

June 11, 2023

Background with Professor Scott Gerber

I had Professor Gerber for three classes at ONU Law including, Constitutional Law I, Remedies, and a Constitutional Interpretation Seminar. Additionally, I was one of Professor Gerber's Research Assistants from Fall 2021 until Spring 2023. I noted Professor Gerber to be a hard-working professor – as he would also describe himself. For example, before Remedies class – an early morning class – he would take the time before class to map out the discussion for the day on the board. I believe he was the only professor to prepare for class to that extent in a manner that could directly help his students. Professor Gerber cared about his job, his students, and did more than most as far as his academic writing is concerned.

For the Constitutional Interpretation Seminar, Professor Gerber encouraged me to get my paper published with the ONU Law Review. I balked at first because I did not intend to get the paper published as it was only an assignment, and I was not on Law Review, which undermined my confidence in the work. Finally, I relented and submitted it for publishing. The paper was published by the Law Review, and to make a long story short, that is how I ended up at the NCLA event. That paper never would have been published nor selected by NCLA had it not been for Professor Gerber recognizing its worth and encouraging me to get it published.

Needless to say, Professor Gerber is a top-rate professor.

My Perspective on this Ordeal

The situation with ONU Law and Professor Gerber continues to baffle me and presumably many others. On April 14, 2023, as has been recounted by others, Professor Gerber was banned from campus. As he has stated it in his writings or otherwise, the grounds were “collegiality” with no specifics.

Obviously, I was not in the meeting between Professor Gerber and the school administration on April 14th. I only know what he has told me, which is the same that he has reported to others, “collegiality” issues with no specifics. With nothing more, I cannot help but side with a top-rate professor who goes beyond his duties of simply teaching the law. And even if he only taught the law, and did not push his students to success, this is no way for an institution – especially a law school – to proceed in “disciplinary” matters. Since when has it been acceptable to dismiss someone without telling them, their associates, and other interested parties of the specifics? A case like this could be analogized to cases in our law textbooks of *what is not acceptable*. While ONU is a private law school, it remains that it is an institution which I presume prides itself on treating people fairly because, after all, the law is supposed to be fair. The University has failed to lead by example.

Additionally, the Dean of the law school has failed to act with dignity in the aftermath of Professor Gerber's case. A friend of Professor Gerber set up a gofund me page for Gerber's legal expenses. I donated a small amount of money to this fund. At the barbeque, the Dean (Rose) approached me as I sat and told me he noticed I donated. “That's pretty funny,” he said. Then, the Dean says, “I suppose you feel like you owe Professor Gerber because he practically wrote your paper.” (The paper being my publication and the one selected by NCLA.) These statements were made in front of my classmates and others. While there was no cheating involved in writing that paper, I find it unacceptable that any person, especially the Dean, would accuse a soon-to-be lawyer of cheating. This matter will be under review by Human Resources, and perhaps others if I so choose. For the record, if Dean Rose's comments were intended to coerce me *not* to support Professor Gerber, it did not work. I donated to the fund again from my seat. I cannot turn my back on someone who is not known to have done wrong.

In short, the University has thrown the teaching of law – which includes fairness, process, and decency – into the trash. Any person, guilty or not, should have a fair process. Professor Gerber is no exception, even if his thoughts on DEI (which could be at issue here) are contrary to the University. If DEI is at issue, the University has miserably failed to meet the “Diversity” and “Inclusion” elements. Diversity and inclusion are not obtained by banishing someone who is different from you. Perhaps the University should read *Plessy* and *Korematsu* and determine if they still want to proceed on this route. Or, perhaps they should look at Gerber’s support. High-profile academics are now at odds with the University. That is a hint.

Justin Marks