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Heads and Hearts: The Teaching and Learning Environment in Law School

Gerald F. Hess

In what now seems like another life, I taught second grade. Most of my second graders walked in the first day with new shoes, fresh crayons, and little backpacks. They were excited about school and eager to learn. From me they expected patience, wisdom, kindness, inspiration, and support. My number one goal was for them to leave second grade with those same feelings and expectations. Some of the third-grade teachers did not care much about my goal; they wanted students who understood the basic stuff in the second-grade curriculum, who conformed to elementary school norms, and who were ready to buckle down to do important third-grade work. Nevertheless, I was able to achieve my primary goal with most of my students.

I now teach law school. My first-year students enter with new books, the latest computers, and big backpacks. Many of them have the same excitement and expectations as my second graders. When I allow myself to think about this, I conclude that my number one goal in my law school classes ought to be the same as for my second graders. But I don't think about this very often because I have failed so miserably at achieving this goal with law students. The law school experience systematically beats those feelings and expectations out of many of them. Through this article I hope to change that experience by identifying and weaving together the threads that compose the fabric of an effective teaching and learning environment.

Legal education literature documents a number of disturbing effects of law school on law students. Many students experience the law school environment as stressful, intensely competitive, and alienating. Many suffer from high levels of psychological distress and substance abuse. During law school a significant number lose self-confidence, motivation to do public interest work, and their passion for learning.

Critics of legal education have identified a number of causes of students' negative experiences in law school and have proposed reforms. Causes of

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students' distress include the overwhelming workload, intimidating classroom dynamics, excessive competition, astronomical debt, personal isolation, lack of feedback, and the nearly exclusive emphasis on linear, logical, doctrinal analysis. Proposed structural reforms include reduced class size, smaller student-faculty ratios, alternative grading systems, academic support programs, and counseling services.

Although the proposed structural reforms have much to recommend them, the focus of this article is on individual law teachers working with their students. Part I explores the question *Why is the teaching and learning environment so important?* It addresses the negative effects of the law school experience on students and the role of the teaching and learning environment in inhibiting and enhancing student learning. Part II reviews models of effective teaching and learning environments. Part III addresses the question *How can law teachers and their students create and maintain an effective teaching and learning environment?* I articulate eight components of an optimal classroom environment for legal education: respect, expectations, support, collaboration, inclusion, engagement, delight, and feedback.

The discussion that follows is informed by four types of sources: legal education literature, books and articles on higher education, my own experience, and interviews with law students. The student comments that I quote (some of which have been lightly edited) come from eighteen hours of videotaped interviews with seventy-two students from seven law schools. They were asked to reflect on what hindered and what enhanced their learning in law school.¹ The students, their schools, and the open-ended interview format were not intended to produce hard data and quantitative results. Instead, the interviews help make more tangible the sometimes ephemeral teaching and learning environment.

I. Why Is the Teaching and Learning Environment So Important?

Law school profoundly affects students. The impacts of the law school environment contribute to their day-to-day experience and their psychological health. The educational environment plays a critical role in the quality of teaching and learning.

1. The interviews took place in 1997 at Brooklyn Law School, University of California—Hastings, University of Iowa, University of New Mexico, University of North Carolina, and Seattle University, and in 2000 at Gonzaga University. Teachers who interviewed the students were Linda Feldman (Brooklyn), Laurie Zimet (Hastings), Joe Knight (Iowa), Alfred Mathewson and Peter Winograd (New Mexico), Charles Daye (North Carolina), Paula Lustbader (Seattle), and Gerald Hess (Gonzaga). Those teachers chose students to interview who were diverse in ethnicity, gender, age, socioeconomic background, class rank, sexual orientation, religion, and year in school. Although the students came from a variety of law schools, no attempt was made to ensure that the sample was “representative” of all U.S. law students in the social science meaning of that term. Student comments from these interviews have been previously reported in an article, Gerald F. Hess, *Listening to Our Students: Obstructing and Enhancing Learning in Law School*, 31 U.S.F. L. Rev. 941 (1997), and two videotapes by Hess, Lustbader, and Zimet, *Teach to the Whole Class: Barriers and Pathways to Learning* (Institute for Law School Teaching, 1997) and *Principles for Enhancing Legal Education* (Institute for Law School Teaching, 2001).

A. Effects of the Law School Environment on Students

Stress is a central aspect of the law school experience for many students. Compared to the general population and to medical students, law students experience significantly more anxiety and distress.² Stress causes physical and emotional problems, including the inability to sleep, headaches, allergies, lethargy, weight gain and loss, inability to concentrate, difficulty in relationships with family and friends, and anger at colleagues and teachers.³

A substantial empirical study of psychological distress in law students, completed by G. Andrew Benjamin and coauthors in 1986,⁴ assessed the levels of psychological distress among students before law school, in the first year of law school, in the third year, and two years after graduation. Symptoms of psychological distress included depression, obsessive-compulsive behavior, interpersonal sensitivity (feelings of inadequacy and inferiority), anxiety, hostility, paranoia, and psychoticism (social alienation and isolation). Before law school, potential law students displayed symptoms of psychological distress at levels similar to those of the normal population. But levels of psychological distress rose significantly for first-year students and persisted throughout law school and for two years after graduation. The results are especially strong because they remained consistent regardless of age, gender, and law school grades.⁵

Many students report that the law school environment results in loss of self-esteem and alienation. Large percentages believe that they were more articulate and intelligent before beginning their legal education and that they felt pressure to set aside their values in law school. These negative effects appear to be especially prevalent among women and students of color.⁶

2. Susan Daicoff, *Lawyer Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 *Am. U. L. Rev.* 1337, 1375-80 (1997) (summarizing four empirical studies that compare law student anxiety or distress to the general population, medical students, or both).
3. See B. A. Glesner, *Fear and Loathing in the Law Schools*, 23 *Conn. L. Rev.* 627, 631 (1991); Peter Kutulakis, *Stress and Competence: From Law Student to Professional*, 21 *Cap. U. L. Rev.* 835, 836 (1992).
4. See *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 1986 *Am. B. Found. Res. J.* 225. In her excellent review of empirical research on law students and lawyers, Susan Daicoff characterizes the Benjamin study as "perhaps the most comprehensive, systematic, and methodologically sound study of law students and lawyers to date." Daicoff, *supra* note 2, at 1378.
5. Benjamin et al., *supra* note 4, at 246. Depending on the symptom, between 20 and 40 percent of the law students or graduates reported significant elevations of psychological distress. *Id.* The results are similar to those of an earlier study finding that law students experience significantly greater levels of psychological distress than medical students or the general population. See Stephen B. Stanfield & G. Andrew Benjamin, *Psychological Distress Among Medical and Law Students*, 35 *J. Legal Educ.* 65, 69 (1985).
6. In a 1994 study of students at nine law schools in Ohio, 41 percent of women but only 16 percent of men reported that they felt "less articulate and intelligent than prior to law school." Joan M. Krauskopf, *Touching the Elephant: Perceptions of Gender Issues in Nine Law Schools*, 44 *J. Legal Educ.* 311, 328 (1994). Further, significantly fewer women (58%) than men (77%) felt confident that their values were respected in law school. *Id.* at 327. Likewise, in a 1988 survey of students conducted at the University of California, Berkeley, the following percentages of students agreed that they "felt intelligent before law school, but not

Our student interviews echoed themes from the empirical studies:

The first year of law school was probably the most isolating and alienating year I have ever experienced.

Coming to law school as a first-year student is a very demeaning experience. It's all about breaking you down, getting away from individuality. It broke down my confidence as far as school. I had always done well in school, always wrote well, always got good grades. Coming to law school I did well at first, but the course of the year took its toll on me and really drained my confidence and self-esteem.

We know there are a number of sources of law student distress and alienation. A primary stressor is the grading and ranking system. Most students come to law school with records of high academic achievement. They hope to repeat that success but fear that they will not. For many the fear is realized. Grades can produce a profound loss of self-esteem. The significance of grades becomes inflated because students get so little feedback during the semester that grades are the only indicator of their performance. Further, competition for good grades and high class rank is intense because students perceive the stakes to be so high. Grades and class rank are significant gatekeepers to the reward system during and after law school—law review membership, research or teaching-assistant positions, internships, and jobs.⁷

A related factor in student stress is the high cost of legal education and the enormous debt that many students accumulate. They feel a daunting pressure to get good grades in order to get well-paying jobs so they can pay off that debt. Their stress is exacerbated by the uncertainty of employment in a tight job market.⁸

The workload overwhelms many law students. They have little time for sleep, relaxation, and relationships with friends and family. The demands of the first year cause many of them physical and psychological exhaustion.⁹

While the workload increases student distress, the narrow curriculum contributes to alienation. Conventional legal education concentrates on analytical skills while minimizing the development of interpersonal skills, such as building relationships and engendering others' confidence in you, which are critical for law practice. The curriculum teaches students to be skeptical and to use law as an instrument to achieve a client's or society's ends. It teaches that tough-minded analysis, hard facts, and cold logic are the tools of a good

now": white men, 25%; men of color, 41%; white women, 50%; women of color, 57%. Suzanne Homer & Lois Schwartz, *Admitted But Not Accepted: Outsiders Take an Inside Look at Law School*, 5 *Berkeley Women's L.J.* 1, 52 (1990). The Berkeley study also touched on student alienation, with the following percentages of students feeling pressured to set aside their values in law school: white men, 28%; men of color, 35%; white women, 48%; women of color, 61%. *Id.* at 32.

7. See Barbara Glesner Fines, *Competition and the Curve*, 65 *UMKC L. Rev.* 879, 902-05 (1997); *Making Docile Lawyers: An Essay on the Passification of Law Students*, 111 *Harv. L. Rev.* 2027 (1998) (hereinafter, *Making Docile Lawyers*); Glesner, *supra* note 3, at 657-59.
8. See Peter G. Glenn, *Some Thoughts About Developing Constructive Approaches to Lawyer and Law Student Distress*, 10 *J.L. & Health* 69 (1995-96); Kutulakis, *supra* note 3, at 838.
9. Kutulakis, *supra* note 3, at 838; Stephen C. Halpern, *On the Politics and Pathology of Legal Education*, 32 *J. Legal Educ.* 383, 388 (1982).

lawyer, and it has little room for emotion, imagination, and morality. For some students, "learning to think like a lawyer" means abandoning their ideals, ethical values, and sense of self.¹⁰

One way that many students deal with distress and alienation is through alcohol and substance abuse. In 1994 the Association of American Law Schools reported the results of two major surveys of substance abuse problems in law school.¹¹ Law students reported significantly greater use of alcohol and psychedelic drugs than college and high school graduates of similar age. Their use of alcohol increased significantly as they progressed through law school.

Unfortunately psychological distress, dissatisfaction, and substance abuse that begin in law school follow many graduates into practice. In her thorough review of empirical research on law students and lawyers in 1997, Susan Daicoff summarizes recent research on lawyer satisfaction, depression, and substance abuse: "Approximately 20% of lawyers are extremely dissatisfied with their jobs. As evidence of this dissatisfaction, lawyers are currently experiencing a significantly higher level of depression (19%) and substance abuse (15% to 18%) than individuals in other professions (among the general population, only 3% to 9% is depressed, and only 10% to 13% is chemically dependent)."¹²

Any number of reforms to legal education have been proposed that would address the sources of student distress and alienation.¹³ For example, alternative grading systems could reduce stress for first-year students and increase motivation for upper-level students. Criteria for selection for law review or research and teaching-assistant positions could be based on more than grades. Loan forgiveness and scholarships could be based on writing competitions or service to the law school or community. Career counseling could help students in their job searches and decisions. Law schools could provide substance abuse education, counseling, and treatment programs. Schools could teach students problem-solving skills and time and stress management. The curriculum could include courses that explore issues of personal and professional satisfaction, morality, and social justice. Schools could facilitate peer and family support systems for the students and provide access to psychological counseling services.

