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A Senior Faculty Member's Favorite Sabbatical: My Teaching Sabbatical

John B. Mitchell

Warning: If you are teaching traditional doctrinal subjects and on tenure track or have received tenure and aspire to the status of full professor, stop reading. This essay is not for you. But if you are senior faculty and thus have no more (metaphorical) exams to take or report cards to receive, and you have taught basically the same course package for decades, still enjoy your students, and appreciate that you have the best job in the world, but again you've done this for so long; read on.

I had taken several typical sabbaticals—travel and research culminating in several articles and a book—and up until the last minute, my spring 2009 sabbatical promised nothing very different. And then with a single phone call, my sabbatical book project collapsed.¹ Disaster. There was nothing else about which I was passionate at that time, and it seemed stupid to arbitrarily choose a topic and then spend the next four years writing a book I didn't care about.

In the midst of scrambling desperation, the idea of a sabbatical focused not on a scholarly project,² but on my primary teaching focus (Evidence) emerged.

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1. I'd planned to write a book about the trial of the descendants of Fletcher Christian of Mutiny on the Bounty, famed for sexually initiating young women at the ages of 12 or 14. See Neil Tweedie, Pitcairn Island Mayor Found Guilty of Abusing Young Girls, Financial Times Informatory, Western Mail, Oct. 26, 2004 at 9. It had it all—literary caché, cultural relativism, legal jurisdiction (Pitcairn is a tiny rock of an island in the middle of endless ocean with 47 inhabitants, most of whom speak a form of 18th century English. What right do the British have to try its inhabitants?), the sexualization of Polynesian women by western culture, and more. As I found out after months of research and travel planning, however, it also was the topic of a soon-to-be released book by an Australian news correspondent who had attended the trial. I got a pre-publication copy of the book and though I think I would have written a somewhat different and better book, it wasn't bad at all, and the world certainly didn't need another book on this topic.
2. For an excellent article also offering a non-scholarship context for a sabbatical in which the authors encourage clinical, skills, and legal writing professors to spend their sabbatical in actual legal services law practice, see Suzanne Rabé & Stephen P. Rosenbaum, A "Sending Down" Sabbatical: The Benefits of Lawyering in the Legal Services Trenches, 60 J. Legal Educ. 296 (2010).

The end product would be to totally rethink/reconceptualize the Evidence course I had taught for almost two decades. Of course I knew that sabbaticals were expected to result in scholarship. But I was 65 and a full professor. What the heck? Interestingly my dean and associate dean were both extremely enthusiastic about the new direction I proposed for my sabbatical.

The Plan

I envisioned a five-step process for my “teaching sabbatical”:

1. Identify a few professors around the country who are using pedagogies in their Evidence classes which seem interesting;
2. Contact each professor; obtain their agreement for me to watch a week of their Evidence class; arrange the week I would visit; get a copy of the syllabus so I could read the assignments and would understand that the classes I would be observing within the context of the full course;
3. Visit a week of each of the professor’s classes;
4. Meet with the professor during that week to discuss their view of teaching and the direction and nuances of various aspects of evidence doctrine; and
5. Return back home and reconceptualize my class.

The Execution

After some thought and research I selected three professors. Each had published an Evidence textbook, and each used a teaching methodology I found intriguing. George Fisher (Stanford) incorporated movie clips into his classes; Steve Friedland (Elon) exclusively employed a problem method; and Dan Capra (Fordham) lectured. All three responded positively to my request to watch a week of their Evidence class. At this initial stage, I don’t think I had very high expectations for what this project of mine would yield. But once I sat in my first class, I knew this was special. In the end, it was my favorite sabbatical.

The Evidence courses at both Stanford and Fordham were huge classes in enormous amphitheater-like classrooms. From my view in the back row I could see the entire class dynamic. Interestingly, the majority of students did not use laptops, and of those who did, I don’t think I saw more than three to four Web surfing over a week of classes at both Stanford and Fordham combined. Elon was a class of about 50, and because I was playing a client or opposing counsel in a series of role plays, I sat in front of the class next to Friedland.

I cannot fully convey what a pleasure it was watching really good teachers sequence and present doctrinal material with which I was familiar. Dan Capra’s lectures were simply extraordinary—clear, rich with policy analysis, spiced with the “back story.” From conversations with the students during my weeklong visit, it was clear that they found Capra’s lectures as interesting and thought provoking as I did. Steve Friedland was masterful using problems.

