The Impact of Expectations on Teaching and Learning

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When I entered teaching nearly twenty years ago, I swore that if I ever heard myself speaking about my students in the cynical and disparaging manner in which I heard some of my senior colleagues speak, I would find a different line of work. I recalled that oath a few years ago when I heard myself complaining about my students far too regularly and in terms far too global.

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*. Professor of Law, UMKC School of Law. I appreciate the wisdom of my fellow teachers who attended the 2002 Gonzaga Institute for Law School Teaching Conference, where I presented a draft of this paper. Thank you also to my colleagues, all outstanding teachers by any measure, who read and commented on drafts of this Article: Professors Julie Cheslik, Linda Feldman, Mary Kay Kisthardt, Nancy Levit, and Ellen Suni. I gratefully acknowledge the financial support from the UMKC Law Foundation. I alone am to blame for wrong-headed notions or bad science.

Rather than quit teaching, however, I decided to try to recover some of my earlier idealism and enthusiasm.

I do not think I am alone in needing to attend to this task. Law schools appear to be in the midst of a crisis of confidence in the abilities and motivations of their students. Conference topics on law school teaching feature packed houses for presentations such as "The Challenges of Connecting with 21st Century Students."[1] Journal articles on legal education lament "The Happy Charade"[2] that constitutes the learning and motivation of law students today. Professor Maranville, current chair of the Association of American Law Schools ("AALS") Section on Teaching Methods, best summarized these sentiments when she wrote:

> Many law students are so bored by the second year that their attendance, preparation, and participation decline precipitously; by graduation they have lost much of the passion for justice and the enthusiasm for helping other people that were their strongest initial motivations for wanting to become lawyers. And even in the first year, when most students remain engaged, many fail to learn even the black-letter law at a level that faculty consider satisfactory.[3]

Proposed solutions to these widespread concerns about law students often focus on changing curriculum,[4] teaching methods,[5] or materials.[6]

To improve learning in law schools, however, faculty may need a change of mind. A basic principle of good teaching is that of maintaining high expectations: "Expect more and you will get [more]."[7] Nearly a century of

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1. ASS'N OF AM. LAW SCH., 2002 ANNUAL MEETING WORKSHOP: DO YOU KNOW WHERE YOUR STUDENTS ARE? LANGDELL LOGS ON TO THE 21ST CENTURY, *at* http://www.aals.org/am2002/workprogram.html (last visited Oct. 10, 2002) [hereinafter AALS WORKSHOP].

2. Mitu Gulati et al., *The Happy Charade: An Empirical Examination of the Third Year of Law School*, 51 J. LEGAL EDUC. 235 (2001); *see also* Note, *Making Docile Lawyers: An Essay on the Pacification of Law Students*, 111 HARV. L. REV. 2027, 2030 (1998).

3. Deborah Maranville, *Infusing Passion and Context into the Traditional Law Curriculum Through Experiential Learning*, 51 J. LEGAL EDUC. 51, 51 (2001).

4. Gulati et al., *supra* note 2, at 264-66; *see also* Christopher T. Cunniffe, *The Case for the Alternative Third-Year Program*, 61 ALB. L. REV. 85 (1997).

5. Gulati et al., *supra* note 2, at 264-66; *see also* Paul Barron, *Can Anything Be Done to Make the Upper-Level, Law School Courses More Interesting?*, 70 TUL. L. REV. 1881, 1884-86 (1996).

6. For example, nearly half the presentations on teaching at the Association of American Law Schools Annual Meeting Workshop related to the use of videos and computer technology in order to engage students. AALS WORKSHOP, *supra* note 1.

7. GERALD F. HESS & STEVEN FRIEDLAND, TECHNIQUES FOR TEACHING LAW 15 (1999) (describing the American for Higher Education Association's Seven Principles for

research has established that teachers' expectations of their students can become self-fulfilling prophecies: high expectations are correlated with high achievement, low expectations with low achievement.[8] Moreover, once expectations are established, they tend to be self-sustaining for both students and teachers.[9]

This Article explores the research on expectation effects in education and offers suggestions for putting the research into practice. The first section describes two forms of expectation effect. One effect is the self-fulfilling prophesy, in which predictions based on false information influence outcomes so as to become self-fulfilling. A second, even more powerful effect, is the self-sustaining expectation effect, in which a prediction based on past performance causes future performance to remain consistent with the expectation.

Both expectation effects have positive and negative sides. The positive expectation effects include the effects of positive faculty expectation ("Pygmalion Effect") and the effects of positive student self-expectation. The expectation phenomena also works in reverse: negative faculty expectations and negative student self-expectation. This section will focus particularly on the phenomenon of stereotype threat, which causes a student's achievement to be undermined by the threat of having his or her academic performance judged against a negative stereotype. While the research of expectation effects emphasizes that much of the experimental data reveals only correlation, not causation,[10] those correlations are strong enough, consistent enough, and overlap other educational research on effective teaching practices often enough that teachers need not hesitate to translate expectation theories into classroom practices.

This Article suggests that faculty can improve legal education by critically examining their assumptions and attitudes.[11] Two negative assumptions that undermine learning are suggested. First, the credential bias assumes that past academic performance is a measure of immutable ability, which in turn determines achievement regardless of student effort or faculty instruction.[12] A second bias is the assumption that law students are immutably unmotivated and

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Good Practice in Undergraduate Education).

8. *See id.* at 16.

9. *See id.*

10. *See, e.g.*, Robert Rosenthal, *Covert Communications in Classrooms, Clinics and Courtrooms*, 3 EYE ON PSI CHI 18 (1998) ("From these results, one cannot infer that selecting warmer teachers who present more material will result in children learning more [or] that training teachers to be warmer and to present more material will lead to improved learning.").

11. The Article briefly examines the presence of individual bias in law schools, but focuses mainly on biases relating to groups of students.

12. *See* discussion *infra* Part II.B.

disengaged.[13] Because the "Generation X" characterization aptly summarizes the assumptions made about our students, this bias is referred to as the "generational bias."[14] This Article offers a number of suggestions to foster positive attitudes about our students and ourselves as teachers and to cultivate a high expectation culture.

Finally, this Article addresses high-expectation teaching methodologies. The teaching variable that has the most impact on raising expectations for students is the socio-emotional climate of teaching. This variable requires increasing the warmth of teachers' interpersonal communications with students. This Article examines two aspects of climate: using high-expectation language and providing sufficient silence and space. High- expectation teaching also requires raised expectations. This Article identifies methods for increasing the input and output expectations of our assignments, classroom learning, and assessment techniques. This discussion distinguishes expectations from demands and notes the interplay between emotional warmth and expectation heat.

The Article concludes by addressing concerns about institutional resistance to raising expectations. The conclusion addresses the role of student expectations and teacher evaluations, along with suggestions for addressing the emotional dimensions of teaching and learning.

I. EXPECTATION EFFECTS

When researchers speak of expectations in educational settings, they refer specifically to the teacher's expectations of student achievement.[15] These expectations are based on a variety of assumptions. A teacher may expect a certain level of achievement from one student based on assumptions about that student's ability alone, while the teacher may have expectations of another student's achievement based on a combination of assumptions about ability, amenability to instruction, and motivation.[16] These elements add up to a basic expectation—or prediction—of the student's future achievement.

There are two variations of the relationship between expectations and behavior, each having positive and negative forms. One variation is the self-fulfilling prophecy, in which initial expectations of student achievement, based on false assumptions about the student, result in the expected outcome.[17] The

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13. *See* discussion *infra* Part II.C.

14. *See infra* text accompanying note 115.

15. *See* HARRIS M. COOPER & THOMAS L. GOOD, PYGMALION GROWS UP: STUDIES IN THE EXPECTATION COMMUNICATION PROCESS 4 (1983).

16. *Id.*

17. *Id.* at 5.

second form of expectation relationship — the self-sustaining expectation—occurs when expectations of future achievement are based on past achievements and behavior, rather than on false assumptions, and those expectations again result in the expected outcome, thus reinforcing the initial expectation.[18] These expectation effects can operate to influence student learning individually or as a group.

A. *The Varieties of Expectation Effects*

The classic expectation effect, referred to here as the *self-fulfilling prophecy*, is sometimes called the Pygmalion Effect. Self-fulfilling prophecies occur when an expectation or assumption, although false in its inception, affects behavior that then leads to an outcome consistent with the initial expectation.[19] This phenomenon has long been explored in economics, medicine, government relations, and many other aspects of social life.[20] Some familiar examples of the principle at work include market panics and the placebo effect.[21]

Researchers Robert Rosenthal and Lenore Jacobson spotlighted the importance of the self-fulfilling prophecy in education.[22] In their "Oak School" experiment, teachers were told that a particular subset of the class would be showing signs of significant intellectual growth in the coming months based on the results of a test previously administered to the students.[23] In truth, the test was simply a standard intelligence test given to establish a baseline and the students predicted to achieve were randomly selected.[24] At the end of the year, the students who were predicted to have significant intellectual growth, on average gained significantly more IQ points than the control group.[25]

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18. *Id.* at 5-6.

19. The term was coined by Robert K. Merton, a Columbia University professor in *The Self-Fulfilling Prophecy*, 8 ANTIOCH REV. 193, 193-210 (1948).

20. See for example, studies collected in INTERPERSONAL EXPECTATIONS : THEORY, RESEARCH AND APPLICATIONS (Peter David Blanck ed., 1993) (including teaching, medicine, management). For the thoughts of these same researchers on the effects of non-verbal communication in law see Peter David Blanck et al., *The Measure of the Judge: an Empirically-based Framework for Exploring Trial Judges' Behavior,* 75 IOWA L. REV. 653 (1990).

21. DOV EDEN, PYGMALION IN MANAGEMENT: PRODUCTIVITY AS A SELF-FULFILLING PROPHECY 4-5 (1990).

22. ROBERT ROSENTHAL & LENORE JACOBSON, PYGMALION IN THE CLASSROOM: TEACHER EXPECTATION AND PUPILS' INTELLECTUAL DEVELOPMENT 174 (1968).

23. *Id.* at 175.

24. *Id.*

25. *Id.* The effect was primarily among the youngest children in the group. This IQ effect was one of the criticism of the study. In order that the teachers would accept the initial

Critics of Rosenthal's work noted the experiment's methodological shortcomings and questioned the validity of its data.[26] However, even the harshest critics conceded the basic conclusion of the study: teacher expectations are correlated with behavior and achievement.[27] This same study has been replicated in educational settings from kindergarten to graduate and professional schools.[28] Decades of follow-up research have confirmed the existence of the phenomenon, identified significant variants, and have begun to unravel the mechanisms by which expectations affect achievement.

