

## Phoenix School of Law

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January 2010

# Freshman Professor: The First Year; the First Semester; the First Day

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FRESHMAN PROFESSOR: THE FIRST YEAR; THE FIRST SEMESTER; THE  
FIRST DAY

McKay Cunningham\*

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I. INTRODUCTION

My first class bombed.

Twenty-nine students sat silently, without movement, except their eyes. Their eyes tracked me as I nervously stepped around backpacks to the podium. Twenty-nine wax-still people staring, judging, sizing up. It rang my nerves.

The classroom computer rejected my password. As a result, the PowerPoint presentation perished right then and there. Drowning under the weight of their gaze and without a PowerPoint crutch, I launched. Or, more accurately, I lurched. Desperate to end the silence, I started rambling through a series of unrelated words—a litany of nouns uninterrupted by the

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inconvenience of a verb. Any grammarian within earshot would have been appalled. Any *fifth grader* would have been appalled.

Cottonmouth finally saved me.<sup>1</sup> Without saliva, speech slows. It forced a premeditation otherwise missing. With only a few words available in any given breath, I had to map them out well in advance and grammar soon improved. When I finally “came to,” I had no idea what had been said. Happily, the semester to follow was not a string of “first days.” The classroom computer eventually took my password, PowerPoints clipped along nicely, and gradually discussions drawing in the entire class became commonplace.

This short perspective includes an account of freshman mistakes, lucky breaks, and the beginnings of a teaching philosophy. Part II, “The First Day,” suggests some rather obvious and immediate objectives for a new professor’s first day of class—like, don’t forget to wear pants. Part III, “The First Semester,” focuses on lessons learned the hard way, and Part IV, “The First Year,” identifies a few strategies for improvement given the struggles inherent in the first year.

## II. THE FIRST DAY

Bring water. Yes, cottonmouth saved my career, but presumably, you will have something insightful to say on the first day and will be able to do so using verbs.

More importantly, the first day is a milestone, a personal monument. If you are like most law professors, you were admitted to a top law school where you excelled, then clerked for a court, and perhaps developed expertise by earning other degrees.<sup>2</sup> Becoming a law professor is not easy.<sup>3</sup> Now, on the first day of class, recall the sacrifices and toil invested to get you to this moment. Why did you log so many hours and bypass so many

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<sup>1</sup> Xerostomia is the medical term for the subjective complaint of dry mouth due to a lack of saliva. Xerostomia is sometimes colloquially called cottonmouth.

<sup>2</sup> W. Bradley Wendel, *The Big Rock Candy Mountain: How to Get a Job in Law Teaching*, <http://ww3.lawschool.cornell.edu/faculty-pages/wendel/teaching.htm> (last visited July 6, 2010). In his online page, Professor Wendel lays out the most important steps to securing a future law teaching position. These include obtaining a J.D. from one of the top-fifteen or so law schools; high class-standing; law review service; judicial clerkship; a few years of practice experience; at least one post-law school publication published in an academic law review; and recommendations from faculty members. See also Ass’n Am. L. Schs., *Uncloaking Law School Hiring: A Recruit’s Guide to the AALS Faculty Recruitment Conference*, 30 J. LEGAL EDUC. 345 (1988).

<sup>3</sup> See Wendel, *supra* note 2.

other opportunities? Why did you want to teach? What did you hope to say, demonstrate and instill?<sup>4</sup>

For me, the determinative factor in accepting a job at Phoenix School of Law was the faculty's commitment to the students rather than faculty advancement, tradition, or elitist expectations.<sup>5</sup> At the core, the faculty strove to produce lawyers conscious of, and prepared to fulfill, their professional obligations to promote justice and serve the underserved.

Sounds like an advertisement, but these former judges and long-time professors agonize—with transparent humility—over which teaching approach connects with which students in which ways. They will buttonhole you in the faculty lounge to relay an experimental teaching technique gone awry, or to extol the merits of clinic-based teaching. Concern for student outcomes and a commitment to prepare students for the critical disputes they will soon negotiate permeates the faculty. As one of this group's newest members, I was very familiar with, and daunted by, the rigorous standards my colleagues adopted for themselves; perhaps that is why I was too nervous to use verbs. Like my colleagues, I wanted to teach well and to do so humbly, with the students' best interests guiding lesson plans and classroom decisions.<sup>6</sup> Knowing why you teach and what you hope to accomplish provides a blueprint to which you continuously add and remodel.<sup>7</sup>

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<sup>4</sup> See Gerald F. Hess, *Improving Teaching and Learning in Law School: Faculty Development Research, Principles, and Programs*, 12 WIDENER L. REV. 443, 444 (2006) (“A critical step in the process of improving instruction is for teachers to increase their awareness of their current teaching philosophy and practice. What do teachers believe about the purpose of legal education and the role of the teacher?”); Douglas J. Whaley, *Teaching Law: Advice for the New Professor*, 43 OHIO ST. L. J. 125, 128 (1982).

<sup>5</sup> Preparing students to be practice-ready is a laudable goal for the overwhelming majority of students. But as one professor suggests, “at the premier law schools, a goodly percentage of your students will use their legal education for tasks other than daily law practice . . . [and] it would be a mistake to concentrate primarily on the practical issues that challenge the practitioner.” See Whaley, *supra* note 4, at 127.

