

# SOME ADVICE TO THE PROSPECTIVE DEAN OF A NEW LAW SCHOOL

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I was asked to write an article on "the costs and priorities of a new law school." I found such an article impossible to write in a way which would assist rather than mislead a person considering at this or any future point in time the job of starting a new law school. Costs are relative to time, place, and aspirations. The new dean would be better advised to go directly to those schools which are of the kind he hopes to emulate and seek information as to their current costs than he would be to rely on any historical data which I could provide as to our experience at Davis.

What follows, then, could better be labeled as "strategy and tactics" or "what to think about" as you take on one of the most perilous and exciting of academic tasks. The road from the professional isolation and lonesomeness of that first year of planning to the harassment of the year when your first class graduates and everyone descends on you is a short one filled with opportunities for mistakes. If this article will help you to learn from my mistakes, and my occasional successes, it will have served its purpose.

## THE PLANNING PERIOD

The person given the job of creating a new law school should have a minimum of 2 years between the time he arrives on the campus and the time the first class is admitted. That period will prove all too short for the many things which must be done to get underway without making vital sacrifices of quality at the outset. Academic policy, at least in broad outlines, must be set. Planning for a building must be done. Acquisitions and processing for the library must be in progress. Recruitment of key administrative personnel and the initial faculty must be completed.

Ideally the new school should be budgeted so that the law librarian and an assistant dean can be employed the first year. If the selection of the dean is made sufficiently in advance of the time at which he assumes his duties, he may be able to recruit these key people so that they can be in residence as soon as he is. In any event their recruitment should be the first priority to be accomplished if possible before the

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middle of the first year of the planning period. The assistance of the librarian in particular is needed at the outset. He must be involved in building planning. He needs to recruit a staff and get book acquisitions started if the library is to grow in an orderly fashion and be available on shelves in sufficient quantity for the working needs of the first year of operation.

Even in a public institution the assistant dean can undertake a variety of tasks freeing the dean for becoming acquainted within the university and within the legal community, for faculty recruiting, for academic planning. In a private institution where money raising is involved such administrative assistance at the outset is indispensable.

Some faculty positions should be available to be filled for the year prior to the opening of the school. The task of getting the school underway will be greatly aided if some key faculty members can be recruited in time to participate in the planning processes during the year before the school opens. Their presence will also greatly facilitate the task of recruiting the rest of the faculty. Never does the new dean feel quite so alone as when he is entertaining prospective faculty members without a single law school colleague to assist him in projecting the future, to explain what sort of person the dean is to work with.

#### THE BASIC PLANNING DILEMMA

The person who is selected to be the dean of a new law school operating within the context of an existing college or university is in a unique and difficult position. He is asked to establish a professional curriculum in a setting where at the outset he is likely to be the only representative of that profession present. If he is to do his job he must demand and be granted almost complete autonomy in designing the program for the new school. True, he will face institutional constraints and he may find that faculty in other departments have their own images of what a law school should be. He will need the cooperation and assistance of his colleagues in the university administration and in the other departments. But in the end everyone must rely on the new dean to interpret the needs and shape of a legal educational institution.

As he undertakes his task the new dean faces a basic question: How far should he go in establishing the academic policy of his school while operating essentially on his own? Should he evolve a detailed academic plan and then recruit staff, construct physical facilities, and project budgets in conformity with that plan? Or should he try to

minimize his commitments, recruit the best faculty possible, and let academic plans evolve as a result of interaction between faculty, students, and administration?

The pressures to establish academic policy at the outset are strong. The prospective dean of a new law school is well advised to secure commitments of adequate resources before he takes on the job. What resources are adequate depends on the academic policy of the school. How can you estimate the necessary resources without some reasonably precise notions as to the size of the school, the nature and type of physical facilities, the number of faculty to be recruited and the level of compensation required, the size of the library, and so forth? If the dean has a reasonable amount of lead time he will find himself forced to make a variety of decisions in building planning, in budgeting, and in recruiting of staff and students before he has faculty and students with whom to consult. Finally, imaginative and bold academic planning is most easily done before faculty come to the school, each one with his own baggage of vested interests. In fact, a topflight, imaginative plan supported by resources adequate to the task might reinforce itself by attracting faculty and students who are sympathetic to its aims.

