

# ESSAY

## GRADES

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Make no mistake about it: Grades are a big deal in law school. A very big deal. Viewed from the perspective of students, just about every aspect of the law school experience—from job prospects to whether vending machines in the student lounge return the appropriate change—is affected by grades. In this respect, the law school represents a genuine meritocracy. Top grades earn students positions on the law review, invitations from respected law firms to come aboard for the summer, and membership in the school's chapter of the prestigious Almost-Justice Douglas H. Ginsburg Pizza, Bridge & Controlled Substances Society, a legal fraternity that meets twice a month in the library stacks. Mediocre grades cause students to forfeit desirable parking spaces in campus lots and receive comments such as "Mr. Schecter, how nice to see that the Academic Standing Committee has allowed you to return for your second year despite the fact that you have so little aptitude for the law" whenever professors pass them in the corridor.

Grades are not merely important to students. They are also essential to the smooth functioning of the law school. Without grades, law professors would have a difficult time distinguishing one student from another and, more importantly, gossiping about students amongst themselves. ("Schmatkin? Oh sure, now I remember. He's the dodo who argued on my

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\* Associate Professor of Law, Marquette University Law School. B.A. Brandeis University (1978); A.M. Harvard University (1981); J.D. Columbia Law School (1983). This essay is part of a larger project in which I examine (in much the same way as this piece explores grades) a host of aspects of the American law school, among them the admissions process, the classroom, the final examination, a day in the life of a law professor, the role of the Constitution, the job interview, multiculturalism, the faculty meeting, and the graduation speech. See, e.g., Peter K. Rofes, *Ethics and the Law School: The Confusion Persists*, 8 GEO. J. LEGAL ETHICS 981 (1995); Peter K. Rofes, *Getting In: The Why and the How of It*, 1995 UTAH L. REV. (forthcoming); Peter K. Rofes, *Law School and the Constitution*, 23 FLA. ST. U. L. REV. 71 (1995); Peter K. Rofes, *One Fine Day*, 45 DUKE L.J. (forthcoming 1995). As for acknowledgements, candor impels me to disclose that, with one exception, none of my colleagues here at Marquette has offered anything but scorn for the project. The one exception is a colleague who has offered what can more precisely be described as derision rather than scorn. I remain grateful nonetheless for their collegiality, congeniality, and conviviality.

examination that the hypothetical dispute had to be dismissed ‘on muteness grounds.’ Gave him a D.”) For this reason, virtually every law school makes use of a grading system with which it evaluates student performance and assigns comparative marks to that performance.<sup>1</sup>

Some schools, about three dozen in all, use a numerical system, with grades ranging from 0 to 100.<sup>2</sup> Although generalizations about grades should be made with caution, the empirical data reveal that, for schools using the numerical system, a cumulative grade point average of 16.5 or below correlates poorly with law review membership and federal appellate clerkships.

Most schools use a letter system, the most popular form of which runs from A to F. A striking coincidence about the letter system is that a student whose first-year transcript supplies most of the consonants for the word *decaffeinated* has never gone on to become valedictorian.

A few schools that strive for ever-increasing precision in grading have worked hard to devise more refined systems. One east coast school recently enacted the following distinctive guidelines:

T!	Terrific!
RQF	Really Quite Fine
SS/E/ROTM	So-So/Eh/Run Of The Mill
BINOTA	Badly In Need Of Tutorial Assistance
PVS	Persistent Vegetative State

Irrespective of the particular system a law school selects, students at the school need to be made aware of the meaning assigned to the grades they earn. Accordingly, it is incumbent on the school to provide an interpretive explanation of what each grade in the system signifies. Doing this enables a school to minimize the possibility that a student who receives, say, a *D*

1. The Dillinger Center for Banking Law in Indianapolis is a notable exception to this general proposition.

2. The information contained in this and subsequent paragraphs regarding grading systems currently in place at law schools around the nation has been obtained through an examination of more than one hundred fifty law school bulletins. I do not advise the reader to undertake a similar challenge, at least not while sober or with sharp instruments in close proximity. Nevertheless, the quest drove home to me what a remarkable literary achievement the law school bulletin is, and what a unique challenge it poses to people such as librarians. After all, it's awfully difficult to determine whether to place these works in the *Fiction*, *Science Fiction*, or *Reference* section of the library.

in the required course in legal writing will construe the grade to indicate that he performed in a dandy fashion in the course.

One law school that utilizes the traditional letter system has developed and promulgated the following explanatory guide to that system:

*Grade Interpretation*

- A *Outstanding*—demonstrating either a superior level of accomplishment or the ability to cheat without being caught by the examination proctor.
- B *Good*—demonstrating a level of accomplishment above that expected of the typical student, who is not all that sharp anyway or he would have been admitted to a more distinguished school in the first place.
- C *Satisfactory*—demonstrating a level of accomplishment roughly equivalent to that of a student who would not have been admitted to the school had his parents not made a substantial contribution to the Dean's discretionary fund on the same day he filed his application.
- D *Unsatisfactory*—demonstrating a level of accomplishment equal to that of a student who expresses sincere gratitude when informed by a server in the law school cafeteria that today's soup du jour is "our soup of the day."
- F *Failing*—demonstrating a level of accomplishment so pathetic that the professor has reason to believe the student either just fell off the turnip truck or underwent a lobotomy shortly before the exam.<sup>3</sup>

This guide, relied on increasingly by schools around the nation, serves at least two important functions for students.

