any notion that law schools and law deans could largely ignore where their graduating “rockets” came down. Young lawyers confronted a sudden, dramatic slowdown in hiring. Those already hired faced an array of employer responses ranging from layoffs, to withdrawn offers, to “deferrals,” to funded pro bono leaves.³⁵ Nor was the impact confined to private firms. The governmental and public interest pipeline, which in better times served for many recent graduates as a transient way station and training ground en route to private practice, was clogged with young lawyers who could not

33. MEDIA AND THE LAW (Howard Simons & Joseph A. Califano, Jr. eds., 1976).

34. In particular, there had begun to emerge weaknesses in the national law firm model of practice that created rampant attrition, migration to (and attendant crowding of) government and public interest jobs, and client resistance to paying junior lawyers premium rates.

35. Gerry Shih, *Downturn Dims Prospects Even at Top Law Schools*, N.Y. TIMES, Aug. 26, 2009, at B1.

find private sector jobs or did not want to risk doing so.³⁶ This back-up sharply reduced this category of traditional entry-level opportunities for law school graduates.

As Kent Syverud, the Dean of the Washington University School of Law, pointed out forcefully at the 2010 meeting of the Association of American Law Schools, the deep and likely continuing turmoil in the legal job market has made placement of our graduates an absolutely critical priority for law schools and their deans.³⁷ Dean Syverud believes, and I agree, that it is imperative for every member of the law school staff and faculty to focus on enhancing placement opportunities for students. The dean, in this view, must become not only fundraiser-in-chief, but placement-officer-in-chief, building on his or her interactions with alumni and other law school constituents to actively promote the hiring of the school's graduates.

This growing importance of the dean's responsibility for placement is a consideration that compellingly favors the skills and experience of a dean with a strong background in practice. For one thing, a dean who comes to the academy from practice is likely to have acquired and to retain contacts in practice that will be valuable in gaining employment opportunities for students. More importantly, a practice-grounded dean will typically bring to the placement task a keen understanding of the recruiting processes and perspectives of legal employers—especially law firm employers. Finally, a dean who comes from practice should be able to “talk turkey” to fellow practitioners with enhanced credibility born of their sense that he or she fully understands their institutional needs, limitations, and uncertainties because, until only recently, the dean was “one of them.”

V. THE DEAN AND THE CURRICULUM

In addition to adeptness in the placement arena, perhaps the most obvious element of additional value that a non-traditional decanal candidate brings from practice is the ability to participate with particular knowledge and credibility in the ongoing reconciliation between the doctrinal side of legal education and the

36. Tamar Lewin, *Harvard Law School Suspends Program Giving Students Free Tuition*, N.Y. TIMES, Dec. 3, 2009, at A25 (discussing Harvard's decision to suspend a program waiving tuition for students who agree to work in the public sector because too many students signed up); Carol J. Williams, *New Lawyers Turn to Public Interest*, L.A. TIMES, Apr. 6, 2009, at A6.

37. Kent D. Syverud, Dean, Washington University School of Law, Remarks at the Association of American Law Schools 2010 Annual Meeting, Session For the Law School Dean (Jan. 7, 2010).

practical side (skills and experiential learning). Thus the dean who comes from practice should be able to make particularly astute judgments about the relative priority of investing the school's resources in various forms of doctrinal and non-doctrinal learning. The practice-grounded dean should be discerning in assessing the relative value of particular means of practical training and also in making the necessary decanal judgments about how well the school is carrying out its mission of providing such training and integrating doctrinal and practical learning.

A modest example from my own tenure may help to illustrate the point. In the course of judging or helping to prepare several of our school's moot court teams, I noticed a tendency toward a declamatory style of oral argument. Students were not only opening their arguments, but also responding to judges' questions with "canned," multi-point answers, often accompanied by hand gestures (e.g., holding up one finger for the first point, two for the second, etc.) that seemed likely to have been taught and practiced. This declamatory style was very different from the more outwardly conversational, albeit only outwardly conversational, style of appellate advocacy that I had always regarded as the model of sophisticated and effective oral argument. I asked our director of appellate advocacy whether student moot court competitions, and therefore our training of students for those competitions, favored the declamatory style. He assured me that they did not, that he, too, favored the conversational style, and that our moot court program (and the various competitions our students enter) teaches and emphasizes it as well.

