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# HERDING CATS: IMPROVING LAW SCHOOL TEACHING

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**\*256** HERDING CATS: IMPROVING LAW SCHOOL TEACHING

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What makes a good law teacher? Is excellence in teaching largely a matter of intellectual brilliance, of superior organization and delivery of material, of friendliness and fairness to one's students? Or does it have more to do with style, with stage presence, with the ability to engage an audience in the act of reflective and spontaneous thinking?

While the question of how to define and evaluate teaching necessarily bedevils deans and tenure committees who must make personnel decisions, the focus on defining the competent teacher has obscured from faculty attention the more fundamental question: how can we implement a system to improve faculty performance across the board? It is this question that law schools around the country have not adequately addressed.

To be sure, there have been some recent efforts by the law school community to improve the quality of classroom teaching. [FN1] But one need only spend a few minutes in law school hallways, cafeterias, and faculty lounges to see the widespread dissatisfaction with the quality of and commitment to classroom teaching. [FN2] In many law schools, despite the institutional lip service paid to teaching, scholarship and other outside activities are understood to be more highly valued than good teaching, perhaps because the quality of teaching is so hard to measure. [FN3]

**\*257** We conducted a survey, described below, of programs to improve teaching in law schools. We found that the efforts law schools make to improve teaching are generally focused on newer faculty and take place in the emotionally charged context of tenure decisions. [FN4] Few if any schools have a systematic program to encourage tenured and experienced teachers to improve their use of class time.

Three years ago, the faculty of Franklin Pierce Law Center adopted a program to improve our classroom teaching. This article describes and evaluates that program, in which all three authors played a role. Mitchell Simon designed and implemented the plan; educational consultant Rob Fried assisted in the design; and Ted Occhialino spent a semester at FPLC as visiting professor of teaching excellence. While we have not yet completed our evaluation of the program's success or failure, we believe that through our differing perspectives we can provide insight into how a law school interested in improving teaching might adopt a similar program. [FN5]

### **The Need for Improved Teaching at FPLC**

The reader may have trouble assessing the transferability of our program without a brief description of FPLC, which has often been described as a "nontraditional" law school. Usually those who know something of the school are aware only of our internationally recognized intellectual property program.

FPLC is by choice the smallest independent, nationally accredited law school in the United States. We have about 380 full-time J.D. students. We provide the core education with twenty-six faculty, including three clinical instructors. All but three of our faculty have tenure.

The school was founded twenty-five years ago with a commitment to provide a "student-centered" education. That means to us that we focus primarily on student learning, even at the possible expense of scholarly writing. We have \*258 also been committed to small classes whenever possible, and we believe our students should have easy access to faculty time.

Since we hold ourselves out in this manner to prospective students and allocate our faculty time accordingly, our then dean, Robert Viles, used the "opportunity" presented by an impending accreditation self-study to question whether we were meeting our stated goals. Following our review, the faculty felt that although we were teaching well in the small classes and keeping close contact with our students, our teaching in the larger classes was not at a sufficiently high level to justify our claims. Since the tradeoff for less pressure to write was to be good classroom teachers, we concluded we must make substantial changes to insure effective and creative teaching. [FN6]

We made some choices and took some steps to improve our teaching. Most important to our effort was that all teachers, tenured and nontenured, agreed to participate fully, and the resulting program was aimed at improving teaching, rather than evaluating faculty performance for purposes of pay or promotion.

### **The Search for Programs at Other Law Schools**

In January 1995 we sent a letter to the associate deans of all ABA-approved law schools asking for a description of any program to improve teaching they might have. We received 54 responses to the 173 inquiries. From this limited return we are unable to reach any scientifically valid conclusions. But the virtual lack of any program to systematically improve teaching in the responding schools is certainly informative. Of the 54 responding schools, 35 (65%) indicated that they had no program of any kind, though many said they wished they did.

The remaining 19 schools had no regular, methodical, or comprehensive program, but they were making some efforts in this direction. Their efforts included review of student evaluations, encouragement of attendance at AALS workshops, class observation and mentoring for newer faculty, and informal workshops. [FN7]

### **Initial Phase: Agreement on Goals**

The first decision we had to make, late in the spring of 1995, was whether we would put in place an improved evaluation system tied to compensation \*259 and promotion, or a peer-review system linked to improvement of teaching for its own sake. Our faculty was split on the issue: some argued that only a system of rewards and sanctions could improve teaching, and others argued that such a system would do damage to the school's cooperative culture. The latter camp also expressed a theme unfortunately common in law schools: they were unwilling, once the tenure decision had been made, to trust others to judge their teaching. [FN8]

After a far-ranging discussion among the entire faculty, we recognized that neither side had any hard facts on which to base its argument. The faculty then

reaffirmed our commitment to good teaching and voted unanimously to create a Standing Committee on Teaching Effectiveness. It was charged with making recommendations for a system to improve teaching, to be implemented by that fall. More important, the faculty agreed that all members, both tenured and nontenured, would participate fully in the program, whatever its final design.

One unexpected outcome of this discussion was that in looking at something as personal and important as our teaching, we were forced to reveal many of our perceptions of the performance of colleagues. While such a discussion could be destructive, if allowed to get out of control and if not followed by positive collective steps, in our case the discussion proved to be a wonderful vehicle for unifying our faculty around a shared goal. The discussion made us realize just how much of what we believed about our colleagues was based on hearsay rather than on first-hand knowledge.

