

## STUDENT DEMANDS: HOW SHOULD LAW SCHOOLS AND THEIR DEANS RESPOND?

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LAW students are sometimes caricatured as money-hungry careerists, merely punching their ticket to an outsized law firm salary. Those of us in legal education know that stereotype is entirely invalid. In fact, most students come to law school because they want to make the world a better place.<sup>1</sup>

The death of George Floyd in police custody on a Minneapolis street corner in May 2020 shocked the conscience of the nation. Unsurprisingly, many law students were moved to action and inspired to put their nascent legal skills to work in support of racial justice. Much of their advocacy focused on campaigns for policing reforms at the federal, state and local levels. But some students used the occasion to challenge the law schools they attend (and to which they pay tuition) to live up to the values of diversity, equity and inclusion.

At a number of law schools, including mine, that energy was channeled into the development of a set of “demands” posed by students to their schools. In this essay I will recount the experience at the University of Baltimore School of Law, where I serve as dean, and offer my thoughts on steps law school administrators can take and pitfalls they should avoid in response to this form of student activism.

### *The Precipitating Event and its Immediate Aftermath*

On May 25, 2020, Minneapolis police responded to a complaint that a convenience store customer had attempted to pass a counterfeit bill. Police detained an African-American man, George Floyd. The arrest of Mr. Floyd, videotaped by bystanders, culminated in an officer placing his knee on Floyd’s neck for nearly nine minutes while Floyd lost consciousness and died. The videotape was widely disseminated, triggering nationwide and then worldwide outrage.

The killing of George Floyd naturally caused anguish in law schools, where criminal procedure and constitutional law class syllabi often examine police

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1. *Before the JD: Undergraduate Views on Law School*, ASS’N OF AM. LAW SCH., 2018 at 17, <https://www.aals.org/research/bjd/>. According to research conducted by the Association of American Law Schools (AALS) and Gallup: “Students considering law report that the top reason for going to law school is that it is a pathway to a career in politics, government, or public service.... [T]hree of the four top reasons for undergraduates to consider law school show that they see law as a way to contribute to the public good rather than as a private benefit.”

practices, and where socially aware students, faculty and staff pay close attention to law enforcement abuses. In the aftermath of the May 25 event, law school deans across the country sought to reflect the emotions of their communities by issuing statements deploring George Floyd's death and affirming their schools' commitment to racial equality.<sup>2</sup>

I generally struggle with the question of when a dean should comment on current events. I do so infrequently and carefully, mindful that my law school community is comprised of stakeholders with divergent views and reluctant to step onto a "slippery slope" where I would be expected to comment regularly on each day's news. But I and most other law deans realized that this seminal moment in the struggle for racial justice called for a statement aligning our schools with the national cry for justice.

In the days after Mr. Floyd's death, I began to draft such a statement in consultation with my law school leadership team. Recognizing the importance of student input, I held a meeting<sup>3</sup> with our law school's Diversity Council, a recently constituted body consisting of law student leaders guided by the school's director of diversity initiatives. I asked the Council to help the law school consider how to improve the racial climate in the school and help other students work through the emotions generated by recent events.

On June 1 I issued my statement to the "UB School of Law Community." The statement was emailed to all students, faculty and staff at the law school, and disseminated to School of Law alumni through our law school blog. I prefaced my comments by explaining why I was writing: "One of the important responsibilities of a law school dean is to speak out at critical junctures on matters relating to the rule of law and the administration of justice. Today, I feel compelled to share with you my thoughts about the brutal killing of George Floyd."

I said that the videotape of a Minneapolis police officer kneeling on Mr. Floyd's neck made me "angry and disgusted" and declared myself deeply outraged by this "brazen example of state-sponsored violence." I noted this was not an isolated incident, but rather "a long-standing epidemic of police brutality in America impacting African-Americans and other people of color." I declared myself "in solidarity with UB law students, faculty and staff and all who condemn such wrongdoing and racism in its many forms."

I then shifted to reflect on the role of our law school in bringing about needed change. "We have a responsibility to educate our students about the legal context in which atrocities such as the killing of George Floyd take place, so that the next generation of lawyers and civic leaders are equipped to fight for reform. As a public law school, we have a duty to educate the wider community as well."