10. Roger C. Cramton, *The Ordinary Religion of the Law School Classroom*, 29 *J. Legal Educ.* 247, 248–50 (1978); Laurie A. Morin, *Reflections on Teaching Law as Right Livelihood: Cultivating Ethics, Professionalism, and Commitment to Public Service from the Inside Out*, 35 *Tulsa L.J.* 227, 249 (2000); Lawrence S. Krieger, *What We Are Not Telling Law Students—and Lawyers—That They Really Need to Know: Some Thoughts-in-Action Toward Revitalizing the Profession from Its Roots*, 13 *J.L. & Health* 1, 9 (1998–99).
11. Report of the Special AALS Committee on Problems of Substance Abuse in Law Schools, 44 *J. Legal Educ.* 35 (1994) [hereinafter Report of AALS Committee]. One questionnaire was sent to administrators of all 176 ABA-approved law schools. The second survey was directed to law students at 19 law schools; 3,388 students responded to that survey.
12. Daicoff, *supra* note 2, at 1347 (footnotes omitted). See also Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 *Vand. L. Rev.* 871, 874–88 (1999). Schiltz reviews empirical studies of attorney depression, unhappiness, and substance abuse; he comes to conclusions similar to Daicoff's.
13. See Glesner, *supra* note 3, at 653–66; Report of AALS Committee, *supra* note 11, at 63–64; Krieger, *supra* note 10, at 35–43; Morin, *supra* note 10, at 250–51, 261–64.

The aspects of the law school environment discussed above, the negative effects of that environment on students, the sources of those effects, and the proposed reforms to improve the law school environment are important pieces of the complex puzzle of effective legal education. However, an essential piece of that puzzle is missing thus far—the teaching and learning environment.

B. The Effects of the Teaching and Learning Environment on Student Learning

In her extensive article on stress in law school, B. A. Glesner concedes that stress can enhance student learning as well as hinder it.

A certain amount of tension and anxiety can be useful in motivating individuals to do their best. The stress of law school can lead students to forge strong alliances among their colleagues. The tension of a well-directed Socratic dialogue can motivate students to learn subject matter and develop independent learning skills. Successfully meeting and overcoming a frightening challenge in law school makes courage easier the next time around. Yet studies of stress in law school and the experience of psychological counselors of law students indicate that not all law school stress is productive or motivational.¹⁴

Glesner reviews the education literature on the effects of stress on student learning and applies that literature to legal education. In general, moderate levels of stress improve student performance while low or high levels of stress decrease performance. The more difficult the learning task, the greater the negative effects of stress on learning.¹⁵

Stress inhibits students from receiving and processing information when anxiety distracts them from the learning task. For example, they may cope with anxiety by focusing on what they perceive to be the primary task (learning legal rules) and may ignore other relevant parts of the task (the social, historical, and political aspects of a case). Stress also interferes with students' abilities to organize and store information.¹⁶

Not only can stress hinder students' learning particular tasks, it can limit their capacity to learn in general. Anxiety causes some students to reduce their involvement in their own learning. Prolonged exposure to stress can cause burnout and withdrawal from active engagement in their education. The detachment of many second- and third-year students from law school may be evidence of burnout from stress.¹⁷

Stress affects not only cognitive aspects of learning but emotional and attitudinal components as well. One coping mechanism for students is to self-handicap—through procrastination, for example—to provide an excuse for failure and to reduce the threat to self-esteem. Two common consequences of chronic stress are decreased sensitivity to others and increased aggression; both are problematic in law school and in students' personal and professional

14. Glesner, *supra* note 3, at 644–45 (footnotes omitted).

15. See *id.* at 635.

16. See *id.* at 635–37.

17. See *id.* at 636–38.

lives after graduation. Finally, extreme stress can change students' values and beliefs.¹⁸

No discussion of stress in law school would be complete without mention of the Socratic method. Its proponents identify a number of benefits for student learning: it helps students develop sophisticated legal reasoning, independent thinking, and verbal skills; it engages students in active learning; and it prepares them for law practice. Critics of the method argue that it hinders student learning by causing psychological distress, focusing on a narrow range of skills, and disadvantaging women and people of color.¹⁹

Typical law school pedagogy and culture can combine to hinder student learning. Stephen Halpern, a professor of political science who returned to school as a law student in 1980, says:

The tense atmosphere and psychological insecurity engendered by law school pedagogy during the first year inhibits curiosity and genuine intellectual interest. Students learn to stifle the impulse to ask questions or to make comments on matters which interest them. . . . In such an environment independent and critical thinking by students is unlikely.

The student law-school culture itself creates an environment which is not conducive to thoughtful and independent analysis of the role of law and legal institutions. The typical law student is socialized fairly quickly. In the first year he comes to believe that the single most important consideration in his legal education is the extent to which he can maximize his chances of obtaining an attractive job offer.²⁰

Numerous empirical studies of student involvement in law school classrooms have analyzed participation rates of white men, white women, and people of color.²¹ The consistent result is that white men volunteer and ask questions more often than white women or people of color. The empirical research of Lani Guinier and coauthors suggests that the lower rates of participation are symptomatic of deep difficulties many women have with the law school teaching and learning environment. Many women described their first-year experience as "radical, painful, or repressive."²² They reported that the stress and intimidation of the classroom hindered their engagement, initiative, problem-solving, and learning in general. And the law school experience shifted women's career goals away from public interest work.²³

Many of our student interviews addressed the law school environment. Both male and female students emphasized the negative effects on their learning of the competitive, adversarial atmosphere.

18. See *id.* at 636–40.

19. See Ruta K. Stropus, *Mend It, Bend It, Extend It: The Fate of Traditional Law School Methodology in the 21st Century*, 27 *Loy. U. Chi. L.J.* 449, 453–72 (1996); Orin S. Kerr, *The Decline of the Socratic Method at Harvard*, 78 *Neb. L. Rev.* 113, 116–22 (1999).

20. Halpern, *supra* note 9, at 383.

21. See Elizabeth Mertz et al., *What Difference Does Difference Make? The Challenge for Legal Education*, 48 *J. Legal Educ.* 1, 16–32 (1998). This comprehensive article reviews the results of nine empirical studies of student participation at 25 law schools.

22. *Becoming Gentlemen: Women's Experience at One Ivy League School*, 143 *U. Pa. L. Rev.* 1, 42 (1994).

23. *Id.* at 40, 46–47, 63.

The whole atmosphere of law school is so competitive and so uncooperative and really a win-lose situation in addressing problems. I was used to working more toward a cooperative solution, including more diverse perspectives in how a problem could be solved, and so I felt really alienated.

I find the atmosphere to be incredibly adversarial. As a result, all of us learn to communicate in an adversarial fashion, and when we're in classes a lot of students end up attacking each other instead of remembering how to communicate in a way that's diplomatic and disagree in a way that's constructive.

I was struggling through reciting the case and the professor finally just sort of walked away from the podium and heaved this huge sigh and said, "Obviously, we need to move on." I wanted to run out of that room and dig a hole for myself. Ever after, every time I had to walk into that room I tried to be as small as I could be in that seat. A number of my fellow students came up to me and told me how they felt after that incident: "I'm so afraid of what he is going to do when he calls on me" or "I hope he doesn't get to me." And I remember thinking, "This is pathetic! These people are hoping they don't have to participate. That can't be right."

One student bemoaned the low valuation of public interest work.

I came to law school to use the law for public interest or social justice. And I think one thing that has gotten me down is the lack of acceptance for the notion of using a law degree for those purposes. We have this huge weight given to making it in a firm. And when someone expresses other interests, they're looked at as a do-gooder, or on the fringes.

Our student interviews suggested ways to improve the environment.

Make it more of a community because we're here for three years. It's a long time for us, and it's a time we'll remember the rest of our lives. Let's be a community and maybe we'll learn a bit more because of it.

I guess the single most important piece of advice I would give to a brand new law professor is to do whatever it takes to create a positive learning environment where people aren't afraid to speak up. I mean, obviously it's going to be better for everyone if we have a rich class discussion than if people are cowering in their notebooks.

II. Models of Effective Teaching and Learning Environments

Four models of effective teaching and learning environments could be instructive for legal education: Joseph Lowman's two-dimensional model of teaching effectiveness; Parker Palmer's notion of teaching as creating space; Zelda Gamson and Arthur Chickering's seven principles for good practice in education; and the National Research Council's learning environments.

A. *Lowman: Two-Dimensional Model of Effective Teaching*

In *Mastering the Techniques of Teaching*, Joseph Lowman articulates a two-dimensional model of effective adult education: intellectual excitement and interpersonal rapport.²⁴ His model is based on three types of empirical re-

24. 2d ed. (San Francisco, 1995).

search: his review of the many studies of student evaluation of teaching (more than 1,000 reported in the last thirty years); his personal observations of twenty-five exemplary teachers at colleges and universities in North Carolina and New England; and his analysis of 500 nominations for teaching awards at the University of North Carolina at Chapel Hill. That research yielded a set of adjectives that students and faculty used to describe exemplary teachers. On the intellectual excitement dimension, the most common adjectives were *enthusiastic, knowledgeable, inspiring, humorous, interesting, clear, and organized*. The most common descriptors on the interpersonal rapport dimension were *concerned, helpful, dedicated, caring, encouraging, challenging, and available*.²⁵

The intellectual excitement dimension has two components: clarity of presentation and emotional impact on students. The clarity component begins with the teacher's mastery of the theory, concepts, and skills that make up the content of a course. Clarity also requires the teacher to organize, illustrate, and explain concepts in ways that make sense to intelligent novices. To stimulate students' emotions and to maintain their interest, teachers use their voices, movements, and energy. Some exemplary teachers are overtly enthusiastic and animated, some are witty, and others are serious and intense. A key to an effective teaching and learning environment is not entertainment for its own sake but the excitement of considering new ideas, applying concepts to real life, and making discoveries.²⁶

The interpersonal rapport dimension recognizes that classrooms are highly charged interpersonal spaces. Emotional reactions to the educational environment affect the way teachers teach and students learn. Exemplary teachers evoke positive emotions in students by communicating their respect for students and their expectations that students will perform at a high level. These emotions increase student motivation, enjoyment, and independent learning.²⁷

B. Palmer: To Teach Is to Create Space

In *The Courage to Teach* Parker Palmer addresses the design of an effective teaching and learning space. He defines *space* as "the physical arrangement and feeling of the room, the conceptual framework that I build around the topic my students and I are exploring, the emotional ethos I hope to facilitate, and the ground rules that will guide our inquiry . . ." ²⁸ The design of teaching and learning space is guided by six paradoxes. Each paradox can induce creative tension, essential to an effective teaching and learning environment.

1. *The space should be bounded and open.* The boundaries of the teaching and learning space are created by the questions or materials that keep teacher and students focused on the subject. The students are free to speak to the topic at hand, guided by the teacher and the texts. But the space must also be open to alternative paths and new discoveries that lead to deep learning.

25. *Id.* at 31–33.

26. See *id.* at 21–26.

27. See *id.* at 26–28.

28. *The Courage to Teach: Exploring the Inner Landscape of a Teacher's Life* 73 (San Francisco, 1998).

2. *The space should be hospitable and charged.* The learning space must be hospitable and safe to encourage students to explore difficult issues. But not too safe. The space must also be charged, so that students and teachers do not evade or trivialize significant ideas.