The self-fulfilling prophecy has a negative side as well. Just as assumptions of competence can increase achievement, assumptions of deficiency can hamper learning. One of the most disturbing results of the original Pygmalion studies was that students who were not predicted to achieve were viewed negatively when they overperformed.[29] The teachers in the study were asked to rate students on factors such as intellectual curiosity, happiness, and need for social approval.[30] Teachers rated highest those students who were predicted to bloom intellectually. The students who the teachers rated lowest on social and interpersonal factors were those who, despite predictions of average growth, showed significant intellectual development.[31]

More recent academic performance studies focusing on gender and race add a rich layer of understanding to the impact of low expectations, especially relating to expectations grounded in *stereotype threat.* Claude M. Steele's groundbreaking work in this area posited that student achievement can be crippled by low expectations of the group to which the student belongs.[32] If students fear that poor academic performance will be used to confirm a negative stereotype about their group, that fear itself can undermine

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test as one that could predict IQ growth rather than measure current IQ, Rosenthal used a little-known IQ test: Flanagan's Test of General Ability. It was the use of this test that provided one of the initial critiques of the methodology of the study. Richard E. Snow, *Unfinished Pygmalion: Review of* Pygmalion in the Classroom, 14 CONTEMPORARY PSYCH. 197, 199 (1969)

26. JANET D. ELASHOFF & RICHARD E. SNOW, PYGMALION RECONSIDERED 43-48 (1971) (criticizing methodological flaws and incomplete data sets).

27. *Id.* at 61.

28. JERE E. BROPHY & THOMAS L. GOOD, TEACHER-STUDENT RELATIONSHIPS: CAUSES AND CONSEQUENCES (1974); COOPER & GOOD, *supra* note 15, at 6-9; EDEN, *supra* note 21, at 9-12.

29. *See* ROSENTHAL & JACOBSON, *supra* note 22, at 178.

30. *Id.*

31. *Id.* at 178-79.

32. *See, e.g.*, Claude M. Steele, *Thin Ice: "Stereotype Threat" and Black College Students*, ATLANTIC MONTHLY, Aug. 1999, http://www.theatlantic.com/issues/99aug/9908sterotype.htm (last visited Oct. 11, 2002).

performance.[33] The effect is strongest among those who most identify with academia and for whom academic success is closely tied to self-esteem.[34]

Negative stereotypes lead to decreased performance because students reduce anxiety and threat by withdrawing psychic investment in activities likely to raise anxiety. A student may tire of constantly wondering whether negative stereotypes are impacting interactions with others. The student learns not to care. For example, when female mathematics or engineering students bear the additional stress of having their class participation serve as an indication of the ability of all females, it becomes easier to avoid speaking in class entirely.[35]

> Pain is lessened by ceasing to identify with the part of life in which the pain occurs. This withdrawal of psychic investment may be supported by other members of the stereotype-threatened group—even to the point of its becoming a group norm. But not caring can mean not being motivated. And this can have real costs. When stereotype threat affects school life, disidentification is a high price to pay for psychic comfort. Still, it is a price that groups contending with powerful negative stereotypes about their abilities—women in advanced math, African Americans in all academic areas—may too often pay.[36]

In a series of experiments designed to identify whether stereotype threat affects performance regardless of ability, Professor Steele and his colleagues discovered that when African American students were given tests which they were told would measure their ability, their performance suffered.[37] When these same tests were given with a explanation that they did not measure ability, African American students tested at the same level as their ability-matched counterparts.[38] Other studies have demonstrated that the more difficult the testing situation, the more stereotype threat is likely to impact performance.[39]

Both self-fulfilling prophecy and stereotype threat are examples of the effect of false, often stereotypical, assumptions of competence and how those

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33. *Id.*

34. Claude M. Steele & Joshua Aronson, *Stereotype Threat and the Test Performance of Academically Successful African-Americans*, *in* THE BLACK-WHITE TEST SCORE GAP 401, 401-02 (Christopher Jencks & Meredith Phillips eds., 1998).

35. *Id.*

36. Steele, *supra* note 32.

37. *Id.*

38. Steele & Aaronson, *supra* note 34, at 408-09, 418.

39. *See, e.g.*, Amy E. Bell & Steven J. Spencer, *The Effect of Stereotype Threat on Women's Performance on the Fundamentals of Engineering Exam*, *in* PROCEEDINGS OF THE 2002 AMERICAN SOCIETY FOR ENGINEERING EDUCATION ANNUAL CONFERENCE & EXPOSITION 4-7 (2002), *available at* http://www.ecpe.vt.edu/fac_support/DSPCL/docs/ASEE02.pdf (last visited Nov. 22, 2002).

assumptions—or even the threat of being viewed through those assumptions—can become reality. However, not all assumptions about student competence are necessarily false. Sometimes teachers have information about the prior academic performance of students: test scores, grades, reports from other faculty, performance in prior classes, or even the self-assessment of the students themselves.[40] One might assume that these informed expectations need not be a subject of concern in thinking about teaching and learning. However, expectations grounded on past behavior and objective indicators may have the most powerful effect on teaching and learning. Once an assumption of ability is formed, whether positive or negative, that assumption tends to become a lens through which all future teaching, learning, and assessment are filtered.[41]

The *sustaining expectancy effect*[42] "refer[s] to situations in which teachers fail to see student potential and hence do not respond in a way to encourage some students to fulfill their potential . . . self fulfilling expectations bring about change in student performance, whereas sustaining expectations prevent change."[43] As its effects are pervasive and far more powerful, perhaps, than those of a self-fulfilling prophecy, this effect bears greater examination. For example, the self-fulfilling prophesy effect is almost impossible to achieve with "experimentally induced expectations;" that is, pretending that one believes students can perform at high levels of achievement simply does not work.[44] For both faculty and student, the pretense falls too easily in the face of behavior that disproves the initial assumption.[45] When assumptions are based on past experience, however, they become firmly entrenched.

One way in which the sustained expectancy effect operates is by changing teacher perceptions.[46] For example, when a teacher assesses a student as highly

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40. Some faculty may deliberately try to shield themselves from this information, but the effort may be futile as to those students who are at the top or bottom of the curve because they are most likely to have had their grades submitted to the faculty for the conferral of awards or consideration of probationary status. FERPA and other education privacy legislation may limit the availability of this information more than was true in the past, but faculty at a minimum have information based on the previous exposure to students in their classes. *See generally* John Theuman, Annotation, *Validity, Construction and Application of Family Educational Rights and Privacy Act of 1974 (FERPA)(20 U.S.C.A. 1232g)*, 112 A.L.R. FED. 1 (1993) (providing case law examples of application of various provisions of the act).

41. Obviously, expectations are not the only basis upon which faculty consider student learning. The point of the researchers cited in this article, however, is that expectations are an important influence on the behaviors of many teachers.

42. COOPER & GOOD, *supra* note 15, at 6.

43. THOMAS J. GOOD & JERE E. BROPHY, LOOKING IN CLASSROOMS 93 (4th ed. 1987).

44. COOPER & GOOD, *supra* note 15, at 7.

45. *Id.*

46. *Id.*

capable, the teacher may be more likely to provide enriched learning experiences for that student and to provide more detailed feedback. Conversely, if a teacher expects that the past poor performance of a student indicates the student's ability, the teacher may be likely to give fewer opportunities for challenge and growth. Where growth occurs, the teacher may be less likely to notice: to ignore the signs of growth or to attribute them to fleeting situational factors.[47] The effect of this sustaining expectancy phenomenon is that "as the rich get richer, so too the able appear to get abler; as the poor get poorer, so too the incompetent become even less competent."[48]

Consider the informal tracking that takes place in most law schools after the first-year grades are reported. The higher a student's first-year grades, the more opportunities that student has for enriching educational experiences, such as intensive writing opportunities (law review, advanced seminars) and greater opportunities for interaction with faculty (research assistant positions).[49] Increasingly, as concern for bar pass rates rises across the country,[50] schools are reaching toward a similar low end tracking of specialized courses for students with the poorest grades, or increased course requirements on bar tested subjects.[51] Superior academic performance in these large-enrollment survey courses may be less likely to be revealed or even noticed than in the settings provided for those already expected to achieve high grades. Whether

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47. *Id.* at 6 (quoting Gavriel Salomon, *Self-Fulfilling and Self-Sustaining Prophecies and the Behaviors that Realize Them*, 36 AM. PSYCHOLOGIST 1452, 1452 (1981)).

48. EDEN, *supra* note 21, at 116-17.

49. I base these observations on my experience in teaching and learning in seven different law schools and on discussions with my colleagues at various teaching conferences. Empirical work in the field is still wanting, but that which exists confirms my observations. For example, while methods for law review selection broadened to include "write ons" during the 1980s, first-year grades still determine a significant percentage of eligibility for law review at most schools. Scott M. Martin, *The Law Review Citadel: Rodell Revisited*, 71 IOWA L. REV. 1093, 1102 (1986).

50. Many schools are increasingly concerned with bar passage rates. Deborah J. Merritt et al., *Raising the Bar: A Social Science Critique of Recent Increases to Passing Scores on the Bar Exam*, 69 U. CIN. L. REV. 929, 929 n.1 (2001). An examination of national statistics on bar pass rates does reveal a shift in these rates over the past twenty years. Looking at the national percentage pass rates from 1983 to 2001, one finds pass rates of 65-66% consistently from 1983-88, an increase in the pass rates to 69-70% from 1989-97 (with an anomalous 1994 pass rate of 74%), and then a return to the 66% pass rate for the period from 1998-2001. NAT'L CONFERENCE OF BAR EXAM'RS, BAR EXAMINATION STATISTICS, *at* http://www.ncbex.org/stats/stats.htm (last visited Oct. 11, 2002). While state bar examination scores have been raised in a number of states, it seems likely that recent dips in bar passage rates are also due to decreasing academic qualifications of law students. The entering class of 1991-92, for example, had the highest LSAT scores within a ten-year period, so it is no surprise that the 1994 bar passage rate was higher than average. *See* Leslie Yalof Garfield, *The Academic Support Student in the Year 2010*, 69 UMKC L. REV. 491, 491 (2001).

51. *See* Garfield, *supra* note 50, at 497-98.

specialized classes for at-risk students will create self-sustaining negative expectancy effects depends in large part on the attitudes and assumptions of the teacher.[52] Thus, upper-level academic support courses can create positive expectancy effects, regardless of the prior academic performance of students, when those courses are taught by individuals who believe in their own efficacy as teachers and the abilities of their students.[53]

Whether they are self-fulfilling or self-sustaining, positive or negative, expectations of others or expectations of one's self, expectations affect achievement.

B. *The Mechanisms By Which Expectations Affect Achievement*

Teacher expectations can influence student achievement through their effect on teacher behavior alone. When teachers expect more from students they may allocate more personal resources to their teaching, which, in turn, facilitates greater student learning and achievement.[54] If that achievement is attributed to student ability, it then reinforces the teacher's initial expectation.[55] The negative expectation loop operates in a similar manner.

The expectancy effect has an additional dimension—the influence on students' expectations of themselves. A teacher's expectation, when communicated to a student, influences the student's self-expectation, which motivates the student to put forth greater or lesser effort,[56] resulting in better or worse performance. If the student attributes that performance to his or her own ability, the self-expectation will be further reinforced.[57] The effect of communicating expectations to students so as to influence their own self-expectations may even operate independently of any other teacher behaviors. That is, merely communicating higher expectations without changing any other

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52. One of the critical goals for teachers of students who have met prior academic failure is to counteract the negative psychological impact of those prior experiences.

53. Most academic support programs are premised on these assumptions of competency and goals of empowerment. *See* Kristine S. Knaplund & Richard H. Sander, *The Art and Science of Academic Support*, 45 J. LEGAL EDUC. 157, 160-62 (1995).

54. "Teachers are usually more willing to work with students who are thought to be high in ability because control is not perceived to be an issue. In contrast, teachers may limit their interactions with students who are perceived to be low in ability in order to maintain their feelings of control." Jerry Bamburg, *North Central Regional Education Laboratory Monograph, Raising Expectations to Improve Student Learning* (1994), *at* http://www.ncrel.org/sdrs/areas/issues/educatrs/leadrshp/le0bam.htm (last visited Feb 10, 2003) (summarizing conclusions of numerous studies).