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2. Danielle M. Conway, Danielle Holley-Walker, Kimberly Mutcherson, Angela Onwuachi-Willig & Carla D. Pratt, *Law Deans Antiracist Clearinghouse Project*, ASS'N OF AM. LAW SCH., <https://www.aals.org/antiracist-clearinghouse/> (last visited Jan. 19, 2021). The statements of law school deans are compiled on the AALS website cited above.

3. In light of public health restrictions, all meetings described in this essay, except the June 17 demonstration described in the next section, took place remotely.

I concluded: “This is a difficult moment in the life of our country. I encourage all members of the UB School of Law community to remain attentive and involved, and to engage in peaceful advocacy for justice. Former Senator Ted Kennedy, for whom I once worked, declared that civil rights is the “unfinished business of America. It is a business to which we should all dedicate ourselves.”

I forwarded my message to university leaders including President Kurt Schmoke, a former mayor of Baltimore, who had himself joined a powerful statement from all college presidents within the University System of Maryland.<sup>4</sup> I had informed President Schmoke of my intention to issue a statement but hadn’t considered it necessary to obtain his approval, since I knew our positions on this matter were consistent.

My statement seemed to be generally well-received by students and faculty, although some students felt I had waited too long before expressing my views. (I sent my statement on June 1, one week after the May 25 event in Minneapolis.) In any event, I knew this was only the beginning of the law school’s work to confront these issues.

### *The Demands*

On June 17, a group of several dozen students engaged in a peaceful demonstration on and near our university campus. Students gathered at Baltimore’s Penn Station, a short distance from the law school, and marched around the law school building to a central campus plaza. There several students spoke against police violence. Placards displaying the names of victims of police violence were distributed, and participants were invited to place them in tree soil. Participants then knelt for eight minutes and 46 seconds of silence, the length of time a Minneapolis police officer kept his knee on George Floyd’s neck.

The demonstration was led by students in a safe and responsible manner. In light of the ongoing public health crisis, participants wore masks and maintained distance from each other. The University of Baltimore Police Department had received advance notice of the activity and escorted the marchers as they walked through city streets.

I and several other administrators and faculty members attended and participated in the event. We marched with the students and joined in the chants (e.g., “Say his name – George Floyd!”) that had become standard at racial justice marches across the country. We placed placards in the tree soil and knelt with students in silence.

At the end of the march, student leaders distributed a flyer with the heading: “6 THINGS UB LAW CAN DO RIGHT NOW.” The word “Demands” did not appear on the flyer, but the students who had authored the flyer characterized them as demands that night and thereafter. The six demands on the flyer, fully capitalized, were as follows:

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4. Jay A. Perman et al., *Statement by USM Leadership on Structural Racism and the Killing of George Floyd*, Univ. Sys. of Md. (May 29, 2020), <https://www.usmd.edu/newsroom/news/2050>.

1. MAKE DIVERSITY AND INCLUSION TRAINING MANDATORY FOR ALL STUDENTS AND FACULTY.
2. ACTIVELY SUPPORT, PROMOTE, AND ATTEND EVENTS ORGANIZED BY BLACK STUDENTS.
3. MAKE INTRODUCTION TO LAWYERING SKILLS AND INTRODUCTION TO ADVOCACY [*both mandatory first year classes at our school*] WRITING ASSIGNMENTS RELATE TO TOPICS THAT ARE CRUCIAL TO SOCIAL CHANGE.
4. SET BEHAVIORAL GUIDELINES FOR STUDENTS AND FACULTY WHO ENGAGE IN OFFENSIVE AND HATEFUL SPEECH TOWARD OTHERS.
5. MANDATE EACH CLASS USE CASES THAT EXPLORE THE WAYS IN WHICH SYSTEMIC RACISM IMPACTS THE OUTCOME OF SIMILARLY SITUATED PLAINTIFFS AND DEFENDANTS.
6. ADD CLASSES SPECIFIC TO RACE AND POVERTY TO THE COURSE OFFERINGS (MORE THAN JUST RACE AND THE LAW).

Separately, the students demanded that our university sever its relationship with the Baltimore Police Department (BPD). Earlier in the year the university had entered into a contract to house the BPD Training Academy in a campus building and to allow the Training Academy to use the university gymnasium. This demand was distinct from the six others because it was addressed to the university rather than the law school.