The notion that we would learn about what others were doing by direct observation rather than relying solely on students' comments, while in part threatening, held promise for providing us with accurate information about our teaching. We saw the potential to help each other be better, rather than to fall into the common trap of competing for student adoration. As at many schools, teaching reputation at FPLC was often the product of a single student complaint that entered the culture after being repeated by faculty regardless of its initial validity. Perhaps the most enduring consequence of the design phase was the recognition of how destructive that pattern was. [FN9]

Following the vote to establish the program, the dean committed substantial resources to it. The standing committee was given a line-item budget to fund training, and Mitchell Simon, chair of the committee, was retained during the summer and released from half his teaching load during the coming year. We believe that any similar program, to be successful, will \*260 require designation of a leader with sufficient released time at least for the first two years. [FN10]

#### **Choice of Program**

When Simon started his research, he thought that unless there were significant consequences attached to the review, little change in teaching would occur in a faculty that was almost 90 percent tenured. He then consulted with experts from three universities--New Hampshire, Hartford, and Harvard--and the Institute for Law School Teaching. All those he spoke with agreed on the essential components of a successful system, and they recommended one using peer review rather than summative evaluation. [FN11]

Since the literature on the subject also supports this view, we designed our teaching evaluation to be purely formative rather than judgmental. [FN12] The committee requested, and the dean gave his commitment, that no information gathered during this process could be used in tenure and promotion proceedings. [FN13] Our experience to date suggests that this was clearly the correct choice.

#### **The Components of a Successful Peer-Review Program**

We learned during our discussions that it is nearly impossible to agree collectively on what constitutes good teaching. The lack of a clear set of standards reduces almost any system of evaluation to one based on assessments of superficial style characteristics. To avoid this unhelpful approach, we \*261 were guided by Anthony Cancelli's notion that a valid peer-review system ought to make[] minimal assumptions regarding how instruction should occur. It is left to the professional judgments of the professors to determine how they wish to develop and teach their courses. The system only requires that they be within the bounds of acceptable practice, broadly defined, that they do what they say they do, and that there be a cogent rationale for their choices. Thus the review of each professor is unique and requires decisions based on disparate and often idiosyncratic bits of

information. The use of judgments by peers provides a method that is flexible enough to adjust to the unique data base generated in each review. [FN14]

To achieve this type of individualized assessment while providing sufficient guidance to make the process effective, we adopted a standardized protocol for the peer visits.

#### Faculty Teams

First, we organized the faculty into pairs, with Mitchell Simon joining to complete each review team. Each member of the pair visited the other's classes along with Simon, who took part in all team meetings and observations. He was responsible for insuring that the protocol was followed and for facilitating the discussion. By attending the classes of all teachers, Simon was able to share with each pair ideas gleaned from observation of the other faculty and from the relevant teaching literature. He could link people who were trying similar techniques, and he was the repository of information about overall performance.

That information has proven useful to the faculty in making decisions about future directions for the school. On the negative side, some members of the faculty, especially those with differing ideas about teaching, have objected to relying on the subjective evaluations of a single colleague. Nonetheless, it seems that having one faculty member exposed to the broadest range of teaching information--and not just the dean or the associate dean, as in some schools-- has been very good for faculty discussions.

There is some debate in the literature about how to form the teams, whether voluntarily or by assignment. [FN15] We chose to have Simon form the teams, with consultation and advice from the dean. But we took great pains to insure that the teams had a logic to them. For example, those most uneasy about the process were assigned a colleague with a more easy and accepting style. We also tried to link up very accomplished teachers with those who we felt needed some help to improve their methods and could benefit from observing particularly well-taught classes.

Overall, our approach worked well. But there were several pairings that lacked candor because one of the pair was quite anxious and the other did not want to seem too critical. In at least one of these situations, the teacher being \*262 reviewed was upset by Simon's critical observations. During that debriefing session--unlike most others--the focus was on questioning the accuracy of the reviewer's observations, rather than discovering the basis of the critical comments and having the reviewed teacher then decide how, and if, to act on them.

We had expected that the experienced teachers who were paired with much less experienced colleagues might complain that they were getting little of value from the exchange, but this turned out not to be true. The more experienced teachers reported that they learned a great deal from observing the less experienced teacher, and that the less experienced teacher in conjunction with Mitchell Simon had enough to say about the teaching of the more senior colleague for a productive discussion.

#### Meetings Before the Class

All teams met for about an hour and a half in advance of the class to be observed. At that meeting, the teacher to be observed described his goals for the class, the role of this class in the overall course structure, the teaching methods to be employed, and his expectations for the students. He was also required to identify areas of teaching he perceived to be weak and to identify at least one specific aspect of the class on which he would like specific attention. We provided a guide for structuring this meeting; see Appendix 1.

#### Class Observation and Followup

Team members attended the full class period. They focused on student reaction to

the teaching methods, and they often had discussions with students after class. They paid much attention to student engagement and class organization.

A team meeting followed the class visit. Again, the guide we provided gave a structure for the conversation. Discussion focused on the merits of the selected teaching method, and the visitors offered specific suggestions for improvement. We were surprised how candid and useful these discussions were. [FN16]

We noticed that the timing of the followup meeting was important. Despite the voluntary cooperation of all faculty, the visits caused some anxiety in the observed teacher. [FN17] In the beginning, we were occasionally unable to schedule \*263 the debriefing on the same day. This produced some awkward moments when a visitor informally interacted with the observed teacher between the class visit and the debriefing.