Now, of course, many deans, traditional and not, may well have questioned the oratorical style of argument. The point is that in situations of this kind—consider, for example, the more complex setting of a mock *trial* in which the dean might have occasion to review what students had been taught about handling or offering documents into evidence—the dean with a significant background in practice may well be a more acute observer, critic, and, ultimately, leader and decision-maker with respect to skill and experiential activities related to his or her practice experience.

Less obviously, the dean with substantial practice experience also may be a good judge of what the school should invest in various components of the *doctrinal* curriculum. For example, in my years in practice, I formed (and continue to hold) the view that effective marshaling of historical materials often can be highly persuasive with courts. This and related experience has led me to value greatly the (not always so obvious) practical reasons to include legal history in the law school curriculum, entirely apart from the subject's fascination and its importance for any lawyer's

frame of reference. The same could be said for the whole gamut of courses we teach, and for the ability of a dean with extensive outside experience to be able to bring an extraordinarily worthwhile perspective to the entire process of curriculum planning and selection. I do not argue that the non-traditional dean's capability is presumptively superior in this regard; only that it should not be overlooked, nor unduly discounted, nor, ultimately, treated as presumptively *inferior*.³⁸

VI. THE DEAN AS AGENT OF CHANGE

On the surface, no single consideration would seem to favor hiring a non-traditional dean more strongly than the perception that a candidate who is not tied to the ways of the academy will be better able to effectuate needed change at a law school. There is some truth in this view, but I think it requires some elaboration, or, in today's jargon, "unpacking."

A search committee may well place a high priority on picking a dean who can successfully foster change in a law school's curriculum, its policies, its leadership, or even its culture. Flexibility, imagination, adaptability—all are critical ingredients of success in any enterprise, and the modern law school is no exception. As Professor Arthur Sutherland concluded his history of the Harvard Law School from 1817, "One imperative lesson is written in these annals. The familiar is not the necessary. What has been habitual in the law and in education for it may be deadening if it fails to accord with new demands of society."³⁹

If a law school is indeed searching for a dean who will be an "agent of change," it should approach that criterion through two sub-questions. First, who among the available candidates is most likely to *perceive* the need for change, then identify and prioritize the changes that are needed? Second, who among the candidates is most likely to be able to *effectuate* whatever changes he or she

38. There are other significant attributes of the practice experience that have particular relevance to the role of the dean—for example, the similarities between working with partners and tenured professors as colleagues, working with clients and with students and alumni, the importance of "recruiting and promotion rites," jargon, rankings, and mobility of personnel. See *generally* Reveley, *supra* note 32, at 725–28. Another is the familiarity, even to relatively senior law firm partners, of working collaboratively with junior lawyers. This experience seems to me especially relevant to the dean's level of comfort with interacting with students, as well as with affording access and meaningful input to students on issues facing the school.

39. SUTHERLAND, *supra* note 12, at 369.

perceives to be important? The candidates identified by these sub-questions may by no means be the same.

It may well be that a non-traditional candidate will have the advantage of a true outsider's perspective in evaluating the need for and priority subjects of institutional change. That perspective will flow not only because the non-traditional candidate has not trod or invested in the pathways that the school (or indeed, the legal academy generally) has been following before he or she arrived as dean, but also because the non-traditional candidate, in his or her non-academic career, has been actively following and learning different pathways altogether. The combination of these two factors may argue powerfully for a non-traditional candidate as a person who can identify needed change, although a non-traditional dean in this position would be well advised to immerse himself or herself in the ways of the legal academy and the particular school before jumping to conclusions about what changes to advocate.

The sledding gets tougher for the non-traditional candidate when it comes to actually gaining approval and acceptance of whatever changes he or she prudently identifies. Here, I think, a "Nixon in China" effect may well come into play. Whatever the merits of an academic outsider's vision of needed change, that vision may be perceived (and discounted) as that of an outsider who does not have a full understanding of the culture and traditions of the academy. Conversely, a traditional candidate advocating substantial change will carry the imprimatur and the credibility of long years steeped in the academic tradition, much as Nixon, the hardened cold warrior, was able to parlay his long history of anti-Communism into rapprochement with mainland China without being viewed as "weak" or appeasing.

This is not to say that faculty colleagues and other constituencies will irrationally dismiss a non-traditional dean's initiatives or fail to give them their fair due. And of course some non-traditional dean candidates will offer consensus-building experience and skills that will ease the way for the dean's agenda of change. My point, rather, is that, as with other critical traits of traditional and non-traditional deans, the ability to identify and to implement change cannot be readily generalized and should not be examined categorically, but in light of a candidate's relevant experience and individual strengths and weaknesses.