55. COOPER & GOOD, *supra* note 15, at 20-21.

56. *Id.*

57. *See* EDEN, *supra* note 21, at 64-65.

teaching behavior may be sufficient to cause some students to increase their own learning behaviors, resulting in higher achievement.[58]

The extent to which high teacher self-expectations will influence self-expectation in students varies from student to student. Students who tend to attribute their own successes to ability and effort, rather than external factors, are more susceptible to the expectation effect.[59] More women than men, for example, tend to attribute success to external factors and failure to internal factors.[60] Thus, even when individuals are equally competent, women tend toward lower self-expectations and self-assessed ability than men in educational situations.[61] Researchers speculate that this difference in attribution may explain the higher resistance to positive expectancy effect found among women.[62]

How do expectations translate into behaviors that cause differential learning outcomes? Four sets of behaviors are suggested as mediating the expectancy effect.[63] These are listed here in the order of their significance: (1) the socio-emotional climate created by the teacher; (2) the difficulty and quantity of material taught to students (input); (3) the instructional time spent with students and opportunity for student response (output); and (4) feedback.[64]

The most commonly observed differential behaviors by teachers are:

- Maintaining closer physical proximity to high expectation students; seating low expectation students ("lows") far from the teacher or in a group; talking to students seated further away and maintaining a more flexible, conversational interaction with students seated closer.[65]
- Paying more attention to and using more supportive and friendly tones and non-verbal behaviors with high expectation students ("highs") in academic situations (smiling and nodding head more often, maintaining closer physical proximity and longer, more direct eye contact).[66]

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58. This is referred to as the Galatea effect in some literature. *Id.* at 41-42.

59. *Id.* at 63-64.

60. *Id.*

61. *Id.*

62. EDEN, *supra* note 21, at 64-65.

63. Robert T. Tauber, *Good or Bad, What Teachers Expect from Students They Generally Get!* (1998), ED426985, *available at* ERIC CLEARINGHOUSE ON TEACHING AND TEACHER EDUCATION, http://www.ed.gov/databases/ERIC_Digests/ed426985.html.

64. COMM. ON TECHNIQUES FOR THE ENHANCEMENT OF HUMAN PERFORMANCE, COMM'N ON BEHAVIORAL & SOC. SCI. & EDUC., NAT'L RESEARCH COUNCIL, ENHANCING HUMAN PERFORMANCE: ISSUES, THEORIES, AND TECHNIQUES 6-7 (1988).

65. Douglas M. Brooks et al., *The Ecology of Teacher-Pupil Verbal Interaction*, 14 J. CLASSROOM INTERACTION 39, 41 (1978).

66. Alan L. Chaikin et al., *Nonverbal Mediators of Teacher Expectancy Effects*, 30

- Providing more output (interaction) opportunities to highs: calling on highs more often to answer classroom questions or to make public demonstrations; providing greater assistance and continued interaction with highs in failure situations (i.e., rephrasing of questions, providing clues to answers, asking follow-up questions).[67]
- Waiting longer time for highs to answer questions[68] and waiting longer after their responses before speaking; interrupting performance of highs less frequently than lows.[69]
- Providing differential praise and criticism: "Criticizing lows more frequently than highs for incorrect public responses[;] Praising lows less frequently than highs after successful public responses[;] Praising lows more frequently than highs for marginal or inadequate public responses."[70]
- Providing less accurate, less detailed, and less frequent feedback for lows than for highs.[71]
- "Demanding less work and effort from lows than from highs."[72]

Often teachers are unaware of their own differential behavior and do not, as a rule, avoid low-achieving students out of some deliberate dislike or indifference.[73] Many of the differential behaviors noted above are simply products of the instructor's desire to control classroom interaction and the content of that interaction.[74] If a student, whom the instructor presumes to be a low achiever, raises his or her hand to ask a question, the instructor may be less inclined to recognize that student not because the instructor wants to avoid teaching low achievers, but because the instructor presumes the question will be remedial (and thus take valuable class time, unneeded by the majority of

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J. PERSONALITY & SOC. PSYCH. 144, 145 (1974); Scott W. Kester & George A. Letchworth, *Communication of Teacher Expectations and Their Effects on Achievement and Attitudes of Secondary School Students*, 66 J. EDUC. RES., 51, 54-55(1972).

67. COOPER & GOOD, *supra* note 15, at 10.

68. Mary Budd Rowe, *Relation of Wait-Time and Rewards to the Development of Language, Logic and Fate Control: Part II-Rewards*, 11 J. RES. IN SCI. TEACHING 291, 291 (1974).

69. COOPER & GOOD, *supra* note 15, at 10-11.

70. *Id.* at 10.

71. *Id.* at 10-11.

72. *Id.* at 11; *see also* James Rhem, *Pygmalion in the Classroom*, 8 NAT'L TEACHING & LEARNING F. 1, 2 (1999) ("If you think your students can't achieve very much, are perhaps not too bright, you may be inclined to teach simple stuff, do a lot of drills, read from your lecture notes, give simple assignments calling for simplistic factual answers.") (quoting interview with Robert Rosenthal).

73. COOPER & GOOD, *supra* note 15, at 114. These researchers noted that the differential behavior of which teachers are least likely to be aware is the use of praise. *Id.* at 125.

74. *Id.* at 74-75.

students) or tangential (again, distracting from the teacher's core content goals).[75] These same instructors may be more willing to recognize that student's questions outside of class. The problem is that the differential treatment in the classroom communicates strong messages of negative expectation that will influence the likelihood and efficacy of later individualized teaching.[76]

Sometimes negative expectation effects result not from differential behavior, but from "under differentiation."[77] When students from diverse cultural backgrounds with diverse learning styles are all taught with the same materials in the same ways, the result is an unequal treatment of those students whose culture or learning is not represented.[78] We have only just begun to explore the implications of how our learning environments have differential impacts on those students who represent classes of persons historically disenfranchised by the legal system and society.

How can law school faculty utilize the positive aspects of the expectancy effect and minimize the risks of negative expectancies and stereotype threats? I address the remainder of this Article to my colleagues, suggesting how we can examine our expectations, rooting out negative biases and expectations, sincerely cultivating high expectations both for ourselves and our students, and translating those expectations into effective teaching behaviors.

II. EXAMINING EXPECTATIONS

Recognizing personal biases towards students is an important prerequisite to setting higher expectations. Before expectations can have effect, they must be formed. Teachers often form expectations quickly, based on very little information. These biases can subtly influence our expectations which, in turn, can influence our teaching behaviors.[79] This Section explores the kinds of biases many of us bring to our teaching.

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75. *Id.* at 75.

76. *Id.* at 74-75.

77. COURTNEY B. CAZDEN, CLASSROOM DISCOURSE: THE LANGUAGE OF TEACHING AND LEARNING 137-38 (2d ed. 2001).

78. Barbara Glesner Fines, *Competition and the Curve*, 65 UMKC L. REV. 879, 902-05 (1997).

79. Paul Ekman & Dacher Keltner, *Universal Facial Expressions of Emotion: An Old Controversy and New Findings*, *in* NONVERBAL COMMUNICATION: WHERE NATURE MEETS CULTURE, 27-46 (Ullica Segerstråle & Peter Molnár eds., 1996); ERVING GOFFMAN, THE PRESENTATION OF SELF IN EVERYDAY LIFE 1 (1959).

A. *Bias in Law School Teaching*

Not all teachers are susceptible to the expectation effect.[80] All humans make assumptions and form expectations, but only some teachers consistently translate those assumptions into differential behavior toward students.[81] Are law professors any more or less likely to be susceptible to the expectation effect? Which teachers are more likely to treat students differently based on their expectations?

Some research into high bias teachers indicates that they may be more likely to have "dogmatic personalities" and to view themselves as "reasonable and less emotionally extreme."[82] Research into attorney personalities indicates these high bias personalities may be *over-represented* in law.[83] For example, studies using the Myers-Briggs Personality Type Indicator show that law students and lawyers consistently and disproportionately prefer a "thinking" approach to decision-making over a "feeling" approach.[84] Individuals with a "thinking" preference in decision-making judge others on the bases of logic and critical analysis without significant reference to their own or others' personal values.[85] This orientation may correlate with the personality of high bias teachers who prefer to describe themselves as "reasonable and not emotionally extreme."[86] Regardless of whether we can conclude that law professors are more susceptible to expectation effect than other teachers, at a minimum it seems unwise to assume that law teachers are somehow immune to the expectation effect.

Certainly law faculty form expectations for students no less than any other individual. These expectations can be based merely on appearances.[87] For example, what is your first impression of the quality of work to be expected

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80. For example, some researchers have suggested that women instructors are less likely to translate expectations into differential treatment. *See* EDEN, *supra* note 21, at 63-64. However, additional research into the gender aspects of expectation effect are needed to draw firm conclusion here.

81. COOPER & GOOD, *supra* note 15, at 23.

82. *Id.*

83. *See* Vernellia R. Randall, *The Myers-Briggs Type Indicator, First Year Law Students and Performance*, 26 CUMB. L. REV. 63, 91-96 (1995).

84. Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1392-93, 1408-09 (1997). *See generally* Randall, *supra* note 83, at 75-77 (describing the classification scheme of the Myers-Briggs Type Indicator test).

85. Daicoff, *supra* note 84, at 1394.

86. COOPER & GOOD, *supra* note 15, at 23.

87. Much discrimination law is premised on this social practice of judging others by their appearance. *See, e.g.*, Robert Post, *Prejudicial Appearances: The Logic of American Antidiscrimination Law*, 88 CAL. L. REV. 1, 18-30 (2000).

from the following students?[88]

- Student A sits in the front row in a suit, with a brand new textbook and color coded notebook open at the desk and gives the professor a pleasant smile and greeting as the professor enters the room.
- Students B and C enter just before class begins, dressed in blue jeans, t-shirts and baseball caps, sit in the back row, open one dog-eared textbook between them along with their own personal copies of *Casenotes Legal Briefs* and give the professor no eye contact until she begins to speak.

How would your expectation of each of these students change if you changed their gender, race, seating position, dress, or vocal patterns? How many good students does it take to make a good class? How many classes do we characterize as difficult because of the presence of a core of bad students? How can we prevent stereotypes from influencing our expectations? A first step is to recognize common biases and examine our own attitudes to determine whether those biases exist.

Our own observations of student interaction in class can be powerful yet inaccurate and biased bases for forming expectations. Professors tend to positively evaluate students who "question assumptions, challenge points of view, speak out, and participate actively."[89] Yet this behavior may be considered rude or at least uncomfortable for many students, particularly for those whose cultural background would not sanction this assertiveness.[90] To avoid negative expectation effects, we must temper our assumptions of ability based on learning style preferences and ensure all students adequate opportunities for interaction.

While biases can create negative expectations for certain *individuals*, teachers can also have expectations—positive or negative—for an *entire class.*[91] Here I examine two common assumptions about our students that pose a significant risk of producing the expectancy effect's negative results. By focusing on these, I do not mean to suggest that other powerful biases based on race, gender, or culture, for example, are absent from legal education. Indeed, I believe that my own privileged position requires that I make special efforts to become aware of the ways in which my own expectations are shaped

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88. These students tend to be two of the archetypes of law students faculty see to construct. See, for example, the satirical essay by Professor James D. Gordon III, *How Not to Succeed in Law School*, 100 YALE L.J. 1679, 1686-87 (1991) in which he refers to students as being either "Active Participants," "Back Benchers," or "The Terrified Middle."