We concluded that it was essential to meet as a team as soon after the observation as possible, usually later in the same day. This gave us time to talk to students, organize our thoughts, and minimize the unease produced by any delay in letting the teacher know what the observers thought. Whenever a prompt meeting was not possible, we made it a practice to talk with the teacher for at least a few minutes after class.

### **The Second Semester--Spring 1996**

Our peer observation and review program took a great deal of time that fall--time and resources we felt we could not spare during the following semester. [FN18] We also felt that teachers needed time to try new techniques and to continue the discussions started in the fall semester. So we chose not to require visits during the spring semester. Instead we brought in teaching specialists from outside the law school and allocated Simon's time to a combination of voluntary observation visits, individualized work with faculty, and specific administrative tasks that furthered our goal of increasing classroom value and rigor.

#### **Teaching Sessions**

The committee presented a monthly program on teaching techniques. The director of the state university's Instructional Innovation Center led the October and November sessions. The first addressed learning theory and course planning, and the second looked at various models for more active learning. All full-time faculty, with the exception of two who had previous speaking engagements, attended both sessions.

\*264 We devoted a full-day retreat to higher-level discussion techniques and class planning. The session was led by Lynn Daggett, a professor of law at Gonzaga who also holds a Ph.D. in education. All full-time faculty attended. Daggett modeled effective teaching techniques and led a spirited interchange on use of questions and discussion to develop higher-level analytical skills.

Faculty evaluations of Daggett's session indicated that participants learned from it and were stimulated to study and think about their own class designs. As useful as the seminar proved to be, the real benefits of the training were the informal conversations and group work on use of different techniques in class that followed during the semester break and throughout the next semester.

In contrast to the response to Daggett's training, responses to sessions led by nonlaw teachers were less positive. The faculty said that they found it difficult to translate the general knowledge provided by the speakers into useful ideas for legal education and that making the effort was not an effective use of their time. While this may be a mistaken notion, especially as we were focusing on how to teach and not only how to teach law, we chose to honor this perception because attendance at these sessions was purely voluntary.

We have since reoriented our in-service training: the sessions are led by a member of our own faculty or by a teacher from another law school. This led to the establishment of our program (described below) to bring in a visiting professor of teaching excellence each year. In that role Ted Occhialino proved valuable as a resource for in-house sessions and as a leader of discussion groups.

#### Policy Development: The Grading Policy

The policy issue we chose to investigate during the second semester was how our nonstandardized grading system affected student learning and course selection. Like many other law faculties, we had tried unsuccessfully on many occasions to develop a grading policy. While grading is a topic for a separate article, we include some discussion here because we think the change in our culture produced by the teaching effectiveness program allowed us to move ahead where we had previously been stymied. Simon was charged with gathering all the data needed to understand the issue. He surveyed each faculty member's grading patterns, interviewed students from a number of classes, and reviewed other schools' requirements.

His work led to the faculty's adoption of a rule requiring a mean grade no higher than B in all classes with more than fifteen students. Recognizing the need to allow for valid educational innovation, the faculty authorized the committee to waive the rule for larger classes in which the instructor could demonstrate a "mastery" teaching methodology--that is, courses whose design clearly demonstrated significant student participation, with frequent oral and written presentations. Because of the more intensive teacher-student interaction in classes of this type, a majority of the class might well perform at a level above the average in other classes.

The implementation of the B-mean policy, adopted at our summer retreat, has caused each of us to look more carefully at our individual class plans and \*265 our overall course design, and to devise tests that reflect core concepts while providing a more valid means to evaluate student performance.

The waiver provision obliged several teachers who had previously justified high grades by reference to "mastery" to clearly articulate the techniques and expectations of their courses. Most, after carefully reviewing their courses, elected not to seek waivers. Several committed themselves to improving course design in pursuit of true "mastery" teaching. Few waivers were requested and even fewer granted this year. [FN19] The point is that we doubt we could have instituted such sweeping change in our institution--however warranted--in the absence of the trust and mutuality engendered by our universal participation in the teaching effectiveness program.

Conversations with faculty colleagues have convinced us that the second-semester program was successful in encouraging teachers to implement newly acquired skills in their classes and, most important, in solidifying the faculty's dedication to meet the school's stated commitment to focus on teaching.

#### The Second Round of Reviews--Fall 1996

After conversations with Rob Fried, our primary educational consultant, we implemented the second stage of our peer-review process.

The faculty agreed that each teacher would prepare a self-study of her teaching methodology. We modeled this process somewhat on the "teaching portfolio": a document that contains reflective pieces on one's teaching, samples of course plans, other writings, and evidence of public service efforts. Such documents are widely used in higher education for teaching evaluation. We selected a very abbreviated form of the teaching portfolio, tailored to meet our needs and resources, and used it to stimulate reflection on teaching. [FN20] It appears below as Appendix 2. Also, the faculty authorized the committee to videotape for review one session of each class without advance notification.

The teacher to be observed, her partner from the previous fall, and Mitchell Simon met after the taping to discuss the tape and the self-study. Before the meeting, Simon read and analyzed the teacher's student evaluations for the previous two years.

This process took as much time as the first set of observations, but the time was distributed differently. Teachers spent a great deal of time on the portfolio but did not need to attend or prepare for a preclass meeting. The time commitment for Simon was the same as in the first semester. The team focused its discussions on any dissonance between the teacher's assessment of her goals and methods and what was demonstrated in the video or the evaluations. We concluded that random taping is a critical step in phase two: teachers who are observed only with advance notice can deceive themselves into thinking that such a well-prepared performance is typical.