VII. THE DEAN AS INSTITUTIONAL DEFENDER AND CONFLICT MANAGER

I am often asked by old friends, alumni, and practitioners whether my job mainly entails fundraising. As any law school dean will testify, the answer to that question is “no” because we spend a great deal of our time on a plethora of “inside deaning” responsibilities ranging from student policies and curriculum review, faculty and staff hiring, ABA accreditation and standards compliance, admissions policy, oversight of the various departments of the law school, financial management, and the like.

In mulling over those interactions with friends and former colleagues, what comes to mind is something quite different. One of the dean’s most important, and most challenging, responsibilities is to maintain the institutional integrity of his or her law school and to defend it from outside, and inside, depredations of one kind or another. These incursions may be financial, as in the case of deans who do not feel that their schools are getting a fair share of the revenues they generate for the larger university or, in a public context, that are being appropriated for higher education generally; organizational, when “central” university staff or other academic units seek to intervene in or direct matters of educational or institutional policy that the dean and his faculty believe should reside within the law school; and political, when public law schools in particular face outside pressures or regulation that threaten the school’s mission or pedagogy. And, yes, there are conflicts and controversies internal to the law school that the dean must mediate, resolve, or, if that is not possible, simply defend so as to protect the best interests of the institution.

For better or for worse, the experience of most practitioners, especially those who come from a litigation background, quintessentially entails the management and resolution of institutional and personal conflict. This is not to say that the preferred role model for a law dean is the “scorched earth” litigator—anything but. Still, the representation of clients in law practice frequently involves a sensitive evaluation of the client’s core values and needs (institutional needs of institutional clients) in the context of advising clients on possible outcomes and resolutions of conflict. Notwithstanding all of the old saws about academic politics, many approaching the deanship from a purely academic (or heavily academic) background may be relatively inexperienced and unhardened in this critical arena.

VIII. THE DEAN AS ACADEMIC LEADER

Whatever the advantages of a non-traditional dean in other realms, it is difficult to argue with the proposition that a career academic deanship candidate, with a considerable track record of teaching and scholarship, offers a law school a strong prospect of effective leadership of the academic program. Deanship candidates with solid experience in the legal academy know the ins and outs of what it takes to succeed as a teacher and scholar. Because they do, traditional deans therefore are well-positioned to evaluate candidates for faculty positions, to make judgments about the quality of faculty teaching and scholarship (both for hiring, tenure, and promotion purposes), and—at least with reference to prevailing practices within the academy—to make broader curricular judgments about what should be taught and why. Equally, or perhaps more important, having come up through the ranks, traditional deans share a common base of experience and a general cultural affinity with their faculty colleagues that lends credibility and acceptance to the decisions they must make and the leadership they must exercise in the academic realm.⁴⁰

Traditional deans bring another, very useful practical advantage to the job: having toiled previously (often for many years) in the vineyards of the legal academy, many traditional deans have gotten to know a wide range of fellow legal academics. This “networking” comes about in the legal academy just as it does in many other professional field—through committee work, scholarly workshops and interchanges, professional organizations like the Association of American Law Schools, and similar shared activities. The non-traditional dean brings to the party his or her own parallel network of associations and contacts in the bar and bench, but, in general, although there may be some overlap, the non-traditional dean’s contacts are likely to be very different from

40. See SUTHERLAND, *supra* note 12, at 304 (concerning the appointment of Professor James M. Landis to be dean of Harvard Law School in 1936):

An academic administrator must be all things to all men—particularly to his governing boards. He must be a man of business, wise in the handling of funds, and in modern times experienced in the operations of government. At the same time, in the eyes of his faculty he must be a teacher and scholar, he must have met classes, supervised students, and have published wise things in hard-covered books. Landis had all this in his record.

Traditional deans also have typically spent years within the governance structure of the legal academy, its committee structure, its promotion and tenure processes, and the like. I do not minimize the significance of this cultural experience.

those of the traditional dean, and certainly far thinner in the academy itself.

How should we appraise the relative importance of the various facets of the traditional dean's experience? Surprisingly, perhaps, I would rate the most seemingly obvious of these advantages—hands on experience with teaching and scholarship—as the least important, or the least *directly* important, of the traditional dean's advantages. I reach this conclusion not because my intellectual philistinism finally has revealed itself, as some readers may suspect, but with full reverence for both outstanding teaching and first-rate scholarship.