First, it provides notice that a particular grade reflects a particular level of academic performance. A student who receives a *C* in Torts can turn to the guide and learn that his performance, though not quite outstanding or even good, was nonetheless satisfactory. This information can prove most useful. For, when the student's parents threaten to cut off tuition and living expense payments because of "all those damn *C*'s on your record," the interpretive guide enables the student to reply: "Folks, lighten up; my academic performance in law school thus far has been entirely satisfactory."

Second, the interpretive guide serves an aspirational function, helping students contemplate what they can do to raise their academic performance to the next level other than slipping envelopes stuffed with twenty-dollar bills under the office doors of particular professors. Thus, the student with a host of *C*'s can tell his friends and family: "Hey, I done satisfactory this

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3. Adapted from CHARLES GOREN & ALFRED SHEINWOLD, *PRECISION GRADING 75* (Alan Truscott & Kathy Wei eds., 1995). For a probing discussion of grades and their meaning, see SIGMUND FREUD, *THE INTERPRETATION OF GRADES* (1899).

semester. But next semester I'm gonna do good."

An interpretive guide to grades can be a handy tool for law professors as well. After all, professors squander (make that *spend*) a good deal of time explaining to students why their grades were not quite what the students had hoped they would be. An interpretive guide to grades, used properly, can assist a professor in this hopeless (make that *important*) endeavor. Witness the following conversation, in which the interpretive guide enables a professor to diffuse an awkward situation with a student who has come into the professor's office:

STUDENT: You know, Professor Wackford,<sup>4</sup> I was quite surprised and a little disappointed to learn that you gave me a *B*. Each week, in my study group meetings, I was the one teaching my peers the nuances of your masterful course. Yet you gave them all better grades.

PROFESSOR: Well, Student, let me begin by saying how much I appreciate your generous words about the course. It's reassuring to learn after sixteen years of teaching the same slate of courses that I'm finally getting it right. But I must tell you, Student, neither my colleagues nor I *give* grades. Students *earn* grades. Besides, you appear to be laboring under the misapprehension that the grade of *B* is reflective of mediocre performance. That is not the case, surely not at this law school with its tradition of rigorous academic standards. Hence my comfortable use of the word *misapprehension*. The interpretive guide to grades enacted by this faculty in 1957 makes it abundantly clear that a *B* reflects "a level of accomplishment above that expected of the typical student."<sup>5</sup> I take that guide most seriously. You are therefore to be commended on your fine performance.

STUDENT: Why thank you, Professor Wackford. You know, that lucid and sincere explanation makes me feel considerably better. And, in light of that explanation, do you think you could find a few moments to write a letter of recommendation on my behalf, detailing my "fine performance" in your course? I need it next week.

PROFESSOR: Absolutely no problem, Student. I'm delighted to (cursing under breath) be of assistance in your pursuit of rewarding professional employment.

Notice the truly remarkable aspect of this conversation. Although the exchange begins like thousands of exchanges between law professors and

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4. See CHARLES DICKENS, *NICHOLAS NICKLEBY* 135-48 (David Parker ed., 1994) (describing the horrific practices of Yorkshire schoolmaster Wackford Squeers).

5. See PRECISION GRADING, *supra* note 3.

law students have begun since the time of Langdell,<sup>6</sup> the professor's deft invocation of the school's interpretive guide to grades serves to take the conversation to a higher plane and, ultimately, enhance the student's self-esteem.

Finally, a few words are in order about the way in which law schools convey information about grades, class standing, and the like to affected students. For many reasons, including those mentioned above, matters relating to grades will continue to be of enormous consequence. Law school administrators thus should use particular sensitivity in conveying this information. For instance, when a school informs a student that she earned two *D*'s and two *F*'s for the semester just completed, or that her academic performance places her in the fifth quintile (and that high only because the school's grading system lacks a sixth quintile), the school should do everything in its power to refrain from using terms such as *nincompoop*, *bubblehead*, or *lummoX*. Likewise, it is imperative that administrators and faculty charged with persuading foundering students to rethink career objectives avoid concluding their observations about the situation with statements like the following:

In sum, Mr. Bolotin, careful scrutiny of your academic record leads us to believe that your talents—if we may use that term—are better suited to a career in plumbing, stand-up comedy, or the delicatessen business rather than law. As you leave our law school for what all of us hope will be more successful endeavors, your professors have asked me to extend you their gratitude for all the laughter provided them by your pathetic classroom recitation and abominable examinations.

After all, law students are people too.<sup>7</sup>

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6. Christopher Columbus Langdell, dean of the Harvard Law School from 1870 to 1895, is considered the principal architect of the current law school curriculum, a construct based on the systematic and logical nature of the law. C.C. LANGDELL, *Preface*, in *SELECTION OF CASES ON THE LAW OF CONTRACTS* vi (1871). Langdell also pioneered two of the (unfortunate) hallmarks of American legal education: the Socratic method and the full-time legal academic. Further bolstering the eminence of Dean Langdell was his conviction that law is very much a science, like physics, mathematics, . . . and grading. *See generally* WILLIAM P. LAPIANA, *LOGIC AND EXPERIENCE: THE ORIGIN OF MODERN AMERICAN LEGAL EDUCATION* (1994).

7. Or so I'm told.

