

WHAT SHOULD OUR STUDENTS JUSTIFIABLY EXPECT OF US AS TEACHERS?

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I. PREFACE: TEACHING IS IMPORTANT

IN over a decade as a dean, I have had the opportunity regularly to discuss with seemingly countless persons the techniques, content, objectives, demographics, regulation, and economics of legal education. I have concluded, without doubt, that the people involved in legal education certainly include many of the most talented and committed within the legal profession. They also are doubtless some of the most professionally fortunate people found anywhere. Our working environment offers us daily contact with bright students and committed colleagues, challenging intellectual tasks and endeavors, a substantial degree of personal independence, and even the protection and security of tenure. All these factors surely must place legal educators among the most satisfied and privileged persons, not only within the legal profession, but also within our nation's workforce.

This circumstance would seem to encourage law faculty members to focus upon and hone their teaching skills regularly in response to these conditions of employment that are so conducive to fostering a personal commitment to excellence in the craft. To be sure, teaching as a science and an art does receive attention. The pedagogy of legal education is written about and discussed extensively in journals, legal education organization programs, accreditation and membership processes, and in many other venues. Throughout higher education there appears to be a newly emerging emphasis, within both the public and private sectors, upon the accountability of institutions in the matter of teaching within the classroom and in other venues. Also, the good faith and consistent efforts of so many who are involved in legal education are apparent. Many faculty members strive mightily to bring the best in teaching to their students. While very few law school teachers have any formal training in educational theory, I believe that their sheer intellectual prowess very often brings a sort of evident talent to their teaching.

I am nevertheless concerned by what I believe to be a chronic under-emphasis within the legal education community upon our fundamental obligations as teachers. I sense that there remains a good deal of work to be done, on a school-by-school basis, to assure that every faculty member is devoting all the effort and commitment of which he or she is capable, in a consistent and intentional fashion, to the teaching enterprise. The following thoughts, offered in response to several prefatory rhetorical questions that I pose to the reader, are intended to provoke the reader to inquire whether, within his or her institution, there is yet work to be done to make sure that each student is getting what he or she fully deserves and should be able to expect from the faculty's teaching. The questions suggest answers that ought to be both troubling and provocative. This should remind us that often, just a little

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discomfort with the current circumstances, is the necessary first step toward righting whatever is wrong.

And yes . . . the dean of a school, more than anyone else, needs to be the principal and most adamant spokesperson within the law school community in insisting upon consistent excellence in teaching from every member of the faculty. If the dean is not fulfilling this expectation through concrete actions and incentives, in both individual and collective contexts within the school, then it is unlikely that teaching will ever occupy the place it deserves for our students to receive what they surely are entitled to from us as legal educators.

II. WHY WE OWE OUR STUDENTS QUALITY TEACHING

Query: Do you have colleagues who regard their teaching as a rote endeavor that is just a component of a larger program that "moves them [the students] in and moves them out?" Do you have colleagues who seem to regard the law as little more than another academic discipline, not all that much different from any other discipline taught within a university graduate school environment? Do you have colleagues who seem to have little interest in the issues and challenges of the legal profession? Do you have colleagues who appear to regard students as a necessary inconvenience to be attended to only to free up time for their own scholarship?

The most essential expectation of a faculty member must be that he or she has an active and vital commitment to the essential task of teaching. The expectation must be expressed to individual faculty members and be evident within the institution's culture and mission. But why, even beyond the fact that students expect it, must teaching be done with commitment and quality? What is the actual source of our individual and institutional obligations to our students in the task of teaching?

I believe that as faculty members and administrators we must recognize and seek actively to fulfill a real, professional stewardship obligation to our students regarding the primacy and provision of quality teaching. Our students come to us at matriculation with a fully justified expectation that the faculty will educate, train, and hopefully even afford role modeling to them in the process of their transformation into lawyers and professionals. Their transformation occurs under our watch and we indeed are professionally accountable, in a very large measure, for the quality of the result. Moreover, I believe that we owe an ethical obligation, not only to our students, but also to their future clients. The quality of legal services that our students will render to their clients as lawyers is certainly linked to the quality of the teaching enterprise.