89. BARBARA GROSS DAVIS, TOOLS FOR TEACHING 46 (1993).

90. Glesner Fines, *supra* note 78, at 93.

91. It is not uncommon to hear faculty talk about a first-year section or a graduating class in global terms ("it's a good group this year") or to compare the entire character of a class with prior year's classes ("my family law class is really bright this year").

by the personal characteristics I bring to the classroom.[92]

Nonetheless, I believe there are two identities shared by nearly all law professors that differ from most of their students: law professors typically have better credentials than nearly all their students[93] and typically come from a different generation[94] than most of their students.

B. *The Credential Bias*

The culture of higher education in the United States, and legal education in particular, is a culture of "educational predestination."[95] American educators tend to attribute achievement primarily to ability, measuring ability through objective testing.[96]

> This view contrasts sharply with the predominant perspective in many other cultures, where hard work and effort are considered key to students' academic achievement. In these cultures, high expectations are maintained for all students, and if a student is not succeeding, it is attributed to lack of effort and hard work, not to insufficient intellectual ability.[97]

Thus, the predominant educational culture explains that testing is a measure of fixed, stable ability, which cannot be significantly affected by student effort or faculty instruction. Law schools rely heavily on LSAT scores and grades in

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92. Some of the personal characteristics that influence my assumptions include: white, female, able-bodied, straight, Catholic-Christian, first-generation college graduate, and musician-right-brained. Obviously, some of these characteristics place me in a privileged position in the academy, while others put me at the margins.

93. Robert J. Borthwick & Jordan R. Schau, Note, *Gatekeepers of the Profession: An Empirical Profile of the Nation's Law Professors*, 25 U. MICH. J.L. REFORM 191, 194 (1991); *see also* Donna Fossum, *Law Professors: A Profile of the Teaching Branch of the Legal Profession*, 1980 AM. B. FOUND. RES. J. 501, 501(1980).

94. Some have predicted that this age gap will only continue to widen in the coming years. Robert A. Stein, *The Future of Legal Education*, 75 MINN. L. REV. 945, 969 (1991); *see generally* Marc Galanter, *"Old and in The Way": The Coming Demographic Transformation of the Legal Profession and Its Implications for the Provision of Legal Services*, 1999 WIS. L. REV. 1081.

95. Bamburg, *supra* note 54.

96. The "objectivity" of standardized testing is a matter of considerable controversy in itself. *See, e.g.*, Mindy L. Kornhaber & Gary Orfield, *High Stakes Testing Policies: Examining Their Assumptions and Consequences, in* RAISING STANDARDS OR RAISING BARRIERS?: INEQUALITY AND HIGH STAKES TESTING IN PUBLIC EDUCATION 1, 1- 18 (Gary Orfield & Mindy L. Kornhaber eds., 2001) (discussing controversial aspects of use of standardized testing in American education).

97. Linda Lumsden, *Expectations for Students*, (1997), ED409609, *available at* ERIC CLEARINGHOUSE ON TEACHING AND TEACHER EDUCATION, http://www.ed.gov/databases/ERIC_Digests/ed409609.html.

forming expectations of new students.[98] The schools then cement those stratified expectations by imposing bell curves on teachers' own evaluations despite the significant costs in learning, equity, and professionalism of such competitive learning cultures.[99]

The credential bias threatens a self-fulfilling prophecy effect if teachers do not believe in their own ability to teach and in the ability of their students to learn. If one views prior academic assessments as a measure of immutable ability, one is likely to expect that future performance will be consistent and, thus, act in ways to sustain those expectations.[100] Whether teachers are making predictions about individual students or of the class as a whole, when they view students' credentials as low, they are less likely to provide opportunities for those students to demonstrate growth and, when performance does outpace past credentials, the performance is likely to be overlooked or viewed with suspicion.[101] Consider, for example, faculty mandatory grade mean or distribution policies that allow for exceptions based on the non-random distribution of talent. Teachers who believe they can teach (i.e., affect student learning and motivation), and that their students' learning is a result of their teaching, are less likely to limit their expectations of student achievement to the mere replication of past performance.[102] "This sense of efficacy . . . affects teachers' expectations concerning students' abilities. Teachers with a high sense of efficacy are more likely to view low-achieving students as reachable, teachable, and worthy of their attention and effort."[103] Accordingly, we must believe that our teaching can impact student achievement.

The credential bias poses an even greater risk for the sustaining expectancy effect. While some may temper the importance of entrance credentials in forming our expectations for students, often by deliberately withholding this information from themselves, law teachers have a more difficult time hiding from first-year grades and experiences with students in prior classes.[104] When

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98. I refer the reader to my prior, more developed positions on the subject of law school culture: Barbara Glesner Fines, *supra* note 78, at 889-90, and B. A. Glesner, *Fear and Loathing in the Law Schools*, 23 CONN. L. REV. 627 (1991).

99. Glesner Fines, *supra* note 78, at 899-902.

100. Patricia Ashton, *Teacher Efficacy: A Motivational Paradigm for Effective Teacher Education*, 35 J. TEACHER EDUC. 28-32. (1984) (exploring eight factors in teacher efficacy, including "positive expectations for student behavior and achievement," "sense of control over student learning.")

101. *Id.*

102. *Id.*

103. M. Kay Alderman, *Motivation for At-Risk Students*, EDUC. LEADERSHIP, Sept. 1990, at 27, 28.

104. Some faculty may be able to entirely shield themselves from grade information if they don't read the walls and e-mails announcing dean's list or law review students, absent themselves from the student readmissions process, and otherwise avoid all the ways in which

teachers speak of students' grades as though they have become immutable characteristics, they condition themselves to look for similar achievement in the future, thus sustaining and even amplifying the performance outcomes of their students.

C. *The Generational Bias*

A survey of law school teaching conference topics or a bit of eavesdropping in the halls quickly reveals teacher expectation of overall student preparedness and engagement. "Most of our students, we surmise, would prefer not to attend class at all, nor do any readings."[105] While engaging students in class has been a problem since law school teaching moved out of the law office and into classrooms,[106] the more recent discussion assumes that this generation of law students is worse than ever.[107]

Some suggest that this disengagement is simply a product of "Generation X" law students who tend to be disengaged, disrespectful, and suspicious of authority, with an ultra-consumerist perspective on education and a sense of entitlement to their degrees.[108] However, labels such as this create stereotypical assumptions that potentially create a negative expectation effect. Moreover, these assumptions are likely to be wrong. Even if accurate, generational stereotypes can linger long after the generation has matured. In other words, when law faculty finally define their understandings and expectations of Generation X students, they are likely to be applying those expectations to a

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grade information becomes generally known to faculty. Such avoidance will be impossible for faculty teaching courses in which prior grades (either at the top or bottom percentage) are taken into account in deciding who can enroll. These faculty in particular need to monitor their own expectations.

105. Linda Morton et al., *Not Quite Grown Up: The Difficulty of Applying an Adult Education Model to Legal Externs*, 5 CLINICAL L. REV. 469, 489 (1999).

106. *See, e.g.*, CHARLES P. SHERMAN, ACADEMIC ADVENTURES: A LAW SCHOOL PROFESSOR'S RECOLLECTIONS AND OBSERVATIONS (1947). Speaking of his students at Yale Law School in 1913, Professor Sherman commented on the difficulty of engaging his students:

> [T]o inspire is not always simple or easy: there is no single avenue thereto—more than one avenue of approach may be necessary, and the teacher who knows several avenues obtains the best and the quickest success. . . . [I]f a teacher can manage to interest his students, he will inspire them. But sometimes it seems almost impossible to arouse a student's interest.

Id. at 183-84.

107. *See, e.g.*, Timothy P. Terrell, *A Tour of the Whine Country: The Challenge of Extending the Tenets of Lawyer Professionalism to Law Professors and Law Students*, 34 WASHBURN L.J. 1, 8 (1994) (describing current law students as "basically interested in and dedicated to themselves").

108. Rodney O. Fong, *Generation X: Students in the 21st Century*, AALS WORKSHOP 2002, *at* http://www.aals.org/am2002/fong.html (last visited Oct. 10, 2002).

classroom full of the "Millennial Generation."[109]

That is not to say that students today, or in coming years, will come to school as prepared as we would like or with the study habits we would wish. Indeed, the National Survey of Student Engagement demonstrates that one-fifth of all undergraduate students frequently come to class unprepared and forty-five percent of undergraduate students who study never discuss ideas from their classes or readings with a faculty member outside of class.[110] Furthermore, about one-fifth of both freshman and senior undergraduate students say that their institution gives little emphasis to studying and spending time on academic work.[111] Eighty percent of seniors spend less than twenty hours a week preparing for their classes and forty-eight percent spend less than ten hours a week.[112] Nearly half of these students did not write a substantial paper during their senior year.[113]

What are law teachers to make of these statistics? We could question the assumption that these statistics actually describe law students. For one, law schools recruit the most successful undergraduate students.[114] Further, because academic achievement in higher education is more closely correlated to motivation and effort than to raw ability,[115] it seems likely that these statistics reflecting low engagement do not accurately describe the average law student. Additionally, research into the psychological traits of law students suggests that they are less likely to fit the stereotype of the "slacker." Instead, law students tend to have a higher than average achievement orientation and their predominant reasons for attending law school tend to be "interest in the subject matter and . . . intellectual stimulation."[116] In other words, law students *do* want to learn.

Even when law students are motivated to learn, they may still come to law school with poor study habits.[117] Indeed, if expectations in most undergraduate

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109. NEIL HOWE & WILLIAM STRAUSS, MILLENNIALS RISING: THE NEXT GREAT GENERATION 3-4 (2000).

110. NAT'L SURVEY OF STUDENT ENGAGEMENT, 2002 ANNUAL REPORT 23, *available at* http://www.indiana.edu/~nsse/? (last visited Oct. 1, 2002).

111. *Id.* at 29.

112. *Id.*

113. *Id.* A substantial paper is defined as twenty pages or longer. *Id.*

114. Admission at most law schools is based predominantly on a combination of LSAT and undergraduate GPA. *See ABA-LSAC Official Guide to ABA-Approved Law Schools* (2003), *at* http://officialguide.lsac.org/docs/cgi-bin/home.asp (last visited Feb. 10, 2003).

115. DONALD A. BLIGH, WHAT'S THE USE OF LECTURES? 57 (2000). *But see* JOSEPH LOWMAN, MASTERING THE TECHNIQUES OF TEACHING 5-8 (2d. ed. 1995) (suggesting that "students' level of general intelligence, specific academic aptitude, and ... skills or knowledge" are behind differences in academic performance.)