### *Responding to the Demands*

I did not ask for an opportunity to speak at the march. First, I was there to listen and learn at this student-led event. Second, I wanted an opportunity to consult with other law school leaders so that I could respond to the demands more thoughtfully and concretely.

In the days after receiving the demands, I convened a series of meetings to consult with faculty and staff colleagues, as well as leaders of the Student Bar Association. I soon met with the group of students who had developed the demands. They were predominantly but not exclusively African-American students. While some were active in the law school's Black Law Students Association (BLSA), they did not purport to represent BLSA but rather styled themselves an ad hoc "coalition." Our dialogue was respectful and constructive.

Based on these conversations, the law school's response to each of the individual demands began to take shape.

The *first demand*, regarding training, could be addressed immediately. We had already sponsored diversity training sessions for faculty and staff, and had incorporated such training in the first year student orientation program. But we recognized the trainings had not been extended to students others than 1L's. Moreover, we wanted to expand the training to address implicit bias. These were steps we would have likely undertaken without a student "demand," but it was useful to respond affirmatively to that item.

Similarly, we could react positively to the *second demand*. I routinely exhort faculty and staff colleagues to attend student-organized events, including those

organized by BLSA. I believe my exhortations have had some impact, although attendance at student events could certainly improve. The student demand provided an occasion for me to remind faculty and staff of the importance of supporting student events. Of course public health restrictions have largely precluded in-person events, but student groups have been holding online events and we expect a return to our lively calendar of events in the law school building when conditions permit.

The *third and fifth demands*, calling for class assignments and readings relevant to social justice, implicate the principle of academic freedom. For good reason, faculty members traditionally resist mandates from the law school administration regarding the content of their classes, including specific assignments or readings. Clearly this demand called for faculty deliberation. I charged our standing Curriculum Committee, composed of faculty members and a student representative, to consider the issue.

The Committee has not yet completed its review at the time of this writing, but I expect the committee to recommend that faculty be encouraged to recognize the value of using assignments and readings relevant to student interests and concerns. In fact, I have already encouraged faculty to review their syllabi with this goal in mind. Meanwhile we have been able to shape assignments in the second of the two classes cited in the demands, Introduction to Advocacy, because that course is taught by adjunct faculty with a standardized “problem” developed by the law school.

The *fourth demand*, for guidelines regarding offensive and hateful speech, merited both an easy answer and a longer, complex answer. Our university already has a code of conduct purporting to ban “hate speech,” so the called-for guidelines already exist. However application of those guidelines in particular cases may raise difficult First Amendment issues, especially because the University of Baltimore is a public institution obligated to serve as a forum for divergent, sometimes offensive views. Our university, advised by the Office of the Maryland Attorney General, regularly reviews the code of conduct, a process in which students have input. We were able to point concerned law students to that university-led process as a way of addressing their demand.

Of course that “process” answer does not begin to resolve the longstanding tension between distasteful language that may escalate into hate speech and constitutionally protected freedom of expression. In these tense times, some are quick to feel offended by comments in a classroom discussion or other settings. Our law school community continues to have difficult but necessary conversations about such matters.

Finally, we had a ready answer to the *sixth demand* regarding new courses that examine racial justice and equity. Our curriculum already includes several such courses, and this year we have added to the catalogue a Critical Race Theory course to be taught by one of our new faculty members. We continue to evaluate the curriculum to ensure it is robustly relevant to contemporary law practice and the ongoing struggle for justice.

### *Affirmative Agenda*

Even while responding to the specific student demands, my leadership team and I perceived the need for an affirmative statement of the law school's broader racial justice agenda. Associate Dean Vicki Schultz, formerly a Deputy Assistant Attorney General in the Civil Rights Division of the U.S. Justice Department during the Obama Administration, took the lead in crafting this document with the heading: "University of Baltimore School of Law: Commitment to Racial Justice."

The document declared "Diversity, equity and conclusion is not a fixed point at which we arrive and consider our work done. At the University of Baltimore School of Law it is an ongoing commitment and one of our essential guiding principles." In the document we affirmed "unequivocally that black lives do matter" and we recognized that "structural racism continues to cause harm and deep disparities in our society." We identified a law school's essential role in combatting racism: "Well prepared lawyers are uniquely qualified to examine, challenge and solve complex structural legal issues that call for equity in the quest for racial justice."