But attempts to fix academic policies in the lonely isolation of the dean's office are fraught with difficulties. The more daring the plan the more difficult it may be to recruit experienced faculty members willing to fit into its constraints. The most carefully recruited faculty may decide to reject or modify the plan as the faculty position with reference to the dean becomes solidified. Changes in the composition and attitudes of student bodies or changes in the educational policies of other law schools may subject the preconceived plan to pressures for modification. In fact, the rapidity of change in the methods and resource needs of law schools is now so great as to make it difficult to foresee the problems of 2 or 3 years in the future, let alone those of five or ten.

Still there is room for a choice of styles. One dean may feel it of crucial importance to set the basic attributes of academic policy and to exert all the influence he can to push his school in that direction. Another may seek a planning model which justifies the richest diet of resources he can get but may make plans for the early years which leave as many avenues as possible open for future development. He will recruit the best possible faculty without regard to their commitment to a specific plan and hope that there will be sufficient fluidity to permit

change and adaptation at a rate faster than that possible in established institutions.

My own decision at Davis was for the latter course. Since I was setting up a new school within a university system which included existing law schools, my planning models were largely predetermined. I could justify resources at the level of those schools, which was of tremendous assistance, but it would have been extremely difficult to justify any radically different resource allocations. The easy way was to take the inherited models, recruit the best possible faculty, and keep as many doors open as possible. One result in the early years was a frustrating lack of purposiveness. Many things just happened while a diverse faculty developed understanding and agreement and the student body reached that critical point (at the end of the second year of operation) when student voices began to be heard. Only at the end of the third year of operation can it be said that the school is beginning to achieve its own course and direction. Yet as I think back on it I can see that any plans I would have made in 1964 would not have anticipated the needs of 1969. And there is hope that the decisions of the next year or two will be congenial to faculty and students and have a good chance of surviving.

#### SIZE OF SCHOOL

It is important at the outset to have agreement as to the ultimate size of the law school and the timetable by which that size is to be reached. Building planning and budget planning hinge upon that agreement.

Where there are doubts as to the ability of the school to attract qualified students in sufficient numbers to make a viable school, the first question may be whether to have a school at all. Opinions differ as to the minimum size for a law school. If resources can be found to produce a sizable faculty and library without a large student body, then a school of 250 to 300 students could be an exciting place. But if, as is usually the case, resources are tied to student population, it may take 400 to 500 students to produce a sufficiently diverse faculty and curriculum to make the school attractive.

In other settings the demand level may be so high that the question is to determine the size at which growth will be cut off and the school population stabilized. How do you decide whether to cut off at 500, 800, 1000, or more? A school of 800 or more has obvious advantages. Enrichment comes from numbers and diversity. There can be a variety

of course offerings, content, and approach. Many types of research activity can serve as a stimulus to faculty and as a supplemental educational opportunity for students. A large number of faculty makes it possible for each faculty member to find colleagues to work with on specific problems and to stimulate him. In general there will be more resources available to support a wider variety of activities.

The argument for a smaller school—say one of 400 to 500—is based on the premise that a vital part of legal education comes from the interaction of students with each other and with the faculty. As a school grows larger student-faculty contact tends to diminish even though the student-faculty ratio does not change. In the larger setting students are reluctant to take faculty time. The faculty tends to build walls as it views the disruption possible if its doors remain open to all students. Furthermore, as the faculty grows in size it must spend a larger portion of its time on intrafaculty communications. Time which is allocated in a smaller school to becoming acquainted with students may in a larger school be allocated to becoming acquainted with and dealing with fellow faculty members. Also, as it becomes necessary to divide classes into three and four sections, the students become isolated from each other and group sharing is reduced.

