

NON-TRADITIONAL LAW DEANS: THEIR EXPERIENCES AND THOSE OF THE LAW SCHOOLS THAT HIRE THEM

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TABLE OF CONTENTS

I. INTRODUCTION	2
II. THE LITERATURE ON DEANSHIP	3
III. SCOPE AND METHODOLOGY.....	5
IV. WHY AND HOW NON-TRADITIONAL DEANS ARE HIRED	6
a. Why Law Schools Choose Non-Traditional Deans	6
b. Backgrounds and Motivations of Non-Traditional Deans.....	10
c. The Search and Selection Process.....	13
V. CHALLENGES FACED BY NON-TRADITIONAL DEANS	16
a. The Financial Model.....	17
b. Shared Governance.....	18
c. Faculty Culture	21
d. Incentives and Credentials.....	22
e. The Scholarly Mission.....	25
f. The University.....	27
g. Other Stakeholders	30
h. Special Issues for Independent Law Schools.....	30
VI. ASSESSING NON-TRADITIONAL CANDIDATES	31
a. Loyalty and Mission	32
b. Patience, Endurance and Ego	33
c. Humility, Flexibility and Cultural Competence.....	34

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VII. WHEN THE POSITION IS OFFERED.....	36
a. The Problem of Awarding Tenure.....	36
b. Negotiating the Position and the Package.....	38
c. Getting Started.....	38
d. Building the Team.....	40
VIII. WRAPPING UP THE DEANSHIP.....	41
a. Successes.....	41
b. Limitations of Success.....	43
c. Failures.....	44
d. Departure & Succession.....	46
IX. CONCLUSION.....	47
X. BIBLIOGRAPHY.....	49

I. INTRODUCTION

As the legal academy evolves to keep pace with changes in the profession, many law schools have turned to non-traditional deans to provide new approaches to training the next generation of lawyers. Traditionally, deans have been drawn from the ranks of academia. Non-traditional deans, however, are drawn from private practice or careers in the public sector. Especially in the last decade a number of law schools have hired non-traditional candidates. This paper will explore the circumstances under which law schools turn to non-traditional deans. Drawing on eighty-nine interviews with deans, faculty and others from thirty-six schools, along with a review of the literature, it will address the most significant challenges those candidates face compared to traditional deans, and the attributes of those deans who have met both greater and lesser success.

I find that law schools choose non-traditional deans when the schools face challenges outside the experience and skillsets of a typical law professor. Those challenges relate primarily to finances, operational issues, and external relations, in contrast with a law school's core teaching and research missions. I conclude that while non-traditional deans are selected for their skills and experience in these non-core areas, they also come relatively unprepared for the culture and institutional peculiarities of the legal academy. I find that those non-traditional deans who are considered successful are those who achieve tangible gains in the particular areas that they were hired to address, but only when their motivations and character traits enable them to deal with the challenges they encounter. Those personal attributes include a strong loyalty to the school and its mission, along with several traits often found in successful lawyers and public leaders: energy, endurance and a thick skin. But they also include some traits that may be harder to find in such candidates: humility, patience and cultural competence. In combination these attributes can compensate for a non-traditional dean's deficits and lead to successful leadership.

This paper is intended in part as a resource for law faculty serving on dean search committees that are considering non-traditional candidates, seeking to help such committees identify the strengths and weaknesses commonly found in such candidates. It offers suggestions on how to assess those attributes in the absence of the information networks available within the academy and outlines ways schools can help non-traditional deans start their service. It also provides search consultants with suggestions on how to identify and guide promising non-traditional candidates. It seeks to provide potential non-traditional candidates, as well as candidates from within the academy, with some guidance as to the leadership challenges faced by law school deans. And finally, while focused on the experiences of non-traditional deans and their schools, the descriptions herein of the challenges of deanship apply to traditional deans as well; it is hoped that this paper will be helpful to all.

Many deans say that theirs is the best job in the world. It is the closest to philosopher king that modern life offers: a position from which the dean can lead an important organization while being called upon to articulate publicly the core values of our legal and political systems. The dean leads an institution that is responsible for the next generation of lawyers and leaders who will protect the rule of law, fight injustice, and seek social change through reform. Few jobs offer this extraordinary opportunity. But this paper is not about these points; it assumes that candidates for the deanship recognize the greatness of the role they seek. Rather, this paper focuses on how law schools make the decision to hire a non-traditional dean, and the challenges candidates should recognize in advance to be able to succeed.

Part II reviews the existing literature on deanship, while Part III describes the paper's methodology. Part IV examines the circumstances under which law schools choose non-traditional deans, along with the attributes of those who have been hired as non-traditional deans. Part V examines the elements of the dean's job that are most likely to be challenges for non-traditional deans, while Part VI focuses on the hiring process, offering observations on the most important character attributes that non-traditional candidates need to succeed. Part VII addresses the key steps at the beginning of a deanship. Then Part VIII describes the ways in which non-traditional deans have been found to be successful, as well as the attributes of those who have not. It then wraps up with observations on wrapping up the deanship, and Part IX recaps this paper's conclusions.

This paper arises out of the experience of the author from his service as Dean of the University of Connecticut School of Law, where he arrived in 2013 following thirty-five years in private practice. Conversations with other non-traditional deans confirmed the belief that schools and dean candidates in the future would benefit from the lessons learned at the many schools who have followed this path.

II. THE LITERATURE ON DEANSHIP

A number of articles and essays have been written about the position of law school dean. And most recently the Association of American Law Schools ("AALS") has released its major report, *The American Law School Dean Study*, setting out a rich array of findings from their

surveys of current and recent deans.² There are also many articles by deans about their own experiences.³ Some of those focus on particular perspectives, including an externally focused dean, a “hybrid” internal and external dean, deans of color, and women deans.⁴ Others focus on the hiring process.⁵ Another group of essays and articles offer deans’ reflections at the end of their service.⁶

There are several relatively brief essays by non-traditional deans about their personal experiences.⁷ Two of those are by former judges.⁸ Three others are by deans who came to the deanship from private practice.⁹ A sixth is by a dean whose prior career was largely in government service with other stops along the way, and offers a relatively detailed and sophisticated review of the assets and deficits the author brought to her job.¹⁰

Last, a very useful database of law school deanships is Rosenblatt’s Dean’s Database.¹¹ It lists all current by multiple criteria, including length of service, gender, ethnicity and law school attended. It also identifies incoming and departing along with lists of former deans.

All told, the existing literature offers a great range of observations and recommendations for how deans should approach their job and how law schools should choose and understand their deans. While many of the points made apply equally to traditional and non-traditional deans, the strengths and weaknesses that those two groups bring to the job are quite different. Deans whose prior careers were as law professors bring a deep understanding of

² *The American Law School Dean Study*, ASS’N OF AM. LAW SCHS. (Apr. 5, 2022), <https://www.aals.org/research/dean-study/>.

³ See, e.g., Robert Post, *Leadership in Educational Institutions: Reflections of a Law School Dean*, 69 STAN. L. REV. 1817 (2017); Jeffrey O’Connell & Thomas E. O’Connell, *The Five Roles of the Law School Dean: Leader, Manager, Energizer, Envoy, Intellectual*, 29 EMORY L.J. 605 (1980); Paul D. Carrington, *Afterword: Why Deans Quit*, 26 DUKE L.J. 243 (1987); Darby Dickerson & Marjorie M. Buckner, Ph.D., *Communication Conundrums: Theories About and Tips for Effective Decanal Communication*, 48 U. TOL. L. REV. 211 (2017).

⁴ Frank T. Read, *The Unique Role of the Law School Dean in American Legal Education*, 51 J. LEGAL EDUC. 389 (2001); John A. Miller, *The Modern Law Dean*, 50 J. LEGAL EDUC. 398 (2000); Michael Coper, *My Top Ten Tips for Good Deaning*, 62 J. LEGAL EDUC. 70 (2012); Robert Gilbert Johnston, *What is a Dean For?*, 35 U. TOL. L. REV. 111 (2003); Leslie W. Abramson & George W. Moss, *Law School Deans: A Self-Portrait*, 29 J. LEGAL EDUC. 6 (1977); Bill L. Williamson, *The “Art” of Deaning*, 36 J. LEGAL EDUC. 227 (1986); LeRoy Pernell, *Deans of Color Speak Out: Unique Voice in a Unique Role*, 20 B.C. THIRD WORLD L.J. 43 (2000); Laura M. Padilla, *Women Law Deans, Gender Sidelining, and Presumptions of Incompetence*, 35 BERKELEY J. GENDER L. & JUST. 1 (2020); Peter C. Alexander, *Confessions of a Hybrid Dean: Dean as Sustainer*, 36 U. TOL. L. REV. 1 (2004); David E. Shipley, *The Personal Side of a Deanship*, 31 U. TOL. L. REV. 739, 742 (2000); Susan J. Becker, *Thanks, But I’m Just Looking: Or Why I Don’t Want to Be a Dean*, 49 J. LEGAL EDUC. 595 (1999).

⁵ Robert H. Jerry, II, *Primer for First Time Law Dean Candidate*, 49 J. LEGAL EDUC. 564, n.7 (1999); Eric J. Gouvin, *Looking for a Leader: A Primer for the Dean Search Committee Chair*, JURIST, October 2022, Western New England University School of Law Legal Studies Research Paper, available at <https://ssrn.com/abstract=1975439>; Professor Herbert I. Lazerow & Professor John M. Winters, *In Quest of a Dean*, 26 J. LEGAL EDUC. 59 (1973); Michele Benedetto Neitz, *Pulling Back the Curtain: Implicit Bias in the Law School Dean Search Process*, 49 SETON HALL L. REV. 629 (2019); Jagdeep S. Bhandari, Nicholas P. Cafardi, and Matthew Marlin, *Who Are These People? An Empirical Profile of the Nation’s Law School Deans*, 48 J. LEGAL EDUC. 329 (1998).

⁶ Victor L. Streib, *Law Deanships: Must They Be Nasty, Brutish, and Short?*, 44 J. LEGAL EDUC. 116 (1994); Gail B. Agrawal, *Reflections on Stepping Down*, 50 U. TOL. L. REV. 189 (2019); Victor L. Streib, *Law Deanships: Must They Be Nasty, Brutish, and Short?*, 44 J. LEGAL EDUC. 116 (1994); Jim Rosenblatt, *The Tenure of a Law School Dean: It’s Not How Long You Make It—It’s How You Make It Long*, 42 U. TOL. L. REV. 667 (2011); David E. Shipley, *Resigning as Dean: Stepping Down or Stepping Up?*, 35 U. TOL. L. REV. 189 (2003); H. Reese Hansen, *Some Thoughts on Stepping Down After a Long Term of Deaning*, 36 U. TOL. L. REV. 69 (2004). See generally Jerry, *supra* note 4 (containing citations to much of the literature on deanship). See also Gouvin, *supra* note 4.

⁷ Elizabeth Rindskopf Parker, *The Role of Law Schools and Law School Leadership in a Changing World: On Being an “Outside Dean”—The University of the Pacific McGeorge School of Law Experience*, 29 Penn. St. Int’l L. Rev. 121 (2010); David F. Levi, *From Judge to Dean: Reflections on the Bench and the Academy*, 70 La. L. Rev. 913 (2010); J. Rich Leonard, *The Judicial Dean*, 50 U. Tol. L. Rev. 299 (2019); Nicholas W. Allard, *Love’s Labors Found*, 50 U. Tol. L. Rev. 199 (2019); Jack M. Weiss, *A Causerie on Selecting Law Deans in an Age of Entrepreneurial Deaning*, 70 La. L. Rev. 923 (2010); Kristin Booth Glen, *Deaning for Whom? Means and Ends in Legal Education*, 31 Seattle U. L. Rev. 739 (2008).

⁸ Levi, *supra* note 6; Leonard, *supra* note 6.

⁹ Glen, *supra* note 6; Weiss, *supra* note 6; Allard, *supra* note 6.

¹⁰ Parker, *supra* note 6.

¹¹ <https://lawdeans.com>

academic culture but often limited skills for the financial, managerial, and external aspects of the job, while non-traditional deans usually bring strong financial, managerial, and external relations skills but limited grasp of academic culture. Thus, the greatest deficits each group brings to the job, and the areas needing the most preparation and compensation, are nearly opposite. Since most of the literature is written by persons whose career has been in the academy, law faculties considering non-traditional candidates, and the candidates themselves, face a paucity of guidance in the literature. This paper will seek to address that gap.

III. SCOPE AND METHODOLOGY

This article addresses the gap in the literature about non-traditional law deans' experiences through a different approach from the prior literature. It draws on scores of live interviews that explored the opinions and observations of deans and faculty. It compares the personal experiences of non-traditional deans with reflections from traditional deans. It also draws upon interviews of faculty in the law schools that hired non-traditional deans, providing contrasting perspectives on their challenges and successes.

This article uses the term “non-traditional dean” throughout. As applied here, it refers to individuals whose prior careers were other than as a full-time faculty and who became dean without having gone through the tenure track process as a law professor. There were also a few individuals interviewed who are termed “hybrid” deans in that they had a decade or more of experience outside the academy before becoming law professors.

This paper is based on eighty-nine interviews, with deans and faculty were associated with thirty-six different law schools. Forty-three present or former deans were interviewed, of whom twenty-eight were non-traditional deans,¹² fifteen were traditional deans, and one was hybrid. Only six of the non-traditional deans were at public law schools. Of the deans interviewed, thirty-six were men and seven were women; four were African American, two were Hispanic, and thirty-seven were White. Forty faculty were interviewed, all of whom had been in schools with non-traditional deans. Six interviews were with others: search consultants, provosts, or governing board members.

The interviews followed the methodology of a qualitative survey with semi-structured interviews.¹³ Different series of questions were used for non-traditional deans, other deans, faculty, and other interviewees. The interview subjects were chosen what might be called a “snowball” method, starting with persons known to the author and then branching out to others based on recommendations from others and sometimes on a “cold call” email request.

¹² Part __ below provides some demographic information about the non-traditional deans interviewed.

¹³ See Katerina Linos & Melissa Carlson, *Qualitative Methods for Law Review Writing*, 84 U. CHI. L. REV. 84 (2017). This study seeks to follow the guidance from Linos & Carlson on theoretically informed sampling by separation of the sampled population between faculty, non-traditional deans, and others. While the specific selection within the non-traditional dean population, was only partially random, it did include a substantial portion of the total sample.

The paper focuses on deans of the last fifteen years, so the enrollment and revenue crisis that followed the Great Recession looms large in their experiences.¹⁴

The interviews were usually forty-five minutes long. The author took handwritten notes, later transcribed. The subjects were given as much assurance of confidentiality as possible, including a commitment to make any references or quotes in this article impossible to attribute to any person or school. Subjects were contacted after the fact to confirm any quotes that are included in this paper.¹⁵

IV. WHY AND HOW NON-TRADITIONAL DEANS ARE HIRED

a. Why Law Schools Choose Non-Traditional Deans

While most law school choose deans who come from prior careers as law professors, roughly a fifth are from other backgrounds.¹⁶ The two candidate pools bring quite different strengths and weaknesses. The choices that law schools make between these two options turn out to reflect, more than anything else, a dichotomy between a school's core educational mission of teaching and scholarly research, on the one hand, and, on the other, everything else that makes that mission possible: finances, administration, facilities, fundraising, human resources, admissions, student services, careers, and external relations. Law schools consider non-traditional candidates most often they believe that it is this second category that needs the greatest attention. Even then, law schools will generally prefer a traditional dean if they can find one they consider capable of handling these issues. Yet law schools will sometimes choose a non-traditional dean because that person's credentials and reputation are so substantial as to outshine other candidates and bring the prospect of a reputational boost.

Faculty and deans in schools that choose non-traditional candidates list four attributes that dominate the hiring decision: finances, fundraising, external relations, and "leadership." Of those the most frequently mentioned (by twenty deans and eleven faculty) is finances.¹⁷ Some deans arrive at a time of financial crisis or an unexpected deficit.¹⁸ The school may be looking for someone who had a track record of solving financial problems, and some deans explicitly say they were hired for their financial skills.¹⁹ These problems require a leader who can grasp the obscure cross-subsidies in higher education, understanding the cost

¹⁴ This article does not undertake a quantitative analysis. See Bhandari et al., *supra* note 4, for a quantitative study of the background of law deans as of 1998. This paper does, however, indicate in citations to interviews when a particular point is more frequently identified by interviewees.

¹⁵ The article includes footnotes to the interviews but does so only by indicating the status of the interviewee as dean or faculty or other and with only the month of the interview, thereby avoiding the risk that a comparison of multiple citations could reveal the identity of a source. A few of the footnotes are to "comments" received from interviewees after their interview. None of the interview subjects are identified in the acknowledgments at the start of this article, and none of them have been identified at any time to each other or to anyone else.

¹⁶ *The American Law School Dean Study*, *supra* note 1, at 36.

