

# THE TEN COMMANDMENTS OF FACULTY DEVELOPMENT

*Richard A. Matasar\**

**T**RUE confession: I've been a law school dean or associate dean for over 10 years at three law schools (and I love my job!). Call me crazy, but there is something wonderful about working with bright colleagues, spending my days thinking about institutions and how to improve them, and inviting others to participate financially and emotionally in creating better lawyers.

Nonetheless, there are moments when I wonder if I have stumbled into some sort of parallel universe in which normal expectations of institutional behavior and loyalty have been replaced by fantasies that place individuals above their organizations (and above their colleagues who, in turn, think they are on the top). It may be the alum who is on the verge of declaring war because his or her child was rejected from the law school (refusing to acknowledge that the child's "potential" and the parent's annual \$300 gift to the law school cannot offset a GPA barely above measurable brain wave activity or an LSAT score that could be achieved merely by signing up for the exam). Or, it could be the student who "must" have his or her examination delayed because of a once-in-a-life-time chance to travel to Dubuque to see NSYNC (maybe the Beatles, but NSYNC ... really!). Or, perhaps it is the university administrator who commands the law school to admit a "few more students" (read as many as can be crammed in the door) to reduce the University's overdrawn line of credit (but rejects the law school's contention that the "few more students" must be taught, might even expect employment at the end of their three years at the law school, and will have as much chance of passing the bar examination as my dog Bagel the Beagle). There are days that try the patience of even saintly deans, let alone we mortal deanly sinners.

In the special category of fantasy worlds are those occupied by some faculty members, such as colleagues:

- that never teach on Mondays, Fridays, the evening, Saturday or Sunday, the solstices, anyone's Sabbath, birthdays, their anniversaries, ground hog day, or any time before 10:00 a.m. or after 2:00 p.m. because teaching at those days and times interferes with more important duties, such as (you fill in the blank).
- that cannot do committee work because it burdens the time to write or think about writing.
- that do not publish because scholarship has no "real" value, is B.S., and is done illegitimately, only to gain job security.
- that believe work is of high "quality" only if it might be cited by a court.
- that believe in theory (or at least that any scholarship not reliant on a European philosopher is unworthy).
- that are activists and think that the law school should drop its business courses because they support an unjust economic regime.

---

\* President, Dean & Professor of Law, New York Law School. B.A. 1974, J.D. 1977 University of Pennsylvania.

- that think the law school spends too much time on politically correct nonsense.
- that must move their offices away from other colleagues who are intolerant beasts.
- that are “owed” several trips a year to foreign lands to listen to scholars from other countries whose work *might* inform their fields.
- that never attend an alumni or student event or even graduation because such events impinge on scarce free time.
- that publicly ridicule the law school, their colleagues, and the university’s leadership.
- that engage students, alums, or the media to fight their internal battles.
- that work only at home because pesky students, administrators, and colleagues at the law school are bothersome.
- that deliver e-mail bombs to others and can’t understand why they are disliked.
- that arrive late for class, insult students, or tell racist and sexist stories and have no clue why they might need to reevaluate their classroom technique.
- that abuse the staff, yell at secretaries, call the world incompetent, and expect to be well-served by those who are abused.
- that are “friends” to the students, loved by all, and are unconcerned that the students seem to be learning nothing else in their classes except that some “professionals” can be late, unprepared, and lazy and no one seems to care.
- that believe they have academic freedom to do any of the above.

Whatever the complaint, whatever the demand, whatever the self-serving, institutionally destructive behavior these colleagues engage in, the law school is silent, especially since faculty members are smart and generally capable of justifying their deeds as serving a higher purpose. The time has come to stop such behaviors. Our roles as faculty members and our institutional responsibilities make some conduct irresponsible. We need to establish new ways of thinking that promote collective faculty action. That is the genesis of this missive delivering: The Ten Commandments of Faculty Development.

### I. SOME PRELIMINARY THOUGHTS

Students, deans, and staff come and go, but the faculty of the law school give it continuity. They provide historical memory, stability in the curriculum, and links to traditions; simultaneously through constant renewal, they provide growth, innovation, and fundamental change. Therefore, no great law school exists without faculty leadership; and, no dean can be successful without promoting faculty development. This essay speaks to developing positive faculty interactions.