3. *The space should invite the voice of the individual and the voice of the group.* Learning happens when students are able to express their ideas, emotions, confusions, and perspectives. But the teaching and learning space must also allow the group to affirm, question, and challenge the individual. Students and teachers must be willing to listen to both individuals' and the group's voices so that all can benefit from collective wisdom and new perspectives.

4. *The space should honor the little stories of the individual and the big stories of the disciplines.* The learning space needs to make room for the personal experiences of individuals. Many students begin their learning by building on their life experiences. But the conceptual framework of the discipline helps us understand personal experiences. In an effective learning space, teachers and students respect both types of stories.

5. *The space should support solitude and surround it with the resources of community.* Students need time to reflect and absorb in order to learn well. Learning also requires a community in which ideas are tested, knowledge expanded, and biases challenged. But learning is stifled when the community norm is that all speak in one voice.

6. *The space should welcome both silence and speech.* Words and silence both are mediums of teaching and learning. Silence is necessary for reflection, which can lead to the deepest of learning.²⁹

C. Chickering and Gamson: Seven Principles for Good Practice

In the late 1980s leading teachers and scholars in the movement to improve higher education in the United States developed seven principles for good practice in undergraduate education based on decades of research on teaching and learning.³⁰ The seven principles have had a significant effect on scholarship and teaching practices in the last fifteen years, and they are relevant to the development of an effective teaching and learning environment.³¹ In the late 1990s legal educators began applying the seven principles to legal education.³² The principles provide that good practice

29. See *id.* at 73–77.

30. Arthur W. Chickering & Zelda F. Gamson, Seven Principles for Good Practice in Undergraduate Education, *AAHE Bull.*, Mar. 1987, at 3.

31. After Arthur Chickering and Zelda Gamson published "Seven Principles" in the March 1987 issue of the *AAHE Bulletin*, more than 150,000 reprints were requested by college administrators and teachers over the next 18 months. Subsequently, books, faculty development conferences, and numerous articles reviewed the research behind the seven principles and their practical application in higher education. For a description of the development of the seven principles and their impact on undergraduate education, see Gerald F. Hess, *Seven Principles for Good Practice in Legal Education: History and Overview*, 49 *J. Legal Educ.* 367 (1999).

32. In 1998 the Institute for Law School Teaching sponsored a conference that brought the seven principles to the attention of law teachers. The seven principles were featured in programs of the sections on teaching methods and clinical legal education of the Association of American Law Schools. See *id.* at 369–70. In 1999 the *Journal of Legal Education* devoted

1. Encourages Student-Faculty Contact.

Frequent student-faculty contact in and out of class is the most important factor in student motivation and involvement. Faculty concern helps students get through rough times and keep on working. Knowing a few faculty members well enhances students' intellectual commitment and encourages them to think about their own values and future plans.

2. Encourages Cooperation Among Students.

Learning is enhanced when it is more like a team effort than a solo race. Good learning, like good work, is collaborative and social, not competitive and isolated. Working with others often increases involvement in learning. Sharing one's own ideas and responding to others' reactions improves thinking and deepens understanding.

3. Encourages Active Learning.

Learning is not a spectator sport. Students do not learn much just sitting in classes and listening to teachers, memorizing pre-packaged assignments, and spitting out answers. They must talk about what they are learning, write about it, relate it to past experiences, and apply it to their daily lives. They must make what they learn part of themselves.

4. Gives Prompt Feedback.

Knowing what you know and don't know focuses learning. Students need appropriate feedback on performance to benefit from courses. In getting started, students need help in assessing existing knowledge and competence. In classes, students need frequent opportunities to perform and receive suggestions for improvement. At various points during college, students need chances to reflect on what they have learned, what they still need to know, and how to assess themselves.

5. Emphasizes Time on Task.

Time plus energy equals learning. Efficient time-management skills are critical for students and professionals alike. Allocating realistic amounts of time means effective learning for students and effective teaching for faculty. How an institution defines time expectations for students, faculty, administrators, and other professional staff can establish the basis for high performance for all.

6. Communicates High Expectations.

Expect more and you will get it. High expectations are important for everyone—for the poorly prepared, for those unwilling to exert themselves, and for the bright and motivated. Expecting students to perform well becomes a self-fulfilling prophecy when teachers and institutions hold high expectations of themselves and make extra efforts.

7. Respects Diverse Talents and Ways of Learning.

There are many roads to learning. People bring different talents and styles of learning to college. Brilliant students in the seminar room may be all

much of an issue to nine articles applying the seven principles to legal education. See Symposium, *Seven Principles for Good Practice in Legal Education*, 49 *J. Legal Educ.* 367 (1999). The authors of the symposium, who were also the presenters at the 1998 conference, were Susan B. Apel, Okianer Christian Dark, R. Lawrence Dessem, David Dominguez, Gerald F. Hess, Terri LeClercq, and Paula Lustbader. In 2001 the Institute for Law School Teaching produced a videotape that explores the implementation of the principles in law school classrooms. See *Principles for Enhancing Legal Education*, *supra* note 1.

thumbs in the lab or art studio. Students rich in hands-on experience may not do so well with theory. Students need the opportunity to show their talents and learn in ways that work for them. Then they can be pushed to learn in ways that do not come so easily.³³

D. National Research Council: Learning Environments

In *How People Learn: Brain, Mind, Experience, and School*, the National Research Council applies recent knowledge about learning to the design of learning environments. Effective teaching and learning environments consist of four interconnected components: learner-centered, knowledge-centered, assessment-centered, and community-centered.³⁴

1. *Learner-centered environments.* Each student enters the classroom with a unique set of knowledge, skills, misconceptions, and attitudes. Each student's experience, culture, and background serve as the foundation for future learning. Students construct meaning by building bridges between their prior understanding and the concepts, skills, and attitudes that make up the new subject matter. Teachers in learner-centered classrooms learn about their students' experience, knowledge, background, and motivation in order to help them make the link to new learning.

2. *Knowledge-centered environments.* The ability of experts to think and solve problems is based not only on a set of thinking skills, but on an organized body of knowledge as well. To achieve deep understanding, students need to learn the concepts and skills of a discipline, the interconnections between the concepts and skills, and how to apply them in new situations. Knowledge-centered environments emphasize sense making—students' ability to think about their own learning and to ask questions when new information does not make sense. Learning activities can be structured so that students explore, explain, extend, and evaluate their progress.

3. *Assessment-centered environments.* Feedback is extremely important to enhance learning and develop expertise. Effective assessment systems provide students frequent feedback, give them opportunities for revision, measure their achievement of the course goals, and teach them how to assess themselves.

4. *Community-centered environments.* Effective learning environments promote a sense of community. In that learning community students and teachers share a set of norms: that students learn from one another, that high standards are important for all students and teachers, that the search for understanding must allow students and teachers to make mistakes, and that opportunities for students to interact with other students and teachers and to receive feedback will enhance their learning.

33. Chickering & Gamson, *supra* note 30, at 4–6.

34. Committee on Developments in the Science of Learning & Committee on Learning Research and Educational Practice, Commission on Behavioral and Social Sciences and Education, National Research Council, eds. John D. Bransford et al., 131–54 (Washington, 1999).

III. Creating and Maintaining an Effective Teaching and Learning Environment

The four models of effective teaching and learning environments discussed above are based on research, theory, and practice in higher education. This section synthesizes eight components of an effective educational environment and applies them to legal education. Its focus is on the ways in which individual law teachers and their students can create and maintain an effective teaching and learning environment. The elements are respect, expectation, support, collaboration, inclusion, engagement, delight, and feedback. These components are interrelated and cumulative. The more elements present, the more likely the environment will be conducive to learning.

The teacher and student behaviors and attitudes that contribute to each element are subtle. For example, a central aspect of a positive environment is the respectful and caring attitude of the teacher and students. It is difficult to define caring and respect, but most people know when they are present and when they are not. The creation and the maintenance of the teaching and learning environment depend less on grand gestures and pronouncements than on teachers' and students' doing many little things consistently well.

A. Respect

Mutual respect among teachers and students is a fundamental element of an effective teaching and learning environment. Mutual respect goes from teachers to students, from students to teachers, and from students to students. Otto Eckstein has said, "The most important principle of successful teaching is to have a deep respect for students . . ." ³⁵ A prominent adult educator writes, "A fundamental feature of effective facilitation [of learning] is to make participants feel that they are valued as separate, unique individuals deserving of respect." ³⁶ Leading legal educators concur. "Your students will know whether you like and respect them, and if they know that you do not, you will fail as a teacher." ³⁷

A respectful environment is one in which teachers and students participate in a dialog, explore ideas, and solve problems creatively. Intimidation, humiliation, and denigration of others' contributions are disrespectful, cause many students to withdraw from participation, and hinder their learning. But mutual respect does not mean that the participants avoid conflict, hard work, and criticism. To grow, teachers and students must engage in critical reflection and be willing to challenge and be challenged. ³⁸

35. Quoted in Margaret M. Gullette, *A Deep Respect for Students: The Heart of Good Teaching*, Change, July/August 1984, at 8, 43.

36. Stephen D. Brookfield, *Adult Learners: Motives for Learning and Implication for Practice*, in *Teaching and Learning in the College Classroom*, eds. Kenneth A. Feldman & Michael B. Paulsen, 137, 143 (Needham Heights, 1993) [hereinafter *Teaching and Learning*].

37. Kent D. Syverud, *Taking Students Seriously: A Guide for New Law Teachers*, 42 *J. Legal Educ.* 247 (1993).

38. See Hess, *supra* note 1, at 942, 951-54.

Our student interviews reinforced the central role of respect in creating and maintaining an effective teaching and learning environment.

Treat your students with respect. Create an environment where they'll feel comfortable, where they feel validated, and not made to feel small, like they're not worth being in the institution. I tend to learn better from professors that I respect who create that environment and make me feel that I can contribute to the profession.

When you have a professor that shows they care about you and that you respect, you don't want to let that professor down. In the classes where you like your professor and they treat you with respect, you work a heck of a lot harder.

The creation of a respectful environment is a complex interpersonal process. It begins with what is in teachers' hearts and minds. Teachers must value a positive relationship with their students and must communicate that attitude to them. Then, teachers and students need to behave in a way that fosters respect throughout the course. The following behaviors help establish and maintain respect.

Learn students' names. Perhaps the single most important thing a teacher can do to create a positive climate in the classroom is to learn students' names. Call students by name in and out of the classroom. Do not allow them to be anonymous, to feel that they can fade out without anyone's knowing or caring.³⁹

Use various means to learn all of your students' names throughout the course.⁴⁰ If your students know that you are trying to learn their names, they will appreciate the effort you are making to get to know each one of them as an individual. They will feel valued and respected. Our student interviews highlighted the effect on students when teachers call them by name.

One of the things that did work was to humanize each student. When you raised your hand, it was not "you in the back" or "you with the shirt," it was "Ms. So-and-So" or "Mr. So-and-So." And it absolutely made you feel like "All right, the focus is on me and this professor wants to hear what I am about to say."

39. Charles C. Bonwell & James A. Eison, *Active Learning: Creating Excitement in the Classroom* 22 (Washington, 1991); Syverud, *supra* note 37, at 248-49; Lowman, *supra* note 24, at 70.

40. How can you learn the names of all of your students, especially in big classes?

Get student pictures from the registrar or take them yourself. Paste them on 3x5 cards or on a seating chart. Study the pictures.

Use a seating chart in class. Many people learn names and faces more quickly when they are associated with a particular place in the classroom.

Ask students to help you learn their names by telling you who they are whenever they speak in class or meet you outside of class.