116. Daicoff, *supra* note 84, at 1369-70, 1404.

117. *See* Michael L. Richmond, *Teaching Law to Passive Learners: The Contemporary*

programs are as low as some surveys suggest, many law students could have achieved high grades based on minimal effort and may be unaccustomed to rigorous study schedules. Nonetheless, characterizing their study behaviors as a generational trait is to assume that this behavior is unlikely to change. To create a positive expectancy effect, we must reconsider the assumption that past behavior and attitudes will continue in the law school setting. There is good reason to assume that students will undergo significant cognitive and social development during law school.[118] Once again, however, we are best situated to believe that our students can be engaged and active learners if we believe we can teach them how to do so. In light of declining levels of preparedness of undergraduates overall, law schools would be wise to increase the instruction regarding required role transitions and study skills necessary for professional preparation. This increased instruction could range from expanded orientation programs, to academic support and professionalism programs, to pervasive attention to these issues by the collective faculty.

Even if teachers do not expect students to arrive unmotivated and lazy, teachers appear to believe they will become so by their third-year.[119] There is some evidence of this, but it is not dispositive.[120] For many years, I have taught third-year, second-semester students in my Remedies course. The contrast between their motivations and work habits and those of my first-year students is stark. Simply to teach third-year students more of the same (more cases, more doctrine, more arguments, etc.) in more of the same way ("Mr. Smith, what was the holding in . . .") is inevitably to lower the teacher's standards and the students' motivation. Burnout is the inevitable result if teachers do not add new fuel to student fires. If there is any point in the law school curriculum at

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Dilemma of Legal Education, 26 CUMB. L. REV. 943, 959 (1996).

118. Morton et al., *supra* note 105, at 496-506.

119. Gulati, *supra* note 2, at 235 (quoting an "Ancient law school proverb"). Dean Powell refers to the problem of upper-class student disengagement as the "Jedi Syndrome."

> Beyond economic survival itself, the greatest challenge facing most faculty and students in the twenty-first century will be to respond to what is already a major challenge—what might be called "the Jedi warrior syndrome" after [George Lucas'] Star Wars Trilogy parable. There, the hero, Luke Skywalker, forsook his mentor, Yoda, before his training was completed, because he viewed his mission—saving the alliance and settling old scores—as too important to put off in favor of more training."

Burnele V. Powell, *Somewhere Farther Down the Line: Maccrate on Multiculturalism and the Information Age*, 69 WASH. L. REV. 637, 655 (1994).

120. Gerald Hess, *Bored Third-Years? Think Again*, THE LAW TEACHER (2001), *at* http://law.gonzaga.edu/ilst/newsletters/fall01/hess.htm (last visited Oct. 1, 2002)(noting student ideas on how to improve upper-level teaching). One student responded, "to you upper-level professors: teach already. Quit telling us we probably haven't read, or that we won't recite cases, or that we won't complete projects. Get on with it already. I've got stuff to learn." *Id.*

which faculty need to maintain and inculcate high expectations for student engagement *and* learning, it is in the upper-level classes. If teachers expect upper-level students to be bored and lazy, they are more likely to communicate negative messages about learning, no matter how they attempt to liven up their classes.

III. ATTITUDE ADJUSTMENTS

Because it is difficult to change behavior without changing mindset, the first step toward creating a high-expectation law school experience is to change teacher attitudes toward students and teaching.

A. *Learning About Students' Strengths*

Stereotypes are strongest when used to augment an "information-impoverished environment."[121] Thus, if teachers wish to eliminate the effects of negative expectancies, they need to get to know their students. Knowing the students' names helps to create a positive socio-emotional climate and is the first step toward developing, maintaining, and communicating high expectations.[122] Asking students about their strengths may provide a rich basis for positive first impressions. Interacting with students in a variety of settings,[123] particularly settings in which traditional power relationships are de-emphasized or reversed,[124] can be especially useful in overcoming stereotypical views or hastily drawn first impressions. When a teacher knows students personally, the teacher is less likely to use the exclusive language that assumes sameness of background and goals, for example, everyone comes from two-parent, middle-class, white, heterosexual households and plans on working in

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121. Charles Stangor & Mark Schaller, *Stereotypes as Individual and Collective Representations*, *in* STEREOTYPES AND STEREOTYPING 26 (C. Neil Macrae et al., eds., 1996).

122. Gerald F. Hess, *Listening to Our Students: Obstructing and Enhancing Learning in Law School,* 31 U.S.F. L. REV. 941, 953-54 (1997).

123. See question #4 in Faculty Inventory: "*I find opportunities to have constant interaction with my students to establish a relationship that will permit me to encourage them to establish challenging goals for their own learning.*" Inst. for Law Sch. Teaching, *Seven Principles for Good Practice in Legal Education*: *Faculty Inventory*, *available at* http://law.gonzaga.edu/ilst/p6.htm (last visited Oct. 1, 2002) (emphasis added) [hereinafter *Faculty Inventory*].

124. Walter G. Stephan & David Rosenfield, *Racial and Ethnic Stereotypes*, *in* IN THE EYE OF THE BEHOLDER: CONTEMPORARY ISSUES IN STEREOTYPING 116 (Arthur G. Miller ed., 1982).

a large firm under a senior partner.[125] Time spent increasing one's cultural competency can be important in ensuring a more inclusive teaching approach.[126]

Being sensitive to the cultural differences among our students is important in avoiding language and behaviors based on negative stereotypes. Misguided cultural awareness, however, can be just as destructive as a blindness to diversity. Treat each student as an individual to avoid relying on labels and categories. Once teachers begin using labels, they begin to sustain expectations. Avoiding negative labels is especially critical to maintaining an open eye and mind to student transformation. Just as insidious is the good-hearted but ill-informed use of categories. Sometimes, for example, in an effort to combat isolation, a teacher might overtly take race or gender into account in grouping students for work teams or in calling on students to recite in class. However, the research on stereotype threat indicates that as an individual's minority status becomes more salient in a group, there is an increase in stereotype threat.[127]

Because expectations are often self-reinforcing, the most insidious label we need to be aware of is that which categorizes a student as a low achiever or poor student. Once this label attaches, teachers may increasingly notice deficient performance, while either ignoring outstanding performance or labeling it as exceptional.[128] High expectations mean teachers must continue to believe that all students can grow in their learning and achievement. To foster this expectancy, teachers must look for exceptions disproving the rule of educational predestination. Finding ways to discover and capitalize upon the diverse strengths and learning styles of students can improve learning for all students.[129]

Consider the student who, when responding to questions in class, always has a story to tell (as in, "Well, when my cousin Edna got a divorce . . ." or "But what if my lease says . . ."). One could dismiss this student as missing the point and devise classroom control devices to avoid the distraction caused by these storytellers. However, is there another way to view this student? Can a teacher find a real strength in the ability to create immediacy in learning? Can that strength be capitalized upon? Can the teacher assume that the student's

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125. DAVIS, *supra* note 89, at 40, 44.

126. *Id.* For examples of this work in action, see the essays in TEACHING WHAT YOU'RE NOT: IDENTITY POLITICS IN HIGHER EDUCATION (Katherine J. Mayberry ed., 1996).

127. Claude M. Steele, *A Threat in the Air: How Stereotypes Shape Intellectual Identity and Performance*, 52 AM. PSYCHOLOGIST 613, 619-20 (1997).

128. COOPER & GOOD, *supra* note 15, at 10.

129. Robin A. Boyle & Rita Dunn, *Teaching Law Students Through Individual Learning Styles*, 62 ALB. L. REV. 213, 220-21 (1998).

inappropriate classroom communications can be channeled simply by instructing the student on appropriate communication or is the teacher shackled to an assumption that story-telling is simply an immutable trait of the student?[130] Obviously, teachers cannot find exceptional performance to disprove old assumptions unless they give ample and varied opportunities for students to demonstrate their abilities.

B. *Changing the Culture of Expectations in Teaching and Learning*

By sharing positive impressions of students and avoiding negative assumptions, faculty can reinforce one another's high expectations for individual students and for the class as a whole. Some faculty, presumably many of those reading this Article, may be less susceptible to negative expectancy effects in their teaching. They may already work hard to maintain positive expectations and the teaching behaviors that mediate those expectations. Expectations, however, are also created by an overall culture.

For the Pygmalion effect to truly take root in law students, the culture of law school[131] must be one of high expectations. Student reactions and receptivity to increased challenge will be influenced significantly by the expectations students have developed from their experiences with other teachers in the institution. Faculty are far more likely to meet resistance to increased demands or different teaching techniques if those demands or techniques are outside the norm for the institution. Thus, individual faculty members must work to shape institutional teaching and learning norms.[132]

Simply changing talk can have significant impact. Personal expectations are influenced by the expectations of our peers.[133] Some faculty are notorious for their negative views of students. Like the attorney who says that law

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130. COOPER & GOOD, *supra* note 15, at 23 ("[T]eachers who perceive low expectation student performance as uncontrollable . . . would be most likely to communicate low expectations.").

131. *Cf.* Howard S. Erlanger & Gabrielle Lessard, *Mobilizing Law Schools in Response to Poverty: a Report on Experiments in Progress*, 43 J. LEGAL EDUC. 199, 209 n.25 (1996) (discussing existence and character of of the law school culture).

132. MICHAEL RUTTER ET AL., FIFTEEN THOUSAND HOURS: SECONDARY SCHOOLS AND THEIR EFFECTS ON CHILDREN 193 (1979).

133. *See, e.g.*, Fletcher A. Blanchard et al., *Condemning and Condoning Racism: A Social Context Approach to Interracial Settings*, 79 J. APPLIED PSYCHOLOGY 993, 993 (1994) (noting that college students were more likely to condone racist speech if they heard peers express strong anti-racist opinions than if the racist speech followed more neutral statements by their peers).

practice would be perfect if it were not for clients, these faculty appear to believe that students are the only obstacle to their career satisfaction. Other faculty can find the gem shining through the roughest cut of student. In the culture of critique[134] predominating in law schools, the voice of the former often overshadows the latter. Faculty need to create time for sharing positive expectancies and experiences about and with their students.

Indeed, teachers must monitor their self-expectations as teachers as carefully as they monitor assumptions about students. High expectations for teaching is a necessary prerequisite to increasing the expectations of students. For example, how would our teaching change if we defined for ourselves quality teaching and then set about to measure it in ourselves and others? What if, along with student evaluations of our teaching, we measured student mastery of course material against external, objective standards? What if our own professional success as teachers was measured by our students' success? How would our decisions on salary, promotion and tenure, endowed chairs, or other tangible benefits be affected if we expected great teaching from all faculty? How would the curriculum structure change? Many faculty who care deeply about teaching become mired in negative expectations about the status of teaching in legal education.[135] Here too, some attitude adjustment will be necessary if we are to begin recognizing and promoting positive transformations in teaching and the culture of the academy.

IV. HIGH EXPECTATION TEACHING METHODOLOGIES

Changing assumptions about students alone may be sufficient to improve learning without any conscious changes in teaching methodologies. On the other hand, law faculty could simply adopt behaviors often associated with teachers who have high expectations of students without spending significant time in self-reflection and attitude adjustment. Yet, a sensible working assumption is that law faculty must change both attitudes and actions. I now address the four categories of teaching behavior identified by research as mediating expectations: climate, input, output, and feedback.

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134. *See generally* DEBORAH TANNEN, THE ARGUMENT CULTURE: MOVING FROM DEBATE TO DIALOGUE 7 (1998).