Although *appreciating* good teaching and identifying bad teaching is an important part of the dean's job, it does not require specialized training or experience. *Teaching* good teaching methods may require, or may certainly be aided by, years of experience in the classroom, but I question the extent to which classroom “coaching” of colleagues is a material part of the dean's function at most law schools today. Another relevant and mitigating factor is the extent to which a non-traditional dean may have relevant or even extensive experience in teaching, for example, as an adjunct, in professional education programs, or even in a prior career. A non-traditional dean, in other words, may have considerable teaching experience even though he or she has not been previously a full-time member of the legal academy.⁴¹

Likewise, a track record of scholarship certainly is a plus for any dean, but I would argue that it is likewise not necessarily essential to an effective deanship, and that, in any event, this one aspect of a candidate's experience (or lack thereof) must be weighed against the totality of the candidate's prior experience when evaluating his potential effectiveness. Again, the point is that the essential part of the dean's function in today's law school cosmos is not to author scholarship during his or her deanship,⁴² nor even to “coach” colleagues in producing scholarship at the micro level of suggesting topics, editing drafts, and the like. A

41. I recognize that there are wide variances in the nature and effectiveness of adjunct teaching. Nevertheless, just as it would be foolhardy to equate all adjunct teaching (either in quality or substance) with teaching by full-time faculty, I believe that there are many adjuncts who offer highly substantive and effective courses that far transcend generalized beliefs that adjunct courses revolve around “war stories,” superficial treatment of the substantive law, and the like.

42. See Symeon Symeonides, *On Deaning, Writing and Roses*, 33 U. TOL. L. REV. 217, 219 (2001) (noting the tension between deaning and scholarship and concluding that writing while deaning requires compromises in the quality or quantity of publications or in “taking time off to smell the roses”).

dean who is looking to spend much of his or her time engaged in scholarship (or teaching, for that matter) is unlikely to have sufficient time left for the work that only the dean can do. Rather, the critical component of the dean's scholarly mission is to recognize, appreciate, encourage, and reward outstanding scholarship, and, particularly in the context of the hiring, tenure, and promotion processes, to distinguish worthy scholarship from that which is not. Many non-traditional deanship candidates, in my judgment, are more than capable of carrying out this function with distinction.

Here, especially, it seems to me critical to a proper weighting of the non-traditional candidate's competence and credibility to consider the candidate's prior experience in a more particularized fashion. Not all non-academic prequels to deaning provide equal preparation for the dean's responsibilities for scholarship. For example, there are many judges in today's world (certainly those in the federal system) who necessarily must write and publish on a near continuous basis. It is also a fair bet that many conscientious judges must read and take note of a wide range of legal scholarship. It would be the rare general counsel of an industrial company or general practitioner whose relevant writing experience would compare to that of a first-rate judge (even one who did not write for publication outside of the official reports). The general counsel and the practitioner both might bring other, very valuable, attributes to the deanship, but their particular experience typically would not measure up to an outstanding judge's preparation for the dean's specific responsibilities relating to scholarship.

Similarly, it is far too indiscriminate to lump all practitioners together for purposes of this analysis—the precise experience of specific practitioners will vary greatly in this regard. To illustrate the point with another obvious dichotomy: the practice experience of a specialist Supreme Court advocate, engaged daily in confronting and writing about the most difficult and substantial legal issues of the day for the highly sophisticated audience of the Justices (albeit in the context of briefs, not articles), would present scholarly deanship qualifications wholly different from those of a general practice trial attorney with extensive courtroom experience but only a limited track record of appellate work involving the briefing and argument of issues of first impression in major forums.

Ironically, then, it is not the actual teaching and scholarly skills of the career academic that matter greatly in deaning, but the perception of his or her colleagues that they do and the impact of that perception on the acceptance and legitimacy of the dean's actions and judgments. This is not a phenomenon limited to the

legal academy. We are all naturally inclined to believe that actual, direct experience as a foot soldier, or, at a minimum, experience in actual “combat,” is an important qualification for generalship; consider also, for example, the number of former professional football and basketball players who enter the coaching ranks. The professional sports model is instructive, however, because it teaches that (1) many of the best coaches are not former players and (2) many former players make poor coaches.⁴³ In other words, the lesson to be learned is that direct, on-the-ground experience in a specialized endeavor is a relevant factor in assessing the potential to lead others effectively in that endeavor, but it is by no means a predictor of success sufficiently reliable to warrant disqualification of those who do not possess it or, as I see it, even a strong presumption favoring those who do without close comparison of the entire range of their experience with that of other candidates.⁴⁴