¹⁷ This issue is not limited to schools considering non-traditional deans; the AALS Study found that both deans and university leadership considered fundraising and budget/financial management to be the two most important priorities of the job. *The American Law School Dean Study*, *supra* note 1, at 54. By the same token, that Study found that deans felt most underprepared for those elements of the job. *Id.* at 68.

¹⁸ Interviews with both traditional non-traditional deans, February-July 2022.

¹⁹ Interviews with professor, non-traditional dean, March and April 2022.

structures of programs, and the economics of tuition discounts.²⁰ Often these skills include ways to find new revenue sources,²¹ familiarity with business models,²² the ability to understand a budget and make financial projections, and making informed decisions about resource allocation.²³ These concerns have led schools to hire deans with such backgrounds as helping to run a family business, working as a deal lawyer, and managing law firm finances or government agency budgets.²⁴ One traditional dean described the goal as to “introduce ideas of efficiency, productivity, accountability, all of which are missing in any rigorous fashion from law schools and higher education generally.”²⁵

The second most frequently mentioned goal (by twelve deans and thirteen faculty) is fundraising, including increased government support in the case of public law schools. This goal is usually articulated as an expectation that the non-traditional dean would bring relationships with a new range of potential donors from their prior career, and in some cases energize potential donors by raising the school’s profile. Faculty usually expressed this as an expectation based on the candidate’s private sector networks, and for public law schools, their connections with the legislature.²⁶ Yet while there were several instances of major success in fundraising by non-traditional deans, two of the faculty felt that their dean did not deliver as expected.²⁷

The third dominant goal (mentioned by ten deans and nine faculty) is enhancing the law school’s ties with the relevant community.²⁸ This has multiple elements. It was closely tied to fundraising, since many schools’ alumni and donor bases overlapped and were part of the same community that the new dean came from. Community links are mentioned by five deans and two faculty in connection with expanding employment opportunities for students.²⁹ Fundraising also relates to connections to the political establishment for purposes of supporting state subsidies for public schools.³⁰ Three faculty add the protection of the school from political interference.³¹ But at the same time, faculty point out the danger of a dean that was visibly engaged with a partisan bent.³²

Deans with especially strong external reputations have sometimes been referred to as “celebrity deans.”³³ Both faculty and deans (five of each) reported that their schools, especially among those relatively low ranked by U.S. News, felt that they could achieve more prominence by hiring such deans,³⁴ expecting help with fundraising, alumni engagement, and student employment, in particular. Another interpreted the university’s willingness to

²⁰ Interviews with non-traditional deans, March-June 2022.

²¹ Interviews with non-traditional deans, March 2022.

²² Interviews with non-traditional deans, March-June 2022.

²³ Interviews with non-traditional deans, March 2022.

²⁴ Interviews with non-traditional deans, February-March 2022.

²⁵ Interview with traditional dean, July 2022.

²⁶ Interviews with over twenty deans and faculty, February-August 2022.

²⁷ Interviews with faculty, July-August 2022.

²⁸ Interviews with several deans and faculty, March-July 2022.

²⁹ Interviews with multiple deans and faculty, February-July 2022.

³⁰ Interviews with deans and faculty, February-April 2022.

³¹ Interviews with faculty, May-August 2022.

³² Interview with faculty, May 2022.

³³ Interview with traditional dean, March 2022.

³⁴ Interviews with multiple deans and faculty, February-August 2022.

hire a high-profile non-traditional candidate as an encouraging sign of the university's commitment to support the law school.³⁵

Finally, the deans (but less so the faculty) listed "leadership" as the goal of a non-traditional hire.³⁶ "They wanted a leader," one said.³⁷ Multiple deans and faculty (four and three, respectively) said that their school was searching for someone who could help change the direction of the school.³⁸ As one dean put it, "faculty were terrified of the direction of the school."³⁹ One professor added: "[f]aculty were looking for someone who had the skills to lead the organization and pull us out of a mess."⁴⁰ Another explained how their school was suffering in numerous ways and that they faculty wanted someone "to guide them out of the darker part of the forest."⁴¹

Leadership can be an elusive term. As explained by Robert Post in his excellent article, leadership "is a verb, not a noun. It is . . . actions appropriate to ambient circumstances."⁴² Leadership can be distinguished from management and administration. Elizabeth Parker draws this distinction by saying, "[l]eadership requires vision, the ability to inspire others and to think strategically."⁴³ This requires an ability to be persuasive, accompanied by emotional intelligence, to be able to build consensus⁴⁴ and move the opinions of others who cannot be told what to do.⁴⁵ One professor described their non-traditional dean as "gregarious," which helped their leadership role.⁴⁶ A non-traditional dean, who is familiar with audiences external to the faculty, brings another communication skill: the ability to articulate to audiences other than faculty the value of the institution and legal education in general. Indeed, non-traditional candidates usually bring experience in speaking to diverse audiences.⁴⁷

Beyond forming and articulating a vision, leadership requires management skills to implement vision, largely through effective delegation, including the administrative processes of keeping the school running day-to-day.⁴⁸ Again this is an area where non-traditional deans have an advantage based on their past experience leading organizations.⁴⁹ Levi, for example, compares the administrative work of judges with the kind of leadership needed on the part of deans.⁵⁰ Four deans highlighted their understanding of administrative systems, experience with facilities operations (including major building and renovation

³⁵ Interview with faculty, July 2022.

³⁶ Interviews with several deans and faculty, March-May 2022.

³⁷ Interview with non-traditional dean, March 2022.

³⁸ Interviews with deans and faculty, February-June 2022.

³⁹ Interview with non-traditional dean, February 2022.

⁴⁰ Interview with faculty, June 2022.

⁴¹ Interview with non-traditional dean, March 2022.

⁴² Post, *supra* note 2, at 124.

⁴³ Parker, *supra* note 6, at 124.

⁴⁴ Interview with non-traditional dean, April 2022.

⁴⁵ Interview with non-traditional dean, April 2022.

⁴⁶ Interview with faculty, June 2022.

⁴⁷ Interview with traditional dean, April 2022.

⁴⁸ Parker, *supra* note 6, at 124.

⁴⁹ Interviews with non-traditional deans, February 2022.

⁵⁰ Levi, *supra* note 6.

projects), and the kind of project management skills of the kind entailed in starting new initiatives.⁵¹

Deans and faculty alike point out the importance of decision-making skills, especially the ability to make hard choices even when they will make some people unhappy.⁵² Non-traditional deans are often seen as less risk averse than those from within the academy.⁵³ At the same time, faculty pointed out that deans need to empower their cabinet and staff supervisors to make decisions as well, neither undermining them by taking appeals nor by usurping their areas of responsibility.⁵⁴

This capacity was revealed especially in the context of the Covid pandemic, when some non-traditional deans brought prior experience in business interruption planning, and in some instances influenced the decision of who to hire.⁵⁵ These points largely mirror the *American Law School Dean Study* where it addresses the skills that rose the most in importance.⁵⁶ Those include crisis management and budget matters, where a non-traditional dean might have an advantage. They also, however, included Diversity, Equity, and Inclusion (“DEI”) and student conduct issues, where a non-traditional dean would likely have no such advantage.⁵⁷

Other reasons offered for choosing non-traditional deans include bringing energy to the job⁵⁸ and innovation,⁵⁹ such as around bar success programs⁶⁰ and familiarity with information technology.⁶¹ More generally, as one professor explained, “[a] great benefit of a non-traditional dean is that they can be a breath of fresh air. Faculty can have tunnel vision. A non-traditional dean will question assumptions, open up new discussion with new perspectives.”⁶² Finally, non-traditional candidates can broaden the pool, especially for schools with lower national profiles and those that have no viable internal candidate.⁶³ One said “[o]ften the search committee would not have thought of this person as a candidate, but then once mentioned by someone the reaction is ‘sure!’”⁶⁴ In some cases the non-traditional candidate’s credentials outshone those of other candidates to the point of “overpowering” them.⁶⁵

To recap, all of the issues and skills mentioned in this section are matters outside the core educational program of a law school. They can be seen as the infrastructure that supports and enables the school to pursue its missions of teaching and research. Thus, one can expect schools to consider non-traditional deans when they believe that their educational program

⁵¹ Interviews with non-traditional deans, February-March 2022.

⁵² Interviews with deans and faculty, February-June 2022.

⁵³ Interviews with non-traditional and hybrid deans, February-March 2022.

⁵⁴ Interviews with faculty, June-July 2022.

⁵⁵ Interview with faculty, August 2022.

⁵⁶ *The American Law School Dean Study*, *supra* note 1 at 57.

⁵⁷ *Id.*

⁵⁸ Interviews with deans and faculty, March-August 2022.

⁵⁹ Interviews with non-traditional deans, February-March 2022.

⁶⁰ Interviews with non-traditional deans, February-March 2022.

⁶¹ Interviews with non-traditional deans, March 2022.

⁶² Interview with faculty, May 2022.

⁶³ Interviews with several deans and faculty, June-July 2022.

⁶⁴ Interview with non-traditional dean, July 2022.

⁶⁵ Interview with faculty, July 2022.

is operating reasonably well, but is weakened by inadequate institutional support and relationships.

Notably, none of these considerations have led the highest ranked law schools to hire non-traditional deans.⁶⁶ This is understandable: top ranked schools are able to attract highly capable candidates, including law professors who bring meaningful administrative and leadership experience. Highly ranked schools also put a premium on their scholarly reputation, which makes a scholar leader important both symbolically and in their practical ability to lead that mission. After all, a top priority of deans in the top law schools is maintaining faculty who could likely obtain another job with a single phone call.⁶⁷ Finally, these schools are also well-financed, with greater budgetary control,⁶⁸ and able to hire highly professional staff to provide some of the financial and operational skills that the deans themselves must provide in other schools.

b. Backgrounds and Motivations of Non-Traditional Deans

The non-traditional deans of recent decades have come from a wide range of prior careers. Many had been judges; others were military leaders. A number held significant government positions, and many were in private practice. Eight are former judges, all but one of whom had been a chief judge or justice. The two former military leaders interviewed had been at the rank of General or equivalent, and they in turn identified a number of other non-traditional deans who were also of General rank. Seven of the non-traditional deans interviewed had served in government in either elected or non-elected office. Another eleven came to the deanship from a career entirely or primarily in private practice or elsewhere in the private sector, in each case having held management positions in their firms or leadership of major non-profits or volunteer government roles, or often all three.

Given the goals of law schools discussed in the prior section it is easy to see why such law schools consider non-traditional deans such as these. Those chosen as deans have held roles that required financial skills, leadership of large teams, complex administrative operations, and very hard work. They also tend to be extroverts who have built large networks of relationships.

Turning to their motivations a clear pattern of characteristics arises. All but a few were at a relatively late stage of their careers and were interested in trying something new.⁶⁹ Twelve stated that they felt they had done whatever was important to them in their prior career, even to the point of boredom.⁷⁰ “Looking for a challenge,” said another.⁷¹ The deanship was often a cut in pay for non-traditional deans, but nearly all of them were already financially secure, having achieved family financial goals and fully funded their retirement.⁷² These

⁶⁶ Of course, this observation refers to recent decades. Christopher Columbus Langdell was a non-traditional dean by any standard, having come from a career in private practice in New York City to serve only briefly on the Harvard faculty before becoming dean.

⁶⁷ See Post, *supra* note 2, at 1825.

⁶⁸ *The American Law School Dean Study*, *supra* note 1, at 32.

⁶⁹ Interviews with multiple non-traditional deans, February-October 2022.

⁷⁰ Interviews with multiple non-traditional deans, February-August 2022.

⁷¹ Interview with non-traditional dean, February 2022.

⁷² Interviews with multiple non-traditional deans, February-August 2022.

differences from most traditional deans⁷³ likely influence how they approach the deanship. First, most did not view the deanship as a stepping-stone to a next job, and thus were more exclusively focused on their school's success than on their own prospects. Second, their financial security may make early departure less risky in the event of conflict with the university or other stakeholders. Third, the negative psychological elements of retirement seem to be weaker for them; where a life-long law professor might fear loss of identity, non-traditional deans had other stages of their careers that gave them prominence and purpose.⁷⁴ Non-traditional deans interviewed for this project expressed no concerns about what life would be like after the deanship.

All but a handful of the non-traditional deans interviewed were already well connected with the school as alumni, adjunct faculty, mentors to students, engaged in advisory boards, or speakers at events; they were well known to the school's external stakeholders of alumni, donors, and in the case of public schools, state leadership.⁷⁵ This engagement translates into loyalty to the school as a major motivation, reflected also by the fact that nearly all of the non-traditional deans interviewed had only applied to the one school.⁷⁶ This is a major distinction from traditional external candidates, who may often have little if any prior relationship with the school.⁷⁷ It also seems to be quite important. An informal review of the non-traditional deans who left involuntarily or early (after three or fewer years) reveals that the great majority of them did not have a deep prior relationship with the school.⁷⁸

The educational credentials of non-traditional law deans are often in contrast with the overall trend that deans earned their JD at the most selective law schools.⁷⁹ When a law school hires a dean whose JD is from a lower ranked law school that is often because they graduated from that law school.

Non-traditional candidates are also less focused on the school's ranking than traditional candidates. "The ranking wasn't particularly important."⁸⁰ Another stated, "I would have more impact here than at a higher ranked school."⁸¹ Law professors, in contrast, generally seek to join a higher ranked school, a strong element of a law professor's reputation. Non-traditional deans have already built a significant reputation in their prior careers, and the community whose opinion matters to them is far broader than academics.⁸² For them the simple fact of a deanship is more significant to their public stature than the rank of the particular school.⁸³

⁷³ The AALS *American Law School Dean Study* found that most deans are increasingly below the age of 50. *The American Law School Dean Study*, *supra* note 1, at 27.

⁷⁴ Interviews with several deans, March-July 2022.

⁷⁵ Interviews with multiple deans and faculty, February-October 2022.

⁷⁶ Interviews with multiple non-traditional deans and faculty, February-August 2022.

⁷⁷ It is also rare for a non-traditional dean to seek a second deanship. In the sample of this project that happened only twice, each time after the dean departed involuntarily.

⁷⁸ The details of this calculation cannot be revealed without revealing confidences.

⁷⁹ *The American Law School Dean Study*, *supra* note 1, at 29.

⁸⁰ Interview with non-traditional dean, April 2022.

⁸¹ Interview with non-traditional dean, April 2022.

⁸² Interview with non-traditional dean, April 2022.

⁸³ Comment from non-traditional dean, December 2022.

Next to their loyalty to the school and their interest in a challenge, deans list the school's mission as their greatest motivator.⁸⁴ "Wanting to give back" is almost universally mentioned. Many explicitly said they wanted to "make a difference."⁸⁵ Many stated a desire to serve the legal profession: one "wanted to help build the profession and help new lawyers" and "wanted them to appreciate how good a career it can be."⁸⁶ Another emphasized the role of lawyers in civil society: "[l]awyers must be public citizens. They have a special responsibility for democracy and justice. Law school is the key time to convey that message."⁸⁷ Some pointed out that in private practice they were helping their clients build their enterprises, but did not themselves lead an institution that reflected their personal values.⁸⁸ For them "a chance to build something" was important.⁸⁹

Many expressed a desire to help students,⁹⁰ one specifically stated a desire "[t]o help the next generation of students."⁹¹ Sometimes this was focused on the school's particular mission, and the kind of students it attracted.⁹² That mission often relates to social mobility: education is "what changes a person's or a community's trajectory of existence."⁹³ Others described theirs as an "access school,"⁹⁴ or one focused on first-generation students.⁹⁵ Others said that theirs "is a mobility school: its mission is to move students to and above the middle class"⁹⁶ or described their school's traditional niche as "training for the lower middle class."⁹⁷ Often this entailed help with jobs and connecting students with potential employers.⁹⁸ But it was also to help create better lawyers. One was more specific about the training needed in law school having seen "a lot of lawyers who did not understand the context of what they were doing; the business; the management; the leadership needs of their clients. They didn't see what their clients saw; didn't think from the client's perspective."⁹⁹

Non-traditional deans mention a number of other things that drew them. Some are drawn to the diversity of their school's students, and one cited the greater diversity of students at their school for a reason not to seek a position at a higher ranked school.¹⁰⁰ Another emphasized that their school provided more lawyers to the rural parts of their state than the graduates of more established schools,¹⁰¹ or in another instance, the school's tradition of supplying lawyers for its region's public sector.¹⁰² Non-traditional candidates have also been motivated by the school's reputation in a particular area of law,¹⁰³ the school's public interest

⁸⁴ Interviews with multiple non-traditional deans, February-July 2022. *See, e.g.,* Glen, *supra* note 6.

⁸⁵ Interviews with several deans and faculty, February-July 2022.

⁸⁶ Interview with non-traditional dean, April 2022.

⁸⁷ Interview with non-traditional dean, March 2022.

⁸⁸ Interview with non-traditional dean, October 2022.

⁸⁹ Interview with non-traditional dean, February 2022.