Arguments just given relating to the size of the school have emphasized educational rather than financial considerations. Clearly there are some economies of scale in legal education but they may not be sufficient to be determinative. Most costs—salaries, administration, physical facilities—are tied fairly closely to size. The major item on which savings can be made is the library—since a significant portion of the library will not need to increase with changes in student population. I know of no reliable figures on the costs differentials between a medium-size school (500) and a large school (1000). Some figures available to me suggest that the differential may not be larger than \$200 per student per year if you assume that at each size physical facilities are fully occupied and that comparable educational standards are maintained.

One way to retain most of the advantages of the medium-size school while achieving many of the advantages (including the reduced costs) of the large school may be to create two or more separate medium-size schools which share library facilities and have some common administration. The model for this technique is the University of Houston, where present plans call for surrounding a common library and administrative core with five separate 500-student schools. Only

the first of those schools is now in operation and the Houston experience as additional schools are added should be carefully watched by those who are setting up law schools in areas where the student demand will create pressure for the establishment of large schools.

#### FACULTY AND ADMINISTRATIVE PERSONNEL

The most important task of the prospective dean of a new law school is to have a clear understanding as to the resources available for faculty and administrative personnel and as to the policies which will govern their recruitment, compensation, and promotion. This understanding should cover at least the following key points:

(1) *Salaries*. There should be agreement not only as to the specific salaries which may be available for initial appointments but also as to the law school or schools whose salary levels shall constitute the model for the new school. Everyone involved in decision-making, including academic budget committees, should understand and agree to the salary levels necessary for recruiting and retaining the kind of law faculty desired—however much those salaries may deviate from those paid in other portions of the university.

(2) *Standards for Evaluating Faculty*. General understanding of the nature of the “market” for law faculty members should also be obtained. Unless the differences between this “market” and that for general university faculty are understood, constant friction and misunderstandings can be expected. Special attention should be paid to showing the kinds of standards used to evaluate faculty members in the good law schools and also the patterns with respect to rapidity of advancement and to academic titles.

(3) *Student-Faculty Ratios*. There should be agreement on at least the outlines of an academic plan projecting faculty growth in relation to growth in the student population. Almost all law schools in the United States operate with too high a student-faculty ratio and the prospective dean should seek a commitment for a better than normal ratio so as to permit experimentation with new techniques of teaching.

(4) *Age and Experience Distribution of Faculty*. It is vital in a new school that the initial faculty provide a balance in terms of age and experience. The prospective dean should seek agreement on sufficient resources to maintain this balance during the period of rapid growth.

One further suggestion regarding faculty resources is that the dean

seek to have authorization to hire two or three faculty members in addition to the number needed for teaching under normal ratios during the first 2 or 3 years of operation of the school. Without such extra personnel the faculty is kept so busy with the details of getting the school underway and the courses taught that little time is left for the most vital functions—faculty recruitment and planning. Faculty recruitment imposes an enormous burden on a small faculty during the early years when it may be almost doubling in size every year. Planning should occupy much of the faculty time and requires a diverse group of faculty to do it intelligently. We did not provide this extra faculty at Davis and it proved to be a mistake.

One serious problem in a new school is the relationship between the dean and the faculty. At the outset the dean is alone and makes all the decisions. Some, at least, of his early faculty may come because they wish to reduce the administrative burdens which have settled upon them in older institutions. Hence, when the faculty is small, the dean is apt to dominate the group process and make most of the decisions in his office.

As the faculty grows the dean must shift responsibility for academic policy and much of its administration from his shoulders to those of the faculty. Constant attention must be given to defining and redefining the roles of dean and faculty so as soon to achieve general agreement on a rational division of power and responsibility.

Essential also to the dean's role and to the well-being of the institution is adequate administrative assistance. Ideally, an assistant or associate dean should be a part of the team from the beginning and a second will be needed early in the life of the school. In the modern context it is not possible for one administrator to cover all the bases even when the faculty and student body are relatively small.