135. Mitchell M. Simon et al., *Herding Cats: Improving Law School Teaching*, 49 J. LEGAL EDUC. 256, 256 (1999).

A. *Climate: Increasing the Warmth of Teaching*

Of the differential behaviors, those related to emotional climate are the most significant in creating expectancy effects.[136] Differences in climate are often created through subtle differences in interactions between teacher and student.[137] These nonverbal interactions play an important role in the link between expectations and achievement by influencing student receptivity to learning.[138]

Law schools often overlook the affective domain in teaching and learning,[139] as does much of educational research.[140] Yet learning and teaching involve conscious cognitive and unconscious emotional processes. Excellent teachers are able to touch upon both processes by creating intellectual excitement and interpersonal rapport.[141] Moreover, law teachers play important roles in modeling professional communication skills. Teachers who are inattentive to the emotional climate of their classes are modeling the emotionally impervious stance for which attorneys are often criticized.[142] However, subtle and personal variables such as emotional warmth are difficult to detect in one's teaching without giving particular attention to the issue.

It is unlikely that a teacher can create a warm socio-emotional climate if the teacher does not truly enjoy and believe in the students. But attitude alone will not have as powerful a positive expectancy effect if that attitude is not communicated in a way that is likely to influence the self-expectations of the students. How does one create a positive, accepting, and encouraging environment? Two factors are addressed here: language and silence. Creating a climate of high student expectation depends on how we speak and when we are silent.

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136. Rosenthal, *supra* note 10, at 18-22.

137. *Id.*

138. *Id.* A number of studies established that one can accurately predict student rating of teacher effectiveness merely by viewing tapes of an instructor's class, with no sound and no previous context for viewing the class. *Id.*

139. Martha M. Peters, *Bridging Troubled Waters: Academic Support's Role in Teaching and Modeling "Helping" in Legal Education*, 31 U.S.F. L. REV. 861, 864 (1997).

140. CAZDEN, *supra* note 77, at 78; *cf.* STEPHEN D. BROOKFIELD, THE SKILLFUL TEACHER: ON TECHNIQUE, TRUST AND RESPONSIVENESS IN THE CLASSROOM 43-56 (1990) (researching college students' emotional responses to their education).

141. HESS & FRIEDLAND, *supra* note 7, at 16-18 (reporting the work of Joseph Lowman).

142. Peters, *supra* note 139, at 864.

1. High Expectation Language

The language teachers use to discuss assignments and the expectations teachers convey to students about those assignments will affect student motivation. To motivate students to achieve more, teachers must communicate their high expectations and enthusiasm for student learning in terms that are positive, clear, consistent, and authentic. In introducing the discussion of a case, for example, there is a world of difference between "*If* you briefed this case . . ." and "*When* you briefed this case. . .". Likewise, while it may be a quick fix to student inattention to say, "On the exam, I will require that you . . .", teachers should sound more like, "I am looking forward to hearing your views on the reading for today . . .", if they want to encourage students to engage in deep learning.

The thousands of words teachers speak to their students paint a picture of the expectations teachers have for them. Consider the language teachers use to communicate their expectations for student attendance. Most faculty *require* attendance. But do teachers truly *expect* that students will attend and participate? From reading exchanges on faculty e-mail discussion lists and hearing faculty discussion during teaching conferences, I conclude that many faculty members believe most students do not want to come to class. I suspect that this is the predominant expectation most teachers communicate in their course syllabi and classroom announcements. Most teachers, if they address the issue at all, either refer to some external standards, such as, the ABA or law school requirements for regular attendance, or provide our own definitions of valid and invalid excuses for absences, followed by descriptions of the sanctions for violating attendance standards.[143] Teachers certainly should clearly articulate attendance requirements and the consequences for nonattendance; however, in order to foster an intrinsic motivation for class attendance, teachers should also address students who unavoidably miss class—providing policies for audio taping, emphasizing availability for meeting with students to review or answer questions, and providing advice on making up missed work. For example, for the past two years I have developed a habit of e-mailing all absent students immediately after class. The message I send reads:

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143. This is somewhere between pure speculation and empirical work. In preparing for a presentation on this topic at the summer teaching conference of the Gonzaga Institute for Law School Teaching, I read attendance policies from about fifty different course syllabi available on the web. *See, e.g.,*Fletcher Sch. of Law, *Human Rights Syllabi for the College Classroom, at* http://globetrotter.berkeley.edu/A1USA-syl/lutz-polisci.html (last visited Nov. 22, 2002).

> I'm sorry you weren't able to be in class today. We [briefly describe the subject matter and learning activities they missed and provide information on how to access any handouts, slides or other material distributed in class]. Let me know if you have questions about this material. Next class we will [remind students of assignment for next class]. See you on [next class day].

The response I get from students indicates that many of them are surprised by my e-mail. Some apologize for missing class, some explain their absence, some simply say thank you for helping them keep up. Clearly, they know that I expect not only that they will be in class, but also that they *want* to be in class.

A warm learning climate often requires that teachers reveal some personal aspects of themselves to their students.[144] Perhaps the most powerful personal information teachers can share is their own passion for the subject and the questions they are exploring. Teachers need to communicate that excitement in a way that will energize the students.

> We often live our scholarly lives focused on questions that lie several layers beneath the surface of matters that first intrigued us. In teaching, we must dig back toward the surface, to meet our students there, to recapture the significance of our inquiries, and to help students understand why our current deliberations capture our attention. We cannot simply call out from our position deep within the ground and ask our students to join our subterranean mining expeditions.[145]

Teachers must recall their own journey of learning.

It is in the language of assessment that teachers can create a climate supporting high expectations through the availability and tenor of feedback. Appropriate feedback means positive reinforcement for successful work and judicious criticism for mistakes.[146] Teachers of legal writing typically know the careful balance of praise, criticism, and sensitivity to student confidence levels required to coach students to higher achievement in their writing.[147]

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144. BROOKFIELD, *supra* note 140, at 169.

145. Ken Bain, *A Sustained and Substantial Influence: A Model for Evaluating and Improving Teaching*, 7 NAT'L TEACHING & LEARNING FORUM (1997), *at* http://www.ntlf.com/html/pi/9712/influence.htm (last visited Oct. 10, 2002).

146. Gerald F. Hess, *Heads and Hearts: the Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75, 106-07 (2002) [hereinafter Hess, *Heads and Hearts*].

147. A significant percentage of time spent at legal writing conferences and in the legal writing scholarship is devoted to the subject of feedback to students. Richard K. Neumann,

In responding to student writing, teachers have the luxury of time to prepare responses. In the classroom, however, responses are spontaneous and often unconscious. Accordingly, teachers are often unaware of their approach to these responses. Teachers' perceptions of their use of praise and criticism are often quite inaccurate.[148] Teachers tend to report, for example, that they give more praise to students for whom their expectations are low than for those expected to perform well. For most teachers, however, observations of their behavior reveal the opposite tendency. This may be based on the fact that praising high-expectation students is "more routine and therefore more easily forgotten."[149] Recall that one characteristic of the sustaining expectancy effect is that it causes teachers to overlook achievement in low-expectation students and to consider the achievements they do notice as exceptional.

Moreover, the types of behaviors generating praise tend to differ for high—and low—expectation students. Teachers tend to give praise more often for those successes that the teacher attributes to teaching.[150] This effect is strongest for low-expectation students. "Lows appeared to be learning that their successes are caused more often than highs' successes by help from and obedience to the teacher."[151]

To communicate high expectations, teachers should publicly and privately call attention to excellent student work as well as to work that reflects a very good effort to achieve a high standard.[152] Once again, little habits of communication can make a big difference. For example, after class in the hallways I regularly thank students for their contributions in class or indicate my interest in further exploration of ideas students have generated. One must, of course, avoid any feedback that appears to be insincere flattery.

Finding opportunities for praise is not difficult if teachers clearly define objectives and provide resources, support, and instruction to meet those objectives. For example, I regularly ask students to volunteer to be responsible for a particular problem to be discussed the following class. I give the students written guidelines for preparing the problems and encourage them to speak to me before class for additional guidance. I then allocate sufficient time for the students to demonstrate their mastery of the problems assigned. I also give the

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Jr., *A Preliminary Inquiry Into the Art of Critique*, 40 HASTINGS L.J. 725 (1989). This task constitutes the bulk of the legal writing instructor's extraordinary teaching task. Jan M. Levine, *Leveling the Hill of Sisyphus: Becoming a Professor of Legal Writing*, 26 FLA. ST. U. L. REV. 1067, 1072 (1999).

148. COOPER & GOOD, *supra* note 15, at 119.

149. *Id.*

150. *Id.* at 112.

151. *Id.*

152. *Faculty Inventory*, *supra* note 123.

student ownership of their work. In future discussions, I will say, for example, "Mr. Smith taught us . . ." or "Ms. Jones' research told us . . .". This positive feedback is powerful and meaningful.

A warm emotional climate, however, need not be free of criticism. It need only provide respect for effort and a communication of expectations for increased achievement. A teacher should not simply ignore student errors. However, a teacher can correct students' mistakes by first acknowledging student efforts ("thank you" or "nice try"), correcting the error ("no"), and providing a detailed, educative follow-up (which helps students to identify where their reasoning went wrong, acknowledges that the error is a common mis-step, or simply identifies the response as creative, though ineffective). Follow-up should include clear and repeated invitations for further discussions outside of class.[153]

Since most behaviors that make up climate are non-verbal or unconscious, teachers must find a way to monitor themselves. Careful observation of teaching may reveal these differences. Peer observation by teaching pairs or videotaping classes can be powerful tools for evaluating these and many other behavioral differences.[154] Checklists of questions can be used to inform these observations.[155] Observers can monitor the types and levels of questions asked, the wait time for answers, the type of reinforcement provided to the answer, and the use made of the student's answer. Observers should also monitor both verbal and non-verbal responses, looking for differences in level of demand and giving up on those who struggle. Teachers can simply ask their students to verify these observations. "[E]xpectation effects are perceived by students as very real phenomena,"[156] and, while student perceptions may not be entirely accurate as the quantity and quality of differential behavior, the perception of differential treatment has a life of its own that faculty must address.

Critical to all language of high expectation is providing genuine emotional cues that keep focus on the students. Nothing will chill the climate for learning faster than teacher ego-stroking,[157] emotional vulnerability, or a disrespectful tone.[158] A warm emotional climate requires a fine balance between taking

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153. *See generally* BROOKFIELD, *supra* note 140, at 139-41.

154. Hess, *Heads and Hearts, supra* note 146, at 109-11.

155. Myra Sadker & David Sadker, *Ensuring Equitable Participation in College Classes*, *in* TEACHING FOR DIVERSITY 53 (Laura L. B. Border & Nancy Van Note Chism eds., 1992).

156. COOPER & GOOD, *supra* note 15, at 119.

157. Douglas Duncan & Amy Singel Southon, *Six Ways to Discourage Learning*, TEACHING AT CHICAGO, *at* http://teaching.uchicago.edu/handbook/tac15.html (last visited Sept. 27, 2002).

158. Gerald F. Hess, *Heads and Hearts, supra* note 146, at 103-06.

responsibility for student learning without taking successes and failures personally. Disciplined reflection on teaching can help to maintain that balance.[159]

2. High Expectation Silence and Space

Many law faculty teach through Socratic dialogue.[160] Although this teaching technique has been criticized for its effect on classroom climate, there is nothing inherently negative in the technique.[161] It is the *use* of the technique that influences classroom climate. When used with respect and consistency, and especially when used in combination with other appropriate teaching methods, the Socratic technique is commendable.[162] However, this dialogue is rife with opportunities for negative differential treatment of students.