**\*266** The self-studies documented many changes in teaching methodology as a result of the process. Here are two examples.

The turnaround in my teaching this year is that I am asking rather than telling. Though I heard the advice a thousand times, I did not believe it until my colleagues and I discussed what I had identified as the key points of the class and evaluated what they would have gotten from the section if they were students. My conversations with students after our meeting affirmed that I hadn't achieved what I set out to do. I now think that students learn little when you tell them. They learn a lot when they are challenged by a good question.

This year, I have spent a great deal of time organizing the discussion for myself in written fashion prior to class. Specifically, I targeted the goal of the discussion; identified the various issues I want/hope/expect will be raised by the discussion; wrote out alternative questions to move the discussion in different directions.... As I have become more comfortable with this kind of discussion, I have appreciated that the overall structure and goals of the course lend themselves to students showing themselves what the solutions to "problems" [are].

Several other teachers reported, in their self-studies, changes in their work and insight into the process of teaching that they believed they would not have realized before this process started.

During this semester we also started visiting other law schools to get an idea of student performance and teaching levels in other institutions. Simon has visited the University of Maine and is working on an organized program of visits with the deans at Maine and the Vermont Law School. We hope this effort will lead to regional conversations on teaching among New England law schools.

#### **The Visiting Professor of Teaching Excellence**

Simon's visits to other law schools, the positive responses to training sessions led by law teachers, and our continuing desire to improve our teaching led us to next step: we decided to hire a visiting professor who was recognized as a gifted teacher. The dean set aside funds to bring in a visitor for one semester each year. The visitor was to use half his time to fill teaching needs occasioned by sabbaticals and the like (where funds could be transferred to the visitor) and half to the teaching effectiveness program. [FN21]

We sent letters to scores of colleagues seeking nominations for such a visitor. We then solicited several of the nominees and brought them to FPLC for interviews, something unusual in the hiring of visitors. We found that the days spent with a number of gifted and exciting teachers were worth the cost. **\*267** We ultimately selected Ted Occhialino as our first visiting professor. The rest of this section is his account.

No one taught me how to teach. I modeled my teaching on my favorite professor in

law school. I was lucky. It worked. Students enjoyed my classes, and my enthusiasm for the law and the classroom got me through that first year. After that I improved by trial and error, by reading student evaluations, and by taking student suggestions seriously. Since colleagues never invited me to visit their classroom to watch them teach, I assumed that it would be somehow inappropriate for me to invite anyone to watch me teach. As a result, the first time a colleague watched me teach and offered suggestions for improvement was during evaluation for tenure.

Eventually I moved to the University of New Mexico, attracted by that law school's commitment to teaching as a first priority and by its aggressive recruitment of minority students who appreciated and benefited from good teaching. UNM provided more opportunities for joint teaching experiences but has never had a formal process for the faculty to discuss teaching methodology or an institutional culture of free access to attend a colleague's classes.

Visits by tenure committee members to the classes of candidates for tenure serve to evaluate progress already made in teaching rather than to improve future performance. At UNM a posttenure review for senior faculty was put in place and promptly forgotten.

The invitation from Franklin Pierce Law Center to apply for the position of visiting professor of teaching excellence was a revelation. A law school actually had created and implemented a systematic program to improve teaching and had funded it sufficiently to bring in visiting professors to provide fresh perspectives. I applied; I received the appointment; I went; I had a wonderful time. Most of all, I learned more about teaching in one semester than I had learned in the previous thirty years. I would recommend a similar program to any law school.

#### Arranging the Visit

I had informed my dean that I planned to apply for the FPLC position, and he encouraged me to do so. Having faculty visit at other law schools is one way that UNM overcomes its geographic isolation, fosters exchanges of information among law faculty, and exposes our faculty to the workings of other law schools. The dean at FPLC, the UNM dean, and I agreed that FPLC would pay UNM the cost of my salary and benefits for the semester and I would continue to receive my normal pay from UNM.

The dean at FPLC assigned me to teach the four-credit Civil Procedure class to the first-year students. He and the standing committee decided that I would spend the other half of my time visiting classes and talking with the teachers before and after class. I was delighted with the proposal because access to others' classes would give me maximum exposure to different teaching styles and would foster one-to-one conversations about techniques.

#### \*268 Visiting Classes

Having the school's own faculty visit each other's classrooms has many advantages, not the least of which is that it fosters discussion of teaching between colleagues who might not otherwise take a direct interest in one another's classroom experiences. Once done, though, there is diminishing benefit from repeating the process with the same participants. The committee wanted to bring in a fresh perspective.

As visiting professor, I was the fresh perspective. I met with Mitchell Simon before beginning the sessions, and we agreed that I would use the same methodology and protocols used in the first round of observations.

Before I began, the dean reiterated to the faculty that I would not be reporting to him, to the Promotion and Tenure Committee, or even to the Standing Committee on Teaching Excellence. This was important, not so much to the senior faculty but certainly to the faculty who were not yet tenured and who otherwise might have felt

threatened by my presence.

This part of my semester at FPLC was the most rewarding to me. Having free access to the classes of other teachers was a treat. The preclass discussions-- learning what the teacher proposed to do and the means she planned to use-- provided me with numerous insights into teaching goals and strategies. Watching the class unfold after the strategy session confirmed that preclass planning is important but that no class ever goes exactly as designed. I reveled in watching how other persons handled unexpected twists and turns that classes took.