⁹⁰ Interviews with several deans and faculty, February-April 2022. Glen, *supra* note 6.

⁹¹ Interview with non-traditional dean, March 2022.

⁹² Glen, *supra* note 6.

⁹³ Interview with non-traditional dean, March 2022.

⁹⁴ Interview with non-traditional dean, March 2022.

⁹⁵ Interviews with non-traditional deans, March-April 2022.

⁹⁶ Interview with faculty, July 2022.

⁹⁷ Interview with faculty, June 2022.

⁹⁸ Interview with faculty, July 2022.

⁹⁹ Interview with non-traditional dean, March 2022.

¹⁰⁰ Interviews with non-traditional deans, March-April 2022.

¹⁰¹ Interview with non-traditional dean, March 2022.

¹⁰² Interview with faculty, July 2022.

¹⁰³ Interview with non-traditional dean, March 2022.

orientation,¹⁰⁴ or the school's religious mission.¹⁰⁵ One non-traditional dean emphasized that the religious orientation of the school supplied purpose to the job as dean that was not present in their private practice career.¹⁰⁶

Finally, many non-traditional deans are attracted by the public role of the deanship.¹⁰⁷ Especially when their school is part of the community in which they worked through their careers, the elevation to law school dean give them a platform from which they can be expected to engage with judges, legislatures, journalists, law firm leaders, and industry. For someone who has worked as a lawyer interacting with these elements of the community, becoming dean of the local law school enables them to continue those relationships from a new position of independence and importance. These relationships make law deans more powerful than other deans.¹⁰⁸ The dean of the law school can be a close friend with judges in particular, whose ethics limit their social interaction with members of the practicing bar. These relationships can be quite rewarding to a lawyer whose career has been in this community, while simultaneously helping the law school connect with the institutions of law and government where its alumni, employers, and donors all work.

To recap, non-traditional deans are distinctive in their later career stages, their personal financial security, and their organizational leadership experience. They are more singularly loyal to the law school than most external hires, have more of a student-focused mission, and are more extensively connected with the surrounding community. These are important attributes, and as discussed below, will help the non-traditional dean sustain their energy and effort in the face of the many challenges that they will encounter upon assuming the job. At the same time, it is crucial that search committees examine the experiences of non-traditional candidates to ascertain whether each is in fact bringing the skills needed, assess their character in light of the personal demands and cultural adjustments the job will require.

c. The Search and Selection Process

Law schools have a standardized process for recruiting and evaluating decanal candidates, but it is not a perfect fit for recruiting or assessing non-traditional candidates.¹⁰⁹ The process is familiar to legal academics but unlike anything most non-traditional candidates have experienced. At the same time, search committees have difficulty assessing non-traditional candidates: their credentials are quite different from traditional candidates, they often come from professional environments unfamiliar to the faculty, and are outside the academy's network of sources that can provide character insights. This creates a risk that the hiring decision will be based on guesses and hopes as much as hard evidence of the non-traditional candidate's suitability.

The differences start with the method of recruiting candidates. While a major role of search consultants is to recruit a pool, consultants' networks are mostly confined to the legal

¹⁰⁴ Interview with faculty, June 2022. Glen, *supra* note 6.

¹⁰⁵ Interviews with several deans and faculty, April-August 2022.

¹⁰⁶ Interview with non-traditional dean, March 2022.

¹⁰⁷ Interview with non-traditional dean, October 2022.

¹⁰⁸ Interview with non-traditional dean, October 2022. Read, *The Unique Role of the Law School Dean in American Legal Education*, *supra* note 3.

¹⁰⁹ Interview with faculty, August 2022.

academy.¹¹⁰ Most non-traditional candidates are already connected with the school in question and thus are identified by alumni and others, not the consultants.¹¹¹ Indeed the majority of non-traditional deans had not initiated their candidacy,¹¹² and were not considering the idea until it was suggested to them by someone else, usually by alumni and other leaders connected with the school who know the candidate personally or by reputation.¹¹³

Second, non-traditional candidates are relatively unfamiliar with the culture of higher education institutions, as spelled out in Part V. The selection process may or may not yield information about how prepared or well-suited a non-traditional candidate is for those challenges.

Third, the dynamics of faculty/alumni interaction in the search is very different when a non-traditional candidate is involved. This may be partly the consequence of bias by the academics on a search committee toward candidates with similar backgrounds.¹¹⁴ “Usually it’s the alumni on the search committee who are interested in a non-traditional candidate.”¹¹⁵ “It is almost always the case that the non-faculty search committee members are open to a non-traditional candidate but the faculty members say no way ever.”¹¹⁶ “The faculty sort of roll their eyes patiently and say let’s watch how this goes.”¹¹⁷ One candidate reported their conversation with the search consultant: “[d]on’t you want an academic?” answer “[y]es, but if we can’t find a decent one you’d be a second choice.”¹¹⁸ In some cases, the external pressure in favor of a non-traditional candidate can be significant: “[t]here were other legitimate candidates for dean but he was kind of inevitable. The external stakeholders would have been furious.”¹¹⁹ This can be a challenge for the search committee chair, who is often a dean from another discipline within the university, and perhaps unused to some of the cultural fault lines of law faculties.¹²⁰

Fourth, there are greater difficulties in conducting due diligence for a non-traditional candidate than an academic.¹²¹ For most external candidates the person’s scholarship is of great significance.¹²² That information is largely non-existent for non-traditional deans. Moreover, a non-traditional candidate’s references don’t know what the job is like and therefore cannot easily translate the candidate’s attributes and accomplishments into the legal academy.¹²³ A school’s faculty is also likely to have informal networks with a traditional candidate’s current and former colleagues, or may have heard stories about them previously. Such networks rarely cross over into the world of the non-traditional candidate. The stakes

¹¹⁰ Interview with traditional dean, July 2022.

¹¹¹ Interviews with multiple non-traditional deans, February-October 2022.

¹¹² The AALS Study found that 62% of all deans’ candidacies were initiated by someone else, *The American Law School Dean Study*, *supra* note 1, at 42. But the proportion of non-traditional deans is even higher based on the sample in this project’s interviews.

¹¹³ Interviews with multiple non-traditional deans, February-October 2022.

¹¹⁴ Neitz, *supra* note 4.

¹¹⁵ Interview with search consultant, August 2022.

¹¹⁶ Interview with search consultant, January 2022.

¹¹⁷ Interview with search consultant, February 2022.

¹¹⁸ Interview with non-traditional dean, March 2022.

¹¹⁹ Interview with faculty, June 2022.

¹²⁰ Interview with search consultant, February 2022.

¹²¹ Interview with faculty, June 2022.

¹²² *The American Law School Dean Study*, *supra* note 1, at 45.

¹²³ Interview with faculty, June 2022.

are high: anything the committee senses about a non-traditional candidate's "fit" will be magnified in interviews with the faculty.¹²⁴ A first-rate job talk is the candidate's opportunity to showcase the elements of their background that align with the faculty's values, and to signal an understanding of the school's mission.¹²⁵

Search committees can fall into a narrow mindset, seeking either a dean just like by last one, or the opposite.¹²⁶ The latter tendency, a swing in the pendulum in the type of dean, could be a purely reactive adjustment by the faculty. But it could also be a realistic assessment of the needs of the school in relation to the prior dean's areas of focus. After all, the strengths and focus of one dean may leave other areas in need of attention from their successor, and also provide a firm foundation for turning to new issues.¹²⁷ There is one other distinction of non-traditional deans that can influence the selection process that was mentioned above, that most of them applied for the deanship at only one law school.¹²⁸ This is partly a reflection of the school loyalty that characterizes most non-traditional candidates. But it also means that a non-traditional candidate is more likely to accept the deanship, if offered, than would be the case with a candidate who is considering several schools.¹²⁹ This can create a structural bias: that this certainty of an acceptance made such non-traditional candidates more attractive to schools that were concerned about the risk of a failed search.

The discussion thus far suggests a number of measures that both search committees and candidates can take to assure a better-informed choice on each. Search committees, for their part, should be explicit about the school's most significant needs and the most important skills for candidates. Non-traditional candidates, if they are to present themselves effectively, they need more preparation and study than do law professor candidates. The *American Law School Dean Study* inquired of deans what were their most helpful preparatory experiences; the top three were serving as an associate dean, leading a law school committee, and mentoring from another dean.¹³⁰ The first two of these are not available to non-traditional deans, so the third rises in importance. Yet not even that resource has been used by many non-traditional deans.

In the literature, *Primer for First Time Law Dean Candidate* is an excellent approach, offering fourteen principles and guides to the process.¹³¹ Search committees that are considering non-traditional candidates might ask their consultants to advise that kind of study and preparation, and to make sure that non-traditional candidates understand the search process itself.¹³² But this understanding is not merely a matter of process. The norms of higher education hiring are unfamiliar to non-traditional candidates, including what is expected in a letter of interest, the style of a curriculum vitae, and the tone of faculty interviews during a finalist's campus visit.

¹²⁴ Interview with faculty, August 2022.

¹²⁵ Interview with faculty, May 2022.

¹²⁶ Interviews with several deans and faculty, July-August 2022.

¹²⁷ Interview with faculty, August 2022.

¹²⁸ Interviews with multiple non-traditional deans and faculty, February-August 2022

¹²⁹ Interview with faculty, August 2022.

¹³⁰ *The American Law School Dean Study*, *supra* note 1, at 71.

¹³¹ Jerry, *supra* note 4.

¹³² Gouvin, *supra* note 4 (discussing the search process, and the importance of achieving a consensus vision of the school's needs on the part of the search committee members).

Finally, both the school and the candidate should make sure the candidate understands the challenges of the job, especially the cultural and institutional features that are most likely to be a surprise to a non-academic. Those are the subject of the next section of this article. There are several things that search committees and their consultants, and the non-traditional candidates themselves, can do to mitigate this risk.

V. CHALLENGES FACED BY NON-TRADITIONAL DEANS

All of the nearly ninety individuals interviewed for this study had strong opinions about the challenges in store for non-traditional deans. Faculty and deans placed their emphasis differently, yet they broadly agreed on the issues that a non-traditional dean.¹³³ Indeed these are challenges to deans of any background, though those issues arising from the culture and institutions of the legal academy will be more familiar to candidates from that background.

Above all, the interviewees and the literature alike emphasize what a hard job this is. “It’s a perilous job.”¹³⁴ “In short, more responsibilities than ever are being conferred upon the dean. At the same time, however, almost all the powers necessary to carry out these increasing responsibilities have to be shared with multiple constituencies.”¹³⁵ It requires a multiplicity of skills in different roles:

“The dean must be many things (e.g., leader, administrator, manager, planner, energizer, advocate, mediator, intermediary, counselor, ambassador, representative, fundraiser, public official, and public servant) in his relations with diverse, sometimes competing constituencies (principally faculty, students, professional staff, the greater university and its administration, alumni and other friends or supporters, donors, the legislature, the regents or trustees, the judiciary, bar associations (national, state, and local), the practicing bar, employers of graduates, the ABA Section of Legal Education, the AALS, and the general public).”¹³⁶

It is also a lonely position; the dean has many colleagues but none who share the same burdens. The dean alone is in a position to plan for the law school’s future.¹³⁷ The dean’s colleagues are either in a different power position (faculty, provost) or are outside the world that the dean inhabits (alumni, other deans in the university). Those with the closest understanding of the dean’s position are deans of other law schools. And even here the non-traditional dean is at a disadvantage, having fewer relationships with academics over the course of a career.

The position is also highly exposed; the dean’s conduct and expressions are examined closely for criticism and interpretation.¹³⁸ People seek to find a hidden message in any Dean

¹³³ While outside the scope of this article, non-traditional deans are not alone in facing particular challenges in their role. *See, e.g.*, Pernell, *supra* note 3 (discussing the literature on the experiences of deans of color); Padilla, *supra* note 3 (discussing the literature on the experiences of women deans).

¹³⁴ Interview with non-traditional dean, April 2022.

¹³⁵ Read, *The Unique Role of the Law School Dean in American Legal Education*, *supra* note 3, at 716.

¹³⁶ Jerry, *supra* note 4, at 568.

¹³⁷ Interview with non-traditional dean, April 2022.

¹³⁸ Interview with non-traditional dean, April 2022.

statement.¹³⁹ Difficult decisions are labeled “mistakes,” and actual mistakes are magnified.¹⁴⁰ “Everything you do matters, and often more than it should. The details are magnified. You are in a fishbowl where people, especially inside the faculty, staff, and student body, parse your every word and sometimes look to be offended.”¹⁴¹

In undertaking this job, the non-traditional dean is certain to be unprepared for important parts. The same is true for traditional candidates, but their areas of strengths and weaknesses are different. For those who come through careers as law professors, they are well prepared for the culture and shared governance and the educational missions of law schools, but less so for the managerial and external aspects. Conversely, non-traditional deans arrive with skills relevant to management and external relationships, but are often unfamiliar with the culture, governance, and core educational missions. With either population there is a degree of surprise in store. This article will focus on the most important challenges that will face a non-traditional dean.

For a non-traditional candidate what follows may appear to be a daunting list, and somewhat critical of the environment it describes. That is not its purpose; this paper is about the challenges that successful non-traditional deans have faced and overcome. As mentioned in the introduction, the role of law school dean can be the best job a public-spirited lawyer could ever ask for. But the reasons for that would be a different paper; this one seeks to help schools and their deans succeed. Toward that end this section is intended to prepare such candidates and the search committees that might select them to meet these challenges.

a. The Financial Model

Non-traditional deans are usually surprised and even shocked at what they learn about the finances of their law school.¹⁴² This is true in several respects. First, most law schools are significantly under-resourced, with precious little funds available for any new initiative or to fill any new position. For deans in the early to mid 2010’s, the enrollment drop that followed the Great Recession imposed dramatic blows to their schools’ business models. Eight explicitly said they were unprepared for the extent of their school’s financial distress.¹⁴³ “No one understood the depth of the crisis,” one said.¹⁴⁴ Another added that “[t]he faculty thought we were out of danger. We were not.”¹⁴⁵

Beyond the financial pressures of the 2010’s, non-traditional deans were frequently sought out to address other elements of law school budgeting and finances. Universities tend to impose major constraints on spending by their units, leaving financial decisions subject to significant bureaucratic hurdles and approvals by higher-ups. The finances of higher education are also opaque, making it very difficult to assess the financial impact of any initiative. The dean may find that no one at the law school really understands its finances or give meaningful advice on any cost/benefit decision. There are multiple cross-subsidies, for

¹³⁹ Dickerson & Buckner, *supra* note 2, at 214.

¹⁴⁰ Interview with non-traditional dean, March 2022.

¹⁴¹ Interview with non-traditional dean, March 2022.

¹⁴² Interviews with multiple non-traditional deans and faculty, January-July 2022.

¹⁴³ Interviews with non-traditional deans, February-March 2022.

¹⁴⁴ Interview with non-traditional dean, February 2022.

¹⁴⁵ Interview with non-traditional dean, March 2022.

example in central staff functions and student use of resources in units other than where their tuition is counted. “While the success of commercial corporation is easily measured in dollars and cents, the success of education institutions is much more difficult to evaluate.”¹⁴⁶ Few schools have a rigorous accounting of whether a program’s indirect costs make it a net positive or negative to a school’s finances. A non-traditional dean accustomed to clear financial statements and the ability to track costs will find it hard to get a clear statement of the cost of any part of the school’s educational program.

The strength that a non-traditional dean brings to the job will help in dealing with this problem. Many are quite familiar with financial statements and accounting and have likely been responsible for managing a budget in the past. This brings an ability to recognize the weakness in financial reports, as well better recognizing the areas of loss and gain in the school’s operations. They may also be practiced at difficult negotiations over budgets (see Part V.f below).

b. Shared Governance

Few non-traditional deans have ever experienced the phenomenon of shared governance as it is exercised in law schools, most of them having come from institutions where their teams followed orders and accepted the leader’s decisions. Instead, they will find that the faculty expects prior consultation on a wide range of topics that is only partially defined, followed by lengthier deliberation than the dean has probably ever experienced. And once a decision is made, the dean will find that both faculty and staff will often comply and support it only if they feel as though they joined in the decision.

The problem starts with lack of clarity over who has decision-making authority over what issues. Most non-traditional deans come from organizations where the scope of their decision-making authority was spelled out clearly.¹⁴⁷ They found large gray zones at their law school. As one put it, the first question to ask is “whose decision is this?”¹⁴⁸

Deans identified appointments, tenure, and curriculum as core areas of faculty governance where they should defer to the faculty.¹⁴⁹ There are powerful reasons for faculty leadership in these areas. The faculty have deep personal understanding of the intellect and character necessary to thrive as a teacher and scholar. The faculty are in the best position to set and enforce those standards.¹⁵⁰ Beyond those, however, schools varied. “Many faculty think they understand the budget or have solutions to school management, but have no idea.”¹⁵¹ Eight said that the budget is an area where faculty governance was particularly fraught.¹⁵² Several said that faculty are unaware of the ways that staff make the school run.¹⁵³ More emphasized

¹⁴⁶ Post, *supra* note 2, at 1818.