One variable in dialogue that is very likely to reflect differential expectations is the amount of silence available to students.[163] Teacher behaviors reflecting low expectations include waiting less time for students to answer questions, interrupting more quickly during student pauses in answers, and waiting less time after their answer to respond. Research into wait time indicates that most teachers wait "one second or less" for a student to reply to a question and an equally brief period before they react to the student's answer.[164] Despite solid research supporting this statistic at all levels of teaching, I found it difficult to believe until I watched, with stopwatch in hand, videotapes of my own teaching.

Increasing wait time has extraordinary benefits. The increase need not be dramatic; increasing wait time to only five seconds can result in different student and teacher behavior.[165] Consistent use of increased wait time results

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159. Hess, *Learning to Think Like a Teacher: Reflective Journals for Legal Educators,* 38 GONZ. L. REV. 127 (2003).

160. *See* Steven I. Friedland, *How We Teach: A Survey of Teaching Techniques in American Law Schools*, 20 SEATTLE U. L. REV. 1, 27-28 (1996) (reporting that 97% of faculty use a Socratic teaching method).

161. Ruta K. Stropus, *Mend It, Bend It, and Extend It: The Fate of Traditional Law School Methodology in the 21st Century*, 27 LOY. U. CHI. L.J. 449, 465 (1996).

162. Paul Bateman, *Toward Diversity in Teaching Methods in Law Schools: Five Suggestions from the Back Row*, 17 QUINNIPIAC L. REV. 397, 405-06 (1997).

163. BROOKFIELD, *supra* note 140, at 61-62.

164. CAZDEN, *supra* note 77, at 94. The leading researcher on this subject is Mary Budd Rowe, who has devoted much of her research career to this subject. *See, e.g.*, Mary Budd Rowe, *Wait Time: Slowing Down May Be a Way of Speeding Up*, 11 AM. EDUCATOR 38-43 (1987).

165. Sadker & Sadker, *supra* note 155, at 51.

in more students responding more often, with more complex and better supported answers and greater confidence in those answers.[166] Teachers who wait longer after student responses ask more complex and better articulated—though fewer—follow-up questions. Those questions exhibit more flexibility in making use of the student's response.[167] On the other hand, the rapid reward response to a student's answer ("Yes, right. [restate student answer, go on to next topic]") can often stifle learning.[168] Thus, increasing wait time is a high-expectation teaching methodology easily monitored in the classroom—simply watch the clock.

Two caveats are in order here. First, wait time increases the quality of responses only if the questions asked are clearly constructed. Let students know they can always ask for rephrasing or clarifications, rather than sit in confusion trying to puzzle over the question instead of the answer. Teachers should also construct questions carefully to match learning goals. Questions that require only rote recitation of information do not challenge students and may even communicate the message that class time needs to be spent checking whether students have read their assignments. Effective classroom questions should aim primarily at analysis, synthesis, and evaluation, and should be carefully constructed and clearly communicated.

The second caution regards the negative effect of wait time if students perceive it as oppressive. Long periods of silence are uncomfortable for most people.[169] Increasing wait time works best if students are informed of your purpose in the teaching technique, have an opportunity to ask for help or be excused from answering in some consistent fashion that does not undermine overall expectations, and have an opportunity to truly think during the wait time.[170] One useful technique for complex analytical questions is the "think, pair, share" technique, in which the teacher asks a question, instructs students to think or write out an answer (for a few seconds or up to two minutes), and instructs students to speak with the person next to them about their answer.[171] Only then does the teacher call for responses from the class as a whole.

In addition to creating some space and time in the classroom, faculty should consider providing space and time during the semester. In the rhythms

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166. CAZDEN, *supra* note 77, at 94.

167. *Id.*

168. Duncan & Southon, *supra* note 157.

169. Polly A. Fassinger, *Understanding Classroom Interaction: Students' and Professors' Contributions to Students' Silence,* 66 J. HIGHER EDUC. 82, 94 (1995).

170. BLIGH, *supra* note 115, 93-94.

171. For more on this and a wide variety of other techniques for cooperative work or other active learning strategies in the classroom see MERRILL HARMIN, INSPIRING ACTIVE LEARNING: A HANDBOOK FOR TEACHERS 32-33 (1994).

of learning, students need time to stop and grieve the loss of old certainties, to reflect and apply their new learning before moving on to more, or simply to rest.[172] Yet, few law school schedules realistically provide for space, reflection, and rest. A teacher can provide these respites by building into the syllabus some end-of-unit review problems, guest lecturers to reflect upon a topic or theme, or other activities designed to provide closure and breathing space in the learning cycle. Faculty often neglect such space because of concerns for topic coverage. Yet, if the teacher is focused on student learning, rather than faculty teaching, the teacher soon recognizes that no realistic coverage is obtained when students are left behind by an unrelenting educational pace. This is not even about a trade-off between depth and breadth; rather, the trade-off becomes student learning or not.[173]

B. *Increasing the Heat: Raising Expectations for Student Learning*

A warm socio-emotional climate sets the stage for a high-expectation teaching and learning experience. Within such a climate, a teacher can increase the opportunities for student challenge and engage students to meet those challenges. Accordingly, nearly equal to climate in significance is input. That is, what learning experiences do we require of our students? More written assignments, more sophisticated analysis, and more opportunities for application of knowledge are the input behaviors that, coupled with more opportunities for formative assessment of learning, translate into higher achievement.[174] Thus, in this section, I address the relationship between socio-emotional climate and high-expectation behaviors, examining in particular the dilemmas presented in differentiating between demand and expectation, in choosing the appropriate level of challenge we present for student learning, and in clearly, consistently, and equitably communicating those challenges to students.

Sometimes faculty speak as if the need for higher expectations is incompatible with the need for a warmer emotional climate in the classroom. It is as though teaching must be emotionally tough in order to be intellectually challenging. Efforts to bring authentic, emotional warmth to teaching become confused with mere pandering to "mewling infants who care only for their own

172. BROOKFIELD, supra note 140, at 46.

173. BLIGH, *supra* note 115, at 61 (arguing that lecture teaching methods and "over-timetabling and excessive course material" encourage surface rather than deep learning approaches and "discourages the very intellectual skills that high education claims to foster").

174. Tauber, *supra* note 61.

warm bottle, and look not beyond the next feeding."[175]

Clearly there is a delicate balance between support and challenge, but the two are not antithetical. Lowered standards or minimal expectations need not result from a respectful and supportive relationship with students. Indeed, such a relationship is crucial to student willingness to engage in dialogue. Teachers most effectively develop thinking skills in their students by creating a "cooperative classroom condition where experimental ideas can be risked, alternative hypotheses explored, and answers changed with additional data; where value is placed on creative problem-solving strategies rather than on conformity to 'right' answers."[176] Just as in the attorney-client context, participatory relationships are not inconsistent with challenge or effectiveness, they only require a surrender of some control and increased open communication.

It is easy to confuse higher expectations with higher standards or more rigor, which can refer to anything from grading guidelines or classroom behavior management to active learning techniques. Expectations and demands are not the same. High goals, standards, and demands do not, by themselves, indicate high expectations (the belief that students can meet these goals, standards, or demands). Demand is a mediating behavior in which higher expectations translate into higher achievement.[177] If teachers demand that students produce more and higher quality work, do they also believe that students can do so?

Often when faculty speak of expectations, however, one finds a curious phenomenon. Expectations become standards and standards become grades. Yet, to communicate higher expectations and motivate students to greater effort we need not, and likely should not, make every learning experience translate into a grade. The irony of using grades to motivate students toward higher expectations is that the focus on the distribution of those grades can undermine the communication of high expectations. Concerns over grade inflation may reflect a concern for lowered expectations.[178] Yet the curves for grade inflation—mandatory curve, for example—are ones that, for the class as a

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175. Celeste M. Condit, *Theory, Practice, and the Battered (Woman) Teacher*, *in* TEACHING WHAT YOU'RE NOT: IDENTITY POLITICS IN HIGHER EDUCATION 165 (Katherine J. Mayberry ed., 1996).

176. RAYMOND S. NICKERSON ET AL., THE TEACHING OF THINKING 337 (1985).

177. Expectations translate into behaviors through input (opportunities or demands for student response) and output (feedback). Tauber, *supra* note 63.

178. Robert C. Downs & Nancy Levit, *If It Can't be Lake Woebegone . . . A Nationwide Survey of Law School Grading and Grade Normalization Practices*, 65 UMKC L. REV. 819, 843-44 (1997).

whole, communicate quite mediocre expectations.[179] Teachers expect—even require—only a small percentage of the class to excel. Comparative grading also communicates mediocre expectations for the teacher, as it excuses faculty from defining the knowledge and skills representing competent or outstanding learning. Teachers cannot, therefore, use grades as a measure of their teaching.[180]

To raise expectations, teachers must be confident that assessment systems will truly reward students who meet those expectations. That is not to say that teachers can necessarily expect the same level of performance from all students. Teachers can, however, expect more from many and can define expectations for all students clearly and objectively. How much can teachers expect? There is a danger of pushing the expectancy effect too far. When demands are based on exceedingly high expectations, the credibility of the source of these expectations themselves may be eroded and may actually undermine performance.[181]

Teachers can best increase the content and skill levels of the goals set for students, not necessarily by increasing the quantity of learning as much as the quality of the learning and the clarity with which learning goals are communicated. The teacher must set specific, concrete, and realistic goals for student achievement. This task requires having an intellectual definition of courses with a clear vision for student learning. Only then, can teachers match course objectives, assignments, and teaching methods to the goals established for students.[182]

Teachers must also state their expectations clearly, consistently and with intellectual integrity.

> If learning is suffused with ambiguity, if students are unsure what is expected of them and by what criteria their efforts are being judged, they will probably mistrust teachers and resist their instructions and entreaties. . . . [T]he perception of ambiguity—of being unsure what teachers want or expect and of suspecting that they hold secret agendas—is . . . one of the most demoralizing factors for students.[183]

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179. Glesner Fines, *supra* note 107, at 899-902.

180. Jonathan D. Fife, *Response to* Pygmalion in the Classroom *or Pygmalion as an Example of the Quality Principles*, NAT'L TEACHING & LEARNING FORUM (May 1999), *at* http://www.ntlf.com/html/sf/fife.htm (last visited Sept. 27, 2002).

181. EDEN, *supra* note 21, at 65.

182. *Faculty Inventory*, *supra* note 123.

183. BROOKFIELD, *supra* note 140, at 151.

The teacher must then follow through with teaching behaviors consistent with these expectations. Consider class participation. Faculty often speak of feeling as though they are pulling teeth to engage students in classroom discussions.[184] Yet, what language is used to communicate expectations for classroom participation? Has the teacher explained *why* student participation in class is expected? Obviously, teachers will have a difficult time explaining why they expect students to participate in class if they have not explored for themselves why this participation is important. Having arrived at that understanding, classroom behavior must be consistent with the goal.

In communicating goals to students, a teacher should repeat these expectations to them in a variety of ways to reach the different learners.[185] The teacher can let students know that the goals are challenging, while simultaneously communicating the expectation that success is within the reach of all students who commit the effort to achievement. At the same time, the teacher should not be unwilling to call students on their half-hearted efforts.