After class, before meeting the teacher for the followup session, I talked with students. Those conversations proved less enlightening. Students tended to confirm my own views of the teacher's strengths and weaknesses and the relative value of different teaching styles used in the class. [FN22]

**\*269** I imagine my classroom visits were of more benefit to me than to most of those whose classes I visited. The faculty had already had comments from their own colleagues. My comments may not have differed markedly from those made earlier, though an outsider's confirmation of the earlier critiques may have been of some value.

For example, the legal research program for first-year students had been completely revamped in accordance with recommendations of the committee. The teachers, who had previously lectured in an effort to cover all research tools, had redesigned the program to use minimal lecture and had redirected their time to developing and supervising practicums in the library. The librarian and library staff who had redesigned the program were justly proud of the changes. More important, the student evaluations and the faculty's estimation of student research skills were improved dramatically by this targeted approach to teaching.

The committee had identified problem areas, suggested changes, encouraged innovation, and provided additional support to help the faculty and staff to rethink and restructure the program. The new course was impressive, as was the enthusiasm of the staff. They were grateful for the committee's help and also for the goodwill with which the committee had conducted the critiquing process. My visits confirmed that the writing program was on the right track and produced a few minor suggestions for improvement.

#### The Lawyering Process Course

The committee had concluded that one way to improve teaching was to foster cooperative teaching efforts among the faculty. The autonomy and isolation of the typical law professor make interaction difficult, especially at a small school like FPLC that is unlikely to have many faculty who specialize in the same subject and can serve as resources to one another. The committee's solution was to create a new first-year course in lawyering skills and to invite almost the entire faculty to coteach one of the weekly segments with a colleague. The teacher who planned the course set the general subject matter of each class, but the specific content and the teaching method were left entirely to the coteachers.

Everyone who taught any segment of the course was invited and encouraged to sit in on every class, and most of the faculty participants took advantage of this opportunity to watch their colleagues teach. Both the process of coteaching and the invitation to attend all the classes brought a new openness to the faculty and encouraged innovative teaching methods. I assume that the pairing of coteachers was not random, as there were unusual combinations of teaching styles and academic subject specialties in many of the pairings. As a coteacher of two of the segments I can testify that it was a delight to plan a class with a colleague who had a different teaching style and specialized in a different area of the law, and it was equally instructive to sit in on the classes taught by others.

Although there were no formal meetings of the faculty participants during the semester, several of the classes engendered extended conversations about \*270 teaching methods. For example, one teacher showed excerpts from video-taped interviews with the judges and lawyers who had participated in the trial and appeal of the case being examined in the class; that helped the students get a sense of the participants in the process, their strategies, and their views of the issues presented by the appeal. This led to a conversation about the possibility of creating a new seminar that might create an oral history of the New Hampshire bar, judiciary, and legislature.

During one of the first classes, I watched the teacher chastise a student for articulating the issue in a case in the precise manner that I had taught the students to use during my orientation session. During that same class, a colleague sitting next to me whispered that he totally disagreed with the vocabulary the teacher was using to describe the court's reasoning. Within days, we arranged for a breakfast meeting of teachers in the first-year curriculum to talk about different preferences on briefing and classroom presentation style and about our different understandings of the meaning of common legal terms. The meeting did not result in an agreed-upon glossary of terms or a standard format, but it did lead to an understanding of the need for each teacher to explain what she expected in her class and to be aware that students were exposed to differing views in other classes.

Both from being a coteacher and from being an observer of others' classes, I concluded that the course and its format provided the most valuable opportunity of the entire semester for improved communication among faculty and sustained consideration of effective teaching styles. This is another innovation of the FPLC Committee on Teaching Effectiveness that I will ask my UNM faculty to consider adopting.

#### Seminars on Teaching

Portions of FPLC faculty meetings were reserved for discussions about different aspects of teaching. Faculty who had attended the AALS Experienced Teachers Conference reported on what they learned and led FPLC faculty discussions similar to those they had participated in at the conference. One seminar had testing and exams as its topic: one teacher made available a prior year's exam and grading guide, and another critiqued both and led a conversation on different testing and evaluation techniques. These conversations were often provocative, partly because there were fresh faces in the person of the visiting professor and one newly hired faculty member.

FPLC has provided a model, undoubtedly one that can be improved upon, for other law schools that are willing to commit themselves to improving their teaching mission. I know at least one other school that will benefit from the FPLC program. My dean has just created a Teaching Effectiveness Committee at UNM and has made me the chair.

So how do we answer our initial query: what makes a good law teacher? Our modest efforts at FPLC strongly suggest that it is almost impossible to take any scientific measurement of improvement in teaching performance. Just as one \*271 should not view an eclipse of the sun by staring at it directly, here it is best to observe the shadow that is cast--in this case, to pay attention both to the response from students and to the professional culture that unfolds around the question of improved teaching. Do our students talk about the "teaching" they experience, apart from their own idiosyncratic reactions to a given course or teacher? Do they know we are trying to do a better job? Are they able to respond, thoughtfully, to their opportunities to evaluate their teachers--to view such occasions as a chance to suggest positive improvement? Has it become part of the faculty culture to take teaching seriously? Are conversations about teaching isolated and random, or do the

faculty talk about their teaching as often as they discuss their consulting or their writing?