¹⁴⁷ Interview with non-traditional dean, February 2022.

¹⁴⁸ Interview with non-traditional dean, February 2022.

¹⁴⁹ Interviews with non-traditional deans, February-March 2022.

¹⁵⁰ Read, *The Unique Role of the Law School Dean in American Legal Education*, *supra* note 3, at 718.

¹⁵¹ Interview with non-traditional dean, April 2022.

¹⁵² Interviews with non-traditional deans, February-June 2022.

¹⁵³ Interviews with non-traditional and hybrid deans, February-March 2022.

the faculty's lack of understanding of the external parts of the job,¹⁵⁴ especially related to student employment and the burdens of debt.¹⁵⁵

Understanding the scope of shared governance is important because faculty value the opportunity for input. One dean drew criticism because “[i]t seems like he makes a decision then presents it to the faculty to discuss and approve.”¹⁵⁶ Another said “[i]n my early days, my judicial background as the ultimate arbiter led me to make some serious mistakes by assuming that I had more authority as a law school dean than I actually did.”¹⁵⁷ But governance is also an area where schools differ. One dean reported: “[t]his faculty wanted to be governed; they did not want to run the school and were not interested in committee work.”¹⁵⁸

While non-traditional deans often struggle to understand the scope of faculty governance, they are even more surprised by the faculty's process of deliberation and reaching decisions. There is a near universal observation that faculty deliberation is lengthier and more detailed than anything non-traditional deans have experienced.¹⁵⁹ Faculty seem to enjoy deliberation more than reaching a decision. As one former judge described it, judicial culture is about finding the solution to the problem; “faculty culture is exploring the problem forever.”¹⁶⁰ As one non-traditional dean observed, law professors “as a breed they are selected for their somewhat neurotic tendency to focus on details, a skill that helped them in law school and is exacerbated as law professors, but will often be counterproductive as a dean.”¹⁶¹ Non-traditional deans are much more comfortable than law faculty with making decisions under uncertainty.¹⁶² Faculty made the same observation from their perspective: “sometimes he got a bit of trouble with the faculty pushing something that they didn't think had been adequately debated. He'd ask ‘Do we need to have a discussion about that?’ and the answer would be ‘Yes.’ Over time he got more adept at that.”¹⁶³ Patience with the slow pace of faculty deliberation, decisions, and bureaucratic movement is essential for a dean to handle the governance process.¹⁶⁴ At the same time, it is worth considering that from the faculty's perspective this slow pace may be a feature more a bug. A dean only has five-plus years to accomplish any change, while for a faculty it may be fine if change happens over the course of a generation or two.

While lengthy faculty debate and deliberation could be something of a frustration, both deans and faculty point out its value on decisions that faculty might think affect them or that vary from past practice. Deans drew praise when they made sure to understand the faculty's feelings before making a decision, even one that “belonged” to the dean.¹⁶⁵ One dean points out “lengthy deliberations that end in a near unanimous decision that could have been

¹⁵⁴ Interview with faculty, June 2022.

¹⁵⁵ Interview with non-traditional dean, February 2022.

¹⁵⁶ Interview with faculty, July 2022.

¹⁵⁷ Leonard, *supra* note 6, at 301.

¹⁵⁸ Interview with non-traditional dean, August 2022.

¹⁵⁹ Interviews with non-traditional deans, February-June 2022.

¹⁶⁰ Interview with non-traditional dean, February 2022.

¹⁶¹ Comments from non-traditional dean, December 2022.

¹⁶² Interview with non-traditional dean, February 2022.

¹⁶³ Interview with faculty, June 2022.

¹⁶⁴ Interviews with non-traditional deans and faculty, February-April 2022

¹⁶⁵ Interview with traditional dean, June 2022.

reached far earlier: they have another purpose, which is reaffirming and reassuring the faculty that they are one mind and have shared values.”¹⁶⁶

Non-traditional deans deal with this in different ways. Some seek to move deliberation by focusing the faculty on the cost and risk of delayed decisions,¹⁶⁷ or explaining the price to inaction.¹⁶⁸ Another relied on respected outside presenters to share unpleasant facts about the external environment affecting the school and its students.¹⁶⁹ The slow pace of faculty deliberation can also force the more time-sensitive decisions into the dean’s hands to address alone. As one dean put it, “the result is that nothing happens fast unless they leave it in the dean’s hands. And often they are happy to do that. The result is ironic: while they like consultation, there are more issues than necessary on which they get none.”¹⁷⁰

Beyond law faculty deliberation, non-traditional deans are surprised by faculty’s hesitancy to embrace change.¹⁷¹ “Almost any program change is a threat to some personal relationship rightly valued” by a member of a faculty committee charged with the idea.¹⁷² “Today, in an environment of shared governance with multiple constituencies on even the minutest decisions, any dean who desires to initiate major change faces almost insurmountable odds.”¹⁷³ “Those constituencies who share power generally accept no responsibility for the result, but they frequently want to dictate or control the decision making process.”¹⁷⁴

There is an irony here, since tenured and other long-term law faculty have among the most secure employment of anyone. One might think that they would be more relaxed about changes knowing that their job would never be at stake. Yet the causation seems to work in the opposite direction: persons who are deeply fearful of change, and who value autonomy, might be well advised to seek law professorships, where there is great autonomy and minimal obligation to change their approach to work overtime. Faculty point out that more senior members are often the most resistant to change of all, having settled into their positions decades earlier.¹⁷⁵ And of course law faculties are just one example of the slow pace of change throughout higher education.¹⁷⁶

There is nonetheless a good reason in favor of a slow pace of change in law schools and universities in general. That relates to the cost aspects of new initiatives. The faculty and administrative structures of law schools impose high costs on any new initiative, from the management time needed to design and shepherd through approval, through faculty deliberation, to the compliance elements needed by the university, to the plethora of details involved in setting up a new program.¹⁷⁷ As a result a great deal of resource investment is lost if an initiative fails. At the same time, what one author called “the painful risk of failure

¹⁶⁶ Interview with traditional dean, July 2022.

¹⁶⁷ Interview with non-traditional dean, August 2022.

¹⁶⁸ Interview with non-traditional dean, March 2022.

¹⁶⁹ Interview with non-traditional dean, February 2022.

¹⁷⁰ Interview with non-traditional dean, February 2022.

¹⁷¹ Interviews with non-traditional deans, April-June 2022.

¹⁷² Carrington, *supra* note 2, at 345–46.

¹⁷³ Frank T. Read, *The Unique Role of the American Law School Dean: Academic Leader or Embattled Juggler?*, 31 U. Tol. L. Rev. 715, 716 (2000).

¹⁷⁴ *Id.*

¹⁷⁵ Interviews with faculty, April-June 2022.

¹⁷⁶ Interview with traditional dean, July 2022.

¹⁷⁷ Interview with traditional dean, July 2022.

and negative results,”¹⁷⁸ are reputational and morale costs from a failed law school program or initiative, that likely exceed those that a private business or typical non-profit suffer.¹⁷⁹ Universities and law schools expect to last many decades, or even centuries – far beyond the lifespan of most businesses. One could easily see caution around change and new programs as a feature, not a bug, of law school decision-making.

This also reflects the value of the faculty’s sense of community. “Keeping privileged faculty happy is far more easily said than done. I have always believed that excellent faculty are like artists.”¹⁸⁰ In the best schools the faculty work together closely as colleagues, critiquing and helping each other with their research. Disruptions to the spirit of camaraderie can severely damage that atmosphere, losing something precious about the school community and endangering its ability to attract and retain its best members.

c. Faculty Culture

While shared governance may be the surprise most often mentioned by non-traditional deans, faculty culture brings the strongest statements. The strongest of those statements relate to the unusual orientation of loyalty in a law faculty. The dean will almost always have come from an organization in which the members were loyal to the organization and its goals. The leader will articulate the goals and means to achieve them, and the team members are expected to support that effort or leave. In a law faculty, the situation is nearly opposite. The faculty’s loyalty is often directed not toward the school but toward their personal goals.¹⁸¹ This is not to label them as disloyal; to the contrary such faculty are highly loyal to what they understand to be their highest and best purpose at the school. The key is “who decides” – the dean will find that each individual member of the faculty sees it as their own decision where to direct their time and energies. “Tenured faculty: act like independent contractors, not employees. [You must] leave them to choose their own scholarship; they will bargain for less teaching; only in service do they act more like employees.” One dean said, the “hardest part of the job has been convincing some of the faculty of the value of doing more than the minimum for the school.”¹⁸² In *Leadership in Educational Institutions*, Robert Post observed, “[f]aculty typically have inordinate difficulties with authority (which is why they seek to reshape reality), and I was shocked by the depth and strength of the transference that immediately attached to the office of the dean.”¹⁸³

Faculty confirmed this point: “[w]e don’t work for the dean; in some ways the dean works for us.”¹⁸⁴ “We don’t take orders.”¹⁸⁵ “You may look powerful to the outside, and in some ways you are. But with respect to faculty governance, your power is quite limited.”¹⁸⁶ Another said that their dean “is surprised at the lack of initiative and commitment to the

¹⁷⁸ Carrington, *supra* note 2, at 343.

¹⁷⁹ Interview with traditional dean, July 2022.

¹⁸⁰ Post, *supra* note 2, at 1825.

¹⁸¹ Interviews with non-traditional deans, February 2022.

¹⁸² Interview with non-traditional dean, March 2022.

¹⁸³ Post, *supra* note 2, at 1826.

¹⁸⁴ Interview with faculty, May 2022.

¹⁸⁵ Interview with faculty, April 2022.

¹⁸⁶ Interview with faculty, June 2022.

school; they need to be dragged and cajoled and bribed into doing things for the school,”¹⁸⁷ and another whose dean was “surprised at how self-centered the faculty was.”¹⁸⁸ O’Connell & O’Connell quote Erwin Griswold: “[u]ltimately, a faculty will break your heart.”¹⁸⁹ These same authors offer sound guidance for a dean who seeks a stable relationship with such a faculty: “[s]o far as is humanly possible, [academic chiefs] should let the members of the faculty alone, giving them all the freedom practicable for teaching and research. But the relationship is not reciprocal; faculty members have no obligation to leave the [academic chief] alone. He must be available, responsive, and patient.”¹⁹⁰

The challenge of faculty culture is driven in part by the degree to which law professors’ work is largely solitary. Deans observed them as silos¹⁹¹ and predominantly introverts, requiring that the dean convince them of the need to engage.¹⁹² As a consequence, one dean described the culture as “poisonous, individualistic and with very little teamwork.”¹⁹³ This issue manifests itself frequently in the divergent expectations of non-traditional deans and faculty around their physical presence on campus.¹⁹⁴ One professor said that some of their colleagues “wondered why he was making such a big deal about it” when the dean urged them to be more present on campus.¹⁹⁵

A non-traditional dean can also feel a bit like an alien among the faculty. Faculty may think have not “you’re your dues” in the job progression, and somehow get “to jump the line.”¹⁹⁶ Also, when counseling faculty or evaluating, they can wonder what authority or credibility you have, never having been in their shoes.¹⁹⁷ If the faculty have been there a long time “then you are walking into a complex web of personal relationships over which you have no leverage.”¹⁹⁸ Many faculty will be suspicious of the new non-traditional dean.¹⁹⁹ There is fear that the non-traditional dean, coming from a different career milieu, will not share their values or protect parts of their positions that are dear to them. One non-traditional dean captured a short message that conveyed the full perspective when told on arrival: “[y]ou are a necessary evil” but without you “the school was going to die.”²⁰⁰

d. Incentives and Credentials

Another surprise to non-traditional deans may be the incentive system of law school professors, as the things that faculty value about themselves and each other are quite different from what is found elsewhere. They put great importance on credentials, especially the ranking of the law school from which they earned their JD. A law degree from Harvard or

¹⁸⁷ Interview with faculty, June 2022.

¹⁸⁸ Interview with faculty, May 2022.

¹⁸⁹ O’Connell & O’Connell, *supra* note 2, at 630.

¹⁹⁰ O’Connell & O’Connell, *supra* note 2, at 632 (citing H. WRISTON, *ACADEMIC PROCESSION: REFLECTIONS OF A COLLEGE PRESIDENT* 122 (1959)).

¹⁹¹ Interview with non-traditional dean, March 2022.

¹⁹² Interview with non-traditional dean, March 2022.

¹⁹³ Interview with non-traditional dean, March 2022.

¹⁹⁴ Interviews with non-traditional deans, March-April 2022.

¹⁹⁵ Interview with faculty, July 2022.

¹⁹⁶ Interview with traditional dean, October 2022.

¹⁹⁷ Interview with traditional dean, October 2022.

¹⁹⁸ Interview with faculty, April 2022.

¹⁹⁹ Interviews with multiple non-traditional deans, February -October 2022.

²⁰⁰ Interview with non-traditional dean, February 2022.

Yale (or to a lesser extent, one of five or so other top law schools) is of great importance to being hired into the faculty of many schools, and can be a core part of a professor's identity for decades.²⁰¹ This is unfamiliar to some candidates who have gone through much of their careers with only modest interest expressed by clients, bosses, or the public in the identity of their alma mater. Equally surprising, deans report, is learning how elevated an opinion the faculty have of their own credentials.²⁰² In contrast, some faculty seem to be relatively unimpressed with some non-traditional deans' career achievements, even those of national repute.²⁰³

One can see how the career path and incentives for law professors drives this dynamic. They were usually highly successful as students, and yet spurned the higher paying careers of their law school classmates. In exchange for that sacrifice, they expect certain things in addition to autonomy and job security, in particular being held in high regard by law professors they respect, especially those at higher ranked schools. That is generally accomplished through their published scholarship. Since their teaching and service are barely visible to professors at other schools, an enhanced reputation is achieved mostly through impressive scholarly publications coupled with talks during visits to other schools. The focus on scholarship can lead to lower contributions toward other parts of the school's mission.²⁰⁴

The focus on credentials, in the opinion of many, lends itself to a degree of elitism. It also seems at odds with law professors' embrace of progressive causes around equality. There is "a level of hypocrisy around elitism vs. equity and access, as well as pettiness."²⁰⁵ This also shows up in law schools that have separate tracks for tenured, clinical and skills faculty,²⁰⁶ where deans often find not only varying degrees of voting rights on appointments and tenure, but a sense of superiority among the tenured faculty.²⁰⁷ As one former dean pointed out, "[s]omething I learned too slowly was that no good idea was worthwhile unless a tenured member of the faculty embraced it."²⁰⁸

A similar dynamic applies to law professors' view of themselves compared to other disciplines. The tenure clock of law professors is shorter than in most disciplines, and the promotion to full professor much earlier. Several deans reported that law faculty are higher paid and seem to work less than those in other disciplines.²⁰⁹ As one said, "[f]aculty think they work hard; they are so wrong: they have weekends off, most Fridays, only a 30-week year."²¹⁰ "The faculty has no idea how entitled they are."²¹¹ At the same time, faculty may resist a dean's efforts to address uneven performance: "[t]here's a lot of mediocrity in law faculties that are protected by their colleagues."²¹² But these impressions may be formed by deans' focus on those individuals that most frustrate them, as many faculty are driven by

²⁰¹ Interviews with non-traditional deans, March-April 2022.

²⁰² Interviews with non-traditional deans and faculty, March-June 2022.

²⁰³ Interview with non-traditional dean, March 2022.

²⁰⁴ Interview with non-traditional dean, February 2022.

²⁰⁵ Interview with search consultant, February 2022.

²⁰⁶ Interview with non-traditional dean, March 2022.

²⁰⁷ Interview with non-traditional dean, October 2022.

²⁰⁸ Comments from non-traditional dean, December 2022.

²⁰⁹ Interviews with non-traditional deans, February-March 2022.

²¹⁰ Interview with traditional dean, August 2022.

²¹¹ Interview with non-traditional dean, February 2022.