<sup>6</sup> For a discussion on student-centered learning, see Geraldine O'Neill & Tim McMahon, *Student-Centered Learning: What Does It Mean for Students and Lecturers?*, in EMERGING ISSUES IN THE PRACTICE OF UNIVERSITY LEARNING AND TEACHING 27 (Geraldine O'Neill, Sarah Moore, & Barry McMullin eds., 2005), available at [http://www.aishe.org/readings/2005-1/oneill-mcmahon-Tues\\_19th\\_Oct\\_SCL.pdf](http://www.aishe.org/readings/2005-1/oneill-mcmahon-Tues_19th_Oct_SCL.pdf).

<sup>7</sup> The profession of teaching law requires nothing more than a J.D. and (presumably) a license to practice law—and sometimes not even those. No specialized training requirement or independent licensure impedes a lawyer's transition from courtroom to classroom. Gerald F. Hess, *The Legal Educator's Guide to Periodicals on Teaching and Learning*, 67 UMKC L. Rev. 367, 367 (1998) (“Most legal educators have no formal training in teaching and learning. Instead, their Juris Doctor education involves legal theory, doctrine, and skills.”).

Picking your textbook is a big part of the blueprint. Most schools offer little, if any, guidance to new faculty. Instead, you will be flooded by a torrent of texts and authors vying for your approval.<sup>8</sup> Of course, you want a book you identify with that best fits your teaching style. This is difficult, because you have no teaching style yet. A few traps, however, can be avoided. Do not automatically pick the most popular book—or the book your professor used.<sup>9</sup> Reading several chapters from each of the many texts stacked in front of you challenges even the most industrious among us, but caving in and picking the best-seller might hamstring your entire year. As others have noted, the most popular text may not fit you or your class “because pedagogical soundness and student accessibility are not, for many professors, the decisive factors in choosing a casebook.”<sup>10</sup>

Maybe the bestseller packs excessive detail into every topic, subtopic, exception, and exemption. Maybe it espouses a slanted ideological agenda; even if you share the ideals, your students may benefit from a more objective approach. Finally, blindly betting on a bestseller ignores innovative new books. If your teaching blueprint focuses on the student, consider the text that is most accessible to the student.<sup>11</sup>

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<sup>8</sup> Aspen, Foundation Press, Carolina Academic Press, and Thomson West are among the most prominent publishers hoping to influence your decision. In addition to textbooks, most publishers will send you teacher’s manuals and an assortment of secondary sources.

<sup>9</sup> See HOWARD E. KATZ & KEVIN FRANCIS O’NEILL, STRATEGIES AND TECHNIQUES OF LAW SCHOOL TEACHING 12 (2009) (“[Y]ou may find yourself drawn to the best-selling casebook in its field, or the one that is most widely revered, or the one that *your* teacher selected when you took the course in law school. Resist this impulse.”); *but see* Whaley, *supra* note 4, at 129. According to Whaley:

No matter what your instincts tell you or what others advise . . . for your first outing adopt the most popular casebook published on your subject. It is popular for a reason: teachability; on your first try at a course, you do not need major trouble with the casebook. Bitter experience has taught me—and others confirm this—that until one actually teaches from a book, it is impossible to predict how good a teaching tool it is, so be wary of adopting as your first book the newest, experimental publication on the market.

*Id.*

<sup>10</sup> KATZ & O’NEILL, *supra* note 9, at 12.

<sup>11</sup> See Debra Moss Curtis & Judith R. Karp, *In a Case, On the Screen, Do They Remember What They’ve Seen? Critical Electronic Reading in the Law Classroom*, 30 HAMLIN L. REV. 247, 250 (2007). The authors state:

Most students entering law school today are computer literate; for them, the computer screen is the center of their universe. Students develop the habit of reading on the computer, and therefore, the positive feelings associated with paper

For me, a new Property professor, Dukeminier's casebook seemed the obvious choice—at first. Dukeminier dominates the market and boasts a reputedly helpful teacher's manual.<sup>12</sup> Plus, other property professors at my school use Dukeminier, and I could benefit from their notes, PowerPoints, and advice. But the more I studied the casebook, the more it became clear that it was not the best *teaching tool* for me.

Instead, a first edition, interactive casebook included the characteristics I found most engaging and most likely to promote student understanding. The casebook labels itself as “interactive,” because students get both a paper copy and an electronic copy. The electronic copy includes links to case law, statutes, law review articles, videos, legal definitions and more. With property law in particular, links to maps and diagrams illuminate the otherwise tortured textual narrative describing disputed parcels often at the center of any given case.<sup>13</sup> Having never taught from a different casebook, I cannot say I chose the best text. However, the students like it, and their in-class understanding of the material reflects their sentiment.

Professors traditionally pick the textbook on their own. For almost everything else, consider inviting student opinion. One way to do so on the first day is through a survey. A student survey prompts students to invest themselves in your teaching and their learning. Along with the first day syllabus and reading assignments, dole out a short survey asking for each student's hometown, previous legal experience, preferred learning style, expectations for the school and for the class. When you collect the surveys at the end of the first class, you know an assortment of facts specific to each student; the student knows that you care enough to ask.<sup>14</sup>

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reading are unlikely to be as strong in the current generation of law students as in compared to past generations. (citation omitted).

*Id.*; see also Daniel L. Barnett, *Form Ever Follows Function: Using Technology to Improve Feedback on Student Writing in Law School*, 42 VAL. U. L. REV. 755 (2008); Harriet L. Schwartz, *Facebook: The New Classroom Commons?* CHRON. OF HIGHER EDUC., Sept. 28, 2009, available at <http://chronicle.com/article/Facebook-The-New-Classroom/48575/>.

<sup>12</sup> JESSE DUKEMINIER, ET AL., PROPERTY (6th ed. 2006).