Lack of communication among faculty members and cleavages between them corrode some law schools. Simply put: divided faculties do not accomplish as much as more cohesive groups. Worse yet, division and lack of a shared faculty purpose can undermine the educational process itself. Faculty members can spend more time than is healthy relitigating their past disputes and huddling with close associates to bemoan the evils being done by cabals of other colleagues. In such situations, the institution as a whole gains very little from the faculty other than the sum of its

individual contributions (and sometimes less than that). These instances call for action: law schools must establish a new culture of cooperation and teamwork.

One can imagine two prototypical faculties: the independent contractors and the fiduciaries. The independent contractors are characterized by fierce autonomy from each other, students, alums, the university, and the law school. They focus primarily on self-improvement. Their collaboration is situational and geared primarily to specific projects. Their teaching schedules serve their convenience. If possible they teach what they want, without regard to institutional need. Their service is often minimal, but becomes extraordinary on projects and committees of individual interest. In sum, independent contractors are delighted when their school's reputation improves and when they benefit from their school's achievements, but they believe their primary duty is to succeed personally. Building the institution is a by-product of their own growth.

Fiduciary faculties are also focused on self-improvement, but see their own work as intimately related to that of their colleagues. They sense that the improvement of the school as a whole is an improvement in which they share. They see their department or school as closely connected to every other part of the organization. They collaborate often as readers and advisors on each others' projects. Their teaching revolves around their own interests, but they are willing to teach courses that serve institutional interests at times convenient to others. They see service to the school as interesting and important, necessary to building their institution; hence, they volunteer, even to do uninteresting but necessary work. A faculty member who acts in a fiduciary capacity believes strongly in institution building. She or he works toward the growth of the school, which will then lead to personal achievement.

Obviously, no faculty entirely fits either prototype. However, almost every school that has internal conflict is deeply divided over what it means to be a "good" faculty member. Too many independent contractors make it hard for others to take a fiduciary role, especially if the independent contractors "free-ride" on the institutional work of others. By the same token, no school improves only by holding hands in a friendship circle, singing Kumbaya, and saluting the university's flag. The goal is to maintain high levels of individual faculty achievement within an environment that places the institution first.

Every faculty also experiences other conflicts—between scholars and teachers, traditionalists and innovators, conservatives and liberals, service-givers and service-avoiders, etc. Even if one wanted to eliminate these divisions, one probably could never fully eradicate them. More interesting, however, is that there is a strong reason to want division in the faculty—to keep it lively and constantly in search of optimum behavior. Hence, a faculty development policy should never seek to create cookie-cutter colleagues. Rather, institutions should strive for an environment of open debate in which variation is encouraged. The only truly dysfunctional behavior is that which is institutionally destructive. Thus, if a faculty development policy is effective, all faculty members will take a fiduciary interest in the school; their measurement of success will be whether their actions leave the school in better shape than when they arrived.

## II. FACULTY DEVELOPMENT PHILOSOPHY—THE 10 COMMANDMENTS OF FACULTY DEVELOPMENT

There are several basic postulates (I call them commandments, and number them 1-10 because it seems to have a nice poetic ring to it) that underlie the development of a productive fiduciary faculty. I describe each in turn and suggest its implication for our behavior toward each other.

### 1. *Being a Faculty Member Means Membership in a Community*

Some law school faculty members act as if they are in a solitary enterprise. Not a surprise. We teach alone, without teaching assistants. We grade our own exams. We rarely have co-authors. We have avoided clients, partners, associates, and opponents. In short, we can live our professional lives in isolation from others. Yet, the life of solitude and autonomy is false. We are deeply dependent on colleagues. Their teaching and coverage frees or shackles us. Their service to the law school helps or hinders its operations. Their knowledge and willingness to share improves our work, or harms it (especially if they make it their responsibility to prove that they are smarter than we are).

Being a faculty member comes with privileges—freedom to structure courses, to write about subjects of interest, to become involved in law reform, to dress as one wishes, to report for work at odd hours, to be eccentric. One must also recognize the obligations associated with these privileges—working hard, treating all others in the institution with respect, sharing knowledge, helping others to improve, participating in institutional life, seeing the students as important. If one wants solitude, one can set up shop alone. But, if one works for an organization, one must further its mission. Synergy and collaboration improve us all.

### 2. *Personal Excellence, Yeeesss! But Its Not a Zero Sum Game*

Faculty members are ambitious. We each desire to leave our mark on the profession—through our teaching, service, or writing. The job of the administration is to free each faculty member to pursue personal excellence. To “be all that you can be,” the faculty must be productive. Thus, deans generally attempt to create resources to support every reasonable faculty request (and even some that are unreasonable).