Make a videotape of your students. In the first week of the course, have a staff person operate a video camera outside of class. Have each student appear on camera for 10 seconds to give her name and something memorable about herself. Study the video. (It's hard for me to forget students who tell me on video that they double-handed a boat across the Pacific Ocean, have the same name as a character on *Bewitched*, or hope that my beloved Wisconsin Badgers lose that weekend.)

Learn about students' experiences and use them in class. Ask students to provide information about themselves: where they are from, undergraduate school and major, graduate degrees, work experience, other experience related to the course, hobbies, and anything else they want you to know. Have them put in parentheses any information they do not want you to reveal to others. They can provide the information in response to a one-page survey, on index cards, or via e-mail. Ask students to share their experiences at relevant times in the course. (As part of a discussion of alternative dispute resolution in my Civil Procedure course, my students and I benefited from the views of students who had had experience as mediators and representatives of labor and management in arbitration. The index cards alerted me to their expertise.) Knowing something about students helps many teachers learn their names as well. Our student interviews noted the benefits of incorporating students' experience in the classroom.

We have a lot of life experiences that we are bringing in. In some ways we know more of what should have happened in a given contracts setting or torts setting because we've been out in fields where these things happen. And some professors are really great about honoring that and seeking out students that they know have worked in a field to get their input.

Let students get to know you. Introduce yourself at the beginning of the course, letting students know about your professional and personal interests. Fill out the same survey you have the students complete. Share that information in class or on the course Web site. (I tell students on the first day of class that I taught second grade—and that it is not all that different from teaching law school. The students laugh, and I get to make the point that second graders and first-year law students share an excitement for learning.) Get to know students outside of the classroom as well through office hours, lunches with students, or attending student events.⁴¹ One of our student interviews captured the importance of students' seeing their teachers outside of the classroom:

It does a world of good for a lot of students to see a professor at a law school family picnic or at the barristers ball out there on the dance floor with us. I think those types of things go a long way toward creating a relationship between student and professor. Even if the student has anxieties and insecurities about the law and the class work, seeing that other dimension of a professor, I think, goes toward breaking down barriers that the student may be putting up.

Be considerate of students' time. Law students, like their teachers, are busy people. Many are balancing a full load of courses, work, and families. You can show respect for students by treating their time as a precious commodity. If you come to class early and stay late, you can address student concerns at a time convenient for students. Starting and ending class on time demonstrates your cognizance of students' busy lives. You demonstrate respect by setting

41. See Janet Mancini Billson & Richard G. Tiberius, *Effective Social Arrangements for Teaching and Learning*, in *Teaching and Learning*, *supra* note 36, at 284; Lowman, *supra* note 24, at 71–72.

office hours at times that work for the students and by not missing your office hours. Coming to a teacher's office hours is rarely a casual act for students, and a teacher's absence during office hours can make them frustrated and angry.⁴² Through verbal and nonverbal behavior, teachers communicate to students whether they are welcome and whether they have the teacher's full attention. For example, you can tell students that you will not schedule any other work during office hours and that "nothing I do is more important than meeting with you."⁴³ Nonverbal cues that welcome students include seating the student where there are no barriers between you (such as a desk) and not answering the phone during the conference.

Define and model respect in the classroom. At the beginning of the course, you can articulate the critical role of mutual respect in the classroom and define with students respectful behavior. (I tell students that three types of respect are essential to an effective classroom environment: my respect for them; their respect for me; and their respect for one another.) Throughout the course, you can demonstrate respect for students, colleagues, lawyers, judges, and the law. Teachers who incorporate the other seven components of an effective teaching and learning environment discussed below will model respect. For example, inclusion of a variety of perspectives, collaboration with students in goal setting, listening carefully to students' comments, and challenging all students to achieve high expectations are powerful demonstrations of respect. Our student interviews recognized the critical role that the teacher plays in establishing and maintaining a respectful environment.

There are classmates who will basically crucify each other. And it's very uncomfortable to have to face that not only from the professor but also from other students. I think it's the professor's responsibility to be able to maintain a level of respect not only among themselves, the professor and the students, but also among the students themselves. I've seen professors do that very effectively, and I have also seen professors fuel the fire.

B. Expectations

A teaching and learning environment steeped in mutual respect between teachers and students does not imply low standards and minimal expectations. Indeed, high expectations are an important element of respect.

There is considerable literature on the powerful effect of expectations on learning. If teachers set high but attainable standards for academic performance, student achievement usually increases; if they set low expectations, academic achievement usually decreases.⁴⁴ Negative expectations become self-fulfilling prophecies.⁴⁵ Students consistently give high ratings to courses in

42. See Lowman, *supra* note 24, at 72, 91.

43. Syverud, *supra* note 37, at 253-54.

44. Mary Deane Sorcinelli, Research Findings on the Seven Principles, in *Applying the Seven Principles of Good Practice in Undergraduate Education*, eds. Arthur W. Chickering & Zelda Gamson, 13, 20-21 (San Francisco, 1991).

45. See Donelson R. Forsyth & James H. McMillan, Practical Proposals for Motivating Students, in *Teaching and Learning*, *supra* note 36, at 263, 284.

which they had to work hard.⁴⁶ Our student interviews noted the effect of teachers' expectations on students' motivation and performance:

I choose my classes according to professors and their reputation. If they have high expectations, I'm going to have high expectations of myself, and I'm going to want to come to class and produce at their level. I don't think professors understand the power they have over their students. If they come to class prepared and they demand a lot, I'm coming to class very well prepared because I want to really be active in their classrooms and understand.

High expectations of all students. At the heart of an effective teaching and learning environment is the principle that all students can attain a high level of achievement. Teachers who expect a student to succeed act in ways that make success more likely. Students who expect themselves to succeed work harder, ask more questions, and learn more than students who do not expect success. You can show students that you believe all of them can succeed by seeking participation from many students each class, by spreading difficult questions and assignments to all students, and by finding opportunities to celebrate student accomplishment publicly and privately.⁴⁷

Clear communication of expectations. Teachers must clearly articulate their expectations to students at the beginning and throughout the course. In the first class, you should inform students, orally and in writing, of the course goals and your expectations regarding preparation for class, attendance, class participation, respect in the classroom, and teaching and evaluation methods. During the course, you can help students understand your expectations for daily assignments by telling them not only what material to read but what focus questions to consider while reading.

He took the time to put questions within each case so that when you're reading it not only do you look for the answer to that question, but when you find it you start putting the pieces together. The best thing about knowing the questions is that no matter how difficult the subject is you can prepare for the class. You are not just reading the case and briefing a case and showing up in class. You know what to expect.

It is especially important to clearly communicate your expectations regarding evaluation methods. You should give students the grading criteria in writing and outline the characteristics of excellent, fair, and poor performance.⁴⁸

Modeling high expectations. While grading criteria will help students understand expectations, seeing models of outstanding student work will give them a clearer idea of how expectations translate into a finished product and often will provide strong motivation.⁴⁹ And you should model the commitment to excellence: you must be as demanding of yourself as you are of your students.

46. Sorcinelli, *supra* note 44, at 21.

47. See Okianer Christian Dark, Principle 6: Good Practice Communicates High Expectations, 49 J. Legal Educ. 441, 442-43 (1999); Forsyth & McMillan, *supra* note 45, at 266.

48. See Hess, *supra* note 1, at 944; Robert A. Scott & Dorothy Echols Tobe, Communicating High Expectations: Effective Undergraduate Education, Liberal Educ. Spring 1995, at 38, 42.

49. Scott & Tobe, *supra* note 48, at 42.

Ultimately, as our student interviews illustrated, teachers best communicate their expectations through their actions.

A professor can only expect to get as much back as the professor puts into the class. Plain and simple: if the professor half-asses the class, the students are going to half-ass their effort. And if the professor is really demanding, I think most students will stand up to the challenge and get things done.

I felt that the teacher was a very hard worker. I thought that she loved her job. Those things helped me gain respect for the professor and in turn it helped me learn more in the class because I was excited about going to class. I never missed once. Even though it wasn't my best grade, I think I learned the most out of that class.

C. Support

A supportive teaching and learning environment is tied closely to respect and expectations. Mutual respect is fundamental to a supportive environment, and an important adjunct to teachers' high expectations is their commitment to helping all students achieve those expectations. Elements of a supportive environment include teachers' attitudes, student-faculty contact, and role-model and mentor relationships.

Teachers' supportive attitudes. Lowman's research identifies common descriptors of exemplary teachers on the interpersonal rapport dimension: *concerned, helpful, caring, encouraging, and available*. Those teacher attitudes have strong positive effects on student motivation to excel.⁵⁰ A supportive environment is an important factor in student motivation and engagement in all law school classrooms, especially those that include the Socratic method and value problem-solving and critical thinking. Likewise, a supportive climate in and out of the classroom enhances students' learning, willingness to take risks, and their openness to offering and considering a variety of perspectives.⁵¹ Our student interviews highlighted the effects of teachers' attitudes on students' classroom experience and motivation:

I think there is a place for the Socratic method. It's a question of whether it's applied with some humanity and whether you allow the student to maintain some dignity.

If this professor is a nice person and treats people well, I'm going to work extra hard in that class just because I have that kind of relationship with that person not only in class but also outside of class.

Frequent student-faculty contact. Substantial research on effective teaching in higher education documents the importance of student-faculty contact. Student-faculty contact has positive effects on students' educational goals, satisfaction with their educational experience, tolerance for ambiguity, intellectual independence, and persistence towards their degree.⁵² According to

50. See Lowman, *supra* note 24, at 29.

51. See Marlene Le Brun & Richard Johnstone, *The Quiet (R)evolution: Improving Student Learning in Law 100* (Holmes Beach, 1994).

52. See Susan B. Apel, *Principle 1: Good Practice Encourages Student-Faculty Contact*, 49 *J. Legal Educ.* 371, 373-74 (1999).

Chickering and Gamson, "Frequent student-faculty contact in and out of class is the most important factor in student motivation and involvement."⁵³ Such contact has significant benefits for teachers as well. The relationship that comes from contact with students enhances teaching effectiveness. (When I'm in a classroom with students I don't know, I make all sorts of paranoid assumptions about how they are reacting to the class, why they are acting as they are, and what, if anything, they are learning. Countless times, when I have learned more about the individual students, my initial assumptions and speculations are way off base.) And one of the great rewards of teaching is learning about the interests, aspirations, and experiences of the wonderful human beings who are our students. You can increase contact with students in the classroom by coming to class early and staying after class to talk with them, and by using interactive methods in class, such as Socratic dialog, role-playing, and free-flowing discussion. Opportunities for out-of-class contact include informal discussion programs (debating a current topic, for example), attending student events, sharing a meal, and holding conferences (in person or via e-mail).⁵⁴ One of our student interviews noted the positive and negative effects of teachers' attitude toward meeting with students out of class:

What is also helpful is when professors are available outside of class and they're open to being available. Some professors are great. You go in and ask questions in their office and they'll answer all of your questions and anything else that you might have. But then you get other professors—when you go in, they're very defensive: "Why are you in here asking me these questions? You know, I really don't want to talk to you. I have no time to talk to you." That doesn't help learning and it makes you not like the professor.

Role-model and mentor relationships. Role models and mentors are crucial for students' professional development. Through their actions, law professors teach students legal ethics and values. As Susan Apel succinctly puts it: "Faculty teach civility and fair dealing, for example, by *being* civil and fair in their professional contacts with their colleagues and their students."⁵⁵ Likewise, if teachers want students to participate in class, take risks, and think creatively, then they must welcome diverse perspectives, listen carefully to students' contributions, and not react defensively to criticism. In the role of mentor, teachers encourage, guide, and advise students.⁵⁶ One of our student interviews echoed the importance of faculty mentors for students:

One of the things that has been most encouraging to me as a student has been to have professors that seem to be willing to be more than just a conveyor of the law but also look to mentor. It's the professor's countenance when you come up after class and ask questions or when you go to their office.