<sup>13</sup> See, e.g., *Fowler v. Tarbet*, 274 P.2d 341, 341 (Wash. 1954) (describing a parcel's boundary as “‘8.95 acres lying and being in the N.W. corner of Lot 9 in Section 1, Township 30 North, Range 44, E.W.M., being 2 acres in width (east and west), bounded on the north by Diamond Lake, and on the west by the west line of Section 1.’”). In the classroom, one picture (diagram or map) is often worth a thousand words. Where a traditional casebook might tediously describe a property's boundaries in metes and bounds, an interactive casebook can provide both the tortured narrative and the survey itself.

<sup>14</sup> See Gerald F. Hess & Sophie M. Sparrow, *What Helps Law Professors Develop as Teachers?—An Empirical Study*, 14 WIDENER L. REV. 149, 169 (2008) (emphasizing based on the authors' empirical study that “gathering feedback from students during the course—has

A secondary benefit arises later in the semester. Inevitably, a handful of students offer little unprompted participation and punctuate their passivity with apathy. Maybe they don't like you or the subject. Regardless, you want to reach them. If you know from the survey that "Ms. Levell" has worked as a paralegal, graft a reference to her experience into your presentation. "Ms. Levell knows as well as anyone that a motion in limine must be filed." Or, mention to "Mr. Thomas" before class that the "Bulls played a good game last night," a point of interest Mr. Thomas noted on his survey. By this, you reveal your blueprint: that your objective involves—in fact, revolves—around them.<sup>15</sup>

Your first day is almost over. You have a blueprint, a survey, and a textbook. Do not forget one last thing—that you are holding yourself out as the model. I missed that my first day. I still miss it from time to time, and will likely always need reminding of it. By "professing," standing at the front of the room, judging who excels and who does not, you characterize yourself as the standard.<sup>16</sup> Some scholars suggest that law school wrings out students' moral and ethical predisposition by the unyielding pursuit of fact-based legal analysis.<sup>17</sup> Professors reduce cases that present moral dilemmas into "opportunities for advancing a client's cause through legal

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enormous benefits." Another indication of the importance of student surveys is the Law School Survey of Student Engagement ("LSSSE"), a service that has grown rapidly in recent years and provides information about the quality of the law student experience through student surveys. It seeks to answer whether an institution's "programs and practices are having the desired effect on students' activities, experiences, and outcomes." About LSSSE—Law School Survey of Student Engagement, <http://lsse.iub.edu/about.cfm> (last visited July 6, 2010).

<sup>15</sup> See Hess, *supra* note 4, at 446 ("Learning is enhanced if students sense that their teachers care about them.").

<sup>16</sup> See Whaley, *supra* note 4, at 128 ("It is an awesome undertaking to master an area of law to the point where you 'profess' to teach it to others.").

<sup>17</sup> See, e.g., Anita Bernstein, *Pitfalls Ahead: A Manifesto for the Training of Lawyers*, 94 CORNELL L. REV. 479 (2009) (discussing the general malaise and unhappiness experienced by lawyers upon entering law school and continuing into their legal careers); Ann L. Iijima, *Lessons Learned: Legal Education and Law Student Dysfunction*, 48 J. LEGAL EDUC. 524, 529 (1998). According to Iijima:

[Students] learn to suppress their feelings and come to care less about others. They learn that their value systems are irrelevant. "The underlying highest value taught, even if implicitly, is the ability to come up with convincing reasons in support of any argument, whether one personally agrees with them or not, and to defend those reasons with cogent and convincing logic, on behalf of anybody. . . ."

*Id.* (quoting WALT BACHMAN, *LAW V. LIFE: WHAT LAWYERS ARE AFRAID TO SAY ABOUT THE LEGAL PROFESSION* 56 (1995)).

argument.”<sup>18</sup> One, albeit immeasurable, technique to allay law school created cynicism is through your example. What standard will you represent? While certainly not a panacea, modeling professionalism, kindness and transparency (humility) counterbalances the pressure to analyze human conflict dispassionately.

### III. THE FIRST SEMESTER

Midway through the first semester, standing before the class grew slightly more comfortable. The focus shifted from “am I wearing pants?” to “are they engaged?” However, shifting my anxiety to the students only unearthed more questions. What approach encourages the highest level of student understanding? If students learn in different ways,<sup>19</sup> what teaching style addresses each learning proclivity? Given a student-centered blueprint, is strict Socratic method justified? During the first semester, I fumbled blindly to (1) develop an effective teaching style; (2) teach transparently; and (3) provide useful feedback.

#### A. *Finding a Teaching Style*

Teaching style is certainly a personal matter—anchored in individual goals and character traits. Even so, formal training to help new law professors develop their individualized teaching style is missing.<sup>20</sup> State

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<sup>18</sup> See WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 6 (2007). As the “Carnegie Report” also explains:

Issues such as the social needs or matters of justice involved in cases do get attention in some case-dialogue classrooms, but these issues are almost always treated as addenda. Being told repeatedly that such matters fall, as they do, outside the precise and orderly ‘legal landscape,’ students often conclude that they are secondary to what really counts for success in law school—and in legal practice. In their all-consuming first year, students are told to set aside their desire for justice. They are warned not to let their moral concerns or compassion for the people in the cases they discuss cloud their legal analyses.

*Id.*

<sup>19</sup> See David Glenn, *Matching Teaching Style to Learning Style May Not Help Students*, CHRON. HIGHER EDUC., Dec. 15, 2009, available at <http://chronicle.com/article/Matching-Teaching-Style-to-/49497/>; Hess, *supra* note 4, at 447.