Resources are not unlimited, however. Therefore, many faculty members see themselves in competition with each other for the law school’s “goodies.” Worse, at some institutions, faculty members see their colleagues as enemies: the success of a colleague is a diminishment of one’s prospects. With such a view, some schools have the ethos: “better to avoid, than help, your colleague.”

Law schools must fight this ethos; we need an operating philosophy that encourages each faculty member to revel in the successes of every other faculty member. This philosophy makes it the job of each faculty member to make his or her colleagues better teachers and scholars. The theory contemplates that although each faculty member should continue to seek self-advancement, each also must

engage in collective growth. Accordingly, improvement of the school as a whole will lead to resource growth over time. Thus, even with limited resources today, the future for everyone is brighter if the school improves overall.

When faculty members share a common purpose of institutional improvement, every other part of the school gets better. Students see themselves as part of a vibrant, growing place. Faculty and students treat each other more as colleagues than as people engaged in separate businesses. Staff and administration work in concert with the faculty, not in opposition (real or supposed). The sum of the whole of the law school is larger than its parts only when people work together.

### 3. *If You've Got It, Flaunt It; If Not, Fake It*

Many faculty members hesitate to toot their own horns; others who have no horn, blow whatever they can find, and do so often. There is simply no reason to hide success. Every law school should develop a culture in which success is praised loudly, publicly, and in ways that all can see. Thus, when a faculty member publishes, the law school should send reprints to every relevant audience. When a faculty member speaks publicly, the law school should tell the world where she or he has spoken and what he or she has said. When a faculty member is interviewed by the press, the law school should republish or rebroadcast the remarks. When a faculty member is recognized by others, or receives an award, the law school should report and applaud the recognition or the award.

Minimally, it is the job of the law school administration to spread the faculty's fame and glory for all to see. However, this means that sometimes the dean (or her designates) will make judgments about who and what will be exciting to the press and public. A colleague whose work is topical and of interest to the public may become more visible than another whose work is more scholarly or even brilliant. The goal is simple: all of us benefit by the visibility and fame of our colleagues. This is a necessary consequence of the Commandments discussed above—personal achievement and marketing of that success will help us all to have greater opportunities.

This task is easiest when there is a compelling story to tell. Law schools should begin by creating speaker's bureaus of faculty, staff, students, or any other community members who are willing to speak before an audience—live or on memorex! (My own rule is that I'll go wherever I can find an audience of 8 or more.) The law school should become ubiquitous.

There is an unintended consequence of this philosophy: institutions must be prepared to market and sometimes push their claims to the limit. Doing so is no different than the self-promotion (read advertising) done by most other organizations. Law school culture can benefit from shameless promotion. I have no hesitation to sing my law school's praises publicly, even if I hit a few flat notes along the way. Blind public faith can be liberating. It means that those who are shy, hesitant, or cautious ought not castigate more brash colleagues or stand in their way. Blame for crossing the line should be directed at the deans, who are pushing the law school's visibility. As my old pappy told me: "It's often easier to ask for forgiveness, than for permission."

#### 4. *Try New Things; Experiment; You'll Like It*

To succeed spectacularly, one must be prepared to fail grandly. Law teachers fancy themselves as enterprising, self-starters. We go where others have never gone before. We take risks in our scholarship. We take positions that others will not like. We can get after ideas like a junkyard dog. In short, we look like real risk takers.

But, if we take a closer look, we are among the most risk-averse players in the legal profession. First, we have tenure, or the possibility of obtaining tenure. Thus, our risks are well-insured. Second, we take risks in a fairly conservative environment. Our salaries do not get reduced if we goof; our teaching loads do not get increased or decreased because of our performance in the classroom. We aren't sent to the corner when our students flunk the bar exam or fail to obtain a job. We have the right to criticize others' ideas, without having to propose better ones. We have a curriculum and program that change at the margins, every now and then, but only after some bitter fighting.

If we have little personal exposure to the stick if we err, if we are willing to take risks in our own work, if we are interested in studying new things, should we hesitate to experiment institutionally? No! We should take risks!

Change is always somewhat frightening. It disrupts our comfort. It forces us to confront strange people, ideas, and concepts. It challenges our cherished beliefs. It seems abnormal, different. But, frequent change can become as normal as the status quo. We could easily have a culture in which we all invented new things every day (we have that culture; it is called scholarship!). Law schools need not become radical havens for social experimentation; they should, however, be receptive to the desires of colleagues to try different things, even those different things that have failed in the past.