53. Chickering & Gamson, *supra* note 30, at 4.

54. See Apel, *supra* note 52, at 377, 380–85.

55. *Id.* at 379.

56. See Le Brun & Johnstone, *supra* note 51, at 102–05, 116.

D. Collaboration

Two types of collaboration contribute to an effective teaching and learning environment. The first is cooperative learning, in which students work with one another in pairs or groups in class discussions and out-of-class projects. The second is collaboration among students and teachers in course design, delivery, and evaluation.

1. Cooperative Learning Among Students

An extensive body of research documents the benefits of cooperative learning methods. Over the past 100 years, more than 600 studies have demonstrated that cooperative learning produces higher achievement, more positive relationships among students, and psychologically healthier students than competitive or individualistic learning.⁵⁷ In the context of college education, cooperative learning

- enhances student learning and academic performance in small and large classes; it is especially effective when mastery is important and the task is complex and conceptual.
- aids student development of problem-solving skills, moral reasoning abilities, and high-level thinking skills such as analysis, synthesis, and evaluation.
- promotes positive student attitude toward the subject matter, more satisfaction with the class, and increased motivation to learn about the subject.
- fosters positive relationships among students and between students and teachers.
- increases students' willingness to consider diverse perspectives.
- helps students manage stress, enhance their self-esteem, and avoid some of the psychological distress that accompanies competitive environments.⁵⁸

The many benefits of cooperative learning demonstrated in research on college education enhance the teaching and learning environment in law school, and legal educators note additional benefits. As peer teachers and mentors, students compare and challenge perspectives, gain insights, pressure one another to produce their best work, and develop lawyering skills, including written and oral advocacy. Even before they graduate, students need to learn to work with other lawyers and to engage in cooperative approaches to negotiation, mediation, and alternative dispute resolution.⁵⁹ Moreover, cooperative learning has resulted in significant improvement in

57. See David W. Johnson et al., *Cooperative Learning: Increasing College Faculty Instructional Productivity I* (Washington, 1991); Vernellia R. Randall, *Increasing Retention and Improving Performance: Practical Advice on Using Cooperative Learning in Law Schools*, 16 T. M. Cooley L. Rev. 201, 218 (1999).

58. See Johnson et al., *supra* note 57, at 40–46, 51–54; Randall, *supra* note 57, at 218–22.

59. See David Dominguez, *Principle 2: Good Practice Encourages Cooperation Among Students*, 49 J. Legal Educ. 386, 387 (1999); Le Brun & Johnstone, *supra* note 51, at 291–92.

student dismissal rates and academic performance in an academic support program. The program was especially effective for African-American students.⁶⁰ Finally, cooperative learning not only helps students learn, it helps them to build community in and out of the classroom and to develop a greater sense of respect for one another.⁶¹

(I had my first experience with cooperative learning in law school in 1991 in my Remedies course. At the end of a unit I drafted a set of problems and had the students work on the problems in small groups. I feared that the students, almost all of whom were third-years, would not stay on task, would miss important aspects of the analysis for the problems, and would think that the small-group work was childish. I was especially concerned about one student, Z, who had not spoken in class the entire semester and had spent most of the time frowning at me and at other students. Much to my surprise, the students eagerly discussed the problems. They developed appropriate lines of analysis that I had not considered. And student Z was an animated, jovial participant in the small-group discussion.)

Recent legal education literature explores the design and application of cooperative learning activities in law school. Vernellia Randall describes in detail the design elements of cooperative learning as a "structured, systematic, instructional strategy in which small groups work together toward a common goal."⁶²

Cooperative learning activities appropriate for law school run the gamut from short, informal group work to highly structured semester-long projects.

- *Three-minute discussions.* Divide the class into groups of three for the semester. From time to time, pose a question, hypothetical, or problem for the groups, and give them three minutes to discuss

60. See Randall, *supra* note 57, at 234.

61. Paula Lustbader, Structuring Collaborative Exercises, in *Techniques for Teaching Law*, eds. Gerald F. Hess & Steve Friedland, 139 (Durham, 1999).

62. Randall, *supra* note 57, at 234. Randall articulates seven elements for the design of effective cooperative learning activities:

1. The teacher must clearly identify the objectives (which could include content, attitudes, and skills) of the activity.

2. The teacher decides group size, membership (heterogeneous or homogeneous), and the method for selecting members.

3. Each student must feel part of a team, responsible not only for her own learning, but for the learning of other group members as well.

4. Students engage in face-to-face interaction to explore issues and to work toward achievement of group goals.

5. Each student is accountable for contributing a fair share to the group's success.

6. Students get to know one another, communicate accurately, support one another, and resolve conflicts constructively.

7. Group members reflect on group processing and give one another feedback on individual and group effectiveness. See *id.* at 234-59.

In addition to designing the group activity, the teacher's role is to provide clear directions for the activity (preferably in writing), circulate among the groups to monitor and assist learning, and lead the debriefing to expose the major points learned (which could include content, skills, and values). See Lustbader, *supra* note 61, at 139; Vernellia Randall, Designing Cooperative Learning Exercises, in *Techniques for Teaching Law*, *supra* note 61, at 139-42.

and generate responses. At the end of three minutes, ask spokespersons from the groups to report.⁶³

- *Team statements.* Pose a question or problem, and ask each student to write an individual statement in response. Then have students pair, discuss the question, and prepare a response. Next have two pairs join, discuss the problem in a group of four, and write a group response. Finally, have the group responses read to the entire class.⁶⁴
- *Interest groups.* Divide the class into groups, each representing a different interest group. The groups meet for twenty minutes to develop testimony to the legislature on proposed legislation. A representative from each group testifies. Then the students abandon their interest group roles, become legislators, and debate the appropriate legislative action.⁶⁵
- *Community lawyering.* In a community lawyering seminar the teacher placed students in groups of three to five. Each group identified a community field project involving issues such as race relations, public safety, affordable housing, and local schools. Each group developed a plan for community intervention and worked cooperatively with local residents and leaders to find solutions to community problems.⁶⁶

One of our student interviews described an excellent cooperative learning experience:

She divided the class of about forty people into groups of four, and everybody was going to pretend that they were making recommendations to a congressional committee about how to change the statute. We had to read the statute the night before. You had to argue with other people in your group about how the statute should be changed. You had to redraft it. You had to come up with a presentation to make to Congress. And then one person from that group had to make the presentation. You had to read. You had to interpret a statute. You had to present and persuade other people in your group, argue effectively, and then stand up and make a presentation; and you had to write a statute. Those are five incredible skills that you need to have as a lawyer that you had to practice in one hour. It was fabulous.

2. Collaborative Course Design

An effective teaching and learning environment is characterized by commitment of both students and teachers to the course goals, learning activities, and evaluation methods. The concept that teachers and students should share responsibility for significant course design decisions is supported by two

63. See Gary Minda, Three-Minute Discussions, *in* *Techniques for Teaching Law*, *supra* note 61, at 142-43.

64. See Randall, *supra* note 57, at 239.

65. Stephanie M. Wildman, The Question of Silence: Techniques to Ensure Full Class Participation, 38 *J. Legal Educ.* 147, 153 (1988).

66. See Dominguez, *supra* note 59, at 398-99.

principles of adult education. First, adults pursue education voluntarily to acquire knowledge and skills, but will withdraw from voluntary participation if the education is not meeting their needs or is conducted at an inappropriate level. Second, mutual respect underlies an effective educational environment; by collaborating with students in course design, teachers demonstrate profound respect for students.⁶⁷ Sharing control with students reduces significant sources of stress in law school, including feelings of powerlessness and paranoia.⁶⁸ Empirical research demonstrates that student-and-teacher collaboration in deciding classroom policies, course objectives, instructional methods, and evaluation schemes enhances student learning and student attitudes toward the course, the law school, and the teacher.⁶⁹

You can involve students in course design decisions in a variety of ways.

Student choice in their assignments. Giving students options is one way to involve them in the course and to allow them to build on their strengths and interests. For example, students appreciate the opportunity to have a say about the due dates for assignments. A more substantive involvement occurs when students choose topics for writing assignments, or when students are allowed some discretion in determining the weight of each assignment.⁷⁰

Periodic student assessment of teaching/learning methods. Design a simple form to gather feedback from students about the effectiveness of teaching/learning methods. The form can be as plain as three questions on one page: What teaching/learning activities are most effective for you? What teaching/learning activities are least effective for you? What new teaching/learning activities should we try? You can use the feedback to modify your instruction to help students learn more effectively. When a teacher gathers student feedback and uses it to improve the course, most students respond enthusiastically. (I gather feedback from students in each of my courses in the middle of the semester. My students offer helpful suggestions: Give more ungraded quizzes. Clarify instructions for small-group work. Hold an optional tutorial session on jurisdiction. Perhaps more important, when I summarize for students the feedback they offered and implement some of their suggestions, students feel respected and invested in their own education.)

Design decisions at the beginning of the course. Work with students in the first class or two to make basic decisions about course design. This technique is most appropriate for upper-level courses. You can allow students to partici-

67. See Brookfield, *supra* note 36, at 141–44; Billson & Tiberius, *supra* note 41, at 286–88.

68. Glesner, *supra* note 3, at 657.

69. Gerald F. Hess, Student Involvement in Improving Law Teaching and Learning, 67 UMKC L. Rev. 343, 355–61 (1998). I surveyed 95 students who participated in student advisory teams to work with the teacher in course design. The teams operated in six different semesters in both first-year and upper-level courses. Participation on the SAT had the following effects on students: improved attitude toward the course (98%); improved attitude toward the teacher (94%); improved attitude toward law school (82%); improved learning (84%).

70. Gerald F. Hess, Principle 3: Good Practice Encourages Active Learning, 49 J. Legal Educ. 401, 416 (1999). The teacher can establish ranges of weights attributable to various graded assignments (e.g., paper 25 to 50 percent, project 20 to 40 percent, exam 25 to 50 percent) but allow each student to personalize the grading scheme by specifying the percentage of their grade attributable to each assignment.

pate in limited course design issues, or you can work with students on all of the significant aspects of course planning. For example, you could distribute a survey to students before the first class asking them to respond to questions about course design.⁷¹ Then, during the first class, you could solicit student comments before making decisions on these design issues. Or you and your students could make these decisions by consensus. (Designing upper-level courses with students in the first class meetings has provided some of my most rewarding experiences as a teacher. When students realize that I am serious about the process and that they have significant involvement in shaping the course, including the evaluation scheme, they respond thoughtfully and responsibly. And gratefully. Most students appreciate deeply the confidence I show in them, the respect inherent in this process, and the opportunity to design their own adult education.)

Student Advisory Team. As I have summarized elsewhere:

A SAT is a group of students who meet periodically with the teacher to help the teacher improve the course. The students have two primary roles. First, the students provide feedback to the teacher about the students' learning (what they "get" and what they don't) and the effectiveness of the teacher's instructional methods. Second, the students offer suggestions to improve the course and their learning. The teacher's role is to listen to the students' feedback and to implement reasonable suggestions when appropriate.⁷²

(My most humbling moment as a teacher, and an experience that helped me grow, involved a SAT. The literature I had read about SATs warned that face-to-face feedback from students can be painful and some teachers react defensively. I thought, "That won't happen to me. I am a good teacher, concerned about student learning, and I welcome feedback from my students." Right. A SAT group read me a letter from a member of the class criticizing a graded assignment I had given. As the students read the letter, I got more and more angry. When they finished, I launched into a point-by-point rebuttal of the criticisms. As I conducted my vigorous defense, a little voice told me that I was not listening and that my defense was counterproductive. But I ignored that voice. A day later I realized what a fool I had been. At the next SAT meeting I apologized to the students and admitted that I still had lots to learn about listening and teaching. My confession became the foundation for a close, productive relationship with my students that semester.)