As difficult as it is to balance support and challenge with any one student, with an entire class of students no one set of learning goals can provide the optimum balance. Thus, it should be communicated that learning goals are learning floors, not ceilings for learning, while taking care to keep that expectation floor consistent for all students. For example, teachers generally conclude that class participation is important because they want students to develop certain abilities to articulate their reasoning. However, do teachers expect only rote answers from some students but more complex analysis from others? Thus, for example, while the rolling ball method of calling on students in each class by seat order may create some disincentives for students who are not next to be fully prepared, it does have significant advantages in avoiding any negative differential treatment in opportunities for output, gives students an opportunity to show their best efforts in class preparation and participation, and avoids the oppressive climate that many students feel from being a random target.

Not every learning opportunity should be required. Certainly not every learning opportunity should be part of the summative grading process, though there should be opportunities for formative feedback. If teachers are to

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184. *See, e.g.*, Stephen J. Shapiro, *Teaching First-Year Civil Procedure and Other Introductory Courses by the Problem Method*, 34 CREIGHTON L. REV. 245, 260 (2000) (reporting increased participation by Evidence students after adopting the problem method of teaching). Interestingly, student law review editors have used the same metaphor when speaking about getting faculty to respond to their editorial work. *See, e.g.*, Phil Nichols, Note, *A Student Defense of Student Edited Journals: In Response to Professor Roger Cramton*, 1987 DUKE L.J. 1122, 1128.

185. *Faculty Inventory*, *supra* note 123.

communicate an expectation that students are self-motivated, self-regulated learners, teachers should present students with extra-curricular learning opportunities outside the classroom. While only a few students may follow up on guidance for further reading or research on topics, the teacher that does so has provided an important message about the intrinsic value of learning when that teacher suggests that students can "read more about it."[186]

Most importantly, teachers can encourage students to engage in their own goal-setting. High expectations for student learning must include the expectation that students will be self-directed. Yet, this relinquishment of control is disturbing to some law faculty. Anytime educational policies encourage faculty to move from "sage on the stage" to "guide on the side," protests arise that faculty control is necessary to ensure effective and challenging education.[187] When students are given the power and responsibility to formulate their own learning tasks, they approach learning with greater flexibility, creativity, and sensitivity to nuance.[188] Thus, teachers should encourage students to independently assess their progress towards achieving the goals and expectations of our course.[189]

Providing guidance to students and opportunities for teaching one another is an extremely effective method for raising the expectations for the entire class as well as providing a supportive climate. When peers interact in learning there tends to be both a cognitive and an affective difference in the approach to the process by both participants.[190] Hierarchies are broken down and learners view the relationship as a collaborative learning experience. There is a greater likelihood of empathic response and freedom from constraining deference which frees students to push the limits of learning.[191]

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186. *Id.*

187. Alison King, *From Sage on the Stage to Guide on the Side*, 41 COLL. TEACHING 30, 30-31 (1990).

188. Glesner-Fines *supra* note 78, at 898; Gerald F. Hess, *Student Involvement in Improving Law Teaching and Learning*, 67 UMKC L. REV. 343, 355-61 (1998).

189. *Faculty Inventory*, *supra* note 123.

190. NEAL A. WHITMAN, PEER TEACHING: TO TEACH IS TO LEARN TWICE 8 (1988).

191. *See* Glesner Fines, *supra* note 78, at 913; Vernellia R. Randall, *Increasing Retention and Improving Performance: Practical Advice on Using Cooperative Learning in Law Schools*, 16 T.M. COOLEY L. REV. 201, 213 (1999).

V. CONCLUDING THOUGHTS ON EXPECTATIONS FOR LAW SCHOOL TEACHERS AND THE PROBLEM OF RESISTANT LEARNERS

The balance between the heat of greater challenge and the warmth of greater support is a delicate one depending upon the personal calculus of students, teachers, subject, and time. Obviously, raising expectations for students requires raising expectations for teachers. Yet there is another challenge for many faculty: teachers not only must balance warmth and heat in our expectations for our students, but also must avoid getting burned in the crucible of student expectations of teachers. Just as faculty have expectations for students that influence teaching behavior and the students' expectations for themselves, so too students have expectations about teaching that affects their behavior toward the teacher and the teacher's self perceptions.

Several accounts of teachers who have tried to increase the warmth and expectation in their teaching report that their efforts were met with painful episodes of student resistance.[192] Those accounts often reflect aspects of racial or gender bias that make the task of teaching more difficult for women and minority faculty members.[193]

To maintain high expectations of students, teachers must be careful not to simply accept negative stereotypes of student motivation and attitude. Yet teachers must also consider that some students will have low expectations not only for their own learning, but also for their teaching. What if a student expects that law school will replicate the same minimally challenging process of most undergraduate education; that legal education is a credentialing process rather than an educational process;[194] that law professors will reflect his vision

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192. *See, e.g.*, Pamela J. Smith, *Teaching the Retrenchment Generation: When Sapphire Meets Socrates at the Intersection of Race, Gender, and Authority*, 6 WM. & MARY J. WOMEN & L. 53, 86-91(1999) (describing her experiences with law student resistance to her authority, including slanderous attacks on her race and gender, and institutional responses); *see also* PETER SACKS, GENERATION X GOES TO COLLEGE: AN EYE-OPENING ACCOUNT OF TEACHING IN POSTMODERN AMERICA (1996) (recounting a threat to his tenure resulting from teaching and grading practices in his junior college journalism classes that were significantly more challenging to his students than the practices of his colleagues); Condit, *supra* note 175, at 157-58 (describing many male students' active and passive resistance to her authority in teaching rhetoric courses at the University of Georgia).

193. Smith, *supra* note 192. I suggest that Professor Smith's experiences are shared by many more faculty than depicted by the published accounts. At a recent teaching conference in which one faculty member recounted experiences similar to those of Professor Smith, a room full of nearly 50 faculty members resounded with stories of gender and race-based aggression and resistance by law students.

194. *See* Gulati et al., *supra* note 2, at 238-39.

of lawyers as white, male, elites; or that professors who are women, particularly women of color, will be nurturing but not challenging?[195] Morever, what if those student expectations are fulfilled by many of the other teachers in the law school?

What we have learned from expectation research is that these expectations will produce profound emotional reactions when they are challenged. Recall the Oak School experiment, which found that students who overperformed were considered less likeable than those students who achieved at the low levels expected of them.[196] So, too, it may be that faculty who assert their authority in the classroom by increasing challenges will face very personal resistance from these high-bias students.

Even without bias, the process of challenging students is an emotional one. Anger and grief are a natural consequence of transformative learning.[197] Particularly in the task of teaching critical reading, thinking, and writing, students become angry and resentful that their past certainties are being torn from under them.[198] When that discomfort is presented by a professor whose very presence challenges the student's core beliefs of identity and role, the emotional reaction can be even greater.[199]

Emotional reactions from these high-bias students can result in disruptive or resistance behaviors in the classroom or even aggressive campaigns to undermine the teacher's authority and position in the academy. Teaching evaluations in particular are often cited as tools for students to express anger and resentment.[200] In addition to the emotional toll of reading anonymous attacks upon one's ability, personality, appearance, and sanity, some faculty face threats to their career because of the institutional reaction to these evaluations.[201] Many faculty believe that their ratings by students will suffer if they increase the intellectual challenge of their teaching (the research points to an opposite correlation)[202] or distributing early and strict grades (there is

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195. Or, in Professor Smith's characterization, that black women will be Mammies, but not Saphires. Smith, *supra* note 192, at 53. I am instructed by the writings of my colleague Nancy Levit to wonder if these same high-bias students have a "men are men" attitude toward their male professors that would induce a resistan2ce to nurturing behaviors by those professors. *See* Nancy Levit, *Keeping Feminism in Its Place: Sex Segregation and the Domestication of Female Academics*, 49 U. KAN. L. REV. 775, 775-77 (2001).

196. *See supra* text accompanying notes 29-31.

197. BROOKFIELD, *supra* note 140, at 46.

198. *Id.* at 47.

199. *See id.*

200. *See supra* note 192.

201. *Id.*

202. Contrary to many faculty beliefs, there is a positive correlation between challenging courses and high ratings by students of instruction. *See* Kenneth R. Bain, *Student*

some research to support this belief).[203] While most research shows a connection between student ratings of teaching and overall teaching effectiveness,[204] that same research indicates that student ratings of instruction "may reflect the nature of the students as much as that of the [instructors]."[205]

How can faculty not only balance support and challenge for their law students, but also protect themselves from the resistance and aggression of students who resent that balance? First, they must start from a solid basis in their scholarship. That is, they should have an intellectual definition of their courses and clearly defined goals and measures of student learning. Reflective practice can create a solid foothold when we face the winds of student opinion. Through this reflective practice, teachers can then sort out the justified student criticism from that which stems from bias or resistance to learning challenges.

Second, teachers should go back to the students, engaging them in dialogue about their learning orientations and goals. Where there is resistance, teachers can describe their perceptions of student disengagement or resistance and ask the students to identify possible sources of that resistance. This dialogue may allow the instructor to justify learning for low-expectation students in a way that can affect their own motivations. Through dialogue and reflection, the instructor may discover routes to learning that were previously overlooked.

Third, teachers should remain flexible and confident. Involving students in course planning, approaching the same subject from a different angle, or introducing additional subjects to match student interest and enthusiasm can often make a dramatic difference in the level of student resistance. "Teachers who rely on only one teaching method must always expect a hard core of resisters who are unsympathetic to or intimidated by the approach concerned."[206]

Ratings and the Evaluation of Teaching, N.W. UNIV., SEARLE CENTER FOR TEACHING EXCELLENCE *at* http://president.scfte.northwestern.edu/serve_online.htm (last visited Oct. 1, 2002).

203. There is some research to support this belief. The more certainty with which a student can predict his or her grade, the more likely that expected grade might impact their evaluation of the instructor. For example, research confirms the suspicion of legal writing instructors that their early and frequent evaluation of students impacts their teaching evaluations more directly and negatively in comparison to their colleagues who do not distribute grades until after student evaluations are completed. *See* James G. Nimmer & Eugene F. Stone, *Effects of Grading Practices and Time of Rating on Student Ratings of Faculty Performance and Student Learning*, 32 RES. IN HIGHER EDUC. 195, 207-09 (1991).

204. *See* LOWMAN, *supra* note115, 17 (reviewing research literature demonstrating strong correlations between teacher effectiveness and student ratings and weak correlations between leniency of grading and high student ratings).

205. BLIGH, *supra* note 115, at 205.

206. *Id.* at 152.

Finally, teachers should consider that no amount of challenge will be acceptable to some students. Among any group of learners, some will have a primary goal of avoiding effort or task.[207] I suggest that for many law students, this is not the primary orientation toward learning, but for most law students it will be true at least some of the time. One must acknowledge the normality of resistance. For those students whose bias blinds them to learning from some faculty or whose resistance to learning is intractable, faculty would be well-advised to avoid unceasing efforts at conversion. One author has adopted the practice of striking a bargain in which "you accept their right not to learn and they agree not to disrupt the learning of others."[208] Even for these students, however, expectation theory tells us that teachers should not lose hope. If teachers do not believe that all students—even the most biased and resistant to learning—can be taught, teachers cut short their own ability to achieve excellence in teaching.

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207. Susan Nolen, *Reasons For Studying: Motivational Orientations And Study Strategies*, 5 COGNITION AND INSTRUCTION 269-87 (1988).

208. BROOKFIELD, *supra* note 140, at 161.