Our stewardship and ethical obligations as teachers are weighty ones. Even when the scholarship and service expectations of faculty members are taken into proper account, teaching remains evident as the principal and essential enterprise of the law school. From a student's perspective, while other activities of the faculty can do much to inform good teaching, those activities must at best be regarded as collateral. We must acknowledge that, but for the students who come to us to learn, the law school would be unnecessary. Nonetheless, common experience confirms that the primacy or the quality of teaching cannot be assumed. Effective teaching turns

significantly upon the commitment, energy, intellect, and intangible teaching gifts of faculty members. If these attributes could be brought fully to bear at every juncture in the learning experience of our students, every motivated student would receive nothing short of an incomparable experience. We all know, however, that this does not always happen. To the extent that motivated students do not receive the expected ends of our teaching mission, we need to do some personal and institutional soul searching.

III. A SCHOOL MUST CONSISTENTLY RE-CENTER ON TEACHING

Query: Have you, as a faculty member had students share complaints about the teaching abilities of one or more of your colleagues? Have the students sought you out as a sounding board because you are regarded as someone who takes his or her classroom teaching very seriously? Have you even felt penalized because you perceive that your institution does not value your efforts in the classroom or the time you spend acting as a mentor to your students? Have you felt that only your scholarship agenda counts in the promotion, tenure and salary setting processes? If so, what s wrong with this picture?

Modern legal education is a complex endeavor. Law schools face an array of challenges, including the need to be responsive to diverse and sometimes conflicting constituencies, the need to address pressing issues of resource development and allocation, and the need to manage the demands of extensive programming. Nonetheless, like an individual, a law school program must from time to time intentionally “re-center” to assure that its first constituency—its students—are getting all that they deserve. This periodic refocusing assures, amid all the frenetic activity that can arise from complexity, that the core enterprise of teaching is not knowingly diminished, benignly neglected, or simply forgotten.

From time to time I ask students about their experiences in our school. They are never reticent to offer their perspectives on the contacts that they have had with our faculty members, both inside and outside of class, whether positive or negative. Likewise, alumni have a real penchant for capsulizing their law school experience through the lens of their direct encounters as students with specific faculty members. As noted, neither students nor alumni generally have much to say about the scholarly records of faculty members or about the faculty’s service and professional activities. A student and a teacher best connect in a lasting fashion in the context of the teaching endeavor. It is truly the centerpiece enterprise of a law school. Despite all the exciting challenges and gratifying accomplishments that law schools and faculty members may face or enjoy in other endeavors, we cannot lose sight of the fact that our first and foremost obligation is to assure the quality and effectiveness of the everyday learning experiences of our students. Surely teaching, as opposed to any other function or activity, must be at the center of our professional work. We need to remind ourselves consistently of this truism.

I do not offer any simple remedies to fixing the substandard teaching of a given faculty member or to changing a culture that diminishes the importance and centrality of quality teaching by not recognizing or properly rewarding it. I do think that the major predicate for success is in place if the dean consistently insists upon

an environment in which teaching excellence is seriously discussed and emphasized by the collective faculty. The dean also must develop, on a one-on-one basis, a relationship with each faculty member that allows for full and frank discussion of the craft and art of teaching within that person's work. Moreover, a genuine institutional "culture of teaching" must be developed and nurtured in such a fashion that substantial peer pressure develops among faculty members to meet the full set of expectations that a student may justifiably have of a faculty member in respect to teaching skills and commitment.

Also, needless to say, so long as expectations regarding teaching are fully articulated within both individual and collective venues, a faculty member's abilities as a teacher can and should be a very meaningful factor in decisions involving promotion, tenure, compensation, and the award of the various perquisites that serve as incentives and rewards within the academic arena. Teaching, scholarship and service are the pillars upon which faculty achievement is usually measured. I will venture that unless teaching is articulated and meaningfully enforced in an institution's express mission as having primacy over scholarship and service, the fair expectations of the students will likely be disappointed.