Everyone knows that law professors are independent, strong-willed, and often uncooperative creatures. While nobody at FPLC believes we have succeeded in herding cats towards any teaching nirvana, we believe our efforts have altered positively the culture of the school. [FN23] We still honor educational freedom and innovation, but we also embrace the notion that we have a collective responsibility to give our students the best legal education we can deliver.

This responsibility includes placing adequate demands on our students and, more important, placing high demands on ourselves. The faculty and administration have used the last few years to learn all we could about different teaching techniques and theories, to prod each other to improve our class time, and to convey an institutional culture that not only values collegiality and cooperation, but demands of all participants the search for excellence.

**\*272** We close with some provocative questions raised by an anonymous reader who reviewed this article for the Journal.

What are your recommendations to other law schools with different legal cultures, values, and size? The law school in this study had the combination of a highly supportive dean, a faculty committed to the project, and a self-identity focused on the importance of teaching--even at the cost of less emphasis on, or dedication to, scholarship.

Every law school pays lip-service to the importance of effective teaching, but self-styled top-tier law schools firmly believe (with some empirical basis) that their reputations are based on their faculty's scholarship, not on teaching effectiveness....

I find the program would be a tough, if not impossible, sell at the top-tier law schools. It's hard to imagine any of the top twenty or thirty law schools putting together this project and gaining a critical mass on the faculty for cooperating in the venture. So the interesting question for me is what this says about the structure of the profession and our values, as we move up the prestige hierarchy.

The reviewer asks: "Is your article irrelevant to scholarship-focused institutions? Does anybody care?"

As pointed as this question is, it is obviously not for us to answer. We wrote this article to see, in part, if anyone does "care," and the results won't be in for a while.

Certainly, size and status affect the culture of any institution: law schools are no exception. A teaching effectiveness program like ours takes resources and a significant commitment. That commitment may be hard to justify completely since we are unable to quantify improved teaching or to disagree with the reviewer's comments on the strong relationship between reputation and scholarship. Nonetheless, as teachers who have the ability to train and influence the next generation of lawyers (as well as the development of the law), we hope that the article is relevant to all law schools and that some--or even many--care.

#### **\*273 Appendix 1**

From M. D. Sorcinelli, *An Approach to Colleague Evaluation of Classroom Instruction*, 7 J. Instructional Dev. 14 (1984), reprinted in Keig & Waggoner, *supra* note 9, at 45-49.

#### Pre-Observation Conference Guide

1. Briefly, what will be happening in the class I will observe?
2. What is your goal for the class? What do you hope students will gain from this class?

3. What do you expect students to do in the class?
4. What can I expect you to do in class? What role will you take? What teaching methods will you use?
5. What have students been asked to do to prepare for this class?
6. What was done in earlier classes to lead up to this one?
7. Will this class be generally typical of your teaching? If not, what will be different?
8. Is there anything specific on which you would like me to focus during this class?

#### Classroom Observation Guide

Sorcinielli provides a series of questions for each of the following topics. We have not included them since we did not use them in our work.

1. Students' and teacher's attitudes and behavior before class begins
2. Teacher's knowledge of subject matter
3. Teacher's organization and presentation skills
  - A. Engaging student interest
  - B. Organization and clarity
  - C. Teaching strategies
  - D. Closure
  - E. Teacher's discussion and questioning skills
  - F. Teacher's presentation styles
  - G. Students' behaviors

#### Post-Observation Conference Guide

1. In general, how do you think the class went?
2. What do you think about your teaching during the class?
3. Did students accomplish the goals you had planned for the class?
4. Is there anything that worked well for you in class today--that you particularly liked? Does it usually go well?
5. Is there anything that did not work well--that you disliked about the way the class went? Is this typically a problem area for you?
6. What were your teaching strengths? Did you notice anything you improved or any personal goals you met?
7. What were your teaching problems--areas that still need improvement?
8. Do you have any suggestions or strategies for improvement?

#### \*274 Appendix 2

Distributed to participants at the AALS conference for experienced teachers, June 1995.

In the preparation of a teaching portfolio, people are often stimulated to be reflective about why they do what they do in the classroom. For many faculties, almost as a byproduct, that produces an improvement in teaching performance.

Following are some guiding questions to help structure that reflection.

1. How has my teaching changed in the past five years, and are these changes for the better?
2. What kind of activities takes place in my classroom? Why?
3. Which courses do I teach most effectively? Why?
4. What is the underlying value of the course and my way of teaching it?
5. Do I encourage collaborative effort in class?
6. How promptly do I grade and return assignments?
7. Am I easy for students to talk to, easy to make a mistake in front of?
8. How heavy a workload can I reasonably impose?
9. How do I motivate students?
10. When do students talk to each other about my teaching? What do they say? What would I like them to say?

[FN1a]. **Mitchell M. Simon** is a professor at the Franklin Pierce Law Center. **M. E. Occhialino** is a professor of law at the University of New Mexico. **Robert L. Fried** is a visiting associate professor of education at Northeastern University.

[FN1]. For example, the AALS hosted two recent conferences for experienced teachers that focused on issues of quality teaching--the first such AALS conferences on this topic for many years. And Gonzaga University Law School founded the Institute for Law School Teaching to bring insights from educational research into the law school classroom. There has also been a greater interest from scholars in the area. See, e.g., James Eagar, *The Right Tool for the Job: The Effective Use of Pedagogical Methods in Legal Education*, 32 *Gonz. L. Rev.* 389, 390 (1996-97).

[FN2]. See, e.g., Paul Wangerin, *The Evaluation of Teaching in Law Schools*, 11 *J. Prof. Legal Educ.* 87, 88-90 (1993).