The document reviewed steps the school had already taken in the areas of training, programming, dialogue and the classroom experience. It also described actions we intend to take in furtherance of our aspiration to be an antiracist law school. One particular innovation which has proved successful is the formation of a weekly reading group led by two clinical professors entitled "Organizing and the Law." The document also pledged a review of procedures used by the law school's journals and advocacy teams to combat bias and assure equitable access to participation and leadership opportunities.

Note that this affirmative agenda overlaps with and is informed by the six student demands, but covers a broader range of subjects. It commits the law school to longer-term action beyond the specific areas identified by the student coalition.

We shared this racial justice agenda with faculty and staff, and eventually convened an online town hall-style meeting with students to present and discuss it. It remains a work in progress because, as it declares, our commitment to this ideal is always ongoing.

### *Lessons Learned*

Even as our process of responding to the student demands continues to evolve, I have distilled five lessons learned from this experience. I offer them here for the possible benefit of other law school administrators responding to demands of their own students now or in the future.

#### *1. Engage actively.*

Effective leadership of a law school requires a high degree of energy and focus. A dean gets very few days off, literally or figuratively, because he or she must always be available to respond to problems in a timely fashion before they fester. To be sure, effective leadership also entails the ability to delegate tasks to others, but there are some moments when the dean must speak or act personally.

The aftermath of George Floyd's killing was such a moment. Emotions were running high nationally and on our campus. The role of our law school at that moment was undefined, and the community seemed anxious for guidance. My June 1 statement was a crucial instance of active engagement. The thoughts I expressed in that statement were hardly unique or profound, but they needed to be expressed.

In contrast, the absence of a statement at this moment would have conveyed a message of disinterest or neglect which would have been counter to my intent. I wanted to give voice to the community's concerns as I perceived them. I wanted to place an official imprimatur on those concerns.

The need to engage actively continued in the weeks that followed. Specifically, I considered it essential that I participate in the June 17 demonstration. My physical presence there conveyed not just my personal support but the law school's institutional support for the students who had organized the event. It would have been insufficient to commend the students from a distance – I wanted to place myself alongside them.

Throughout this period our law school was operating remotely due to the coronavirus pandemic, creating a barrier to physical interaction with students and others. I had to work harder in the online meetings of those weeks to convey my dedication to racial justice and the law school's commitment to diversity, equity and inclusion. And when the June 17 demonstration presented an opportunity for physical engagement, albeit masked and distanced, I took advantage of it. Doing so comported with a more general rule I have tried to live by as a dean: *Be present*.

## 2. *Recognize and honor emotions.*

The video of George Floyd's death was disturbing to all who saw it, but it was especially searing for many Black students. Some have had their own traumatic experiences with law enforcement. As a White man, I could not and did not pretend to share that lived experience, but I sought to understand and validate those who did.

Law professors teach their students to analyze problems rationally, based on cold hard facts and the applicable law. Law students are encouraged to put emotion aside in the dispassionate exercise of legal judgment. But Oliver Wendell Holmes Jr. was right when he observed that "the life of the law has not been logic; it has been experience."<sup>5</sup> At this moment, the experiences of Black students and others who feel oppressed or victimized became highly relevant. The fear, frustration and anger expressed was genuine. In talking with students through this period, it was important for me to recognize and respect those emotions.

An emotional reaction to the killing of George Floyd in the context of America's racial history was entirely reasonable. The law school needed to give students space and permission to feel pain and express anger.

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5. Edmund Fuller, *Oliver Wendell Holmes, Jr.: The Common Law*, BRITANNICA, <https://www.britannica.com/biography/Oliver-Wendell-Holmes-Jr/The-Common-Law> (last visited Jan. 19, 2021).

3. *Don't be such a lawyer.*

Just as law students should be allowed to abandon their recently minted lawyerly demeanor at emotionally charged moments, so too should law school administrators avoid an unduly legalistic approach to these situations. In this regard, I suggest there are two specific pitfalls to avoid.

First, don't insist on strict adherence to procedural rules. For example, student demands may be presented outside the established channels for complaints. Perhaps such matters are supposed to be brought to the attention of the dean of students. Perhaps concerns are ordinarily presented through the Student Bar Association rather than by individual students. In my view it would have been unwise and counterproductive to insist on procedural regularity under the unusual circumstances presented this spring. At such times I believe it is best to get to the heart of the matter without calling process fouls.