IV WHAT STANDARDS IN TEACHING ADD FOR THE STUDENT

Query: Do students in your school regard the entire enterprise as little more than a "ticket punching" affair? Do students ever express their appreciation for what they have learned, with special mention of a faculty member who has been a mentor and given special and appreciated guidance? Do your colleagues regard themselves as personal and professional role models for the students? Do the students seek out counsel from your colleagues well after graduation? Does your school abide by "cutting corners" in making concrete demands upon faculty in matters bearing upon the teaching mission?

If the truth be told, it is hard to "mess up" the truly well-credentialed and motivated student. Most often, he or she will excel even in spite a pedestrian or mediocre pedagogical culture. A school might even rely upon the credential levels of its students to further its reputation within the academic community at the expense of commitment to providing an academic experience that is guided by sound standards. We know, both empirically and intuitively, that there are some institutions that add little to the experience of a student. They fail soundly in adding worth to the student's life and professional preparation in any meaningful fashion. They often are a target of derision of their graduates as having been little more than "holding tanks" for their charges who were cued to all the short-cuts, easy-outs, and academic shams (never admitted publicly, but too often acknowledged privately).

This is the result of the institution failing to have meaningful standards or failing to enforce them, with each leading to the same end. When expectations regarding teaching are ill defined, or atrophy, students necessarily are not compelled to achieve their potential and instead "pass through" a course or even an entire program with relative ease. While unusually talented students are perhaps the least dependent academically upon teaching quality, any student, regardless of credentials or abilities, suffers from slackened institutional expectations regarding teaching

quality. Both the faculty and the students, despite representations to the contrary, can become little more than disengaged travelers across the academic landscape enjoying a common delusion about the value of their efforts.

Many students have good intentions, but little understanding of how to achieve academic and professional success. This means that the school's academic and teaching standards likely will be the most important factors in determining the extent to which the student's academic experience will impart the tools necessary for personal and professional maturity. This maturation includes the acquisition of wisdom (the ability to assess complex relational and social landscapes and to act with discernment, sensitivity and judgment in relation to the circumstances), the mastery of content, and the development of the knowledge, skills, and interpersonal adeptness that are the essential prerequisites to personal and professional accomplishment and success.

Articulated and enforced standards of rigor, high expectations, and frank assessment are therefore the basis of what we "add" to the experience of a student. Put bluntly, anything that we offer short of the best in standards is a disservice to our students, an abrogation of our stewardship obligation, and an indictment of our very mission. Absent painstaking adherence to recognized and accepted standards of rigor, expectation, and fair assessment, we become little more than "sounding brass" in our work. We add nothing to the experience of our students and they become the long-term losers. The stakes, for our students and for ourselves as teachers, are really this high.

V DEFINING STANDARDS IN TEACHING (THAT TO WHICH A STUDENT IS ENTITLED)

Query: Even among your colleagues who take teaching seriously, does it seem that certain colleagues attract the respect and admiration of students in a way not enjoyed by others? Does it seem that your colleagues who put the greatest demands on students are the same ones who are most respected by the students and whom the students, later as alumni, talk about with such an evident fondness and appreciation? Also, however do you have colleagues, even some who are well meaning, who "go easy" on the students in the classroom and otherwise, apparently bartering rigor for popularity or "good" student evaluations, or whose courses are heavily enrolled, but for all the wrong reasons? Do you have colleagues who just never seem to connect with students, for example, faculty members who at graduation are clueless to the identity of most of the graduates?

This discussion assumes that what we should expect of students (measuring up to defined standards in learning) should also be expected of faculty members (measuring up to defined standards in teaching). The justifiable expectations of faculty members in the matter of teaching, however, cannot be articulated easily with the same substantial (though quite imperfect) objective criteria that most often govern tenure and scholarly productivity. In fact, addressing inadequacies in teaching may be problematical due to the constraints of tenure and the difficulties of bringing change to an unhealthy culture that does not set forth any genuine expectation of teaching excellence. Notwithstanding these impediments, we know

that just as a teacher assesses a student by criteria that typically range well beyond the quality of the simple work product (exams, papers, etc.), in a like manner the attributes of a truly talented and fully engaged teacher cannot be reduced to any simple formulation.