<sup>20</sup> See Hess, *supra* note 7, at 367. Despite the profession’s failure to provide formal teacher training, several organizations provide faculty development resources for law teachers, including the Association for American Law Schools, the Legal Writing Institute, the Society of American Law Teachers, the Center for Computer-Assisted Legal Instruction, and the Institute for Law School Teaching.

governments uniformly require formal education and licensure to teach second grade.<sup>21</sup> Elementary school teachers study the science of learning and review varying approaches before ascending to the rank of teacher. Not so with law professors. Without formal guidance,<sup>22</sup> new law professors often adopt the only approach to legal teaching they know—the same Socratic method employed when they were students.<sup>23</sup>

Scholarly debate measuring the effectiveness of the Socratic method outstrips my meager half-year experience,<sup>24</sup> but there are many who doubt its effectiveness.<sup>25</sup> Bottom line? Don't do what I did and assume that the teaching style you encountered as a student matches your students' needs and your objectives as a teacher. While no formal training informs the new professor's path, a number of articles outline cogent arguments favoring a varying number of teaching styles.<sup>26</sup>

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<sup>21</sup> See Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook 2010-11 Ed.*, Teachers—Kindergarten, Elementary, Middle, and Secondary, <http://www.bls.gov/oco/ocos318.htm#training> (last visited July 6, 2010) (“[A]ll States require general education teachers to have a bachelor’s degree and to have completed an approved teacher training program with a prescribed number of subject and education credits, as well as supervised practice teaching.”).

<sup>22</sup> See *supra* note 20 and accompanying text.

<sup>23</sup> See Whaley, *supra* note 4, at 125 (stating that without formal training, the new law professor survives the first year, “if at all, by aping his or her favorite professor in law school”).

<sup>24</sup> See, e.g., James R. Beattie, Jr., *Socratic Ignorance: Once More into the Cave*, 105 W. VA. L. REV. 471 (2003); Peter M. Cicchino, *Love and the Socratic Method*, 50 AM. U. L. REV. 533 (2001); David D. Garner, *Socratic Misogyny?—Analyzing Feminist Criticisms of Socratic Teaching in Legal Education*, 2000 BYU L. REV. 1597; Jeffrey D. Jackson, *Socrates and Langdell in Legal Writing: Is the Socratic Method a Proper Tool for Legal Writing Courses?*, 43 CAL. W. L. REV. 267 (2007); Orin S. Kerr, *The Decline of the Socratic Method at Harvard*, 78 NEB. L. REV. 113 (1999).

<sup>25</sup> See KATZ & O’NEILL, *supra* note 9, at 47 (“[W]hen a period of Socratic questioning comes to an end, can we safely assume that every student has absorbed every point that you were trying to convey? Hardly. The Socratic method is too oblique, too reliant on suggestion, too dependent on induction ever to permit that assumption.”); Martin H. Belsky, *Law Schools as Legal Education Centers*, 34 U. TOL. L. REV. 1, 8 (2002); Judith D. Fischer, *Portia Unbound: The Effects of a Supportive Law School Environment on Women and Minority Students*, 7 UCLA WOMEN’S L.J. 81, 86-87 (1996); Paul T. Hayden, *Applying Client-Lawyer Models in Legal Education*, 21 LEGAL STUD. FORUM 301, 303 (1997); Duncan Kennedy, Note, *How the Law School Fails: A Polemic*, 1 YALE REV. L. & SOC. ACTION 71, 72-73 (1970) (“A great many students, of all levels of academic competence and of many varieties of personality, feel the socratic method . . . is an assault . . . . [S]tudents see professors as people who want to hurt them; professors’ actions often do hurt them, deeply.”).

<sup>26</sup> See generally GERALD F. HESS & STEVEN FRIEDLAND, *TECHNIQUES FOR TEACHING LAW* (1999); MARLENE LE BRUN & RICHARD JOHNSTONE, *THE QUIET REVOLUTION: IMPROVING*

Another resource for developing your teaching style during your first semester is the school itself. It will not take long to discover which professors invest the most in their classes and enjoy widespread student respect. Go to that professor's class, ask how she prepares and why she employs a problem method<sup>27</sup> to convey one legal concept but modified Socratic for another. Of course, this can also set you back—as it did me.

After observing a highly regarded colleague conduct (like a symphony) his class, I could not help but realize the gaping inadequacies of my own. So, I impersonated his tough-but-fair techniques in my next class. Nobody bought it. As a first-year professor, I cannot suddenly be the learned hand or the wise matriarch.<sup>28</sup> So, yes, observe other's classes, ask other's

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STUDENT LEARNING IN LAW (1994); ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP (2007) (articulating ways to effectively educate law students to leave law school better prepared to practice law responsibly, effectively and ethically; this book has become part of the collective conversation about reform in legal education); Hess, *supra* note 7, at 367; J.P. Ogilvy & Karen Czapanskiy, *Clinical Legal Education: An Annotated Bibliography*, 7 CLINICAL L. REV. 1 (2d ed. 2001) (SPECIAL ISSUE); Arturo López Torres, *MacCrate Goes to Law School: An Annotated Bibliography of Methods for Teaching Lawyering Skills in the Classroom*, 77 NEB. L. REV. 132 (1998); Arturo López Torres & Karen E. Harwood, *Moving Beyond Langdell: An Annotated Bibliography of Current Methods for Law Teaching*, (SPECIAL EDITION) GONZ. L. REV. 1 (1994); Arturo López Torres & Mary Kay Lundwall, *Moving Beyond Langdell II: An Annotated Bibliography of Current Methods for Law Teaching*, (SPECIAL EDITION) GONZ. L. REV. 1 (2000).