Of course, an adequate secretarial staff is an essential in a modern law school. Blessed is the new dean who manages (as I did) to secure the services of a first-class administrative assistant early enough in the planning process so that she (or he) can assume responsibility for development of internal administrative procedures. Obviously, there should be understanding at the outset as to the level of support necessary to provide an adequate administrative and secretarial staff.

#### THE PHYSICAL PLANT

Ideally, one would like to be able to open a new law school in a new building of the size and kind adequate to serve the needs of the

school when it reaches its full enrollment. Problems of money and time will prevent this solution in almost every case. The new dean will find that money has yet to be raised or that he must wait for the law building to reach the top of a priority list for state funds. In some settings one may proceed rapidly from planning to construction. In others (such as the University of California) the time between initial planning and construction may stretch out over several years.

If the new dean is in the position of doing the basic planning of a new building before the arrival of his faculty and the development of an academic plan, he faces difficult problems. Much academic policy is determined by bricks and mortar. For example, how does one plan the size of classrooms? Should the largest classroom be kept relatively small (say seating 100) in order to force small classes and sectioning? But then what happens if his faculty later wants to experiment with a large-section, small-section pattern and needs a classroom to seat 150? If he builds the 150-seat classroom, however, will he be able to resist pressures to fill it without sectioning?

Numerous decisions which will affect the future life of the school will need to be made when the shape of that life can be seen only dimly. The new dean will need to consult widely and draw upon the experience of as many people as possible. Hopefully, he will have his librarian present to assist in the design of the vital library portion of the building. If not, he will be well advised to seek out a friendly librarian of a school with a library of the type he hopes to build and secure his services for planning purposes.

Wisdom in building planning is to leave open as many options as possible so as to minimize the constraints upon future academic policy. Plan as many spaces as possible of all kinds. You can be certain that your needs will always exceed the available space. Here the dean of the private school with private money may have the freest hand. In public schools state fiscal policies may compel the justification of every space in terms of an agreed-upon academic plan. In any event the shorter the budget the harder it will be to provide for the future.

Often it will not be possible to build at the outset for ultimate size. Or even though one is building for that size fiscal constraints may unduly limit the spaces which can be built. Under these circumstances careful attention should be paid to the problem of building with future additions in mind. Try hard to visualize traffic patterns in the building after it has received the planned addition. In far too many cases step two in the building process results in converting a well-planned building into a confused agglomeration of rooms and hallways.



If adequate temporary space is available to take care of the needs of the school over the first 2 or 3 years, it may be possible to postpone some of the building planning until the time at which the initial faculty can assist. This route has its problems, however. If the money for the permanent building is not committed and the temporary space is reasonably adequate, undue delays in getting the building may result. Also accreditation may be postponed until such time as the new building is completed, or at least under construction.

#### THE LAW LIBRARY

Building an adequate law library today is almost wholly a matter of dollars for books and for personnel. Most needed books are available in one form or another and a first-rate library can be assembled.

Basically there are two ways to go about creating a law library. One is to allocate a sum of money for book purchases at the outset sufficient to purchase some target figure (50,000, 75,000, *e.g.*) of books. Another is to establish at the outset (preferably 2 years before classes start) a book budget which would appear to be close to that needed to maintain the library and provide sufficient growth over the long term. These dollars will buy larger numbers of books at the outset, because some of the standard sets are relatively cheap per volume and because the continuation burden will be low. By the time classes are underway it should produce a good working level.

The second approach has two major advantages. By avoiding a large initial bulge in book purchasing it permits leveling out of the work load and handling it with a staff size which will continue into the future. And since most budgeting tends to deal with arguments over increases it facilitates coming out with a high enough book budget for the future. The danger in a system which starts with an initial "splurge" followed by a reduced book budget is that the reduced budget will be too small for the long term and getting it increased may be difficult.

I would add two cautions in planning for the law library. Assume that more personnel will be required than are present in the established law library with which you are familiar. And remember that no optimum size can be fixed for a law library. The target always shifts. The number of books which today is regarded as adequate for a school of the type planned will be much larger 5 years from now because the existing libraries will have been growing over those 5 years.