²¹² Interview with traditional dean, August 2022.

their own character to work hard, without the influence of the dean. As one said, “[f]aculty want to protect their tribe.”²¹³ On the other hand, one professor pointed out the many other ways law professors contribute: mentoring, help with employment, letters of recommendation, serving as a public intellectual, Op-eds, etc., community engagement, e.g. non-profit leadership, political engagement, amicus briefs and other law reform.²¹⁴

Finally, both deans and faculty commented critically on personality traits that they found among faculty. They described law professors as “needy,” “overblowing small issues,” and “thin-skinned”²¹⁵ and “nurture ancient grievances.”²¹⁶ One professor warned of “pettiness,”²¹⁷ another said of their colleagues, “[i]t’s impossible to understand the dysfunction of the faculty. ... Law professors can be vicious, backbiting, and not direct.”²¹⁸ Another emphasized the problem this can present to a dean: “[l]aw faculty are extraordinarily dangerous: smart, with lots of time on their hands to undermine you.”²¹⁹ One professor who was a former dean said, you feel like you are “the fire hydrant in a dog pound.”²²⁰

These characteristics arise in part because, deans say, professors are conflict averse and avoidant.²²¹ “They don’t understand the importance of getting along with each other.”²²² They lack experience in resolving conflict among themselves, leading them to discern slights and insults, then sustain resentments without an effective resolution; “long hatreds or rivalries between faculty members—are unlikely to be solved by a dean,” one former dean added.²²³ Deans found that both faculty and many staff expected the dean to hear the details of these internecine complaints, something that most had never experienced in their prior careers.²²⁴

Deans and professors alike point out how these character traits cause faculty to look for acknowledgement of their work from their dean. Again, in the absence of financial rewards, personalized attention by deans becomes a substitute reward and validation. Deans should remember that this is good news: this kind of individual attention replaces financial compensation, which the school could not afford. Symbolic rewards such as named chairs or endowed chairs have an elevated importance.²²⁵ Public statements of praise and thanks are important, and their absence can be a source of resentment.²²⁶ In a study comparing deans’ self-assessment with the assessments by their faculty the authors found significant differences in certain respects. “In essence, many faculty members wish the deans would be more open, friendlier, and more caring toward them as well as providing them with direction, organization, and well-defined methods of doing things. This was particularly true

²¹³ Interview with traditional dean, November 2022.

²¹⁴ Interview with traditional dean, July 2022.

²¹⁵ Interviews with multiple traditional and non-traditional deans, March-August 2022

²¹⁶ *Id.*

²¹⁷ Interview with search consultant, February 2022.

²¹⁸ Interview with faculty, May 2022.

²¹⁹ Interview with faculty, June 2022.

²²⁰ Interview with faculty, June 2022.

²²¹ Interviews with non-traditional deans, February-March 2022.

²²² Interview with faculty, December 2022.

²²³ Comments from non-traditional dean, December 2022.

²²⁴ Interviews with non-traditional dean and faculty, March-August 2022.

²²⁵ Interview with faculty, August 2022.

²²⁶ Interviews with non-traditional dean and faculty, February-August 2022.

for younger faculty members who have been teaching for ten years or less.”²²⁷ Of course the converse is not true: faculty seem to have a lot of hesitation around praising their deans.²²⁸

e. The Scholarly Mission

Non-traditional deans generally understand the teaching mission of law schools, having experienced it themselves and having hired and mentored many recent graduates. They have much less experience with or understanding of the scholarly mission. They may never have read an article by a member of the faculty of their school other than in preparation for the job search. To the extent they have read law review articles, they were likely on topics of direct relevance to a specific legal issue, rather than the more theoretical work that characterizes the work at higher ranked law schools. Depending on the school and its financial condition, this tension can be solved by mutual education, or it can be a genuine conflict and end in a shifting of institutional resources. Indeed, some tenured faculty may view the hiring of a non-traditional dean as a public signal that the school has decided to lower its academic reputation.

This presents a problem for the new dean and for their faculty, starting the deanship with some mutual ignorance and even suspicion. The new dean will struggle to understand why the scholarly mission is so important that it consumes a significant amount of faculty resources, and even the jargon will seem novel.²²⁹ The faculty will worry that the dean will undervalue their work and will not support them with the time and funding that they need to research, write, and travel to discuss their ideas.²³⁰ They are aware that there is some degree of scorn occasionally expressed against some of the more arcane and theoretical law review articles.²³¹

For some tenured faculty this fear has become reality. One reported a loss of “the energetic intellectual culture.”²³² One left the school when the new dean published a statement purporting to capture the faculty’s consensus yet omitted any reference to scholarship.²³³ Another spelled out the tenured faculty’s perception as: “while he states an interest in the intellectual mission, he doesn’t make that happen; he may not know how,” adding, “[i]t is not his priority. He doesn’t know what people are working on; doesn’t congratulate them on their papers; doesn’t have a good sense of what needs to be done sustain the scholarly enterprise.”²³⁴

Even when the new dean emphasizes support for scholarship the faculty will be doubtful.²³⁵ One professor observed that their dean grasped the mission only over time: “[p]eople have

²²⁷ Johns, Horace E., *Effect of Selected Biographical Factors on Faculty Perceptions of Law School Deans’ Leader Behavior*, 15 HIGHER EDUC. 497, 505 (1986).

²²⁸ Interview with faculty, December 2022.

²²⁹ Levi, *supra* note 6, at 914.

²³⁰ Interviews with deans and faculty, May-October 2022.

²³¹ See interview at the Fourth Circuit Court of Appeals Annual Conference with Chief Justice of the United States Supreme Court John G. Roberts, Jr. (June 25, 2011), available at www.c-span.org/video/?300203-1/conversation-chief-justice-roberts (“Pick up a copy of any law review that you see and the first article is likely to be, you know, the influence of Immanuel Kant on evidentiary approaches in 18th-century Bulgaria, or something, which I’m sure was of great interest to the academic that wrote it, but isn’t of much help to the bar.”).

²³² Interview with faculty, July 2022.

²³³ Interview with faculty, March 2022.

²³⁴ Interview with faculty, June 2022.

²³⁵ Interviews with non-traditional dean and traditional dean, March-June 2022

expressed strong opinions that [their non-traditional dean] does not understand faculty scholarship. He has reconciled to it but has been slow to absorb it. Now he does respect the deep expertise that comes from careful deep research.”²³⁶ This gap in understanding is unfortunate to the extent it weakens the ties between dean and faculty. Non-traditional deans in particular might better prepare themselves to understand how scholarly research supports the school’s broader mission. There are strong arguments for that idea. In combining both the teaching of legal knowledge and the building of new knowledge, law schools follow the core concept of all research universities, which combine teaching and research in every major discipline. In over a hundred years of experience since this model developed this has proven to be a success in attracting the best students and training the most successful graduates.²³⁷ Turning specifically to the role of scholarship in law schools, this benefit operates in two ways: that scholarly research both improves the teaching of law and improves the law.

It is widely agreed that doing research makes one a better teacher in the subject of one’s research. The deep exploration of an area of law, the writing of new ideas, and the testing of them with colleagues and in workshops, all combine to make a teacher better grasp the subject they are teaching.²³⁸ It also makes students become better lawyers as the pedagogy of American law schools engages law students with this exploration. A fundamental difference between legal education in the US and most of the world is that we do not so much teach students what the law is, so much as we teach how the law works. This has proven to be a great advantage for American law schools (far more foreign students come to the US for advanced degrees than vice versa), and for American lawyers, who tend to dominate most international private legal practices. If law schools in the United States concentrated on simply teaching the current rules, our graduates’ knowledge would soon prove obsolete as the law evolves to meet the many technological and demographic changes of society. Our students are far better off if they graduate with an understanding of how our system deals with the deeper questions that the law must address any time a new problem is confronted.²³⁹ Along the way they become adept at drawing analogies and distinctions that demonstrate how to find new answers, which is at the core of the common law.²⁴⁰

The second major contribution of legal scholarship is to improving the law. This is easy to see with respect to doctrinal writing, which explores a current problem in applying the law, such as how to govern new areas of technology, or solving contradictions between doctrines. The benefit of scholarly writing is less immediately apparent, however, with theoretical legal scholarship. Yet it is in those deeply theoretical works that new ideas are developed that can have massive influence over time, and demonstrate the power of ideas.²⁴¹ Law schools, and in faculty writing, are where these ideas are incubated.

²³⁶ Interview with faculty, July 2022.

²³⁷ Nor is law the only area where the subjects of faculty writing seem arcane, indecipherable, and out of reach to the common reader. The same is true in the sciences, math, and other disciplines as well.

²³⁸ Interview with traditional dean, October 2022.

²³⁹ Interview with traditional dean, October 2022.

²⁴⁰ As an aside, and as a fact rather than a justification, the rankings system of US News & World Report incentivizes the scholarly mission since it uses academic peer reputation scores as the largest single factor in ranking law schools. While as of this writing some of the top ranked law schools are withdrawing from the USNWR rankings the role of scholarly publications in establishing a school’s academic reputation is well established.

²⁴¹ This paper is not the place for an exploration of the effect of academic scholarship on the development of law and policy, but significant examples can be found in Oliver Wendell Holmes work that started a shift from formalism to realism, e.g. *The Path of the Law*, 10 HARV. L.

f. The University

As if the internal challenges of the faculty were not enough, a new range of challenges comes from the relationship with the university.²⁴² Most law schools are affiliated with universities, which support and often subsidize the law school but impose numerous constraints. These will be unfamiliar to most non-traditional deans (and many first-time traditional deans as well). Deans will often find surprising levels of bureaucratic constraints on action, especially when it entails hiring. In the public sector in particular, the process of hiring a staff or faculty member will take multiple times the duration found in the private sector, requiring countless submissions and approvals, many of them quite obscure.

The non-traditional dean's relationship with the provost and president can be a special challenge. Among former judges and law firm partners, it may be the first time they have had a "boss" in decades.²⁴³ For all new deans it is hard to discern the nature and scope of the authority the provost and the president have over the dean. After all, the shared governance model of the law faculty often leads the faculty to believe that the dean reports to them, not the university. As one professor put it, "[y]ou have to ask: who are you there for – the provost and president, or the faculty."²⁴⁴ Both are true in some respects: the dean reports in two opposite directions, to both the university and the faculty.

The lack of clarity in the relationship with the provost and president is compounded by the ways in which law schools differ from other parts of the university.²⁴⁵ Law schools also tend to have highly engaged alumni who hold positions of power in government and finance, and who tend to draw more political attention than most of the university. They combine professional training of soon-to-be practicing lawyers with scholarly research. Law schools have their own set of accreditation standards, which demand a level of independence of program and resources, as well as protections for the dean and faculty.²⁴⁶ Law schools tend to provide their own student facing programs in lieu of the university's central offices for admissions, careers, registrar, and student services. Thus, to the extent that a university is seeking funds from its law school to cover such central functions, the law school is paying for them twice. Tuition discounting is an even more complex topic. Most university administrations do not grasp the idea that merit scholarship aid is not an expense, but rather a revenue adjustment necessary to cover fixed costs. Their business models are different, with little funded research, strong competition for students, and tuition discounting. They are a single department, combining in one person the roles of dean and department head. All these factors combine to make law schools different from the other parts of the university that the provost and president deal with.

REV. 457 (1897) and Brandeis's famous article introducing the idea of the right to privacy. More recently Catherine McKinnon's theoretical work on misogynistic social behavior eventually led to powerful new doctrines of hostile workplace discrimination. CATHERINE A. MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION* (Yale Univ. Press, 1979), while Robert Bork's early theoretical work on pricing and antitrust led to a jurisprudence that prevailed for two generations. ROBERT H. BORK, *THE ANTITRUST PARADOX: A POLICY AT WAR WITH ITSELF* (New York: Free Press, 1978).

²⁴² For a separate discussion on the special situations of independent law schools, see *infra* Section V.h.

²⁴³ Interview with non-traditional dean, April 2022.

²⁴⁴ Interview with faculty, April 2022.

²⁴⁵ Interview with non-traditional dean, April 2022.

²⁴⁶ E.g., ABA Standard 201

Deans are most disappointed when they discover that they do not have the power to spend the law school's "own" money. While the dean may have raised funds through philanthropic efforts, and have space in its budget from a staff departure, the university may nonetheless deny or slow-walk any hiring or spending because the university itself wishes to keep those funds as part of its financial statement assets.²⁴⁷ At the more specific level, salaries will likely be subject to university standards. This can be a problem for positions that should be filled by a lawyer (careers office and admissions in particular) since those have to meet higher market salary competition than the comparable positions elsewhere in the university.

All these factors create problems for the dean in dealing with the university's financial relationship with the law school.²⁴⁸ This is especially problematic where the president and provost did not understand the economics of tuition discounting.²⁴⁹ "The provost and the university do not understand these things and will tell you to do them in the wrong way."²⁵⁰ This is compounded in some cases by what appears to be resentment by university leadership toward the law school.²⁵¹ Whether driven by other disciplines' jealousy of the favorable terms of law faculty employment, resentment of perceived elitism on the part of law faculty, or a general societal suspicion of lawyers, such feelings on the part of the leadership can be harmful in resource allocation and other ways.²⁵²

Some universities exercise a high level of control over their law school's spending decision, as six deans conveyed.²⁵³ One referred to this as the "Mother may I?" requirement;²⁵⁴ another was surprised and disheartened that after the law school raised money for its endowment the university then withheld the right to spend the funds on the intended use.²⁵⁵ One dean's budget meeting with the president and CFO ended without decision, followed later by a unilateral decision from the CFO on the law school's budget.²⁵⁶ All this is made more difficult when, as often happens, the faculty has unreasonable expectations of university support.²⁵⁷ There are multiple stories of faculty who think their new dean's priority should be fighting with the administration.²⁵⁸ Others, however, believed that their dean's prior public career provided greater budgetary negotiation skills.²⁵⁹

The university bureaucracy is also a source of frustration. "Perhaps the most surprising part of the job has been the extent to which I do not have ultimate decisional authority, but am simply a cog in a vast university bureaucracy."²⁶⁰ The new dean must understand that this organization "will not fit your definition of 'efficient.'"²⁶¹ Nine deans reported institutional

²⁴⁷ Interview with non-traditional dean, August 2022.

²⁴⁸ Interviews with non-traditional deans, March 2022.

²⁴⁹ Interview with non-traditional dean, March 2022.

²⁵⁰ Interview with non-traditional dean, March 2022.

²⁵¹ Interview with traditional dean, August 2022.

²⁵² Interview with traditional dean, August 2022.

²⁵³ Interviews with multiple non-traditional deans, traditional dean, and faculty, March-July 2022.

²⁵⁴ Interview with non-traditional dean, October 2022.

²⁵⁵ Interview with non-traditional dean, August 2022.

²⁵⁶ Interview with non-traditional dean, April 2022.

²⁵⁷ Interviews with non-traditional deans, March 2022.

²⁵⁸ Interview with non-traditional dean, October 2022.

²⁵⁹ Interview with faculty, December 2022.

²⁶⁰ Leonard, *supra* note 6, at 301.

²⁶¹ Interview with faculty, July 2022.

slowness and a myriad of impediments to any action or initiative.²⁶² This is attributed to many factors, including lack of staff, antiquated systems, compliance constraints, a unionized workforce that resists new a job responsibilities, and, especially in the public sector, an arcane human resources system that made hiring process interminable and wasteful of management time.²⁶³

The personal side of the university relationships matter as well. Many non-traditional deans have strong working relationships with their presidents.²⁶⁴ Sometimes a non-traditional dean is the favorite of a president who feels that the law faculty need stronger leadership and a greater orientation toward the university's goals.²⁶⁵ The president may view the non-traditional dean as more of a colleague if they have similar backgrounds,²⁶⁶ especially when the president views the non-traditional dean as a colleague with similar backgrounds.²⁶⁷ Complaints by the faculty to the provost may even be seen as evidence that the dean is doing a good job. Deans with good relations with the provost and president describe them as give and take around mutual understanding of each other's interests and priorities.²⁶⁸

But at the same time, the public salience of the law dean with significant external relationships, can spell trouble with some presidents.²⁶⁹ On the one hand, the law dean's connections can be an asset to the university as well as to the law school.²⁷⁰ Those relationships may also provide the dean some protection against a president's hostility since removal of the law school dean is likely to gain far more public attention than with the deans of other units. On the other hand, those public connections can also be deemed a threat by other presidents, who feel a need to control the relationships between their university and public leaders, and view the dean as competition for alumni loyalty and recognition and who may capture limelight that the president wishes to occupy exclusively.²⁷¹

Finally, some law schools experience pressure from the university board of trustees. While the deans of a university's academic units have traditionally been insulated from direction by the board, in recent years there seems to be a trend of boards giving direction on law school policy and strategy.²⁷² This can be a problem because such boards are not made up of academics; they are mostly successful people from business or politics, and their understanding of academics is limited.²⁷³ Stories are becoming more common of trustees who imagine that the university should be run more like a business. Trustees tend to be people with a high level of confidence from their own career success, and who may believe that the strategies and approaches to decision-making that served them well in their careers should apply in the academy.²⁷⁴ Non-traditional law deans may have more credibility with

²⁶² Interviews with non-traditional deans and traditional dean, February-August 2022.

²⁶³ Interviews with non-traditional deans, March 2022.

²⁶⁴ Interviews with non-traditional deans, March-August 2022.

²⁶⁵ Interview with search consultant, April 2022.

²⁶⁶ Interview with non-traditional dean, June 2022.

²⁶⁷ Interview with non-traditional dean, June 2022.

²⁶⁸ Interviews with non-traditional deans, August 2022.

²⁶⁹ Interviews with non-traditional deans, February-October 2022

²⁷⁰ Interview with non-traditional dean, October 2022

²⁷¹ Interviews with non-traditional dean and faculty, June-August 2022. For a further discussion on this, *see* Failures, *infra* Section VIII.c.