There must be, however, some shared understanding of what we owe to students in the teaching endeavor before we can even consider what might be the remedy for inadequate performance in the classroom, courtroom, and clinic. There must be defined expectations of the character of personal investment and engagement by faculty members that involve the commitment of the teacher and the quality of the teaching. Expectations are benchmarks of performance that place real demands upon the teacher. These demands call for a teacher to invest in the learning process in such a fashion that, by both self-assessment and by the assessment of others, a judgment may be made that the teacher has taken his or her students "beyond the ordinary" in the learning experience. These demands do not invoke issues of academic freedom. They are not content directed, but speak only to quality and commitment in teaching. Academic freedom can never be meaningfully invoked when only these factors are in issue. Tenure cannot be a shield for poor performance and lack of engagement in the teaching enterprise.

While what comprises "beyond the ordinary" may be difficult to articulate, it is something that is certainly felt by both teacher and student. The enforcement of rigorous expectations in teaching creates a milieu in which mutual respect and appreciation between teacher and student is formed. My consistent experience in observation has been that those who teach with rigor and who have the same high expectations of themselves as they have of their students are those who are the most valued and respected by colleagues and students alike.

VI. DEFINING TEACHING EXPECTATIONS AND CREATING A CULTURE OF LEARNING

Expectations in teaching are not repealed. Rather, they slowly and almost imperceptibly atrophy. Each successive failure to adhere to a defined set of expectations fosters an acceptance of the inadequate. It is inattention and even laziness that leads to a decline in expectations. The enforcement of a culture of expectations requires a deliberate focus and a very large measure of individual and institutional effort. The enforcement of these standards of performance does not in the short run bring affirmation or attract students to a teacher's classes. It more likely may bring, at least initially, student fear and avoidance. Moreover, just as in parenting, a dean who is "kind" to a faculty member through shallow expectations, non-intrusiveness, and unwarranted approval may bring short-term warm fuzzies for everyone, but this results in long-term and often irreparable harm to the students and the institution.

So how do we define and enforce academic standards? The following is an index of what I believe a student is entitled to expect in the teaching of a faculty member. The index is not intended to be complete, but rather is only a suggestive listing of certain aspects of the relationship between teacher and students that appear to bear substantially upon the learning experience of the students.

A. Instructor Preparation, Use of Time, and Responsibility for Classroom Logistics

After a period of time in teaching, it is easy to go on “cruise control” in the classroom. This can lead to poor or inaccurate content presentation, a wasting of time on collateral or irrelevant matters, inadequate responses to student questioning, and a general lack of direction and purpose in the classroom. The reasons for a lack of preparation include boredom with the level at which the materials must be presented, an unwillingness (on account of inertia) to integrate into the classroom new presentation approaches or to adopt new classroom texts and materials, a lack of understanding (or an unwillingness to obtain it) of new developments in one’s discipline, or a prioritization of class preparation behind non-teaching academic, professional and personal pursuits.

Class preparation also encompasses other logistical factors, including taking responsibility for assuring that class materials are available on a timely basis, providing an up-to-date, relevant, reasonably detailed syllabus to guide class activities and assignments, having an accurate seating chart that helps the instructor make connections between names and faces, making sure that electronic or audio visual aids are reliable, starting class promptly at the appointed time, and ending class promptly at the appointed time. While some of these logistical matters may appear as minutia, a lack of attention to them can create an atmosphere of sloppiness and nonchalance in the classroom.

B. Student Accountability in the Classroom

Perhaps the greatest daily disservice to students in higher education occurs in the “passive” classroom. This describes the classroom environment in which students are not called upon to participate in any active fashion. Each student sits and takes notes. The student is not engaged intellectually. It really does not even matter if the student has done any preparation for the class. An absent student might actually get just about as much out of the class by borrowing a classmate’s notes as by being present. Even in those classes in which the instructor calls upon students for recitation, if the instructor does not frankly assess and comment upon a student’s responses, and further press the student, the proper sense of expectation of performance in the classroom is not created. The student is thereby deprived of the opportunity to become a better critical thinker, to learn how to make and defend an argument, and to learn the techniques of problem solving. There is a good deal even to be said for the dying tradition of having students stand when called upon to recite. It focuses upon a student’s ability to articulate without the use of notes, text, or other aids, and creates an intangible sense of expectation of competent performance.