Each great new idea may be found only after several false steps. But, if we are willing to try, allow failure, and permit others to move forward, we can make an enormous impact on our schools. One faculty member's innovation leads to the next. The consequence is an institution that is always looking forward. Progress should not be ad hoc. If we experiment, it should be within the context of our long-term goals or our mission. Thus, we are not wildly flailing, but moving toward a commonly shared goal. In this way, trying new things is an instrumental necessity.

#### 5. *We're Lucky to Have Good Jobs, Let's Not Forget It—Let's Fess Up*

We get paid for doing exactly what we want, when we want to do it. We have an ability to structure our work in ways very few others can. We get paid a decent wage over nine months (and can spread the payments over the calendar year), and have a chance to earn much more during the summer. We will have significantly better lives than most of our students—many of whom will be required to work harder than we are required to work and for less pay. Where our classmates in the private sector can get laid off, bought out, fired, demoted, and lose their equity interest in failing organizations, we have job stability and will have our salaries rise over time. Even when we compare ourselves to the most senior partners of the

fanciest law firms (and conclude we are underpaid), we still have jobs with great psychic income and lower stress. In short, we've got great jobs.

We need to remember this when asked for service by our employer—the law school. It is sometimes hard to show up at student or alumni events, but it ill serves the institution for us to forget that our presence improves student/faculty relations, gives our students strong role models, and allows us to raise more private funds. If the school needs a course at an odd time, or needs a course to be taught that is not interesting to us, but is within our competence, we ought to be willing to volunteer to help. As much as we might be dissatisfied with the development of our school, can we be disloyal to it or engage in destructive behavior? Perhaps law faculties need a “think before we complain too loudly” rule (or at least a two-button push system before e-mail can be sent). How else can we build a true community?

#### 6. *Believe It or Not, We Don't Work Hard Enough*

Here's a scary thought: young associates at large law firms throughout the country must *bill* over 2000 hours per year. Here's another scary thought: law students throughout the country go to school full time *and* also hold 20 hour (or more) per week jobs. As hard as we work, and I know we work very hard, there is much more to be done.

We have to dig deep within ourselves to find the time and energy to improve. One simple thing is for all of us just to spend more time working. This may be a good solution for anyone who currently is just not working very much. But, because this is a very small number, the more interesting solution will be found in reallocating time. How are our days spent? Do we use every hour well? If not, then perhaps we work harder by becoming more efficient. Do we spend the optimum amount of time preparing for class, researching every point in an article, or just plain thinking? If not, then perhaps we can pick up time by simply rechanneling our compulsiveness.

When all is said and done, however, we still return to some basics. We are part of a profession that values personal freedom and therefore does not push to conform to performance standards. Under that regime, productivity is a personal responsibility. We need to embrace a personal quest for greater individual performance in order to grow our institutions.

#### 7. *Live and Let Live*

We have too much to do to justify holding grudges. We have too much to do to justify interfering with the work being produced by our colleagues. We have too much to do to try to control every aspect of the law school. Finally, we cannot be in the position of trying to do other people's jobs for them. At base, we must trust our colleagues to do their jobs and avoid micro-managing our schools.

This approach has profound institutional consequences. If followed, it allows law schools to diversify—not all people must hold a set of orthodoxies. Intellectually, each person may experiment, try new things, and create an individual style. This means that each faculty member is responsible for maintaining a trust with every other faculty member. The majority must be respectful of the hopes and aspirations

of the minority of the faculty. Each faculty member must be able to dissent from the views of every other faculty member without fear of reprisal. "Mistakes" of long ago cannot be used to tar a current faculty member. Dissent should be encouraged, but it must be responsibly exercised. One must be willing to lose at times, and see the school change. Otherwise, we will stagnate.

There is an even greater responsibility for faculty majorities. They must avoid the permanent disenfranchisement of some portion of their peers. Those who lose every vote are walking time-bombs. Every faculty member's views need to be valued or even respected. Whatever power the majority of the faculty might exercise should be weighed against the cost of exercising that power—especially when power consistently is exercised by the same group against the same group of dissenters. Everyone needs to win every now and then!