Second, don't quibble over words in the way that lawyers are prone to do. Specifically, don't object to the word "demand." Some may view it as presumptuous for students to make "demands" of their school rather than offering suggestions or proposing reforms. But there is a long and storied history of students *demanding* change from campus authorities. Indeed, there are times when student advocacy is expressed through dramatic acts of civil disobedience, such as occupying an administrator's office. Consider yourself fortunate if your students merely issue written demands!

This is not to say that a dean should abandon the lawyerly instinct to react calmly and thoughtfully to student demands, just as he or she would react in an organized fashion to a set of demands in the course of litigation. As described above, my colleagues and I reacted to the six student demands in a logical sequence, accepting some, resisting others and seeking further deliberation when appropriate.

But our approach was open-minded, not cramped. Our development of an affirmative agenda, in the form of the Commitment to Racial Justice document, demonstrated an expansive approach beyond the point-by-point response. We tried to meet the students' ambitions with our own.

4. *Take account of local conditions.*

There is no one-size-fits-all response to student demands. Much will depend on the scope of the demands and the culture of the law school itself. A key variable is the school's involvement in the community outside the campus.

Baltimore has a long list of social ailments, including income inequality, underperforming public schools, high crime and flawed political leadership. Our law school, especially through the work of our law clinics, has been involved in efforts to improve local conditions and strengthen community development. For example, in recent years our law school has been an active participant in the access to justice movement in Maryland. These efforts provide students with many opportunities for public service. I believe our school's role in the community blunted to some degree student anger toward the school. We are seen as part of the solution, not part of the problem.



Ironically, though, one of the ways in which our university has played a role in local reform efforts gave rise to one of the student demands. In 2015, the death of a young Black man named Freddie Gray in police custody led to widespread protests before the officers were charged. The officers were eventually acquitted, but an investigation of the Baltimore Police Department (BPD) by the U.S. Department of Justice resulted in the imposition of a federal court consent decree to improve policing in the city. Then-Attorney General Loretta Lynch announced the consent decree in an appearance at our law school in January 2017.

One notable action under the consent decree was the opening of a new and improved police training academy on the University of Baltimore campus. As noted above, the coalition of students demanded that the university sever its relationship with the BPD, which they regard as an irredeemably flawed agency. My personal view is that improved police training is essential, and I welcome the university's involvement in that enterprise. In fact, I would like our law school to play even more of a role in police training, including use-of-force policies. The university has not acquiesced to this demand and the dispute remains unresolved.

5. *Rely on your teammates.*

While active personal engagement by the dean is necessary, it is not sufficient. No dean can handle these complex situations single-handedly. Instead, a successful dean has assembled a skilled and cohesive leadership team to carry out the mission of the law school and to work together in addressing concerns such as those expressed in a set of student demands.

Every dean's leadership team looks different, with varying numbers of associate deans, assistant deans and other administrators. At our modestly resourced public school, my leadership team consists of two associate deans, a handful of assistant deans and other key administrators. In responding to students' demands, I relied heavily on the associate dean for administration, the associate dean for academic affairs, the dean of students, the director of diversity initiatives and the communications director.

But while no dean is an island, each dean alone bears ultimate responsibility for the success or failure of the law school administration at difficult moments. These high-pressured situations draw on every bit of emotional intelligence a dean may possess. The dean must navigate a rough and shifting terrain, making difficult judgments along the way. Remote operations during the pandemic make it more challenging to respond nimbly to unfolding events. Leadership teammates can at least help guide the way.

*Conclusion*

The racial reckoning brought about by the killing of George Floyd will, I predict, result in meaningful improvements in police practices and accountability. And as the event has reverberated in law schools around the country, legal education will improve as well. Throughout this period there have been difficult but productive conversations among students, faculties and administrators about

training, hiring, curriculum and culture. We have a long road ahead, but we are all moving in the right direction.

I am proud to say that the University of Baltimore School of Law will emerge from this experience a stronger, more effective and more antiracist law school. But the last thing a dean should do is declare victory in responding to student demands when the underlying shared goal of racial justice is always over the horizon. The lessons I have learned and shared in this essay have helped my law school make progress, but we must always strive to do better.