<sup>27</sup> For more in-depth discussion on the problem method, see Myron Moskowitz, *Beyond the Case Method: It's Time to Teach with Problems*, 42 J. LEGAL EDUC. 241 (1992). Moskowitz's definition of the problem method is as follows:

The problem method has three essential features: The first feature is, of course, the problem. The problem involves several issues cutting across several cases and statutes. It is meant to resemble a complex situation that a lawyer might face in practice. The problem may be framed in the context of litigation, negotiations, drafting, or planning. The student must approach the problem in a specified role, such as advocate, judge, advisor, planner, legislator, or law clerk to any of these. The second feature is the advance distribution of the problem. Students are expected to work on the problem at home and come to class prepared to discuss it. . . . The third feature is that the problem is the focus of the class discussion.

*Id.* at 250; see also James Eagar, *The Right Tool for the Job: The Effective Use of Pedagogical Methods in Legal Education*, 32 GONZ. L. REV. 389, 404-05 (1997-98); Shirley Lung, *The Problem Method: No Simple Solutions*, 45 WILLAMETTE L. REV. 723 (2009).

<sup>28</sup> There are legitimate pedagogical advantages, however, to being a new or junior professor: "generational proximity to the law school student body; recency of law practice experience as junior practitioners; and lower susceptibility to the problem of 'conceptual condensation'—extreme depth of subject matter knowledge that makes it difficult to see subjects from the students' perspective." Gregory W. Bowman, *The Comparative and*

opinions, and explore other's experiences. However, do not mimic them. Students detect and respect authenticity and transparency.

### *B. Teaching Transparently*

Having learned from the Socratic method as a student, it was difficult to be transparent as a teacher. When I was a student, the professor threatened learning just as much as encouraged it. Rarely would my classmates raise a hand to seek clarification. Professors rarely revealed their expectations and often obscured rather than clarified the legal precepts embedded in the cases from the reading assignment.

Why not highlight the legal precepts embedded in the cases? Why not disclose expectations, provide practice problems, outline study methods, and identify the legal skills you hope they will learn? In a recent blog posting, Professor Eugene Volokh shared the instructions he gives to first-year Tort students.<sup>29</sup> The instructions detail why certain material is covered, why he calls on students during class, the legal skills he hopes to develop, and more: "Students are generally happier if they understand that we have good reasons for certain pedagogical choices, and that they often accept the validity of those choices once we tell them what the reasons are."<sup>30</sup>

Transparency also means honesty. No doubt, Professor Volokh no longer struggles with "I don't know," but I do. No matter how many hours I prepare for a single class, some student asks a question—a good question—that baffles me. Sure, I could defer to the traditional deflections: "depends on the jurisdiction," and "well, what do you guys think?" But if the blueprint mandates a modest and transparent model, there is no choice but to reveal the gap.<sup>31</sup> Even as a first-semester professor, when vulnerability seems the highest, "I don't know" serves both teacher and student. First, students' respect of a professor's authority rests on much more than a single question. By preparing thirteen hours for a one-hour class, students cannot help but respect the professor, as such preparation radiates throughout the class period: "the success of a class is directly proportional to the amount

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*Absolute Advantages of Junior Law Faculty: Implications for Teaching and the Future of American Law Schools*, 2008 BYU EDUC. & L.J. 171, 171.

<sup>29</sup> Eugene Volokh, *The Volokh Conspiracy—the Pedagogical Goals of Law School Classes*, <http://volokh.com/posts/1249858402.shtml> (last visited July 7, 2010).

<sup>30</sup> *Id.*

<sup>31</sup> See Whaley, *supra* note 4, at 130 (advising that such gaps are inevitable and that "you set an impossible standard if you try to eliminate all of them on your first try at teaching").

of time spent in preparation for it.”<sup>32</sup> Second, “I don’t know” is an invitation to *find out*—a great teaching moment.

For example, one of several times when I had to confess my ignorance was when a student raised her hand in class to challenge what I had termed an “easement appurtenant.” She pointed out to me, and the class, the text where the authors insisted that the same facts resulted in an “easement in gross,” not appurtenant. It is relatively easy to deflect a student question, but when the student cites the text—the book you chose—it is harder. I had to confess, “well, I don’t know why the text says that.” However, we did not stop there.

In the next ten minutes, I solicited arguments from the class for terming the easement either in gross or appurtenant. Discussion flowed because the students knew the professor did not know and therefore could not reject their proffered answer. We eventually summarized the arguments for both sides, emailed them to the textbook authors, and analyzed the authors’ response during the following class period. I may have lost face, but the students have a tight grasp on easements in gross *and* appurtenant.

Another effective technique to teaching transparently involves student evaluation. Instead of obscuring how students are graded, a more effective teaching approach requires divulgence of grading criteria as well as multiple and varied opportunities for feedback.

### *C. Offering Feedback*

Traditionally, students struggle for an entire semester briefing cases, studying statutes, and outlining hornbooks—all for one end-of-term exam.<sup>33</sup> What the exam tests and even the form it will take often remains a mystery until the moment the proctor utters the heart-sinking words: “You may begin.”

Final exams play on a law student’s world like some weirdly orbiting moon. They are always in sight; but while they’re at a distance, they serve merely to create the tensions which swell daily like tides—to read, to keep pace, to understand. As exams draw close, however, . . . their

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<sup>32</sup> *Id.*

<sup>33</sup> See Steve Sheppard, *An Informal History of How Law Schools Evaluate Students, With a Predictable Emphasis on Law School Final Exams*, 65 UMKC L. REV. 657, 681 (1997).

gravitational force starts to shake the whole place to pieces.<sup>34</sup>

That shaking rattled my foundation as a one-L, and I complained at the time. Curiously, my complaints as a new law student failed to register when I became a new law professor. Perhaps I viewed such rigors as a “rite of passage” now that I had passed. Perhaps the force of near-universal status quo lent undeserved credibility to the process.<sup>35</sup> Regardless of my subconscious justification for a single mysterious end-of-term exam, Phoenix School of Law’s philosophy, thankfully, prevented its implementation. Feedback—usually through midterm exams—is a school requirement. As I groped through my first semester, a gradual appreciation for the process arose; my complaint as a one-L was not unjustified.