71. The survey could ask students to respond to some or all of the following questions:

What are your goals for the course? (What content do you hope to learn? What skills do you hope to develop? Other?)

What teaching/learning methods should we use to achieve the goals of the course? (Class discussion, teacher presentation, small-group work, student presentations, field trips, videotapes, simulation, writing exercises, other?)

What role and responsibilities do students have to help achieve the goals of this course?

What role and responsibilities does the teacher have to achieve the goals of this course?

What evaluation methods should we use to assess student performance? (Tests, papers, problems, presentations, class participation, other?)

72. Hess, *supra* note 69, at 343.

E. Inclusion

The quality of students' learning is closely tied to their motivation. Motivation is enhanced more by the chance to achieve rewards than the desire to avoid punishment. For example, students whose primary motivation is to avoid a bad grade tend to exert less effort and perform less well on exams than students with positive motivation. Motivation can be extrinsic (motivation for grades, money, or other rewards) or intrinsic (motivation based on curiosity, interest, and the desire to learn). Although both types of motivation can aid learning, students perform better when their motivation is intrinsic.⁷³

A key to intrinsic motivation is that the students feel welcome and included. Inclusion is important for all students, but it is crucial for women, for older students, and for students of minority background, race, or sexual orientation.⁷⁴ An effective teaching and learning environment values diverse student goals, interests, experiences, perspectives, and learning styles.

Student goals. Goals are an important source of motivation. Students perform better when they know what goals they are trying to achieve and the goals are personally important to them.⁷⁵ You can increase students' motivation by having them participate in generating goals for the course and by having them articulate their personal goals as well. Then you can shape your course to help students achieve both course goals and personal goals.

Student interests and experiences. Students come to law school with a variety of backgrounds, values, and interests. Courses that include topics and skills relevant to students' interests and values increase intrinsic motivation. And students learn more effectively when the new information and skills are related to their previous experiences. On the other hand, they feel unwelcome and silenced when courses exclude issues that are important to them. You can increase students' motivation and improve their learning by finding out about their backgrounds, interests, and experiences and using that information when designing learning activities. You can gather that information in many ways—a brief written or e-mail survey, a short writing assignment asking students to draft personal statements, an oral survey in class, or informal discussions out of class. Then you can prepare hypotheticals and problems that reflect students' interests, and you can ask students to speak up when their experiences are relevant to the content or skills at hand.⁷⁶ Our student interviews noted the learning opportunities that are missed when teachers downplay issues that are important to students' lives:

73. See Cameron Fincher, Learning Theory and Research, in *Teaching and Learning*, *supra* note 29, at 47, 55; Wilbert J. McKeachie, *McKeachie's Teaching Tips: Strategies, Research, and Theory for College and University Teachers*, 10th ed., 302–03, 307 (Boston, 1999); Forsyth & McMillan, *supra* note 45, at 263–65.

74. See McKeachie, *supra* note 73, at 218–21.

75. See Forsyth & McMillan, *supra* note 45, at 268–69.

76. Paula Lustbader, *Teach in Context: Responding to Diverse Student Voices Helps All Students Learn*, 48 *J. Legal Educ.* 402, 405–06 (1998) [hereinafter *Teach in Context*]; Paula Lustbader, *Principle 7: Good Practice Respects Diverse Talents and Ways of Learning*, 49 *J. Legal Educ.* 448, 455–56 (1999) [hereinafter *Principle 7*].

He didn't talk about gender issues. He didn't talk about issues dealing with race and religion in regard to property. I felt like those were just little side notes. Every single time that those issues were brought up that really motivated me and really made me want to learn because they were relevant to who I am, they were just footnotes. And so it just further devalued who I was. I have no voice. There's no way I can talk about what happens, how I feel about law, how law could work better to help more people, because my view doesn't count.

We've come across some cases where race was an issue or women's rights should have been an issue and we could have fleshed it out more. Some people might look at that as getting sidetracked. But we also have to understand that we are learning law in a vacuum, but when we get out in the real world we have to deal with people that are not the same color, that are not the same gender and religion or sexual orientation. And we need to learn how to deal with that effectively.

Diverse perspectives. Students and teachers have a wide variety of perspectives on the content, skills, and values that make up legal education. An effective teaching and learning environment includes diverse perspectives. You can facilitate and welcome diverse perspectives by choosing material that reflects a variety of viewpoints, by acknowledging at the beginning of the course the value of differing opinions, and by validating students who raise divergent views in class.⁷⁷ Our student interviews demonstrated the challenges and benefits of including a variety of perspectives in the classroom:

If the system wants to include more people of color and people of diverse backgrounds, it has to include what we bring to the institution. It has to include our perspectives, our takes on certain issues, our culture. It seems to me hypocritical of an institution to say, "Well, we need more diverse students, but we're not willing to accommodate what these diverse students bring to the institution and to the field of law."

She had actually given us a supplemental reading. It was like an anthology that included different perspectives. I'm talking African-American perspectives; I'm talking female perspectives on contracting and how that radically changes how you view what an acceptable offer truly means within a given context. That was crucial.

Various learning styles. Paula Lustbader cogently describes the importance of learning styles for law teachers: "Theories about learning styles indicate that learners have a preferred mode of learning, that people learn in different ways, that a variety of learning styles will be present in any classroom, and that no one teaching method is effective for all students."⁷⁸ Empirical research has demonstrated the wide variety of learning styles of law students.⁷⁹ An effective

77. See Lustbader, Principle 7, *supra* note 76, at 456; McKeachie, *supra* note 73, at 218–24.

78. Lustbader, Principle 7, *supra* note 76, at 455. See also Charles S. Claxton & Patricia H. Murrell, *Learning Styles: Implications for Improving Educational Practices 7–55* (Washington, 1987) (describing in detail four types of learning style theories: instructional preference, social interaction, information processing, and personality).

79. See Vernellia R. Randall, *The Myers-Briggs Type Indicator, First Year Law Students, and Performance*, 26 *Cumb. L. Rev.* 63 (1995) (learning styles based on the Myers-Briggs Type Indicator); John H. Reese & Tania H. Reese, *Teaching Methods and Casebooks*, 38 *Brandeis L.J.* 169 (2000) (learning styles based on the Kolb Learning Style Inventory).

teaching and learning environment includes a variety of teaching and learning methods to help students with different learning styles excel. Effective teachers employ a range of methods, including Socratic dialog, large- and small-group discussions, writing exercises, visual aids, and simulations. As one of our student interviews explained:

I am a visual learner as well. I'm definitely one of those students who needs to reflect on her notes before answering a question, who's better in small-group exercises, who hates talking in front of a large group. Professors don't necessarily value students' different learning styles. They don't allow room for different kinds of teaching methods to be responsive to those styles. I think I could have learned a lot more in my first-year classes if we had divided up into groups and discussed policy, if we had written take-home exercises or prepared outlines.

And, as Parker Palmer notes, an effective environment includes silence and speech. Our student interviews concurred:

Give people time to think about the question and process an answer. I think teachers tend to be sort of uncomfortable with silence, and students do too, but I think there could be more silence in the classroom to let people generate responses.

F. Engagement

Closely related to the concept of inclusion is the idea that an effective teaching and learning environment engages the teacher and the students. Teachers demonstrate their engagement through their attentive presence with students in and out of the classroom. Students become engaged in learning when they actively participate in their own education.

1. Teacher Presence

One type of communication linked to effective teaching and learning is teacher immediacy. Immediacy refers to verbal and nonverbal communication that brings teacher and students closer together. A teacher's immediacy behaviors reflect a positive attitude toward students and enhance personal relationships with students; they positively influence students' attitudes toward the teacher and the course and improve student learning. An empirical study of college students revealed the types of teacher immediacy behaviors that enhanced learning for white, Hispanic, Asian, and black students. The verbal behaviors that demonstrated engagement and significantly affected learning for all four groups included soliciting alternative viewpoints and opinions from students; praising student work; calling students by name; posing questions and encouraging students to talk; using humor; having discussions outside of class; and asking students how they feel about assignments. Two nonverbal behaviors significantly affected learning for all four ethnic groups: maintaining eye contact and smiling at students.⁸⁰

80. See Judith A. Sanders & Richard L. Wiseman, *The Effects of Verbal and Nonverbal Teacher Immediacy on Perceived Cognitive, Affective, and Behavioral Learning in the Multicultural Classroom*, *in Teaching and Learning*, *supra* note 36, at 623, 623–31.

Another teacher behavior critical to engagement is listening. Teachers communicate their presence to students by listening carefully to student responses and questions. Active listening takes effort. After asking a question or posing a discussion prompt, listen to what students actually say, rather than look for the responses you expect. When students ask questions and make comments, listen actively by waiting till the student is finished talking (rather than interrupting), by responding directly to the student's questions, and by checking with the student to be sure you have understood the student's comment or question. (Outside of class I am only a so-so listener. But in class I concentrate lots of energy on active listening. If my concentration wanes and I miss part of a student comment, I admit I lost my concentration and ask the student to repeat the part I missed. I want students to recognize that listening is an important, difficult skill.)

2. Active Student Participation

Students learn better when they are actively engaged in the learning process. And student motivation and involvement increase when teachers employ a variety of teaching and learning methods.⁸¹ Active learning methods are effective in achieving many of the primary goals of legal education, including

- higher-level thinking skills (analysis, synthesis, evaluation, and critical thinking)
- content mastery (By discovering knowledge and concepts, students attain a deeper level of understanding.)
- professional skills (Interviewing, counseling, negotiating, mediating, and advocacy skills are best learned through experience.)
- Positive attitude (enhancing students' attitude toward the course and their appreciation of diverse perspectives)⁸²

Many types of teaching and learning methods are appropriate for law school. Each of the following methods can be structured to increase students' active participation: Socratic dialog (questioning), lecture, discussion, writing, simulation (role-playing), computer exercises and discussion, and real-life experiences.⁸³

81. Bonwell & Eison, *supra* note 39, at 3; Barbara Gross Davis, *Tools for Teaching* 197 (San Francisco, 1993).

82. Hess, *supra* note 70, at 402-03.

83. *Socratic dialog*. See *id.* at 406-07. Students will get more from Socratic dialog if they are well prepared for class. To help students prepare, inform them in advance of the key questions, hypotheticals, or problems that will be the focus of the next class. In class, after posing the hypo or problem, you can increase the number of students who will actively engage with the problem through a number of simple techniques: give the students 30 seconds to formulate their analysis; have them spend one minute writing a response; or ask them to briefly discuss the problem with a neighbor.

Lecture. See McKeachie, *supra* note 73, at 66-84. At the beginning of the lecture, show students how the contents of the lecture are relevant to the course and to them. Grab their attention with a problem, a video clip, a newspaper story, or an anecdote. During the lecture maintain their attention by varying the pace of the lecture, voice tone, facial expression, and movement. Use visual aids such as the board, overhead transparencies, or computer presentations. Break up the lecture by actively involving students every ten minutes or so with a

Our student interviews strongly endorsed the use of a variety of teaching and learning methods to actively engage students.

You basically get a lot of passive learning instead of active learning. You create an environment where students literally can sit an entire semester and not be

large- or small-group discussion or a short writing activity. At the end of the lecture, summarize the main points, pose questions that arise from the lecture, or, better yet, have students summarize the lecture and pose questions.

