

Writing (and Re-Writing) Federal Criminal Law—in the Classroom

William W. Berry III*

Tell me and I forget. Teach me and I remember. Involve me and I learn.

— Benjamin Franklin

I. PEDAGOGICAL FRAME

At the heart of any good pedagogical approach is a focus on engaging and motivating students. This applies even to the most interesting subjects, such as federal criminal law classes.¹ In five years of teaching law, I have discovered two important ways to engage students: (1) demonstrating enthusiasm for the subject matter, and (2) taking student work seriously—perhaps more seriously than they anticipate or even desire.²

And enthusiasm goes only so far. So, what will make a student push him or herself to produce their best work? The simple answer is an audience.³

II. CLASS STRUCTURE

As an upper level writing seminar, my federal criminal law class had to, by definition, achieve two separate goals: (1) teach students the subject matter of federal criminal law and (2) improve the students' writing skills.

These classes are important in our curriculum because they provide intense, individualized faculty feedback on student writing. In my experience, the two most significant (and perhaps difficult) skills a student must master in law school are the ability to apply law to facts and the ability to write well. In this class, I endeavored to focus carefully on developing both skills.

Because the seminar met once a week for two and a half hours, I separated the

* Assistant Professor and Beccaria Scholar in Criminal Law, University of Mississippi. I would like to thank Ellen Podgor for organizing this symposium, as well as my former federal criminal law students who made the class a joy to teach.

¹ It is, of course, quite common for a professor of a subject to find it quite interesting, even if others might find it quite boring.

² I am indebted to my former law school dean and professor, Kent Syverud, for this lesson. See Kent D. Syverud, *Taking Students Seriously: A Guide for New Law Teachers*, 43 J. LEGAL EDUC. 247 (1993).

³ See, e.g., Patrick T. Terenzini, et al., *Students' Out-of-Class Experiences and Their Influence on Learning and Cognitive Development: A Literature Review*, 40 J.C. STUDENT DEV. 610, 619 (1999) (observing that "the most powerful source of influence on student learning appears to be students' interpersonal interactions, whether with peers or faculty.").

course into fifteen topical modules.⁴ For the first hour each week, I covered the black letter law for the module. During the remaining hour and a half, we engaged with the material in its application, using student writing as our tool.

Each week, three students had to write short papers (5–7 pages) answering an assigned question. The questions were open-ended enough to allow students to express their own opinion, but focused enough to require them to grapple with the inherent tensions and underlying policy in the doctrine.

I then assigned one of the three papers to each of the other (non-writing) students in the class. These reviewers were to assess the short paper both for the strength of its substance and the quality of the writing. This included editing and commenting on the short draft.

After summarizing the argument advanced by the student in his or her paper, I asked the reviewers to comment on the substance of the argument before opening up the discussion to the class as a whole. When I had chosen a good topic, this discussion often cascaded into engaged debate among the class concerning the persuasiveness and the scope of the thesis advanced.

After exhausting the substance, I shifted the discussion back to the writing itself. During this portion of class, students assessed the quality of their classmates' writing, providing both structural and grammatical critiques. Finally, I concluded the discussion by using the overhead projector to present my comments and edits. In doing so, I demonstrated to the class where I thought the student's writing could use improvement. By using track changes to highlight all of the errors, I likewise emphasized the importance of attention to detail and proofreading.

Over the course of the semester, each student wrote two short papers, and then revised one of the papers and extended its scope and length to ten to twelve pages for the final class paper.

As I had not used this approach before, I discussed it informally with several students prior to the semester who had signed up for the class. In doing so, I discovered a high level of trepidation related to the "public," in-class review of student papers.

To set the tone and remedy this fear, I prepared one of the three papers for the first week, using the first draft of an argument section of a law review article I was writing. The students enjoyed the opportunity to critique and edit my work. It helped create a more collegial tone that set the stage for the semester.