C. Enforcing Attendance Requirements

This is a component of quality teaching that very easily can atrophy in the absence of constant diligence. Many schools have announced attendance policies that apply across the program. Others have minimum attendance policies that are only a baseline that can be enhanced by the faculty member. Regardless of the

formulation, the requirement of a student's attendance speaks to a basic assumption that the course material can be integrated into a student's educational experience only by actual physical presence. In an age in which e-learning is making such significant advances, it may be thought that a student's physical presence in the learning venue is not necessarily called for in order for there to be a successful learning experience. Still, we must remember that nearly all law schools, while increasingly using technology to facilitate the teaching experience, are very much physical venues that offer the potential for an incomparable learning experience in which teacher and student work one-on-one or in which they are in immediate physical proximity. A failure to enforce attendance standards rigorously sends a potent message to students that the subject matter to be learned does not call for any engagement and that the end objective of the learning experience is simply to take an exam or write a paper, get a grade, and thereby get one's ticket punched.

D. Meaningful Evaluation Tools

In a good part of higher education, examination and testing has become relegated to a work-dodging exercise. The model of comprehensive evaluation, for example, the concept of teacher and student poring over a theme paper or essay examination, is no longer descriptive of much the academy. What is the value of quick feedback on exams given by scantron testing, etc. when it comes at the expense of using an exam for a pedagogical purpose?

Also, grading has to make sense. While essay or performance grading can have highly subjective characteristics, it cannot be, or even appear to be, an exercise in arbitrariness or unfairness. This is a matter that is especially frustrating not only to students, but also to a dean, because it is so difficult to diagnose with certainty and even more difficult to remedy. At the same time, however, a faculty member who develops a reputation for inexplicable grading standards probably does more to impair his or her effectiveness than could be done by any other shortcoming. A sense that a teacher's grading is without justifiable norms or standards inevitably causes students to invest less of themselves in the process, which runs counter to all that should characterize good teaching.

E. Rigorous Grading Standards

Grade inflation is one of the most potent viruses afflicting higher education. While not much original thought has been brought to this topic in recent years, it may be because it largely boils down to whether an instructor is willing, class by class and year by year, to "call it like it is." There is no credible evidence that we are teaching students who are any brighter now than students were in past decades. In fact, it appears that the students may be positively less accomplished in matters of analysis and articulation.

Yet, at many schools, grades in the A and B range are now the median or average. Garrison Keillor's characterization indeed appears apt—all students (inexplicably) appear to be above average. I am convinced that this phenomenon in part arises from the desire of some faculty members to pander to students. In other words, these faculty members would rather be "loved" than respected. Grade inflation also

arises from a number of other factors that include competition for students, a need for favorable student evaluations, etc. In any event, grade inflation appears to be not only a measurement issue, but also both a symptom and a catalyst of a culture of low expectations.

F Timely Grade Submission and Evaluation Feedback

Beyond honest grading, a committed teacher will return his or her grades in a timely fashion within the grading deadline policy of the school. This is an obligation honored in the breach by too many in legal education. For students, it breeds disappointment and cynicism concerning the commitment of the transgressing faculty member. Who can blame a student for disrespecting a faculty member who fails to meet this fundamental obligation? The exam grading process does not get any easier or less burdensome with the passage of time; it only gets tougher. The heroes here are the faculty members who not only submit their grades in a timely fashion, but who also take time to schedule (sometimes on a mandatory basis) individual exam reviews with students. What a powerful tool to turn the process of evaluation into a highly individualized feedback and teaching experience! Also, when writing skills and analysis are central to the pedagogical objectives of an exercise, for example, papers, briefs, etc., a faculty member's feedback obligation includes, at a minimum, full and complete marginal notations and a faculty-student review conference as an additional preferred evaluation measure.