Unlike most other learning disciplines, law schools traditionally pay little heed or entirely disregard their student evaluation process<sup>36</sup>: “[T]he grading system used in most law school classes, the system that primarily relies on the use of a single end-of-term essay exam, is not consistent with generally accepted theory regarding grading in higher education.”<sup>37</sup> Several articles expose the inadequacies inherent in a single and final essay exam, including: unfairness of time constraints,<sup>38</sup> failure to test legal practice skills,<sup>39</sup> undue emphasis on “issue spotting,”<sup>40</sup> arbitrary grading that promotes an unfair ranking system,<sup>41</sup> and a gaping disconnect between the demands of the classroom and those of the exam.<sup>42</sup>

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<sup>34</sup> SCOTT TUROW, *ONE L* 157 (1986).

<sup>35</sup> See 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, 823-24 (1997) (suggesting that the single end-of-term exam remains the dominant measure in part because of the unchallenged force of the status quo).

<sup>36</sup> See Steven Friedland, *A Critical Inquiry into the Traditional Uses of Law School Evaluation*, 23 PACE L. REV. 147, 148-150, 156-57 (2002).

<sup>37</sup> Paul T. Wangerin, “Alternative” Grading in Large Section Law School Classes, 6 U. FLA. J.L. & PUB. POL’Y 53, 54 (1993).

<sup>38</sup> Philip C. Kissam, *Law School Examinations*, 42 VAND. L. REV. 433, 435, 462 (1989).

<sup>39</sup> See *id.* at 474-76; see also Friedland, *supra* note 36, at 188 (“How to measure skills such as client counseling, negotiation, and oral advocacy has perplexed many in legal education, particularly those with an essay ‘mindset.’”); Janet Motley, *A Foolish Consistency: The Law School Exam*, 10 NOVA L.J. 723, 729, 737 (1986).

<sup>40</sup> Friedland, *supra* note 36, at 164.

<sup>41</sup> See Linda R. Crane, *Grading Law School Examinations: Making a Case for Objective Exams to Cure What Ails “Objectified” Exams*, 34 NEW ENG. L. REV. 785, 787 (2000); Barbara Glesner Fines, *Competition and the Curve*, 65 UMKC L. REV. 879, 879 (1997).

<sup>42</sup> Friedland, *supra* note 36, at 189 (stating a single final exam generates a “‘disconnect’ between the examination and the body of the course”).

Of course, final exams are not the sole form of feedback, only the most common. In order to avoid blind-siding my students with a furtive final, (and in order to comply with school policy), I offered feedback in a couple of different ways. Primary among them was the midterm exam. Colleagues suggested the midterm mirror the testing format and objectives in the final exam. Unlike the stealth attending the traditional law school final exam, the instructor should reveal as much about the exam beforehand as possible.

For example, I explain that there will be twenty-five multiple-choice questions, three short answer questions, and one essay question. I state the point value for each section and suggest an estimated time it should take to complete each section. As a class, we discuss exams in philosophical terms, recognizing imperfections and highlighting the objectives this particular test seeks to meet.<sup>43</sup> We weigh varying study methods and identify sources that allow students to actually practice by taking similar tests. The midterm not only previews the final exam, it provides students a valuable measuring stick to gauge their progress.

That measuring stick is most effective when deconstructed immediately after the exam. In other words, administering a midterm exam that only produces a letter grade for each student five weeks after the exam misses the point entirely—well, almost entirely. The sooner students study their answers compared to the rubric,<sup>44</sup> the more valuable the feedback.<sup>45</sup> At PhoenixLaw, we provide a secure environment free of copy machines, cell phones, computers, etc. where students review their answers and compare them with the answer key/rubric. Requiring students to review the exam on their own before approaching the professor with questions or concerns enhances their learning and protects the professor's time. If the student still has questions after analyzing the answer key/rubric, the student is encouraged to meet with the professor. When students knock on my door with questions about their exam, I do not just tell them the answer.<sup>46</sup>

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<sup>43</sup> While my pre-test discussions in class outline *some* criteria by which students will be evaluated, it certainly is not enough. For example, some scholars suggest that “students learn more effectively when their teachers provide them with the criteria by which they are evaluated,” and that the criteria should be a detailed description of “what students should learn and how they will be evaluated.” Sophie M. Sparrow, *Describing the Ball: Improve Teaching by Using Rubrics—Explicit Grading Criteria*, 2004 MICH. ST. L. REV. 1, 6 (citing other disciplines that note improved learning after exposure to grading criteria).

<sup>44</sup> See generally *id.* (describing the use of rubrics to help students understand expectations and begin to evaluate themselves in light of these expectations).

<sup>45</sup> See Wangerin, *supra* note 37, at 65 (noting that faster feedback is more effective).

<sup>46</sup> See Sparrow, *supra* note 43, at 5 (“Grading is a powerful learning tool. As one leading educator noted, ‘(grading) is the most effective tool a teacher has to promote learning.’” (citation omitted)).

Q: I don't understand why I scored so few points on this short answer.

A: What is the call of the question?

Q: Who is most likely to win a lawsuit to quiet title, and why?