During the semester, I also had to balance my criticisms of student work with some positives so that my critiques would be constructive and not crushing. To that end, I carefully concluded my review of each student's paper by highlighting the strengths of the paper and slightly downplaying the overall shortcomings that I

⁴ The modules were Federal Criminal Jurisdiction, Mail Fraud and Wire Fraud, Extortion and Political Corruption, Bribery, Drugs, Money Laundering, Guns, Conspiracy, Organized Crime, Securities Fraud, Sentencing, Pleas and Prosecutors, Perjury and False Statements, Forfeiture, and Obstruction of Justice.

had highlighted in front of the class. We then applauded the student, which eased the blow (somewhat) of seeing a multitude of red marks, comments, and edits on their paper.

III. CLASSROOM OUTCOMES

Given the bifurcated goals of teaching the substantive material and improving student writing, it is worth examining the strengths and weaknesses of this pedagogical approach through these two distinct lenses.

From the perspective of substantive federal criminal law, my assessment was that students' memorization of the black letter law as a whole was perhaps less than it would have been in a class with a final examination.⁵ Interestingly, though, the ability of students to apply the concepts covered in class was much stronger, in my estimation, than it would have been in a typical large class setting.

The students who wrote the short papers had to, by the nature of the questions asked, probe further than they might be initially inclined to respond intelligently to the prompt. The reviewers, who knew that they had to respond publicly to a classmate's work, also went far beyond the assigned material to assess whether they agreed with their peers. This somewhat surprising development was a welcome one—students engaging in independent research in order to challenge the claims advanced by a classmate in a short paper.

In other words, positioning students as peer reviewers had the effect of enhancing the reviewing students' learning by requiring them to think deeply and critically about the federal criminal law question posed. This became particularly rewarding where the reviewing students staked out their own claims and then took advantage of the opportunity to debate their classmates. At the end of the semester, the students' deeper understanding of the inherent doctrinal and policy tensions and their ability to develop arguments as to the proper scope of the cases far outweighed, I believe, any potential gaps students might have had in their knowledge of black letter law.

As to the writing, the results were even better. The progress the students made in developing their writing skills was both surprising and refreshing. In particular, the critiques I gave each week helped to develop a distinctive writing culture in the class such that students began to point out similar shortcomings in their classmates' writing and minimize the same errors in their own papers.

Likewise, requiring students to edit each other's work on a weekly basis started to demonstrate many of the common errors inherent⁶ in student writing as

⁵ I think this is the nature of paper classes more generally. The ability of an examination to coalesce and cement a student's knowledge of a particular area is lost when there is no final examination.

⁶ Typical student shortcomings include use of excessive background material, making overly broad and vague arguments, proposing solutions that do not solve the problem posed, excessive use of the passive voice, and generally failing to translate otherwise good ideas from their mind to their written work product.

well as illustrate the virtues of good writing and proofreading. By challenging students to rigorously evaluate the writing of their classmates, they started to apply the same intensity of review to their own work.

Each week, the overall quality of the writing, for the most part, improved. And there was a clear difference in the quality of the first and second short papers submitted by individual students. Lastly, the final, longer papers comprised the best set of seminar papers I have graded as a professor.

Despite its success in improving student writing, there are two potential issues worth considering in replicating this approach. First, the success of the rigorous approach to writing requires complete student buy-in; without a highly motivated class, the likelihood of second and third year law students demonstrating the work ethic required to improve their classmates' writing as well as their own is low, particularly in light of all of the many other demands upon their time.

Interestingly, I think this is where knowledge that there would be an audience each week in class, either to see how the professor critiqued the paper in front of the class or to hear what your classmates thought of your paper, motivated the students in a way that most other tools cannot. Appearing eloquent and capable in front of one's colleagues is apparently an important concern for the current generation of law students.

Second, the downside to this approach is the amount of extra time involved for the faculty member. If one is not careful, the amount of time spent editing, critiquing, and developing student writing can amount to adding another class to one's teaching load.

Nonetheless, from my perspective, it was certainly worth the effort to see the significantly improved written work product.