[FN3]. See, e.g., Barbara Bennett Woodhouse's assertion that "time spent on developing pedagogy is fast becoming the professor's pro bono work--something extra, done for love, and in the face of formidable institutional disincentives." *Mad Midwifery: Bringing Theory, Doctrine, and Practice to Life*, 91 *Mich. L. Rev.* 1977, 1993 (1993); Eagar, *supra* note 1, at 394-96.

[FN4]. We asked all ABA-approved law schools whether they had a teaching effectiveness program. Typical of the responses we received were the following. "As associate dean, I have informally tried to establish a teaching program for untenured faculty.... Although the untenured said they were eager to participate in a teaching program, they were extremely reluctant to allow senior faculty to visit their classes." "We do encourage our new teachers to attend the annual AALS program for new teachers.... Perhaps we ought to do more--but, in direct answer to your question, we don't." See also Lisa Green Markoff, *Back in Vogue? AALS Agenda: Teacher Evaluation*, *Nat'l L.J.*, Jan. 8, 1990, at 1.

[FN5]. We have gathered some data on the impact of the program, but it would take much more time and resources to provide a scientifically valid study. Nonetheless, the comments of outsiders can provide some measure of evaluation. For example, a professor of law from the University of North Carolina reviewed our teaching effectiveness program during a May 1996 site visit in connection with our proposed LL.M. program. She concluded:

Based on this attention to teaching improvement, teaching has become a real focus for the faculty.... These activities [described in her report] ... indicate a strong commitment to improve teaching effectiveness. Determining when the teaching has improved substantially will be difficult to measure, but FPLC is doing a great deal to insure that improvements are made.

[FN6]. Some might question the wisdom of raising a self-perceived weakness in a self-study for an ABA sabbatical site visit to create what in the literature is called a "triggering event"--an event that breaks down a faculty's natural resistance to evaluation and creates a situation that the faculty may not ignore. For a detailed description of the stages of faculty resistance and of triggering events, see Wangerin, *supra* note 2, at 91-95. Regardless of the wisdom of the choice, the outside input from the evaluation team and the self-reflection produced by the process resulted in adoption of the program described here.

[FN7]. In virtually all the responses there was at least nominal interest in the idea. Several commented with apparent resignation on efforts they had made which failed to take hold. It was clear that although the associate dean recognized that evaluation and support were key elements in education, development of such a system was not a current priority for any of the responding institutions.

[FN8]. See R. J. Menges, *Colleagues as Catalysts for Change in Teaching*, in *To*

Improve the Academy, ed. J. Kurfiss, 83 (Stillwater, 1987).

[FN9]. There is ample research to suggest that peer review of teaching has a positive effect on faculty morale and collegiality. Nevertheless, a survey of college teachers found that many remain unconvinced that such efforts will not be destructive. Larry Keig & Michael D. Waggoner, Collaborative Peer Review: The Role of Faculty in Improving College Teaching, ASHE-ERIC Higher Education Report No. 2, 128 (Washington, 1994).

[FN10]. We believe the selection of the person to run the program is critical, but different sorts of people will be right for different institutions. Some schools may want a chair with an advanced degree in education; others may focus more on the respect the designated person has within the faculty, or the person's feedback style. In an e-mail exchange among the authors, Fried asked Simon, who had no training in evaluation, how he had approached the task. Simon replied: "I began to believe I could do the job when the consultants with whom we worked, and the literature I reviewed, indicated that there was not a clear set of criteria on which to grade my colleagues. Rather, I was told to build on years of being an experienced observer. This allowed me to see my role as using common sense and my life experience both as a teacher and as a learner. In light of this, the key component was to always give feedback in a manner designed to improve the teacher. Having been a supervising lawyer, a teacher, and a long-time youth sports coach, I had a good idea how to provide constructive, rather than destructive, feedback. I think this was the key to whatever success I had in the class visits."

[FN11]. We are grateful for the help of Lee Seidel and Merle Larracey, University of New Hampshire; Catherine Krupnick, Harvard School of Education and consultant to the AALS; and Gerry Hess, director of the Institute for Law School Teaching at Gonzaga. Most of the on-site work was done by coauthor Rob Fried.

[FN12]. See the citations collected in Keig & Waggoner, *supra* note 9, at 11- 21.

[FN13]. The question whether this rule should be waivable by a candidate for tenure presents a thorny issue. During the first tenure application after we implemented our peer-evaluation system, the candidate requested that the committee provide information to the faculty. We agreed, somewhat cavalierly. But we believe this may have been a mistake, because the next tenure candidate was then confronted with the "need" to waive: failure to waive might create a presumption that the withheld information was negative. If--as we believe--the purpose of the confidentiality aspect is to protect the process, we were probably mistaken in seeing confidentiality as a "right" of the reviewed teacher.

[FN14]. Methods for Arriving at Clinical Judgments in Peer Evaluation, unpublished paper quoted in Keig & Waggoner, *supra* note 9, at 16.

[FN15]. See, e.g., Susan Stavert Roper et al., Collegial Evaluation of Classroom Teaching: Does It Work? 1 Educ. Res. Q. 56 (1976).

[FN16]. Simon sought and received written evaluations from those visited. Despite the time and emotional commitment involved, the participants said the process had been useful to them. The majority indicated that the process of preparing for the visits had required them to rethink class structure, a process that was carried forward for the rest of the semester. But there was one inadequacy in this process. Fried, who reviewed the forms at FPLC's request, pointed out that faculty did not complete the forms in sufficient depth to provide useful data. He suggests that schools implementing such a program emphasize the need for in-depth followup questionnaires so that more scientific research on the utility of the process can be done.