A: What is the substantive area of property law at issue?

Q: Adverse possession.

A: Which elements were met under these facts? . . .

By requiring the student to analyze the exam again, the concepts embedded in the exam are reinforced. Otherwise, it's just a lecture:

Q: I don't understand why I scored so few points on this short answer.

A: It's because you failed to fully address two elements of adverse possession that significantly impact the analysis. The two elements are . . . .

Certainly, other forms of feedback inform student learning, including quizzes, instant class polling,<sup>47</sup> class participation projects, performance exercises and the like. In one professor's ideal world, students are measured by "a variety of evaluation tools, such as oral quizzes, written interviews, short papers, and performance exercises, all on a periodic basis, and all geared toward articulated and clearly-stated institutional goals, such as a recognition that students learn differently and for different reasons."<sup>48</sup> I have much to learn when it comes to providing effective feedback.

By the time the first semester ended, I was relieved. With so many ways to muck it up, I was grateful for gracious students and helpful colleagues. Without such patience from students and guidance from colleagues, the first semester would have reflected my own law school experience. I would have "taught" using a faulty Socratic method, hidden the legal principles I had hoped to convey, and graded each student with a one-time final exam that deviated mysteriously from classroom lessons.

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<sup>47</sup> For a helpful, albeit limited, in-class diagnostic, the Center for Computer Assisted Legal Instruction (CALI) offers a useful polling option. Computer Assisted Legal Instruction, <http://www.cali.org/content/cali-instapoll> (last visited July 7, 2010).

<sup>48</sup> Friedland, *supra* note 36, at 192-93.

Not to say I did not muck things up.<sup>49</sup> It got very mucky at times, which is why evaluation became especially important at the end of the first year.<sup>50</sup>

#### IV. THE FIRST YEAR

I spent much of the first year in a mad scramble adjusting to each new challenge—from speaking with verbs to drafting fair multiple-choice questions.<sup>51</sup> As final exams and the summer break approach, colleagues urge a broader more contemplative perspective. Student evaluation, the Dean’s evaluation, and self-evaluation deserve serious introspection, particularly in light of susceptibility to routine once it sets. What went well? What did not? What can be improved?

According to a recent empirical study, five activities in particular help law professors assess and improve their teaching: “(1) keeping a journal about teaching; (2) thinking about effective teaching methods before and after class; (3) gathering and reviewing feedback from students during the course; (4) attending a national or regional conference or workshop on teaching and learning; and (5) talking about teaching and learning with colleagues.”<sup>52</sup>

These five evaluative activities require a certain amount of humility.<sup>53</sup> When “master” teachers impose vigorous self-analysis despite decades of successful teaching, they illustrate that teaching well is not an obtainable end.<sup>54</sup> Despite demonstrated teaching success, these mentors show that our reach should exceed our grasp.<sup>55</sup> For me, introspection begins with the blueprint.

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<sup>49</sup> See Whaley, *supra* note 4, at 128 (stating that a new law professor’s capability to do the job “involves something of a sham”).

<sup>50</sup> See Hess, *supra* note 4, at 443, 447 (addressing the question of “how we can improve our teaching and our students’ learning” and noting that “over ninety percent of college and university faculty members rate their own teaching as above average”).

<sup>51</sup> See Susan M. Case & Beth E. Donahue, *Developing High-Quality Multiple-Choice Questions for Assessment in Legal Education*, 58 J. LEGAL EDUC. 372 (2008).

<sup>52</sup> Hess & Sparrow, *supra* note 14, at 162.

<sup>53</sup> See Hess, *supra* note 4, at 447-48 (noting that faculty development and “the exploration of teaching and learning theory and practice can be threatening to faculty members”).

<sup>54</sup> See *id.* at 450 (“Faculty development is for all faculty members, not just those who ‘need’ to improve their teaching. All teachers can enhance their effectiveness through increased knowledge about teaching and learning, reflection and feedback on current practices, learning new skills, and refining existing ones.”).

<sup>55</sup> Robert Browning, *Andrea del Sarto*, in VICTORIAN POETRY: AN ANNOTATED ANTHOLOGY 189, 191 (Francis O’Gorman ed., Blackwell Publ’g Ltd. 2004) (1855). Browning’s full quote is “a man’s reach must exceed his grasp, or what’s a heaven for?”

Is teaching law worthwhile? Am I any good at it? Did I serve the students, the school, or myself? Are the concepts I care most about honored or ignored?<sup>56</sup> Candidly, the answers are not crystal clear for me, but the overwhelming thrust is positive. The academic and teaching environment continue to intrigue and challenge. Moreover, statisticians (and common sense) suggest that one year—a single sample—will not yield a reliable result.<sup>57</sup> So long as I do not have that pit-of-the-stomach doubt that teaching law ill suits my abilities or that the law school antagonizes my most cherished beliefs, no fundamental change is necessary. Thankfully, for me, it is quite the opposite.

More specifically, the first year revealed the pressing need to continue studying the topic I teach.<sup>58</sup> Beyond reducing the “I don’t know” moments in the classroom, mastering the subject matter prompts new approaches to teaching.<sup>59</sup> Rather than teach zoning law by reading a case about a distant court’s analysis of a distant city’s ordinance, why not dig up actual ordinances affecting the student’s neighborhoods and analyze them ourselves? As one prominent commentator suggests, “A teacher’s passion for both teaching *and the subject* is a crucial factor in student motivation”.<sup>60</sup>

Mastering the subject matter necessarily includes awareness of current events. Over this first year, scores of students emailed news clips highlighting property law disputes bubbling up in our city. Integrating these disputes into class discussion and assignments draws amplified engagement from students.<sup>61</sup> The study of law becomes the practice of law when a news

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<sup>56</sup> See Hess, *supra* note 4, at 444 (encouraging teachers “to increase their awareness of their current teaching philosophy and practice”); Whaley, *supra* note 4, at 127 (“Once you’ve selected your course, you need to set a goal. Why are you teaching this subject to these people? What do you hope to accomplish?”).