G. Accessibility Outside of Class

Some of the best learning by students occurs in one-on-one and small group settings in faculty members' offices. While the obvious issues here may seem to involve the merits of an "open door" policy, as opposed to posted office hours, that is only one aspect of the matter. If lack of accessibility is due to outside engagements, or other time uses that take up an inappropriate part of the faculty member's time, other issues come into play. Law school teaching, when done well, requires a full engagement in the enterprise. Certainly faculty members need to have time apart from teaching to engage in scholarly research and other professional and personal endeavors. It is fairly easy, however, to figure out whether a faculty member regards the role of teacher as a vocation or merely an avocation. Those who consider it a vocation somehow manage to do it all. They are good illustrations of the old adage that if you want something done, give it to a busy person. The truly committed teachers usually are able to perform with excellence in any endeavor, while a less committed faculty member may with impunity short-change his or her students to further a more personal agenda.

Assuming reasonable accessibility (which I think should mean being available to students substantially throughout each day and week, with or without an appointment), the most important further issue involves the character of the instructor's interaction with the student outside of class. Curt responses, an air of impatience, a waving off of the student's concerns, a mere bouncing back of questions asked, or even a sugar coating of the student's inability to understand

because of inadequate self-inquiry all do a positive disservice to the student and are inconsistent with quality teaching.

H. Participation in the Life of the School

Accessibility outside of class also extends to participation in co-curricular activities. In the law school setting, this may involve such tasks such as coaching interscholastic competition teams, judging intrascholastic moot court competitions, and sponsoring student organizations. A faculty member's failure or refusal to participate in co-curricular activities not only shirks an obligation owed to students and sends a message to the students that the faculty member does not care for student contact and interaction, but also places a disproportionate burden upon colleagues.

I. Being a Reliable Mentor

Most students crave the chance to develop a meaningful professional relationship with a faculty member in a context in which the faculty member can give guidance, encouragement, and as warranted, constructive criticism. The difference between the student who merely passes through the academic program of a law school with relative anonymity and the student who develops one or more mentor relationships with faculty members can be profound, both in terms of the student's satisfaction with, and benefit realized from, the law school experience. A beneficial relationship with a faculty mentor generally requires some initiative by the student, but in any event it will not develop unless the faculty member intentionally encourages the initial approaches of the student and lets the student know that a mentor relationship is welcomed. A faculty member who is not amenable to the role of being an academic and career mentor to students is depriving them of what might be the most beneficial and memorable component of a student's time in law school.

J. Generally Helping out with Student Needs

A faculty member should make a priority of keeping appointment commitments with students in the same way that a lawyer ought to do with clients. He or she must follow through on his or her agreement to write reference letters for students or otherwise to render career or academic assistance. A faculty member must take to heart any role accepted or assigned to guide a student in regard to academic scheduling, to sponsor a law review article, or to discuss with the student job or professional strategies and opportunities. Foremost, a faculty member has, in all of his or her activities, a necessary and critically important obligation to be a role model in all that the faculty member does in his or her professional and community life. This is not too weighty a role to assume. In fact, it must be assumed; our students are watching us at every juncture.

VII. CONCLUSION

A law school relies upon each of its faculty members to deliver to its students its most important programmatic product—teaching—in a fashion that recognizes and reflects the worth of the enterprise. Despite the fact that most fine teaching has certain idiosyncratic characteristics, the principal components of what is recognized as "good" teaching are fairly evident and widely agreed upon. Students within our law schools deserve our best. It is probably not difficult to make a case in nearly any law school that some teaching is substandard and that little is done to remedy that fact.

Nothing here is designed to suggest any final answer to the challenge thereby posed. Nonetheless, I hope that your reading of this essay at least prompts an acknowledgment that, as teachers, we are engaged in a professional calling that gives us a tremendous capacity to affect the lives of our students in a profound and lasting way. It is a rare person who looks back upon the educational experience and cannot identify teachers or professors who are regarded fondly and with respect because they truly added a new dimension or perspective to that person's life experience. To have this power to affect other's lives and careers is a remarkable capability, but only if it is recognized for what it is and managed with a sense of stewardship, devotion, and obligation.