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ALLAN F. SMITH — MY “DEAN FOR A DAY”

*Theodore J. St. Antoine**

It has been my good fortune to have served in more different roles in relation to Allan Smith than has any other person in this Law School. I was his student here longer ago than either of us would care to calculate. A decade and a half ago he recruited me for this faculty when he was Dean. Although the prospect of working closely with Allan had a good deal to do with my decision to leave active practice for teaching, that was not to be. The first morning of my return to Ann Arbor, I remember plugging in my stereo system and hearing Allan's voice over WUOM announcing his resignation from the deanship to assume a University vice-presidency. Ever since I've thought of him as my “Dean for a Day.”

Fortunately, that did not end our professional association. For several years I reported to him when I was Dean of the Law School and he was Academic Vice President of the University. For a few years I had the giddy honor of being *his* Dean. And finally I saw him scale the pinnacle of the University presidency itself — no “acting” President he, but a full-fledged operating and achieving President, if only for an interim period. Now the two of us have wound up in positions of equal status, if hardly of equal accomplishment. We even teach the same first-year course.

A perceptive colleague has remarked that if you can get just one new idea out of a course in school, you should count it a success. By that standard the one semester of property I had with Allan can be scored a triple success. I can remember *three* things he said to us! You could always tell when Allan was working up for a departure from his usual, canny Socratic style, and for a much-welcomed declarative sentence. The tone of his voice would rarely change, but invariably he would perch one long, skinny leg on the top of his desk and lean forward meditatively. At such moments he reminded me of nothing quite so much as some great, amiable spider.

We were barely into the property course before Allan startled us with the simple but unanswerable query, “What is property, anyway?” And after we all had fumbled around for a while aimlessly, Allan opined, “So far as the common law is concerned, it is whatever

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the courts will protect for you, and only that.” For a beginning law student who had been nurtured, as I had, in the Jesuit tradition of natural law philosophy, that was a brutal introduction to legal positivism. I later came to realize that it is still intellectually respectable to take a somewhat different view of the matter, but at least Allan had opened my eyes to the realm of legal concepts that lie beyond the particular rules of particular cases.

On another occasion a student was struggling with a court decision he plainly found distasteful. “What’s the matter?” asked Allan. “Does the result offend your sense of justice?” Pause. Leg goes up on top of desk. “Well, if it offends your sense of justice, it shouldn’t be the law — or else there’s something wrong with your sense of justice.” As someone who had earlier suffered the rude jolt of learning that an imposing and respected teacher didn’t believe that the essence of property was grounded in the nature of being, I found it reassuring to know that at least he believed in justice.

And he taught us too about the slipperiness, about the malleability of legal concepts. He called the bona fide purchaser the “law’s fair-haired boy.” “Yet,” said he one time, “if an owner can trace and identify his stolen painting, even in the hands of a bona fide purchaser, we’ll give it back to the owner. We wouldn’t do the same for the owner of stolen currency. What’s the difference?” And so we were led to ponder how the law manipulates the most basic notions of property in order to facilitate commercial intercourse. But I’m not sure the lesson would have stuck so well without Allan’s homely image of the b.f.p. as the “law’s fair-haired boy.”

I have seen Allan under considerable pressure as an administrator — I might just as well say attack — from a group of some twenty angry, snarling deans. I won’t say he always handled himself suavely and imperturbably in those circumstances. Sometimes he all but blew his top. He would hear us out, however, and his ultimate decision would be responsive to our concerns, would be balanced and sensible; yet we’d know it was his decision, not ours. My strongest impression of these occasional brouhahas was that Allan might lose his temper but never his identity. There is not an artificial element or a false note in this man’s makeup. In the most trying of times, in the most pleasant of times, you can count on him being himself.

That I think is the most memorable aspect of Allan Smith. He of course has been a fine teacher, an important and productive scholar, an effective administrator. But unlike many other persons in this zany profession, Allan Smith the person somehow always looms

larger than even his notable set of achievements. He is indeed one of a small handful of people I know to whom one could apply, without blushing, the words of Horace's twenty-second ode. Cold print does not do it justice; a proper rendition calls for the whole Michigan Glee Club, or for Allan's own splendid tenor:

Integer vitae scelerisque purus,
Non eget Mauris jaculis neque arcu,
Nec venenatis gravida sagittis,
Fusce, pharetra.

Someone like Allan, who was reared and educated in Nebraska, before the days of modern educational fads, would have learned his Latin, and would need no translation. But for the benefit of anyone else who may not have been so favored, Horace sums up the essence of what I have been trying to say about Allan:

The man whose life is *whole*
Needs no other armor.