Often, the problem method is used to guide students in the application of doctrine. Friedland did some of that, but also took it further by expanding the problem to a broader lawyering context where strategy and judgment were required in addition to doctrinal mastery. The hyper-interactive classroom dynamic resulted in broad, enthusiastic participation. George Fisher taught 170 students who were taking Evidence as an elective. Some of his pedagogy appeared in part to be calculated to the overwhelming size of the class. Thus, in every class a pre-assigned group of 15 to 20 students knew that they could be called on and asked to assess the assigned hypotheticals (generally incorporating video clips from movies). It was two other aspects of Fischer's pedagogy, however, which really caught my attention. First, throughout class discussion he used the overhead, showing flow charts diagramming the area being covered and regularly going back to the charts throughout class with a magic marker to indicate the place where the most recent class discussion/analysis fit on the chart. Second, he gave regular feedback by assigning weekly hypotheticals from his text, requiring a written analysis from each student, and then providing a model answer when the papers were submitted. (My understanding was that he didn't grade the papers, but logged in that the work had been done.)

In short these were three fabulous teachers with three very different pedagogical approaches to the material. Yet, as one might expect, all three shared some fundamental characteristics. They were extremely well prepared, had carefully planned the class structure and flow, but were flexible enough to deviate a bit if an opportunity arose, totally knew their stuff, had good senses of humor, showed complete respect towards their students and throughout, projected what I can only term a sense of bemusement reflecting that they truly enjoyed and got a kick out of their students.

The Conversations

I meet with each professor several times over the week of classes. Some of our conversations took place at breakfast or lunch, and one was held over dinner. We talked about Evidence doctrine and upcoming issues. We talked about teaching Evidence and teaching more generally, about the current generation of students compared with those of a decade ago, about our law school professors, and our careers as practicing attorneys. We talked about family, children, grandchildren, aging and deceased parents, and our own aging. We talked geopolitics, law school politics, and about our roles as mentors at this point of our careers when we no longer were making careers. In sum, it was an amazing, irreplaceable experience for me to share such personal and intellectual intimacy with these three people who are my peers.

The Aftermath

When I returned, I began outlining, making lists, scribbling on restaurant napkins. I was excited about how I was going to change my class. And change it I did. While no text could begin to reflect the richness of Dan Capra's

presentations, I found a textbook that was more like a medical than law text. Completely didactic. No cases (except when referred to in examples of doctrinal application), and no notes or questions. Every word intended to guide the students' understanding of doctrinal evidence as it plays out in practice.³ The result of using this text was that I was free to spend less time explicating doctrine and focus more on how advocates actually use evidence. I'd always used a number of problems in the course, having my students work in "firms," getting on their feet to argue various evidence issues and even putting witnesses on the stand to lay evidentiary foundations. But after watching Steve Friedland, I decided to use advocacy problems/hypotheticals as my principal teaching materials. (Friedland was also gracious enough to "loan" me a number of excellent problems).⁴ Finally, I also decided to incorporate George Fisher's use of overheads to map the location of a particular discussion within a broader substantive context, as well as the importance he placed on providing regular feedback. Instead of written answers to hypotheticals, however, I chose to use eight ungraded online multiple choice quizzes where I provided explanations. The web feature of the quizzes allows me to assess individual as well as overall group responses to each question, and therefore gives me the opportunity to address common misconceptions in class as well as identify individual students who are having difficulties.

I've just started my fourth semester teaching my brand new class. I'm having fun and am energized. And the students? They love the book; they really like learning Evidence in an adversary context. Their final exams also were discernibly better than those of previous classes I've taught (and no, neither the exams nor my grading has become any easier).

Final thoughts

Senior faculty, trust me; do this if you can. It's as close to a magical experience as I've ever had in academia.⁵

3. See Deborah Jones Merritt & Ric Simmons, *Learning Evidence: From the Federal Rules to the Courtroom* (West 2009).
4. I put all my materials on a website, organized by "lessons." Each lesson assigned readings from the text, and had links to the applicable Federal Rules of Evidence, cases if any (I only use eight cases throughout the course; and when I do, I specify the pages for student focus), charts or diagrams, and hypotheticals.
5. But what if you just can't get away for a whole semester? Then go for two weeks and watch at least two different professors. Some colleague(s) can cover one week of your classes, and you can make up the other. Or schedule one of the weeks during your spring break at a school that has a different time for their break.