²⁷² Interview with traditional dean, August 2022.

²⁷³ Interview with faculty, July 2022.

²⁷⁴ Interview with non-traditional dean, October 2022.

such trustees than most academics, given similarities in their prior careers. To the extent that non-traditional deans can educate trustees of the harm of such approaches, they and their schools will all be better off.

g. Other Stakeholders

Beyond the competing demands of faculty and university, deans must also balance the expectations of other stakeholders who claim input into the direction of the law school.²⁷⁵ In this regard, however, non-traditional deans may have an advantage, having substantial experience in public life and dealing with diverse groups. A law school deanship is a highly visible position, with multiple constituencies expecting their interests to be acknowledged in the dean's work and public utterances. It is easy to offend one group or the other. In times of national public angst around issues of law and public policy, it is nearly inevitable that some quarters will expect a statement from the dean that is sure to disappoint other constituents. They also all have opinions about legal education. Alumni and employers call for more "practical" training. Judges urge more individualized training in research and writing skills. Donors want to see their image of a law school advanced by their support. In some places, legislators express hostility towards some state law school programs and courses, to the point of threatening reduced funding.²⁷⁶ Non-traditional deans may have greater success negotiating these differences, having had a foot in both worlds.

Non-traditional deans also find surprises in the staff and students at today's law schools. Staff often have a sense of ownership of the school, and an expectation that they, not the dean, know the right way to do their jobs. Deans from the private sector in particular may arrive expecting staff to eagerly take on extra work and tasks outside their usual routines, and be surprised to find that this is considered inappropriate. Deans new to the academy will also be struck by the differences between today's students and their own classmates from decades past. Their behavior as students will also differ from the law firm associates and other junior lawyers they may have dealt with recently. Deans encounter far more demands from students about curriculum and other topics than they recall from their student years, as well as a sense of entitlement on the part of this generation.²⁷⁷ There are also serious objective concerns such as cyclical drops in employment, especially with the historically high levels of debt that they will carry after graduation.²⁷⁸

h. Special Issues for Independent Law Schools

A number of law schools in the United States are independent, existing as free-standing institutions unaffiliated with a university. Usually, the dean reports directly to the board of trustees rather than through a provost, and is therefore the president as well as dean of the school. This forces the dean to spend considerably more time on institutional matters such as finances and governance. It allows greater control but eliminates the insulation from the trustees that a university president and provost provide, thus putting a greater premium on

²⁷⁵ Interview with non-traditional dean, March 2022. Carrington, *supra* note 2.

²⁷⁶ Interview with faculty, May 2022.

²⁷⁷ Interviews with non-traditional deans and traditional dean, March-July 2022.

²⁷⁸ Interviews with non-traditional deans, February-June 2022.

non-traditional deans' time and relationship skills, since independent law school deans spend substantial portions of their time working with the board.²⁷⁹ While the provost or president of a university have many deans and other aspects of the university to deal with, an independent school's board is focused only on one dean. Their deans will understandably spend a great deal of time and effort addressing the concerns of board members lest the board lose confidence and put the dean's tenure at risk.²⁸⁰

Independent law schools appear to have structural biases in favor of non-traditional deans. An independent law school's dean is usually also the president, which indicates the degree to which the role entails business as well as academic duties.²⁸¹ (Schools have found that it is problematic to separate the roles.²⁸²) Thus the independent school's dean will spend more time on non-academic matters than a dean who is supported by a university.²⁸³

The bias toward non-traditional deans also arises by virtue of the position's direct report to the board of trustees. In a university the law dean usually reports to the provost, who is usually a scholar with a strong academic background. That academic intermediary is not present in independent law schools. This creates a bias in favor of selecting a non-traditional dean, who the board can relate to better than an academic.²⁸⁴ Faculty in some schools express concern that, as a result, both the scholarly enterprise and the emphasis on progressive values in their curriculum are at greater risk in an independent law school.²⁸⁵ A dean made the same point: "[t]he problem was board members who were very conservative. Many of them did not understand that the product the school was selling was a progressive vision."²⁸⁶ All of these issues – financial vulnerability, board pressures, status as president as well as dean – put pressure on an independent school dean to focus more on financial and operational issues than on the school's teaching and scholarly missions.²⁸⁷

VI. ASSESSING NON-TRADITIONAL CANDIDATES

It takes a special set of character strengths to manage the imposing list of challenges above. The *American Law School Dean Study* identifies five top attributes that help a dean succeed: emotional intelligence, good judgment, being a stabilizing force during difficult times, ability to listen, and integrity.²⁸⁸ These apply both to traditional and non-traditional deans. But the different career paths of non-traditional deans leave deficits that call for compensating attributes as well. Search committees and faculty will want to look for these traits in candidates, and need to recognize the risks presented by a dean who is unready for these challenges.

In doing so search committees will encounter a deep asymmetry between the two classes of candidates. For candidates coming from careers as law professors the committee may focus

²⁷⁹ Interviews with non-traditional deans and faculty, February-April 2022.

²⁸⁰ Interview with non-traditional dean, March 2022.

²⁸¹ Interview with faculty, April 2022.

²⁸² Interviews with non-traditional dean and faculty, April-August 2022.

²⁸³ Interview with faculty, April 2022.

²⁸⁴ Interview with search consultant, August 2022.

²⁸⁵ Interview with faculty and search consultant, June-August 2022.

²⁸⁶ Interview with non-traditional dean, March 2022.

²⁸⁷ Interview with non-traditional dean, February 2022.

²⁸⁸ *The American Law School Dean Study*, *supra* note 1, at 73.

on their experience in dealing with the financial, external and other operational needs of the school, and decide whether a candidate is up to the learning curve needed to deal with those issues. For non-traditional candidates, in contrast, the committee may be able to assess those skills based on their career paths and accomplishments; what will be more difficult is assessing such candidates' ability to adjust to the culture and institutional characteristics of the law school. That can be a more nuanced exercise. The deans and faculty interviewed for this paper, in concert with the literature, emphasize a series of personal character traits most important for the non-traditional dean.

a. Loyalty and Mission

The interviews, the literature, and the experiences of non-traditional deans in recent decades suggest that personal loyalty to the school stands out above all other attributes needed for a non-traditional dean to succeed. This makes abundant sense. First, deans report that the job is harder and pays less than they experienced in their prior careers. Second, deep loyalty to the school helps the dean keep opposition from various constituencies in perspective: the dean's goal is not to make those constituencies happy; it is rather to make the school better. A third consideration relates not the dean but to the faculty. If they are convinced of the dean's loyalty to the school, they are more likely to be trusting of the dean's motives in any initiative or decision.

Fortunately, loyalty to the school is probably one of the easier characteristics for a search committee to investigate since it is revealed most powerfully by the candidate's history. Apart from the candidate's past involvement with the school, added evidence can be deduced by inquiring whether the candidate will be dismantling prior career connections, such as a position at a law firm.²⁸⁹ Another inquiry is whether the desired deanship may be a stepping-stone toward further career goals.²⁹⁰ In those cases, the school should consider the risk that the candidate would shape their conduct so as to avoid antagonizing some external audience. One professor identified a risk of hiring a political leader as a dean: "[h]e is a politician, and with such a person, either they are your most useful ally for some transactional goal, or they will cut you loose in an instant to meet some other purpose." Most faculty, however, have praised the prior political or public life roles that their deans brought. A career in government service suggests a spirit of public service and, as many emphasized, more experience in collaborative leadership than most private sector careers.²⁹¹ Indeed, one scholar of university leadership has posited that the role is most like that of the mayor of a city, with the attendant multiplicity of constituents, complexity of operations, public exposure, financial constraints, and limited ability to restructure the institution or its employees.²⁹²

Another indication of motives is the candidate's career stage. There is some correlation between that and early departures from the deanship. A dean who has another job in mind will have reason to leave when the deanship is no longer enhancing their resume or

²⁸⁹ Interviews with non-traditional dean and faculty, June 2022.

²⁹⁰ Interview with non-traditional dean, April 2022.

²⁹¹ Interviews with non-traditional dean and faculty, June-December 2022.

²⁹² Jon McNaughton, in [podcast](#) with Times Higher Education, December 8, 2022.

networks, or when the job feels more frustrating than an alternative position on the horizon. When the deanship is the candidate's final job, that will suggest that they are driven by their own values and those of the school.²⁹³

Beyond the candidate's own motivations, their understanding of the school's mission must match that those of the faculty and the university. Deans and faculty alike in this survey urge search committees to ascertain whether the candidate truly understands and embraces the school's mission.²⁹⁴ This can be ascertained sometimes by asking the candidate to articulate the school's mission and explain how they would advance it.

b. Patience, Endurance and Ego

A second crucial attribute of good non-traditional deans relates to personality traits. The plodding process of shared governance, the maddening hurdles of an obscure bureaucracy, and the need to accommodate faculty and others who expect personal attention, all require a dean of remarkably secure ego, patience, and thick skin. A search committee will want to look for indicia that the candidate can combine a sense of urgency in accomplishing change (assuming that to be the goal of a non-traditional hire), while at the same time exhibiting patience while the various constituencies and bureaucratic hurdles are brought into line. Deans and faculty alike emphasize the new dean's need to understand the pace of change in higher education. On the one hand, a non-traditional dean is usually chosen to be a change agent around problems facing the school. Thus, there will be a certain consensus of the need to support new initiatives and other steps to address those problems. But change is slow in higher education, so the dean may want to have multiple initiatives working forward at different levels simultaneously so that one or another will come to fruition periodically. But the faculty can also be overwhelmed if they feel that too much is being asked of them. At one school the dean, who had previously managed a high-level private practice, had trouble "orienting to the pace and capacity of a law faculty."²⁹⁵ While the faculty will be there longer than the dean, other obstructive individuals among staff and university leaders are likely to move on. "Time is on your side" to hire better staff and faculty, several deans said,²⁹⁶ as well as to wait out an obstructive provost.²⁹⁷

The job does not just require patience, however. In nearly every interaction deans must leave their personal needs aside to hear and acknowledge whatever reasonable or strange concern others wish to air. This is a major change from these deans' prior experiences when they were used to significant praise from their teams, bosses and clients. They will have to get used to a culture in which they must avoid taking public credit, while expecting blame for others' mistakes. Thus the job also requires someone who can endure the unusual perspective that many law professors have toward their deans and toward authority in general.²⁹⁸ To manage these relationships the dean needs both a thick skin and absence of

²⁹³ Interview with faculty, August 2022.

²⁹⁴ Interview with non-traditional dean, August 2022.

²⁹⁵ Interview with faculty, July 2022.

²⁹⁶ Interviews with non-traditional deans, February-March 2022.

²⁹⁷ Interview with non-traditional dean, August 2022.

²⁹⁸ Post, *supra* note 2.

neediness.²⁹⁹ In particular, interviewees identified a need to be liked as a source of weakness.³⁰⁰ Any dean whose ego requires reassurance and validation will have a very hard time. “I would not recommend the job to one who takes himself or herself very seriously, and who expects his or her efforts to be widely and fully appreciated. Appreciation can come to some, but it would be a folly to count on it, and one who performs the job for gratitude will not perform it well.”³⁰¹

Finding satisfaction in positive results from the dean’s efforts and initiatives is important, but even that is contingent, since so many external events can frustrate a dean’s plans. “One who seeks rewards in the results of performance had therefore best come to it with a reasonably firm sense of the values to be served by performance in the office; for such persons, there is a possibility at least that they can draw their pay at the window of internal gratification derived from having advanced those values even through occasions of defeat and rejection.”³⁰²

Finally, the job is really hard, and requires someone who is willing to work long and hard. A successful dean has great energy and endurance. The many constituents expect the dean to be present in many ways and at many events, both public and private. Unless the school is financially blessed, the dean will have to monitor and sometimes do the work of others, yet never succumb to frustration. This takes a person who not only has physical stamina but “strength of spirit” as one professor put it,³⁰³ and an ability to be the hardest working person in the building.

c. Humility, Flexibility and Cultural Competence

A third group of characteristics needed for the job apply particularly to non-traditional deans since they will have to adjust to such a new cultural environment. Each of these deans enjoyed major success in their prior careers and arrive with confidence in their ability to solve problems and implement solutions. Instead, they will find that their skills are valuable but do not apply in the same way as outside the academy.³⁰⁴ They must be acutely aware of how little they know about the workings of the school and be prepared to adjust nearly everything about their approach to work, all the way down to their style of speech. This requires humility, but also flexibility to learn new behaviors. It also calls for cultural competence: the ability to learn the norms of others’ groups, and see what is and is not appropriate communication and conduct in each.

As one dean put it, “[y]ou have previously been engaged in situations because you have the answers. In the law school you definitely do not have the answers. You have skills, but they apply differently. You need to learn the environment before you can start to make conclusions.”³⁰⁵ For former litigators, who are used to stepping into a crisis and assuming some level of command, a deanship is different because the norms and environment are so

²⁹⁹ Interview with faculty, June 2022.

³⁰⁰ Interview with faculty, June 2022.

³⁰¹ Carrington, *supra* note 2, at 358.

³⁰² *Id.* at 343–344.

³⁰³ Interview with faculty, December 2022.

³⁰⁴ Interview with faculty, June 2022.

³⁰⁵ Interview with traditional dean, October 2022.

different.³⁰⁶ The first thing the new dean needs to be ready is a sense of humility. That entails a recognition that they do not have the answers (certainly not yet); they will be fortunate if they at least know some of the questions. It means that they must be willing to learn what is different and valuable about this new institution, so they can distinguish between that which must change and that which must be protected and preserved. Sometimes those are hard to distinguish.

Humility is also needed as a matter of relationship building. Faculty may assume that the non-traditional dean wrongly presumes to know best what to do about a complex community of strong personalities that has existed for decades without them.³⁰⁷ This can feel threatening to faculty and can trigger unnecessary resistance. This is in particular a danger in the case of a dean who is used to charismatic leadership: it can provoke resentment and is thus self-limiting and risks disrupting the cultural ecology and tradition of a school.³⁰⁸ Similarly, the dean has enough self-awareness to keep their ego under control and recognize that the job is about the school, not them. "One should want the job for its own sake, but not want it too much."³⁰⁹

Cultural competence, the ability to communicate well with people from a different background from one's own,³¹⁰ is crucial because the dean's success will depend on support, or at least acquiescence, from communities with dramatically different interests and identities.³¹¹ This includes cultural adaptation to communities with specialized language.³¹² Deans emphasize that the faculty's greatest need is for transparency and constant clear communication.³¹³ The dean must be able to speak in a way that makes the faculty comfortable.³¹⁴ "We live in each other's company and have a particular way of speaking."³¹⁵ Cultural competence also entails addressing student expectations that are probably quite different from the non-traditional dean's prior experience. adopting new language signals and identities as those sweep through social media. These must be dealt with by care in communications, concentrating on kindness, inclusivity, and invitation of input.³¹⁶ At the same time the dean must communicate with a clerical and perhaps unionized staff, and then to alumni and donors. Through it all the dean must be clear and secure in their own identity, while alert and empathetic to the perspectives of these constituencies.

Certain prior careers were identified as better indicators of these qualities, when the earlier job entailed managing teams of people who do not necessarily take orders. The closest analogy outside the academy seems to be managing a legislative caucus, whose members are joined by formal party affiliation, but whose primary motivations are to their district constituencies and their personal political values. Interviewees also mentioned law firm

³⁰⁶ Interview with non-traditional dean, October 2022.

³⁰⁷ Interview with traditional dean, October 2022.

³⁰⁸ Post, *supra* note 2, 1827.

³⁰⁹ Carrington, *supra* note 2, at 359.

³¹⁰ Adams, Travis (2012) "Cultural Competency: A Necessary Skill for the 21st Century Attorney," Law Raza: Vol. 4: Iss. 1, Article 2.

Available at: <http://open.mitchellhamline.edu/lawraza/vol4/iss1/2>

³¹¹ Interview with hybrid dean, March 2022.

³¹² Levi, *supra* note 6, at 914.

³¹³ Interviews with non-traditional deans, March 2022. Dickerson & Buckner, *supra* note 2, at 237.

³¹⁴ Levi, *supra* note 6.

³¹⁵ Interview with non-traditional dean, April 2022.

³¹⁶ Interview with non-traditional dean, March 2022.

managers, government employees, and chief judges as good training for leading law faculty.³¹⁷ As one said, “try ordering a bunch of . . . judges around and you’ll be better prepared for a law faculty.”³¹⁸ A former law firm managing partner said that among private practitioners, litigators are the best equipped for a deanship because of their experience communicating complex arguments to different kinds of audiences.³¹⁹

Other experiences can be good training for a non-traditional dean. One had previously run a program at the law school, so the faculty observed their leadership style and effectiveness.³²⁰ A number of others were personally known to several faculty members from adjunct teaching or community activities.³²¹ In some cases the candidate had a track record in areas important to the faculty, including DEI and pro bono work,³²² and others had a history of scholarly research and writing.³²³

Overall, the candidate must come across as someone the faculty can relate to and respect. As one consultant explained, the search committee must ask themselves, “[w]ill the faculty embrace this person as a colleague?”³²⁴ To that one might add: is this a person who will respect and protect what is special and good about the school, and learn to adjust to the new environment in which they are going to work.