Discussion. See Hess, *supra* note 70, at 407–08. Plan the discussion. Will it take place in a large group, which you can monitor and guide, or in small groups, allowing every student to participate even in a large class? Develop a clear, provocative question or interesting prompt (video, reading) for the discussion. Pose the question or prompt in writing so students are clear about what they should discuss. After posing the question, be silent. Give students some time to formulate responses. When they begin to participate, limit your own talking; instead, direct students to respond to one another's contributions. Answer student questions directly or ask other students to respond to the question. Most important, listen carefully to what students say, not for the points you intended to make through the discussion. For a more thorough treatment of discussion and 12 ideas for discussion from legal educators, see Hess & Friedland, *Techniques for Teaching Law*, *supra* note 61, at 55–79.

Writing. See Hess, *supra* note 70, at 409–10. Writing exercises can be in or out of class, graded or ungraded, formal or informal. Out-of-class writing includes formal research papers, legal documents (pleadings, letters, briefs), or less formal papers or journals in which students reflect on readings or experiences in the course. In-class writing can focus student attention, solidify understanding, expose misconceptions, and prepare students for discussion. In-class writing includes brief responses to hypotheticals, analysis of problems, summaries of main points for the class, or written questions about the material.

Simulation. See Hess, *supra* note 70, at 410–12, *citing* Jay M. Fineman, *Simulations: An Introduction*, 45 *J. Legal Educ.* 469 (1995). Simulations can range from short role-plays to entire courses. Examples include (1) problems that are more complex than a classroom hypo and require students to prepare a short written argument; (2) experiences that include an element of performance, such as drafting a contract or giving an oral argument; (3) continuing exercises that run throughout a course, such as drafting a complaint, arguing a motion, and conducting a deposition in Civil Procedure; (4) entire courses built around lawyering activities, such as Alternative Dispute Resolution or Trial Advocacy. An important element of active student learning in simulations is reflection, which can take place in class discussion, a reflective essay, or a journal entry. For a more thorough treatment of simulations and 16 ideas for simulation and role-playing from legal educators, see Hess & Friedland, *Techniques for Teaching Law*, *supra* note 61, at 193–222.

Computer exercises. See Hess, *supra* note 70, at 412–13, *citing* Richard Warner et al., *Teaching Law with Computers*, 24 *Rutgers Computer & Tech. L.J.* 107 (1998). Two types of active learning methods with computers are CALI exercises and electronic discussions. The Center for Computer-Assisted Legal Instruction has over 100 lessons in more than 25 subject areas. They are designed to teach legal rules, the application of the rules, the rationale behind the rules, and skills such as drafting, legal analysis, and fact investigation. Electronic discussions can take place on law school e-mail systems and on Web-based platforms. They allow teachers to pose questions, clarify class discussion, and provide supplemental instruction, and they allow students to respond to questions in writing after giving the question some thought or to pose questions to teachers or other students. Some students who are not comfortable actively participating in large-group discussions in class will be happy to contribute online. For a more thorough treatment of computers and eight ideas from legal educators about their use in law school, see Hess & Friedland, *Techniques for Teaching Law*, *supra* note 61, at 149–92.

Real-life experiences. See Hess, *supra* note 70, at 413. Experiential learning integrates theory and practice; it combines academic inquiry with real-life experiences. Students can have experience with law outside the classroom in courts, agencies, clinics, and law offices. Or teachers can arrange for students to experience law in the classroom through actual legal documents, videos, and speakers. But for effective learning to occur students must do more than have experiences: they must engage in reflection to glean meaning and lessons from the experiences. For a more thorough treatment of experiential learning and 13 ideas from legal educators about its use in law school, see Hess & Friedland, *Techniques for Teaching Law*, *supra* note 61, at 105–30.

engaged in their learning. And I know students that won't read the cases all year. They'll get outlines from friends or commercial outlines. They'll put an outline together and they'll be able to do quite well without ever being engaged with the material. It seems to me that it would be far more productive to have small exercises that students can go and prepare for at home and then be engaged with other students, because it's not just reading we're trying to learn here. We need to be able to talk to people; we need to be able to argue well; we need to be able to stand up on our feet and make presentations. There are lots of skills in law school that we never get to practice. We only sit in class and read.

My Administrative Law class was a huge class. We did role-playing, and there were several issues that I didn't understand or doctrines that I didn't understand, but it all became clear during that day because it all became personal. If you have to get up and play a part—be the victim, be the prosecutor, be the defense attorney—then it really becomes personal and those doctrines take on a whole new life.

Whenever a professor has assigned me to go to court, whether it's for Civil Procedure or Criminal Procedure, it's the greatest thing because you go in there and you're supposed to analyze something and report back on what you've seen. And it's like "Aha! That's a summary judgment motion."

G. Delight

The teacher's attitude, enthusiasm, and passion are main ingredients of an effective teaching and learning environment. Students regularly identify teacher enthusiasm as the most important component of effective instruction. In Lowman's model of exemplary teaching, the most common descriptor of excellent teachers from students and other faculty was *enthusiastic*. A teacher's passion for both teaching and the subject is a crucial factor in student motivation.⁸⁴

Personal attitudes tend to produce reciprocal attitudes in others. When teachers display their delight in teaching and the subject, students pick up that positive attitude. But when teachers appear bored and disengaged, students will too.⁸⁵ If teachers convey to students that they love to be with them in and out of the classroom, students will not only reflect that attitude back to the teacher, they will be receptive to learning and will forgive many mistakes in the classroom.⁸⁶ Our student interviews picked up on teachers' attitudes about their courses:

I'd want that professor to be enthusiastic about the material, to at least impart to us, the students, that they're excited about conveying the information and the law to us.

I think the students lose that part of vitality of a subject when a professor seems to be not interested in the subject anymore. It's not refreshing to the professor, and when the students pick up on it, it's not refreshing to them as well.

84. Maryellen Weimer, *Improving Your Classroom Teaching* 23 (Newbury Park, 1993).

85. Lowman, *supra* note 24, at 41; Weimer, *supra* note 84, at 20–23.

86. See Syverud, *supra* note 37, at 248.

Teachers convey their enthusiasm for teaching and their passion for their subjects in a variety of ways.

Explicitly describing teacher's interest. Tell students why you are energized by teaching this course. What about the subject intrigues you? What is it about teaching at your institution that brings joy and reward? (About two-thirds of the way through one of my courses, I began class one day by telling the students: "Every single day of our course, I am happy to walk into this classroom. Thank you for the gift you have given me—an exciting, insightful, challenging, caring classroom environment." The students deserved to know how I felt. Their reactions ranged from big smiles to tears.)

Verbal behavior. Research shows that students identify certain verbal teacher behaviors as demonstrating enthusiasm: speaking in an expressive manner; using humor; not reading from notes or texts.⁸⁷ (I use humor shamelessly in class, including cartoons attached to the attendance sheet each day, spontaneous comments in class, weird exchanges that pop up in transcripts of court proceedings, and stories. But the use of humor is a serious teaching issue. I often use humor at my expense but never at the expense of a student. Almost all of my humor relates directly to the course, although on occasion something unrelated to the course is so funny that I can't help but share it with students. And if I get to be funny in the classroom, so do the students. I consider that to be a basic respect element.)

Nonverbal behavior. Nonverbal teacher behaviors that students attribute to enthusiasm include movement while teaching, smiling at students, walking up the aisles, hand and arm gestures, and facial expressions.⁸⁸

Self-disclosure. Throughout the course, teachers should share with the students their love for the subject. Revealing personal feelings makes the teacher a bit vulnerable and entails risk. But most students appreciate genuine passion from teachers and identify with that vulnerability and risk, which helps students take risks in the classroom as well.⁸⁹ (I convey to students my love of civil procedure—the complexity of some parts of the course, the nitty-gritty details of other parts, and its practical application in the life of a lawyer. Some of the students laugh with (at?) me when I describe myself as a Civ Pro nerd.)

H. Feedback

Assessment is integral to effective learning. Learning is a loop in which teachers facilitate students' active learning, students perform, and teachers provide feedback that shows students how their learning and performance can be improved. Assessment can be summative or formative. Summative assessment is designed primarily to measure student performance and assign grades, rather than to provide extensive feedback. Traditional law school assessment practice relies exclusively on one exam (most often an essay exam) at the end of the course. The exam is intended to be a summative device. Formative assessment, on the other hand, is intended to provide students

87. See Weimer, *supra* note 84, at 19.

88. *Id.*

89. See *id.* at 22.

feedback to complete the learning loop.⁹⁰ The focus of this section is formative assessment—feedback to students and teachers. It plays a critical role in the construction of an optimal teaching and learning environment.

1. Formative Feedback to Students

The importance of formative feedback for student learning cannot be overestimated. Prompt feedback has a clear positive relationship to student achievement and satisfaction. Frequent positive feedback helps students become self-motivated, independent learners.⁹¹

Effective, formative feedback is specific, corrective, positive, and timely. Specific feedback is most valuable when teachers clearly articulate the criteria for competent student performance (for example, the elements of a convincing written argument), the students perform, and the students receive feedback based on the criteria. Corrective feedback is directed at behavior that students can change, identifies the weaknesses of the students' work, and provides strategies for improvement. Positive feedback identifies for students what they did well and encourages them to build on those strengths in future performances. Timely feedback is prompt; the longer the delay between the students' performance and the feedback, the less effective it will be. Finally, timely feedback comes when students have an opportunity to use it to improve their performance on future work.⁹²

Teachers are the primary sources of formative feedback to students. Other sources include students themselves, peers, external reviewers, and computer programs.⁹³

Self-assessment. An important skill for experts in any domain, including lawyers, is the ability to monitor their own understanding and learning processes. Students need to learn to assess their own performance. Teachers can facilitate students' self-assessment by providing them with assessment instruments that include explicit criteria for their performance.⁹⁴ Keeping a journal provides an opportunity for students to engage in self-assessment and to reflect on their learning.⁹⁵

Peers. Students provide feedback to each other when they work in study groups or on collaborative projects. Peers can provide more structured formative feedback on one another's writing and performance of lawyering skills if

90. See Gregory S. Munro, *Outcomes Assessment for Law Schools 72–73* (Spokane, 2000).

91. Sorcinelli, *supra* note 44, at 18.

92. See Le Brun & Johnstone, *supra* note 51, at 219; Munro, *supra* note 90, at 72–76, 151.

93. See Terri LeClercq, *Principle 4: Good Practice Gives Prompt Feedback*, 49 *J. Legal Educ.* 418, 424–26 (1999).

94. See Munro, *supra* note 90, at 124. For an example of student self-assessment in the context of graded papers in a legal writing course, see Kathleen Magone, *Student Self-Analysis of Written Assignments*, in *Techniques for Teaching Law*, *supra* note 61, at 317–19.

95. See Jacalyn Duffin & Mark Weisberg, *Evoking the Moral Imagination: Using Stories to Teach Ethics and Professionalism to Nursing, Medical, and Law Students*, *Change*, Jan./Feb. 1995, at 21, 25; Mary Pat Treuthart, *Use of Journals*, in *Techniques for Teaching Law*, *supra* note 61, at 253–55.

teachers develop detailed performance criteria and spend a bit of time training the students in the art of critique.⁹⁶

External reviewers. Lawyers and judges from the community are a valuable resource for providing feedback on student performances of skills such as counseling, negotiating, oral advocacy, and drafting. They not only expand the teacher's capacity to provide feedback, they often become more invested in the law school community. Teachers can maximize the effectiveness of external reviewers by providing them with explicit criteria for the performance and guidelines for giving formative feedback.⁹⁷

Computer programs. Computer lessons allow students to learn at their own pace and provide continuous feedback as students respond to questions.