[FN17]. The reader who reviewed this paper for the Journal asked if the student body was educated adequately about the program, since the presence of a visitor "always affects class dynamics in subtle and not-subtle ways." We thought that we had provided adequate information to the students and that the frequency of visitors in all classes would decrease their effect. But Simon's recent review of teaching evaluations indicates that a number of students did not understand the system. Several students believed their teacher was being "watched." Some were pleased we had selected this teacher for scrutiny, possibly altering the students' confidence in the instructor; other students were angry that we were wasting our time monitoring this particular teacher when we should have been watching others. We think schools implementing a similar system should be clearer than we apparently were in communicating with students about what we were doing. But we believe that our system, even with this flaw, was able to meet its goals.

[FN18]. Faculty reported that being observed entailed at least three hours of meeting time (1.5 hours before class and again afterwards) and two hours preparing for the preclass meeting. Many postclass meetings lasted considerably longer than the 90-minute average. Almost half of the observed teachers met with Simon at least once more to work on course design or teaching issues. A number met three or more times and asked to have a second class observed.

The teacher acting as observer devoted three hours to the meetings and generally spent 1.5 hours talking with students and organizing observations in preparation for the debriefing. While two five-hour commitments may not seem overwhelming, it is important to note that all the work was done during a two-or three-day span. That presented some burdens and numerous scheduling problems.

The scheduling issues were well handled by our faculty secretary, who devoted almost one-fourth of her time to this work during the semester. A good-natured secretary and a reliable e-mail system would be critical to the administration of any similar program. We are grateful to Priscilla Byfield for her help and patience.

Simon devoted 10 to 30 hours per week to the program, depending on the number of visits in a week. He taught only one class during this semester.

[FN19]. We granted two waivers in the first year, both limited to a B+ mean, and one in the second. The second-year waiver was given to a course that was totally redesigned and used many of the teaching methods on which we had been working.

[FN20]. See, e.g., Keig & Waggoner, *supra* note 9, at 69-72; Peter Seldin, *Successful Use of Teaching Portfolios* (Bolton, Mass., 1993).

[FN21]. The class the visitor taught, in addition to filling a curricular need, was open to visits from all faculty. Many attended the classes and talked with Occhialino about the structure and the techniques he used. Others viewed the videotapes we made of several of the classes.

[FN22]. In an e-mail exchange on ways we might change the procedure for outside visits, Occhialino wrote:

The prearranged class visit and meeting with the teacher in advance is valuable and should continue, but a more complete evaluation might have occurred if I had been able to view a class without advance notice in addition to the planned class. Perhaps FPLC could have arranged to videotape random classes of each teacher before my scheduled class visits so that I could determine if the planned visit was atypical. The postclass meeting with students provided me with an opportunity to ask the students if the class I had watched was typical, but I would have preferred to see for myself. I might have used portions of such videotapes in my postclass conversations with the teachers to illustrate points or to raise issues for discussion.

I also think it would have been interesting if another FPLC teacher had accompanied me to each of the classes I visited and had joined me in the postclass meeting as well. This would have provided other FPLC faculty with the opportunity to

view a colleague's teaching and might have encouraged the faculty to continue cooperative efforts long after the visiting professor had come and gone. This might not work if the faculty feel less threatened by the presence of the here-one-semester-gone-the-next visiting professor than by their permanent colleagues, but FPLC had already done a round of colleague visits, so any such discomfort should have dissipated by the time I arrived.

We had done videotaping in the second round of reviews and should have made the tapes available to our visitor. We also feel we lost a significant opportunity for discussion of teaching by not assigning another FPLC teacher to accompany him. With hindsight, we believe this would have been a most productive use of faculty time and would have enhanced the effectiveness of the visit.

[FN23]. What follows is a portion of the dean's evaluation of the program.

In my mind if not in fact, the teaching effectiveness program has had at least three institutional impacts. The first is that it has literally institutionalized the importance of effective teaching, especially in the large classroom....

Second, the program has introduced to us on the faculty the existence of different teaching techniques, the value of thinking about them and trying them out, and the positive differences that changes in technique can make. In the past we have tended to take teaching for granted, not to reflect on what we do in the classroom or in preparation for it, and to clothe our complacency with self-serving skepticism about the prospective value of changing our ways. Now we know that some techniques have been shown to be more successful than others, that a body of knowledge about teaching exists and is waiting to be tapped, that there is a greater variety of techniques than we realized, and we can make systematic, continuous improvements in our classroom conduct.

The third impact is that our own teaching is now out of the closet. The rigor of requiring all faculty members not only to visit each other's classes but also to discuss the classes before and following the visits has ended a self-serving taboo. Before the advent of the teaching effectiveness program it was clearly the rule that you didn't visit a colleague's class unless invited, and invitations were rare. As dean I didn't visit classes regularly because I perceived such visits as a particularly invasive exercise of brute authority inconsistent with the first-among-equals collegiality that we preferred. The consequence of the taboo was that we didn't talk much about teaching at all, much less about our personal strengths and weaknesses. Some faculty were known by reputation as strong teachers and others, tacitly, as weak. Actual visits sometimes corrected reputations and, in instances of weak teaching, opened the way finally to diagnosis and improvement.