The foregoing discussion recapitulates the asymmetry of a search committee’s assessment of traditional and non-traditional deans. For a school facing issues with issues outside its core educational program, the question is whether a candidate coming from a career in the legal academy has or can acquire the skills needed to tackle the operational problems and build the external relationships needed. For a non-traditional candidate, in contrast, the questions will relate more to character: is the candidate able to adjust to the culture and institutional peculiarities of the legal academy.

VII. WHEN THE POSITION IS OFFERED

a. The Problem of Awarding Tenure

When a law school decides to offer the deanship to a non-traditional candidate it must first grapple with the tenure decision. This is because law schools are accredited under the standards of the American Bar Association, which state: “[e]xcept in extraordinary circumstances, a dean shall also hold appointment as a member of the faculty with tenure.”³²⁵ This presents a problem for the faculty with almost every non-traditional dean, since it is rare that a non-traditional dean meets the normal standards for tenure of a strong record of teaching, scholarly writing, and service. Even for those non-traditional deans who have

³¹⁷ Interviews with non-traditional deans and faculty, March-August 2022.

³¹⁸ Interview with non-traditional dean, April 2022.

³¹⁹ Interview with non-traditional dean, October 2022.

³²⁰ Interviews with search consultant and traditional dean, February-July 2022.

³²¹ Interviews with several non-traditional deans, February-April 2022.

³²² Interviews with search consultants and faculty, January-June 2022.

³²³ Interviews with search consultant, non-traditional dean and faculty, January-August 2022.

³²⁴ Interview with search consultant, August 2022.

³²⁵ STANDARDS & RULES OF PROC. FOR APPROVAL OF LAW SCHS. 203(b) (AM. BAR ASS’N 2022). The American Bar Association has been designated by the US Department of Education as the accrediting organization for law schools. *Accreditation in the United States*, U.S. DEP’T OF EDUC. (Oct. 27, 2022) https://www2.ed.gov/admins/finaid/accred/accreditation_pg4.html#National_Institutional.

published, their works usually relate to issues in practice and do not fit with the expectations of the legal academy.

Various professors described the tenure decision: “[i]t’s almost always a stretch;” we were “uncomfortable;” we had to “hold our nose;” it required a “different mindset.”³²⁶ One elaborated: “[t]enure – that was awkward. But we knew it was part of the deal. So we had to do it, the question was how. It was like changing measurements from metric to imperial.”³²⁷ But at the same time faculty recognized the public tumult that would follow a tenure denial: “with his incredible CV how could you deny tenure?”³²⁸ One search committee’s members were proactive addressing the issue with the faculty, telling them ahead of the dean vote that a positive vote on the candidate for dean entailed a commitment to supporting tenure, and that they should not do the first without committing to the second.³²⁹

Notwithstanding the ABA standard, some law schools have not awarded tenure to the non-traditional dean. In some cases, the dean declined to seek tenure, perhaps out of a desire to avoid conflict or discomfort around the faculty vote.³³⁰ In another there was discussion among faculty about seeking an exemption from the ABA from the tenure requirement before deciding to go ahead with the recommendation.³³¹

Another part of the tenure decision can be fraught: the prospect that the dean, after stepping down, might remain on the faculty indefinitely.³³² This can be a concern with non-traditional deans who would not meet the school’s tenure standards. It freezes a tenured position that could otherwise go to a candidate who could enhance the school’s scholarly reputation. As one such dean described it, it creates the risk of “years of dead wood.”³³³ One non-traditional dean made a point of departing after the deanship, hoping to inspire some other very senior members of the faculty to follow and thereby open up some space for new hires (they didn’t).³³⁴

Usually there are circumstances that mitigate this risk. Most non-traditional deans come to the position in a late stage of their careers,³³⁵ so the duration for which they are likely to seek continued full-time employment as faculty may be quite limited. And while they may not add much to the scholarly enterprise some non-traditional deans have proven to be prized for their teaching.³³⁶ Even more to the point, most of them sought the position not because they wanted to be law professors but because they desired to lead an institution; once they are no longer leading, they may not view the professorship as their life’s purpose. Search committees can generally sort out these motivations. In some cases, they have addressed it directly with the candidate and sought an informal understanding that the person would

³²⁶ Interviews with search consultants and faculty, February-August 2022.

³²⁷ Interview with faculty, May 2022.

³²⁸ Interview with faculty, August 2022.

³²⁹ Interview with faculty, August 2022.

³³⁰ Interviews with non-traditional dean and faculty, March-July 2022.

³³¹ Interview with faculty, August 2022.

³³² The AALS Study found that 79% of deans return to faculty after their deanship; the number is probably smaller with non-traditional deans. *The American Law School Dean Study*, *supra* note 1, at 38.

³³³ Interview with traditional dean, July 2022.

³³⁴ Interview with non-traditional dean, October 2022.

³³⁵ See *supra*, Section IV.b.

³³⁶ Interview with non-traditional dean, August 2022.

leave the faculty after the deanship.³³⁷ In at least one other case the surrender of tenure was negotiated as part of an early departure from the deanship.³³⁸

b. Negotiating the Position and the Package

When the university (or in the case of an independent law school, the board) finally decides to convey the offer of the deanship, a unique opportunity is presented for the candidate to negotiate the offer. This section will offer some guidance for non-traditional candidates, who are often unfamiliar with the choreography of job offer, negotiation, and acceptance in higher education. They should be counseled that this moment will not come again (or at least not until the Provost asks the dean to renew); the school has invested great time and energy in the search and has made the decision as to their first choice. The university will be incentivized to agree to reasonable terms rather than turning to a second choice, or worse, experiencing a failed search with its many institutional and reputational costs.³³⁹ Search committees should take care to alert a chosen candidate to research and prepare for this process ahead of time.³⁴⁰

The key step to be taken before accepting the job is negotiation with the provost or president over the “package” the university will commit to.³⁴¹ The dean’s salary is just one part of that. Other elements are generally financial promises: tenured lines for hiring new faculty; budget for added staff; or capital funds for facilities renovation or construction. The candidate should have spent time ahead of this moment exploring with key faculty members what are the school’s greatest needs, to inform the negotiations. The faculty will have expectations around this negotiation, especially when they had voted for the non-traditional candidate in hopes of payoff in the new dean’s deployment of political capital and negotiation skills in dealings with the university.³⁴²

For this reason, the candidate needs to have a strong sense of the school’s needs, both from the search and interview process and from talking with key faculty and the outgoing dean. If successful, a new dean who starts their job by delivering on an attractive package from the university will have achieved an early “win” in the faculty’s mind, before even accepting the job.³⁴³ At the same time, the dean should remember that the university’s promises are not legally enforceable, and can be rescinded when the university felt it was in financial straits or had other reasons to retrench.³⁴⁴ This risk can inform the kinds of commitments the new dean might seek, leaning toward those most likely to occur in the near term.

c. Getting Started

The new non-traditional dean has an enormous amount of catching up to do before the first day on the job. The weeks and months before starting are a precious opportunity that the

³³⁷ Interview with faculty, August 2022.

³³⁸ Interview with faculty, August 2022.

³³⁹ Interviews with non-traditional deans and faculty, January-August 2022.

³⁴⁰ Interview with traditional dean, July 2022.

³⁴¹ Interviews with non-traditional deans and traditional dean, February-July 2022.

³⁴² Interview with non-traditional dean, March 2022.

³⁴³ Interviews with non-traditional dean and traditional dean, March-July 2022.

³⁴⁴ Interview with traditional dean, August 2022.

dean can use to learn more deeply about the school and the faculty, with the luxury of not needing to make any decisions or promises. In fact the incoming dean should avoid at all costs suggesting what those decisions might be, since doing so prematurely can lead to irreversible errors. This is described by one dean as “listen, learn lead,” in that one cannot lead until first learning about the team by listening at length to their values and their concerns.³⁴⁵ Another emphasized that you must listen rather than talk.³⁴⁶ These have to be one-on-one conversations,³⁴⁷ with a goal of showing that the new dean understands and appreciates each faculty member’s work.³⁴⁸ It has the added goal of showing the tenured faculty, for example, that the new dean understands the importance of scholarship, showing the clinicians that the dean understands the value of that program,³⁴⁹ and showing the research and writing faculty that the dean the values their work, etc.

Through this process the new dean will come to learn a key fact: who are the individuals among the faculty who are most respected by their peers and have the most stature and internal credibility.³⁵⁰ They will generally be the most loyal and productive, with leadership and organizational skills that the dean will need to draw upon in the years to come. As one professor put it, “[t]ake time to understand who the solid citizens and producers are on the faculty. Then think about how to support their work. You will likely find that by doing so you will be supporting the institution, as a rising tide lifts all boats.”³⁵¹

This process also helps the new dean develop allies who can be relied on for advice.³⁵² Conversely, it will reveal who among the faculty may be problems.³⁵³ As one professor emphasized, this information can help avoid the pointless investment of time working with a member of the faculty who has embraced their sense of grievance. One dean “sought to mollify a couple of ‘monstrously awful’ faculty members who were perpetually unhappy. If [the dean] was not successful, [the dean] drained . . . time and resources, and just extended the impact of their negativity. People like that just need to be isolated.”³⁵⁴ On the other hand, one dean deliberately avoided learning who had opposed their candidacy so as to avoid casting a shadow over their relationship.³⁵⁵ And in another case faculty applauded their dean for spending time listening to the concerns of the most oppositional of the faculty, not so much to convert them to supporters or to change their relationship to the school, but at least to neutralize the energy they brought to their fights against their colleagues and the dean.³⁵⁶

Deans should be careful not to take sides in conflicts between members of the faculty or criticize any one of them to a third person.³⁵⁷ It is said that there are no secrets among law professors, and word will get around. Moreover, many faculty will make requests for

³⁴⁵ Interview with non-traditional dean, August 2022.

³⁴⁶ Interview with non-traditional dean, April 2022.

³⁴⁷ Interviews with non-traditional deans and traditional dean, March-July 2022.

³⁴⁸ Interviews with non-traditional deans and hybrid dean, March 2022.

³⁴⁹ Interview with traditional dean, August 2022.

³⁵⁰ Interview with faculty, July 2022.

³⁵¹ Interview with faculty, July 2022.

³⁵² Interviews with non-traditional deans, February-June 2022

³⁵³ Interviews with non-traditional deans, March-April 2022.

³⁵⁴ Interview with faculty, June 2022.

³⁵⁵ Interview with non-traditional dean, April 2022.

³⁵⁶ Interview with faculty, December 2022.

³⁵⁷ Interview with non-traditional dean, March 2022.

promises of rewards or accommodations; experienced deans urge that the goal is to listen empathetically but make no promises.³⁵⁸

Both deans and professors emphasize that the new dean should be cautious around changes in salary structures.³⁵⁹ Some deans will find pay disparities that they consider unfair and set about correcting them.³⁶⁰ But in doing so, the dean should take care to learn the back stories, lest the change upset a general understanding of what is fair.³⁶¹ Likewise, some mid-level and senior faculty will fear the arrival of a new non-traditional dean because they have “deals” related to teaching loads and other matters.³⁶² Caution is well-advised before disrupting those arrangements, as it is human nature that individuals develop and defend a sense of entitlement to what one has over any shared goal of fairness.³⁶³

Above all, new non-traditional deans need self-awareness: a recognition of the areas where they are less knowledgeable and less prepared for the job. From that recognition they can build a plan to compensate by a process of learning and by building a team of people whose knowledge and skills compensates for the dean’s own limitations.

d. Building the Team

All eyes will be on the dean’s first steps, including especially the choice of the senior team of associate and/or assistant deans, often referred to as the cabinet. Those individuals will be crucial to the dean’s success since they will be the dean’s principal advisors, as well as responsible for implementing large portions of the school’s policies and priorities. Their selection also conveys symbolic value: the faculty will be reading these choices to discern biases in the input the dean receives, and thus an indication of the dean’s own priorities. But even before making those official choices, the dean can set up “a transition team that can help you understand the culture and avoid early mistakes.”³⁶⁴ Those individuals can then help with the cabinet selections, a choice that will have great importance. Those voices will be closest to the dean’s decision-making.³⁶⁵ It is also symbolic: it sends a message to the faculty about who the dean trusts and whose perspective is most important. By including individuals from different groups within the faculty the new dean conveys to them that their concerns will be heard. At the same time, at a school where the faculty and staff elected such leaders, the dean may want to arrange a “shadow cabinet” of trusted individuals to provide additional advice.³⁶⁶

The dean will spend a great deal of time with the cabinet. They will be, a sounding board for ideas, will carry out key tasks, be the best source of information about the faculty, and serve as the dean’s advocates among the faculty. They will provide early warnings about impending mistakes, and whisper when the dean has misstated a communication or left

³⁵⁸ Interview with non-traditional dean, March 2022.

³⁵⁹ Interview with faculty, August 2022.

³⁶⁰ Interview with non-traditional dean, March 2022.

³⁶¹ Interview with faculty, August 2022.

³⁶² Interview with faculty, August 2022.

³⁶³ Interview with faculty, June 2022.

³⁶⁴ Interview with traditional dean, July 2022.

³⁶⁵ Interview with faculty, April 2022.

³⁶⁶ Interview with non-traditional dean, February 2022.

someone's name out in an acknowledgment or "thank you."³⁶⁷ It is crucial that the dean have a trusting relationship with them.³⁶⁸ If that is lost, then usually the deanship is lost.³⁶⁹

The new dean's senior staff will also be crucial. These are usually long-time employees, held over from the prior dean's administration. That means they bring a familiarity with the systems and norms of the institution, which is crucial since the non-traditional dean will be confronted with a surprising level of bureaucratic barriers.³⁷⁰ At the same time, the dean may wish for an executive assistant personally known from the dean's own past employment. While deans who have brought in new staff from their prior careers have deeply appreciated their value,³⁷¹ the other staff at some of those schools have resented those moves, finding them indicative of the new dean's distrust of them.³⁷²

Some non-traditional deans have struggled with delegation of authority to their cabinet and senior staff. Some are used to delegating individual personnel complaints to more junior members of management but are then surprised to find that faculty expect the dean to hear what seem (to the dean) to be very minor concerns.³⁷³ Similarly, the dean may be called upon to deal with interpersonal staff conflicts that would never seem like the concern of the leader of other large organizations.³⁷⁴ On the other hand, some deans have created problems for their teams by taking appeals from routine decisions of their senior staff and associate deans in a way that undercut their authority.³⁷⁵ As one dean put it, "[t]he dean cannot get involved in every decision; you just delegate whenever and where feasible, and empower your people."³⁷⁶

VIII. WRAPPING UP THE DEANSHIP

a. Successes

The track record of non-traditional deans appears to be good, so long as success is defined as making progress on the problems that led the school to choosing this candidate, as opposed to achieving some kind of transformational change in the school.³⁷⁷ Yet "success" in a deanship is a loaded term. The dean's goals may be different from the faculty's, and each of the other constituencies have their own goals, as well. Also, circumstances change: the needs that the school sought to address in hiring the dean may not be those that became most important during the deanship (see: Pandemic).

These difficulties are compounded by the challenge of defining success in any form in higher education. Robert Post, in *Leadership in Educational Institutions*, addresses the difficulty

³⁶⁷ Interview with non-traditional dean, February 2022.

³⁶⁸ Interview with faculty, August 2022.

³⁶⁹ Interview with traditional dean, July 2022.

³⁷⁰ Interviews with non-traditional deans, March 2022.

³⁷¹ Interviews with non-traditional deans, March-August 2022.

³⁷² Interviews with faculty, May-August 2022.

³⁷³ Interview with faculty, August 2022.

³⁷⁴ Id.

³⁷⁵ Interviews with faculty, June 2022.

³⁷⁶ Interview with non-traditional dean, March 2022.

³⁷⁷ Only two non-traditional deans were described by themselves or faculty, from among their thirty-six schools, as having substantially failed to achieve the school's expected goals.

defining success, let alone assessing it. “A university is not a machine for achieving a particular purpose or producing a particular result . . . it is a manner of human activity.”³⁷⁸ And in the end, “[a] good dean . . . can only modestly improve a school. But a bad dean can cause a great deal of damage very quickly.”³⁷⁹ It is fair to argue that success is finishing the deanship without any serious damage being suffered by the school.