Many types of formative feedback are available for teachers to use with their students. Feedback can be individual or group, in class or outside class, written or oral. Although individual written feedback to each student is valuable, it is quite time consuming for the teacher. Fortunately, there are many alternatives that provide significant formative feedback to students.

Individual written comments. You can provide detailed written comments on students' writing, such as drafts of research papers, briefs, contracts, and practice exams. Remember how invested most students are in their own writing, and try to help students understand that your feedback is on their performance, not on their self-worth. Written comments should be a mix of positive and negative feedback, include suggestions and encouragement for improvement, and be specific without being so encyclopedic that the student is overwhelmed.⁹⁸

Individual oral critique. This type of feedback is appropriate for student performance of lawyering skills. Like all other forms of feedback, critique will be most effective if you give the students detailed performance criteria in advance and the critique centers on those criteria. Additional suggestions: start with a positive comment, focus on one or two points, and model excellent communication skills (eye contact, active listening, plain English) during the critique.⁹⁹

Individual feedback in class. Give frequent feedback to individual students in class. When a student makes an insightful comment, performs clear legal analysis, or asks a perceptive question, give positive reinforcement. When a student misses the point or offers a confused analysis, try to find the most positive aspect of the student's contribution and build from that. Ultimately, however, students need to know when they are on the right track and when they are not.

96. See Kathleen Magone, Peer Editing, in *Techniques for Teaching Law*, *supra* note 61, at 245, 245–53; Ralph Cagle, Critiques of Students' Lawyering Skills, in *Techniques for Teaching Law*, *supra* note 61, at 310, 310–13.

97. See Munro, *supra* note 90, at 125; Cagle, *supra* note 96, at 310–13.

98. See Hess & Friedland, *Techniques for Teaching Law*, *supra* note 61, at 227; LeClercq, *supra* note 93, at 422–24.

99. For a list of guidelines for teachers and students in giving and receiving oral critiques, see Cagle, *supra* note 96, at 311–13.

Individual feedback outside class. Much student learning and teacher feedback take place outside of the classroom. Teachers can provide detailed feedback on student work (for example, reviewing a portion of a student's outline or response to a practice exam) in individual conferences. But individual feedback can be much less formal. You can give positive feedback to students in a brief conversation in the hallway, a short written note, or an e-mail message. A bit of praise from the teacher will go a long way in motivating most students.

Group feedback of in-class writing and quizzes. Multiple-choice questions are an excellent vehicle for in-class quizzes that assess issue spotting, comprehension, and application of legal rules. Immediately following the quiz you can start a lively class discussion of the student responses. Short in-class writing exercises, such as identifying issues in a fact pattern or analyzing a problem, are also excellent sources of feedback. You can give immediate feedback through class discussion, or you can collect the student responses and provide feedback to the entire class in the next session or on the course Web site.¹⁰⁰

Group feedback of practice exams. Practice exams that follow a format similar to the graded exams are an excellent learning tool. You can give group feedback by discussing in class common strengths and weaknesses of the student responses, or by talking through with the students how you would have approached the exam. You can provide excellent feedback to the class by putting a sample paper or exam response on the overhead projector and grading it in class, speaking your comments aloud. You can facilitate students' self-assessment of practice exams by posting on reserve in the library or on the course Web site a score sheet, model answers, and sample student answers.¹⁰¹ (I watched one of my colleagues, David DeWolf, grade and comment on an exam in his first-year Torts class. As I walked out of the class, second-year students were at the door waiting to get in for their next class. When I told them what I had just observed, smiles came to their faces as they remembered when he had graded an exam in their class. One student quipped, "Oh. That was not a pretty sight!" Another said, "A whole lot of learning took place that day.")

2. Formative Feedback to Teachers

Formative feedback is crucial to teachers as well. Thomas A. Angelo and K. Patricia Cross have led a formative feedback movement in higher education known as classroom assessment.¹⁰² Classroom assessment helps teachers dis-

100. See Larry Dessem, *Multiple-Choice Quizzes in Large Classes*, in *Techniques for Teaching Law*, *supra* note 61, at 302, 302-03; Lustbader, *supra* note 78, at 413-14.

101. See Hess & Friedland, *Techniques for Teaching Law*, *supra* note 61, at 227-28; Lustbader, *supra* note 78, at 414.

102. *Classroom Assessment Techniques: A Handbook for College Teachers*, 2d ed. (San Francisco, 1993). This comprehensive guide to classroom assessment contains three parts.

Part One: Getting Started in Classroom Assessment. Part One begins with a description of the purpose and need for classroom assessment, its characteristics, and the assumptions on which it is based. This section also contains an inventory of goals that teachers can use to help them articulate their course and class objectives. It then provides a three-step process for teachers to begin using classroom assessment. For teachers who want to fully integrate

cover what their students are learning and how well they are learning it. It encourages teachers to collect frequent feedback about their students' learning and the way they respond to different teaching techniques. You can use that feedback to improve your teaching effectiveness and your students' learning.

Classroom assessment has six characteristics that make it a powerful tool to improve teaching and learning. It is

- *student centered*. The focus is on improving learning and helping students take responsibility for their learning.
- *teacher directed*. The teacher decides what to assess, how to assess, and what to do with the information.
- *mutually beneficial*. Students and teachers are invested in improving both teaching and learning.
- *formative*. Its purpose is to improve teaching and learning, not to grade students or to evaluate teachers.
- *content specific*. Assessment techniques are tailored to the course, its objectives, and students' backgrounds.
- *ongoing*. The teacher gathers feedback throughout the course to assess student learning and modify instruction accordingly.¹⁰³

Many classroom assessment techniques (CATs) are appropriate for law school.¹⁰⁴ For example:

- *Feedback form*. Design a simple form to gather students' opinions during the course on the effectiveness of teaching and learning methods.
- *Student advisory team*. Ask the SAT to give you feedback and suggestions throughout the course.
- *Minute papers*. Ask students to respond in writing to questions about their learning during the last few minutes of class.¹⁰⁵

classroom assessment in their courses, the book includes a detailed nine-step guideline. Part One ends with the description of 12 successful classroom assessment projects implemented in a variety of courses, from Criminal Justice to Astronomy.

Part Two: Classroom Assessment Techniques. Part Two is the heart of the book. It describes 50 classroom assessment techniques, including many CATs appropriate for use in law school courses. The CATs can assess students' content knowledge and skills, their attitudes and values, as well as learners' reactions to instruction. Each description contains a summary of the CAT, step-by-step procedures for implementing it, and suggestions for using the data gathered with the CAT. In addition, each description includes examples from various courses of ways to use the CAT and ideas for adapting and extending the CAT to other applications. Finally, Part Two explores the pros and cons of using each CAT.

Part Three: Building on What We Have Learned. Part Three evaluates classroom assessment, summarizing reports from college teachers who have used it. Those reports address the lessons the teachers believe they learned from implementing classroom assessment in their courses. The teachers articulate the costs and benefits of classroom assessment.

103. *Id.* at 4–6.

104. For 10 classroom assessment ideas from legal educators, see Hess & Friedland, *Techniques for Teaching Law*, *supra* note 61, at 261–83.

105. As I have written elsewhere:

This technique provides a quick, simple way for a teacher to collect feedback on student learning. The teacher ends classroom instruction a few minutes

- *Small-group instructional diagnosis.* Ask a colleague to gather feedback and suggestions from your students.¹⁰⁶
- *Key concept lists.* Ask students to summarize three to five key concepts about a topic.¹⁰⁷

The essence of successful use of CATs is to gather brief, frequent feedback on student learning, to report back to students on the results of the CAT, to modify subsequent instruction in response, and to implement reasonable student suggestions. By using CATs in this way, you not only show your commitment to improving teaching and learning, you demonstrate deep respect for your students as well.

Our student interviews reflected the critical role of formative feedback in effective teaching and learning.

We've had practice exams in a couple of classes that actually helped us a lot. We would get some kind of feedback on what we were doing and what it was that the professor was actually teaching us and whether or not we were learning. And it works both ways. The professor gets an idea of what it is that we're actually grasping, and it gives us an idea of what we're doing right or what we're doing wrong.

He gave us an assignment midway, just five short questions, and he had us prepare them. It wasn't graded. It was simply check, check-plus, just to see how we were doing. And it was perfect because some of us went to see him afterwards and we realized what we were doing wrong. And it was a good method for him to see whether we were getting the material.

early and asks students to respond in writing to questions such as: "What is the most important thing you learned in class today?", "What policies support the holding in *X v. Y?*", or "What important question remains unanswered?" Students write their responses anonymously on sheets of paper and hand them in on the way out of class. This technique is particularly flexible because teachers can shape the questions to generate feedback on any issue in any course.

Hess, *supra* note 69, at 346, citing Angelo & Cross, *supra* note 102, at 148-53.

106. Greg Munro describes this CAT:

In SGID, feedback about the course and the instructor is gathered by breaking the class into small discussion groups to which an outside facilitator [such as a colleague] puts two questions: "(1) What helps you learn in this course?" and "(2) What improvements would you like, and how would you suggest they be made?" Students in each small group discuss and arrive at consensus in answer to the first question. The facilitator then engages the reporters from each of the small groups in a dialog to arrive at a consensus from the class as to what helps the class learn in the course. The same process is followed with regard to the second question, providing a set of written answers that the facilitator can share with the teacher

Munro, *supra* note 90, at 136, citing Ken White, *Using Small Group Instructional Diagnosis to Improve Teaching and Learning*, Wash. Center News, Fall 1991, at 20.

107. Barbara Gross Davis explains this CAT:

At the conclusion of a series of [classes] or readings on a particular topic, ask students to write short phrases summarizing the three to five key concepts or main ideas about the topic. You can review these lists to verify whether your students have grasped the important ideas. Students can also use their lists to review for exams. You might want to initiate a class discussion that asks students to compare and contrast their entries or define and apply the concepts.

Davis, *supra* note 81, at 350.

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Over the past fifteen years I have taught large required courses, medium-sized electives, and small seminars. Regardless of the type of course, the teaching and learning environment was the most critical aspect of the experience for my students and for me. In each of those courses I tried to establish and maintain an effective environment through respect, expectations, support, collaboration, inclusion, engagement, delight, and feedback.

Recently I taught a seminar on legal education to twelve upper-level students, most of them in the second semester of their third year. Many of them suffered from the distress and alienation that come with two and a half years of law school. We collaborated in the design of the seminar during the first two sessions. We established high expectations of one another. Our interactions in class and online were engaging, respectful, and supportive. We considered a variety of perspectives that arose out of our experiences. We took pleasure in learning together and giving one another feedback. We created a teaching and learning environment that allowed us to exceed our expectations.

The students and I left the seminar with renewed hope for legal education and the legal profession. The seminar taught me that I should not give up on my quest to achieve with law students the primary goal I accomplished with second graders—to maintain their eagerness to learn, their lofty hopes for themselves, and their faith that their teachers will support and inspire them.

As I prepare to teach Civil Procedure to more than 200 first-year students, I am both subdued and energized by the challenge. I recognize that it will be very difficult to achieve my primary goal with those students. I realize that the magic in the seminar was the result of complex chemistry that cannot be manufactured. Nevertheless, I know now that it is possible to create a teaching and learning environment that not only maximizes students' achievement but also builds on the motivation and dreams they bring to legal education and is deeply satisfying to the students and to me. It will take considerable effort for my students and me to create and maintain that environment in Civil Procedure. We may not succeed. But it is worth the effort. My students deserve it. I deserve it.