IX. CONCLUSION: A MODEST PROPOSAL

My conclusion is a modest one: that search committees, university presidents, provosts, and faculties hiring law school deans should not overemphasize the relevance and importance of a deanship candidate’s career academic experience nor undervalue the experience of the candidate who comes from practice, the judiciary, business, or government. Moreover, the qualifications of prospective deans who are not career academics should be

43. Of the thirty-two current coaches of teams in the National Football League (NFL), only four played in the league (two others, including 2010 NFL champion New Orleans Saints’ head coach Sean Payton, played only as NFL strike replacements). The military model is subject to much the same analysis. World War II General and Supreme Allied Commander (later President) Dwight D. Eisenhower, the military leader of D-Day, had never led troops in combat until, as a general, he commanded the Allied invasion of North Africa in 1942. See STEVEN E. AMBROSE, *EISENHOWER: SOLDIER AND PRESIDENT* (1990). President Lincoln brought no prior military experience to the White House. See JAMES MCPHERSON, *TRIED BY WAR: ABRAHAM LINCOLN AS COMMANDER-IN-CHIEF* (2008). Indeed, our national tradition of civilian leadership of the military tends to undermine the “foot soldier” leadership model.

I have not had the opportunity to do a head count for this article, but my sense is that “non-traditional” deans of other professional schools—notably, graduate business, journalism, and public policy schools—are quite common.

44. Theo Epstein, who at twenty-eight became the youngest general manager in the history of Major League Baseball and was general manager of the Red Sox when they won two World Series championships (including the franchise’s first in eighty-six years), is a 1991 graduate of Brookline High School who never played baseball for the Warriors but dreamed of working for the Red Sox. See Charles Krupa, *Meet Boston GM Theo Epstein*, USA TODAY, Nov. 30, 2002.

evaluated by examining carefully the actual nature of the candidate's experience (both outside of and within the academy) rather than by invoking loaded and imprecise buzzwords like "non-traditional." Indeed, the converse applies as well; the non-academic, but nevertheless relevant, experience of "traditional" deanship candidates also should be identified and given its due (for example, a professor's experience in practice or working in government, with practitioners through bar committees, with development activities, or with the financial management of an academic enterprise).

I doubt that any of the suggestions in the preceding paragraph will be controversial, although I do question whether those principles are in fact applied consciously or consistently in many of today's deanship searches. The closer and more difficult question is whether a negative presumption of suitability or a closer level of scrutiny should be applied to dean candidates who do not have a strong base of professional academic experience or whether, conversely, a favorable presumption or a less demanding standard of review should apply to candidates who do.

For me, this question is close, not because I believe that, on balance and in general, the "skill set" of academic candidates typically better qualifies them for the job of deaning circa 2010, but because I believe that the perceptions and beliefs of colleagues could make it easier for some academic candidates to succeed than for those coming from outside of the legal academy. Of course, adopting this rationale may lead a search committee to overlook or reject non-traditional candidates who, in fact, possess the concrete skills necessary for success in greater measure than an academic candidate selected to serve on the basis of cultural acceptability.

In the end, as between traditional and non-traditional candidates, I would make two recommendations to law school dean search committees. First, I would affirmatively seek out non-traditional deans for every applicant pool, with the possible exception of those schools at which the need for stewardship and preservation of the status quo or considerations of academic tradition or prestige predominate over the perceived need for entrepreneurship and change. Second, having assembled a diverse pool of applicants, I would apply at most only the mildest of differing presumptions or levels of scrutiny in searching for a dean, at least in today's multi-dimensional, evolving, and entrepreneurial law school environment. The qualities necessary for actual, successful performance in law school deaning today simply do not correlate sufficiently with the advantages of academic experience or tenure to justify making either a predominant factor or prerequisite in deanship selection. And, in picking a dean, I would

want to be sure I was not applying a filter that would cause me to pass up—in Frost’s words, to “wall out”—some Langdell of the twenty-first century.

In 1883, while Langdell himself served as dean of the Harvard Law School, Ephraim Gurney, the dean of the entire Harvard University faculty (analogous, perhaps, to today’s provost), wrote to President Charles Eliot. Gurney urged Eliot not to view legal education as limited to the “pure science of law” but to maintain a balance between able theoreticians and experienced practitioners in shaping the law faculty. “The one lesson I should draw from all my experience in the University,” Gurney wrote, “is not systems, but men.”⁴⁵ In the end, what I write here is a similar plea for less orthodoxy and greater institutional flexibility and imagination in choosing the future leaders of American legal education.

45. SUTHERLAND, *supra* note 12, at 189.