That said, if the faculty had a consensus over the reasons for hiring a non-traditional dean, then it is likely that they and the dean will agree on the improvements that would define success. In the most dramatic cases these related to managing a crisis facing the school when the dean arrived.³⁸⁰ A number of schools faced financial crises in the years following the Great Recession, as the drop in enrollment played havoc with their business models.³⁸¹ This was especially true for independent schools that could not rely on university support.³⁸² The Covid pandemic introduced another crisis, especially in the early months when large losses were predicted for universities.³⁸³

Non-traditional deans also are credited for success in student outcomes, especially in employment.³⁸⁴ Their connections with the employer community often pay off.³⁸⁵ In some schools, bar passage rates were so low as to present a risk of loss of accreditation, which some non-traditional deans were able to reverse.³⁸⁶ Non-traditional deans have also been credited with the vision and drive to establish programs to support students in bar preparation, sometimes with impressive results.³⁸⁷ Many non-traditional deans have gained notice from new initiatives such as academic centers.³⁸⁸ The energy, decisiveness, and project management skills of non-traditional deans is a key to these successes and praised by faculty.³⁸⁹ Non-traditional deans are also expected to help maintain the school’s standing in the face of external challenges. Political interference in particular has been a source of concern for faculty who have relied on deans with substantial external political capital and reputations to advocate for and protect their academic freedom.³⁹⁰

Rankings are a different matter. Some non-traditional deans have been expected to improve rankings that the faculty considered to be unfairly low. The outcome of these cases has not been so positive.³⁹¹ As one professor put it, “we have come recognize that trying to understand rankings is a waste of energy.”³⁹² There is general agreement that they are a distraction from the mission.³⁹³

³⁷⁸ Post, *supra* note 2, at 1818 (citing Michael Oakeshott, *The Idea of a University*, LISTENER at 424. (Mar. 9, 1950)).

³⁷⁹ *Id.* at 1822 (citing JOHN HENRY CARDINAL NEWMAN, *THE IDEA OF A UNIVERSITY, DEFINED AND ILLUSTRATED*, at xiv (London, Longmans, Green & Co. 1891)).

³⁸⁰ Interviews with non-traditional dean and, February-July 2022.

³⁸¹ Interview with non-traditional dean, February 2022.

³⁸² Interviews with non-traditional deans, March 2022.

³⁸³ Interview with faculty, August 2022.

³⁸⁴ Interviews with non-traditional dean and faculty, February-June 2022.

³⁸⁵ Interviews with traditional dean and faculty, July 2022.

³⁸⁶ Interview with non-traditional dean, March 2022.

³⁸⁷ Interviews with non-traditional dean, February-August 2022.

³⁸⁸ Interview with non-traditional dean, April 2022.

³⁸⁹ Interview with non-traditional dean, March 2022.

³⁹⁰ Interviews with non-traditional deans and faculty, February-August 2022.

³⁹¹ Interviews with faculty, August 2022.

³⁹² Interview with faculty, August 2022.

³⁹³ See, e.g., Parker, *supra* note 6, at 128.

Some non-traditional deans arrive with an expectation of substantial fundraising. In some cases, this has come to pass with impressive results,³⁹⁴ while others were disappointed.³⁹⁵ Similarly, some have arrived at public law schools with hopes of gaining added funds from the state legislature, and succeeding in some cases.³⁹⁶ In other schools the goal is defensive: to protect the school from erosion in its appropriation or its university support.³⁹⁷

Non-traditional deans widely believe they have improved their engagement with their external communities.³⁹⁸ Usually the community is the surrounding geographical region, but sometimes a more national community as well.³⁹⁹ Deans have emphasized these efforts as crucial to maintain public support for state institutions, alumni donations, employment opportunities, and clerkships with local judges.⁴⁰⁰

b. Limitations of Success

It is noteworthy that these areas of success all relate to matters outside of the core teaching and scholarly missions of a law school. This reflects a fundamental point of this article: schools turn to non-traditional deans when they are satisfied with the quality of their educational program but believe that other parts of the school's operations need help.

That said, some non-traditional deans, and some law schools that hired them, have hoped to achieve a significant rise in the school's reputation, profile, or ranking. Those expectations are generally disappointed. Some non-traditional deans have sought to raise the school's national prominence and brand.⁴⁰¹ This is far harder to accomplish than most appreciated at the start of their jobs.⁴⁰² None of them moved their school to a dramatically different national reputation, faculty prominence, or enrolled student credentials. This is not a criticism of the deans, other than a reflection of some degree of naivete in their ideas about the job. Rather, it demonstrates three basic facts about law schools in the US: they are highly competitive with one another, yet have very little basis for differentiation, and would require massive amounts of funding to build the kind of faculty and public recognition that would eventually lead to a profound change in their student applicant pool and graduates' success. It is for this reason that none of the successes identified in nearly ninety interviews of this project represented a profound change in a law school.

As one professor pointed out, "[t]here are few obvious answers to the many problems facing law schools; don't expect to find them."⁴⁰³ Another said of US law schools, "we all basically teach in the same way. And schools try to distinguish themselves, doing so by emphasizing some initiative or strategy, but those are on the margins. Doing something fundamentally different is really hard. And if the change is too dramatic the risk of failure is great."⁴⁰⁴ This

³⁹⁴ Interviews with non-traditional deans and faculty, February-June 2022.

³⁹⁵ Interviews with faculty, July-August 2022.

³⁹⁶ Interviews with non-traditional deans and faculty, February-August 2022.

³⁹⁷ Interview with non-traditional dean, March 2022.

³⁹⁸ Interviews with ten non-traditional deans, February-August 2022.

³⁹⁹ Interview with non-traditional dean, April 2022.

⁴⁰⁰ Interview with non-traditional dean, February 2022.

⁴⁰¹ Interviews with non-traditional deans, March-April 2022.

⁴⁰² Interview with faculty, August 2022.

⁴⁰³ Interview with faculty, July 2022.

⁴⁰⁴ Interview with faculty, August 2022.

is not surprising. There are profound limitations on how much any law school, once established, can change. Student expectations are high, especially with unprecedented debt loads and a variable employment market. Students and sometimes their parents (oddly, since all law students are adults) are demanding more personal attention to their needs and vulnerabilities. Law faculty are substantially underpaid compared their own law school classmates, and yet are substantially overpaid compared to their peers in the university. For the dean of a law school in the Twenty-First Century, it is a success to leave the school in as good condition as it was when the dean took the job. To make progress just on the key issues that led to that dean's selection should be grounds enough for celebration.

The one setting where non-traditional deans appear to have made a profound difference for their schools is guiding them past a crisis that endangered their survival. Obtaining initial accreditation, managing a financial meltdown, and recovering from a catastrophic bar passage rate, are all transformational interventions.⁴⁰⁵ But for those law schools already working well by national standards the prospects of a dramatic further rise are dim.

c. Failures

Happily, relatively few non-traditional deans have been considered to have failed in the opinion they're of their faculty and other stakeholders. Defining failure as departing involuntarily or voluntarily after three years or less, there are only a few such non-traditional deans in the last decade or so. It is notable that they have several key characteristics in common. First, they were more likely to have become dean at the mid-point of their careers, suggesting that the deanship may have been a step along the way to other stages of their careers rather than an end in itself. Second, they tend to have had little prior relationship with the law school. Both of these points combine to suggest a lower level of commitment to the job and thus, perhaps a reduced willingness to withstand the burdens and frustrations that it brought.

Involuntary departures are relatively few, and are also relatively simple, each following deterioration in the relationship between the dean and either the faculty or higher ups (the university president or the board). Conflict with faculty overwhelmingly relates to trust, as reported by four faculty members.⁴⁰⁶ As one experienced dean put it, "[i]f breakdown is with faculty, it's usually trust and confidence, which often are a product of communication issues."⁴⁰⁷ One member of their dean's cabinet said that they were the group pledged to support the dean in public even if they disagreed on a plan in private; but when they found they could no longer trust the dean they then could no longer support the dean.⁴⁰⁸

Sometimes the loss of trust arose from broken promises, but more often it was overt dishonesty, or the pursuit of an initiative in private that the cabinet needed to know about if it were under consideration.⁴⁰⁹ Trust can be lost around uncertainty as to the dean's commitment to the school. The faculty may perceive a conflict of interest with other personal

⁴⁰⁵ Interviews with non-traditional deans, March 2022.

⁴⁰⁶ Interviews with faculty, March-August 2022.

⁴⁰⁷ Interview with traditional dean, July 2022.

⁴⁰⁸ Interview with faculty, August 2022.

⁴⁰⁹ Interview with faculty, August 2022.

goals of the dean.⁴¹⁰ If the dean appears to be looking for other employment after the deanship, that can create questions among the faculty as to the motives for certain decisions and questions about what might be happening out of their view.⁴¹¹

While deans' conflict with faculty overwhelmingly relates to trust, conflict with presidents is often around personality. And while trust issues with faculty might be successfully corrected if caught early enough, "if the breakdown is with president, there's nothing you can do. Get out."⁴¹² A law dean with a substantial external reputation and political connections may seem like a threat to some presidents.⁴¹³ As one professor put it, when the non-traditional dean was pushed out "[w]ord on the street was that he wanted someone he could control."⁴¹⁴ The president may have strong feelings about the law deanship when it is a flagship part of the university, and want someone of their choosing.⁴¹⁵ When the university has a religious mission, conflict over that as well can trigger a departure.⁴¹⁶

While involuntary departures are the most dramatic indications of a "failure," a lesser degree of failure can be discerned in a dean's decision to leave early. While each of these cases entailed stories of frustrations, disappointments, and some "mistakes," in reality those were problems of the sort that other non-traditional deans were able to manage. What set this handful of non-traditional deans apart was their own limited willingness or ability to endure the burdens of the job. One was simply "worn out" by disappointments with the job and some of the pressures of the pandemic.⁴¹⁷ Another lost patience with the slow pace of change and the inability to achieve a number of initiatives in a few years.⁴¹⁸ Contributing factors have included conflict with students,⁴¹⁹ failed initiatives,⁴²⁰ and failure to support the scholarly enterprise,⁴²¹ have all been mentioned. Another failed to learn early on who on the faculty to trust, in part because they were rarely present on campus and the dean did not spend sufficient time with each of them.⁴²² Core leadership traits have, as well, such as poor organizational skills,⁴²³ or an apparent inability to make tough decisions.⁴²⁴ Adherence to the school's mission is crucial: one dean viewed their goal "as making the students happy rather than advancing the mission of the school, and didn't deal in every question with 'what makes the school better?'"⁴²⁵

Each of these cases of early departure appears foreseeable in the characteristics these deans had in common. First, and most importantly, they had no significant prior relationship with the law school in question. As a result, it seems that they did not have the internal drive to

⁴¹⁰ Interview with faculty, August 2022.

⁴¹¹ Interviews with non-traditional dean and faculty, June-August 2022.

⁴¹² Interview with traditional dean, July 2022.

⁴¹³ Interviews with non-traditional dean and faculty, June-August 2022.

⁴¹⁴ Interview with faculty, March 2022.

⁴¹⁵ Interview with faculty, June 2022.

⁴¹⁶ Interview with non-traditional dean, March 2022.

⁴¹⁷ Interview with non-traditional dean, March 2022.

⁴¹⁸ Interview with faculty, July 2022.

⁴¹⁹ Interviews with search consultant and faculty, June-August 2022.

⁴²⁰ Interviews with faculty, July-August 2022.

⁴²¹ Interview with faculty, March 2022.

⁴²² Interview with faculty, June 2022.

⁴²³ Interviews with faculty, June-July 2022.

⁴²⁴ Interview with faculty, June 2022.

⁴²⁵ Interview with faculty, June 2022.

see these problems through. Second, these tend to be candidates who were at earlier stages of their careers. Thus, each of them had other, new opportunities available to them if they left the law school, and could start a new chapter. There is a lesson here for search committees: they might be able to discern a candidate's limited willingness to endure the frustrations and stresses of the job if they make a careful inquiry into the candidate's motives, experience, and readiness.

d. Departure & Succession

Every deanship comes to an end, and one of the great responsibilities of any leader is planning for an orderly succession. In most organizations the incumbent leader has a significant role in the choice of successor. Not so with law school deans, however, where the faculty usually leads the selection process and often seeks to exclude the outgoing dean from any direct influence. A law dean nonetheless has two important roles in facilitating orderly succession. The first is developing leadership talent from among the faculty. The second is knowing to depart gracefully when the time is right.

There are great advantages to schools in choosing internal candidates as deans: they are well known and thus less risky choices. Their close familiarity with the school and the faculty enables them to avoid mistakes born of ignorance, and often provide comfort to the faculty who want a known quantity in charge. Therefore, one duty of any incumbent dean should be to identify leadership potential among the faculty and give those individuals opportunities to develop their talent, while encouraging them to consider a deanship when the moment is right.

Then the duty of a dean is to know when that moment has come for them. Deans are consistent in their advice about how to choose when to step down. One said that “[y]ou will get stale, with few new ideas.”⁴²⁶ Another urged “[s]tep down when they still like you.”⁴²⁷ A third said I’ll leave “when there’s nothing left to learn.”⁴²⁸ Another has several close friends on the faculty who are pledged to whisper in the dean’s ear when that time is nearing.⁴²⁹

Notably, non-traditional deans’ decisions around departure are different from those of traditional deans in that they rarely leave for another deanship or for a career of many years as a law professor. Some leave for new settings, especially if they have an opportunity for a new chapter in their careers.⁴³⁰ Most either retire, or plan to do so within a few years. The decision to retire is also usually easier for non-traditional deans than for others. They are generally older than traditional deans.⁴³¹ Moreover, their career experiences have given them a broader identity than their status as a law professor. Some senior law professors seem to fear retirement as a challenge to their identity; that difficulty does not seem to apply to non-traditional deans.⁴³²

⁴²⁶ Interview with traditional dean, June 2022.

⁴²⁷ Interview with non-traditional dean, April 2022.

⁴²⁸ Interview with non-traditional dean, February 2022.

⁴²⁹ Interview with non-traditional dean, February 2022. See Agrawal, *supra* note 5 (thoroughly and thoughtfully discussing this topic).

⁴³⁰ Interviews with non-traditional deans, March-April 2022.

⁴³¹ See, *The American Law School Dean Study*, *supra* note 1, at 27, reporting that increasingly most deans are younger than 50 years old.

⁴³² Interview with traditional dean, June 2022.

Nonetheless some non-traditional deans appreciate the opportunity to teach after stepping down,⁴³³ and prefer the intellectual community of the law school over the other professional communities they have been a part of. Most who stay take emeritus status, five reporting that they left the full-time payroll but continue to be a part of the community and teach at a reduced load.⁴³⁴

There is a perception that law schools “toggle” between types of deans, each time aiming for someone very different from the last.⁴³⁵ This may seem reactive, but it also points out the varying strengths of different backgrounds: with the passage of time there is a different set of issues, perhaps better handled by an inside candidate or other long time law professor. For whatever combination of reasons, the majority of law schools that hired non-traditional deans chose a more traditional candidate to succeed them.⁴³⁶ One dean said that, after departing, their faculty seemed to need a “rest.”⁴³⁷

IX. CONCLUSION

As this paper has emphasized, the job of law school dean is also incredibly demanding. Every new dean is sure to arrive with both strengths and deficits. Search committees and faculties generally know whether their school needs someone whose strengths relate more to the educational mission, or more to issues of management, leadership, and external relationships. When it is the latter group of issues most needing attention, law schools often turn to non-traditional candidates, and those deans tend to be successful when they bring skills relevant to those kinds of issues.

At the same time, both the faculty and the candidate should recognize the challenges of the job that are likely to be unfamiliar to non-traditional dean. Those include many features of the governance and culture of the faculty, as well as the significant institutional and bureaucratic constraints of higher education. To succeed in spite of those, the dean will need to draw on a number of character traits, including humility and an ability to adjust well to an unfamiliar culture. The dean will also need patience, energy and endurance to work tirelessly through the frustrations inherent in the job. Those who tend not to succeed are often those who had limited personal investment in their school and the mission of the deanship.

For the right person being dean of a law school is a great capstone to their career. It is mission driven. It affords the opportunity to change the lives of students and help move society in a better direction. It is a bully pulpit, from which the dean can speak credibly on important issues facing the school, society, and the rule of law. And it gives the opportunity to lead an important institution, leaving it better off than it was when the dean arrived. Non-traditional candidates can bring crucial skills and resources to perform these roles. With preparation

⁴³³ Interviews with non-traditional deans, August 2022.

⁴³⁴ Interviews with non-traditional deans, March-August 2022. See Agrawal, *supra* note 5 (regarding the role of the “former dean,” one of no power but frequent consultation, and sometimes engaged by the university on searches and other projects that benefit from past leadership experience).

⁴³⁵ Interview with faculty, August 2022. Only two schools among those in this sample succeeded one non-traditional dean with another.

⁴³⁶ Interviews with multiple non-traditional deans, traditional deans and faculty, February-August 2022.

⁴³⁷ Interview with non-traditional dean, April 2022.

and self-awareness on their part, as well as the faculty's, the non-traditional dean can be the right person for the job at the right time.

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