## RECRUITING AND FINANCING STUDENTS

A public institution with low tuition or fees (such as Davis, where the resident student pays only \$325 per year) is in a fortunate position with respect to attracting able students and with respect to financing them.

Our experience in California where the pressure of applications to law schools is high has been that we have been able to enroll classes of students of high quality from the beginning without a formal student recruitment program and without special student financing. The low tuition gives a built-in subsidy to each resident student. Governmental and private loan programs already in operation on the campus have been able to meet most additional needs.

In such a setting substantial additional financial aid is necessary only to the extent that the school seeks to recruit out-of-state students or to support special programs for students from minority groups. Many programs both within and without the universities are now available to provide support for minority applicants. Support for other students, however, tends to be particularly difficult for a new public law school to obtain. Alumni are not available for fund raising. Lawyers already practicing in the area are subject to repeated demands from their own law schools. It is the fortunate dean of such a school who is located in or near a large city sufficiently isolated from other law schools to enable him to gain substantial financial support through the local bar. Even more fortunate is the dean whose parent institution will provide student support.

Obviously, the problems of the private school with high tuition are much more complex. A high level of student support is required in such a setting if the school is to get its share of the able students who have opportunities for admission to a variety of schools. Assurance of such support must be one of the items high on the priority list when the prospective dean negotiates with the university.

## OTHER MATTERS

A new school will have several occasions in its early years to be involved in staging public events. There will be a groundbreaking and a building dedication. There will be the first graduation. There will be, perhaps, professional meetings and conventions. All of these impose severe drains of time (and often of money) much heavier than is anticipated. If the law school is located in an institution which has an able and well-financed public ceremonies office it is fortunate. If it has

to handle these affairs on its own, it should plan for adequate extra administrative assistance to avoid having too great an impact on the main business of the school.

Students are involved these days in a wide variety of curricular and extracurricular activities. Student bar associations, class organizations, moot court competitions, recruitment and placement committees, state and national student associations, fraternities, and others will be on the scene and, usually, making some claim for space and financial assistance. Many of these activities will deserve financial support and some basis must be sought for securing it.

Most law schools have difficulty in finding adequate financial support for faculty research and travel. To the extent that this is provided within the framework of normal institutional budgets the problem is minimized. But if reliance must be had upon grants and contracts and fund raising, new levels of difficulties arise. During the early years of the school the faculty is not likely to have the time or the expertise for successful grantsmanship and here again adequate administrative support is essential to success.

#### CONCLUSION

The job of being the first dean of a new law school is fascinating, frustrating, difficult, and exciting. At first you will be certain that it cannot be done and later you will wonder how it all happened. I have two vivid memories of my first days on the job. One is that of sitting at a bare desk in a bare room early in September, 1964, and asking myself, what do I do now? The other is of rushing to the faculty club to lunch a week or so later happily announcing that the law school had just doubled in size, I had hired my secretary. In June of 1969 as I stood before a crowd of over 500 parents, relatives, and friends to open the graduating ceremonies for our first graduating class of 68 students, I found myself wondering how it had all happened and reflecting that there was much more of Topsy than of Barrett in the institution which had come into being.

Many people in many places contributed to the process which brought us to that graduation. Some of them have been mentioned above—faculty, administrative and secretarial personnel, librarians, members of the legal profession, most significantly the students who were willing to take a chance on a new institution. Others should be noted in this conclusion. No dean can succeed in creating a new law school without strong support from his administrative superiors and

from his academic colleagues in other disciplines. No man is an island, not even a law school dean. He must also have the sympathetic support and counsel of his colleagues holding law school deanships throughout the country—even when he is doing his best to raid their faculties for the key people he needs.

I have been fortunate in having the assistance of all the above and more, including loving support and toleration from my family. To you, the prospective dean of a new law school, I can only wish similar good fortune.