#### 8. *Res Judicata is Good; Give Past Battles a Rest*

A necessary consequence of living and letting live is to give up on past battles. No battle is worth relitigating every year. Worse, no battle is worth relitigating in every unrelated faculty issue. Far too many law school faculties that have had divisive battles over curriculum or affirmative action or internal operating procedures destroy themselves by fighting over the same points in each new discussion, no matter how tangential. New hiring is not helped by arguments that a candidate would not be considered were it not for the actions of a bare majority of the faculty that imposed some goofy new curricular requirement (but had no clue how to staff it). When a rule is passed, it ought to be given a reasonable time to succeed before it is scrapped (and before imposing new rules, we should think through their overall impact).

When a slim majority of the faculty passes new rules, those rules will never be well-enforced when dissenting faculty members continue a barrage of disguised challenges. While constant and relentless relitigation may be a strategy to upend bad majority decision making, it undermines faculty cohesiveness. Winning a law school argument or making debaters' points is not as important as working together to make the best of new rules. Otherwise, the law school's stability is held captive, change is rarely effective, and progress is slow. Worse yet, we run the risk of turning our students into unhappy graduates who feel that their school is a quarrelsome, bickering community.

#### 9. *Fight Fair: Don't Use Outsiders*

Faculty members should not take their disagreements with their colleagues to outsiders—students, graduates, lawyers, alums, university officials, the press, or anyone else outside of the community of colleagues. When the governing majority of the law school reaches a conclusion, even an incorrect decision, it should not be undercut by enlisting the help of outsiders.

In politics, there are few rules. We rely on whatever resources we can muster to win our fights. But it would be unfortunate to govern our institutions on a purely political model; bringing in outsiders can only harm a law school's community. For example, when a school reaches a decision, no matter how hotly contested,



beginning classes by complaining to students about the poor decision reached by one's colleagues diminishes the credibility of all decisions reached by that body. Complaining to alums that the law school is badly administered or has an incompetent computer support system is unlikely to reverse those trends *and* is likely to reduce support for the school. Complaining to the central administration (or even to one's colleagues behind closed doors) that the law school has hired poorly and tenured even worse clouds the future of even the strongest young colleague. Calling members of the Board of Regents to lobby directly for a particular outcome, or reporting to the ABA some perceived defect in the law school puts the institution in much wider jeopardy.

Obviously, no law school can or should adopt a gag rule. Moreover, when revolution is needed to oust an oppressive administration that is taking the law school to evil places almost anything should go. But, for normal matters of faculty decision making, a school with pride and trust can govern itself without airing its dirty laundry publicly. We must be circumspect in how we use outsiders and how we converse outside of our community.

#### 10. *Deans, Dean; Faculties, Faculty: Let's Use our Assets Well*

Why do we have deans and administrators? Why do we have a faculty? As in many political communities, there is a distribution of authority in law schools. Deans and administrators implement the governing policies adopted by boards, universities, and faculties. Faculties must abide by these rules, but have the power to adopt new, consistent rules. Deans raise funds, but ask for faculty assistance. Faculties write and teach and ask the deans for resources to make these missions more effective.

No dean can be effective without sharing power well with faculty colleagues. At the same time, few law schools improve without strong leadership. Therefore, well-managed law schools must find a point of equilibrium at which the dean is empowered to administer the school, make independent decisions, and bind the faculty, while having no discretion to override some decisions in which faculty governance is final and irrevocable. Finally, it is only through shared governance that sufficient trust can be established to free the faculty to do what it does best—teach and write—and permit the dean to do what she or he does best—administer.

### III. A POSTSCRIPT

Are these really Commandments? If so, shouldn't there be a sanction when they are disregarded? Banishment to hell has worked in the past! No, it is clear that deans rarely command and never outlast the faculty. I guess these aren't Commandments at all. Perhaps this essay should have been entitled "The Ten Polite, but Optional Requests . . ."

Having now been a part of four wonderful faculties at the University of Iowa, Chicago-Kent, the University of Florida, and New York Law School, I guess I would say that this essay should have been called "The Ten Self-Evident Truths about Faculties and Schools I Admire"—not as catchy, but probably accurate. I

have shared these thoughts because all faculties are organic, changing entities that exhibit the worst of the behaviors catalogued above. Therefore, we constantly need to be self-conscious about what makes our jobs joyful and mindful of what makes us miserable. These “Ten Self-Evident Truths” sometime fade from our thoughts. We sometimes ignore them, especially in the heat of battle. So, I like to think of this essay as serving the Jiminy Cricket function: it should rest on our shoulders and remind us to do the right thing.