<sup>57</sup> See Kevin H. Smith, *External Validity: Representativeness and Projectability in the Probative Value of Sample Surveys*, 39 WAYNE L. REV. 1433, 1474 (1993).

<sup>58</sup> See Whaley, *supra* note 4, at 128 (suggesting a new law professor read the leading treatise in the field, concentrate on history, and know how and why the law reached its present state).

<sup>59</sup> See generally Gary Monserud, *An Essay on Teaching Contracts and Commercial Law for the First Time*, 82 N.D. L. REV. 113, 117-18 (2006).

<sup>60</sup> Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75, 104 (2002) (emphasis added).

<sup>61</sup> See Afra Afsharipour, *Integrating the Financial Crisis in the Business Associations Course: Benefits and Pitfalls*, 5 J. BUS. & TECH. L. 5, 8 (2010) (“[B]y framing the theoretical and doctrinal issues raised in the Business Associations course within the lens of high-profile current events, law professors can more easily engage students with course materials and facilitate a deeper understanding of these materials.”); Laura E. Little, *Teaching Federal Courts: From Bottom Line to Mystery*, 53 ST. LOUIS U. L.J. 797, 799-801 (2009) (stating that “students respond well to discovering a news item that implicates their learning”).

clip reveals that a local ordinance threatens to rezone a student's neighborhood, or a state representative introduces legislation that would allow homeowners to opt out of their homeowner's association duties.<sup>62</sup>

A good way to stay current is through blogging, because it allows you an opportunity to write with limited pressures or expectations on a wide array of topics from varying perspectives. If time-strapped, monitor the most relevant blogs,<sup>63</sup> subscribe to relevant feeds,<sup>64</sup> or set email "alerts" for particular topics as they arise.<sup>65</sup> Of course, "scholarship" feeds two birds with one seed. Hopefully, by writing a law review article or book chapter etc., you further the mastery of your subject matter as well as contribute to the academic debate. Staying current and immersed in the subject matter you teach directly impacts your effectiveness as a teacher.<sup>66</sup>

Apart from improving mastery of the subject matter, it is important to revisit the legal skills and ethical concepts you had hoped to impart. How did you expose students to targeted legal skills? What projects/exercises have others successfully interjected into the classroom? Whether writing demand letters to a student's landlord (dangerous!) or researching a student's chain of title, these exercises provide effective teaching platforms but risk depleting classroom time otherwise devoted to learning substantive legal concepts.<sup>67</sup> Which exercises are most efficient? Which projects can be completed outside the classroom with minimal teacher assessment?

Allotting time to evaluate your effectiveness over the first year can be depressing. While it is nice to spotlight the successes, it is imperative to honestly articulate and confront the shortfalls. Once identified, the shortfalls can be addressed by the ocean of tools and techniques within arm's length. Accomplished teachers at your school and insightful teaching articles/information are easily accessible. This self-evolution and innovation should not stop after the first year; it should be a constant component in your "blueprint" year after year. The best teachers constantly evolve, re-invent, and innovate themselves.

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<sup>62</sup> See H.B. 2625, 49th Leg., 1st Reg. Sess. (Ariz. 2009) (amending §§ 33-1801 and 33-1802).

<sup>63</sup> See, e.g., Law Professor Blogs, <http://www.lawprofessorblogs.com/> (last visited July 7, 2010); Justia Blawg Search, <http://blawgsearch.justia.com/blogs> (last visited July 7, 2010); ABA Journal Blawg Directory, [http://www.abajournal.com/blawgs/by\\_topic/](http://www.abajournal.com/blawgs/by_topic/) (last visited July 7, 2010).

<sup>64</sup> See, e.g., RSS Specifications, <http://www.rss-specifications.com/subscribe-to-feeds.htm> (last visited July 7, 2010).

<sup>65</sup> See, e.g., Google Alerts, <http://www.google.com/alerts?hl=en> (last visited July 7, 2010).

<sup>66</sup> See Whaley, *supra* note 4, at 128-29.

<sup>67</sup> *Id.* at 127-28 (describing the balance a new professor must strike when determining "scope of coverage").

## V. CONCLUSION

As a new professor, vulnerability is at its highest. As if to drive home the point, most schools hire new professors with “the incredible assumption that he or she will know what to do in front of a class, and therefore, needs no guidance in the art of teaching.”<sup>68</sup> Luckily, I had a lot of guidance.

For me, the best advice was to avoid trying to be something I wasn't. I am not a master teacher; admitting “I don't know” in class conveys honesty and leads to learning. I have a natural affinity for the students; fostering empathy rather than repressing it honors my “blueprint” and facilitates student engagement. “If teachers convey to students that they love to be with them . . . , students will not only reflect that attitude back to the teacher, they will be receptive to learning and will forgive many mistakes in the classroom.”<sup>69</sup> To be clear, I made many mistakes in the classroom. However, I am hopeful that a commitment to student over self enhances learning and will eventually improve my teaching. If you are a new professor and you have read this entire article, you are well on your way to becoming a master teacher. Just kidding—you are not. But at least you'll remember to wear pants.

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<sup>68</sup> *Id.* at 125.

<sup>69</sup> Hess, *supra* note 60, at 104.