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## Teaching Criminal Law

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## TEACHING CRIMINAL LAW

JOHN KIP CORNWELL\*

### I. INTRODUCTION

I have always believed that teaching is most effective when it engages both the mind and the heart. It must also be both accessible and challenging to all students, a goal that poses a special challenge in first-year courses in large law schools such as mine, where students' preparation and affinity for the study of law covers a broad spectrum. To maximize results, we must be sensitive, not only to the advantages and vulnerabilities that each student brings to the table, but also to the different ways in which students learn, both individually and collectively. In the pages that follow, I will explain how I endeavor to engage students' minds and hearts in Criminal Law. While there is a certain artificiality in treating these two dichotomously, I will do so for purposes of clarity and organization.

### II. ENGAGING THE MIND

#### A. *Clarity and Context*

There are two characteristics of effective teaching that are necessary to enhance the learning of all students, no matter who they are and what their educational background might be: clarity and context. Clarity of explanation, described by some commentators as the "most important requisite of effective teaching,"<sup>1</sup> is sometimes mislabeled "spoon-feeding" by some law faculty who dismiss it accordingly. Nothing could be further from the truth. Clarifying difficult principles of law by synthesizing or recapitulating case law is necessary to allow students to gauge their progress in reading and to understand cases both individually and as part of a conceptual whole. Of course, a professor can undertake this process in a manner that requires no intellectual engagement by the students, but this is true of most any topic in any course without regard to clarity.

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1. Rogelio Lasso, *From the Paper Chase to the Digital Chase: Technology and the Challenge of Teaching 21st Century Law Students*, 43 SANTA CLARA L. REV. 1, 39 (2002).

I also believe that students' understanding of the material is incomplete if not placed in appropriate context. While others have lauded the benefits of relating classroom learning to practice "in the real world,"<sup>2</sup> the "context" that I refer to is different: It concerns the historical or geopolitical context in which the law evolves. For example, as a prelude to strict liability, I discuss the changes brought about by the Industrial Revolution. This introduction serves a variety of purposes. First, and most obviously, it provides a context for the "public welfare" cases our textbook starts with, for example *United States v. Balint*,<sup>3</sup> *United States v. Dotterweich*,<sup>4</sup> and *United States v. Park*.<sup>5</sup> Likewise, it provides important background for our analysis of later cases, such as *Liparota v. United States*<sup>6</sup> and *United States v. X-Citement Video, Inc.*,<sup>7</sup> as we fine-tune our understanding of what "public welfare" means or should mean today.

Contextualizing the law serves higher-level purposes as well. It reinforces students' understanding that laws and legal doctrine are not created in a vacuum. In my experience, students tend to have too little appreciation of this fact; they are content to "learn the law" without inquiring into where it came from and why. It is our job, in my opinion, to provide the broader picture that few casebooks do.<sup>8</sup> When teaching homicide, for example, I always start by looking at modern statutory provisions and comparing them to those that have not been updated. This method gives me the opportunity to discuss external factors that help explain the contemporary changes in the law. For example, the evolution of vehicular manslaughter offenses and the corresponding increase in penalties for alcohol-related homicide allows a discussion of the highly effective lobbying efforts of Mothers Against Drunk Driving (MADD). This discussion not only provides a better appreciation of statutory change, but it also provides an accessible reference point for students that promotes their assimilation and retention of the material.

Finally, context facilitates a discussion of the "larger" issue of the degree to which historical antecedents that influenced the creation of legal doctrine retain their relevance with the passage of time. For example, to what extent should a federal common law of strict liability for "public welfare" offenses be

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2. See, e.g., Deborah Maranville, *Infusing Passion and Context into the Traditional Law Curriculum Through Experiential Learning*, 51 J. LEGAL EDUC. 51, 56-57 (2001).

3. 258 U.S. 250 (1922).

4. 320 U.S. 277 (1943).

5. 421 U.S. 658 (1975).

6. 471 U.S. 419 (1985).

7. 513 U.S. 64 (1994).

8. One notable exception is the textbook on Constitutional Law by Paul Brest and others. Unlike most texts in this area, Professor Brest and his co-authors organize the materials chronologically so that students understand the historical events that undoubtedly shaped the evolution of federal constitutional doctrine. PAUL BREST ET AL., *PROCESSES OF CONSTITUTIONAL DECISIONMAKING: CASES AND MATERIALS* (4th ed. 2000).

influenced by its genesis in post-Industrial Revolution statutory enactments? Can an understanding of public welfare for strict liability purposes incorporate modern dangers, such as child pornography, that were not recognized until the latter half of the Twentieth Century? Placing historical context in the forefront of the analysis adds dimension to this discussion that is ultimately more satisfying for both the students and the instructor.

*B. Recognizing Diversity in Learning Styles*

Context and clarity, while important, are insufficient in isolation to engage the minds of all students. Effective teaching must take account of the different ways in which students learn. While much has been written on this topic, it is the inventory proposed by David Kolb that resonates most strongly with me. Kolb postulates that there are four types of learners, whom he labels “convergers,” “divergers,” “assimilators,” and “accommodators.”<sup>9</sup> The groups have distinct strengths and weaknesses and process information in differing ways. Because each entering class of law students contains all four types of learners, it is important that we teach in a manner that calls upon the strength of each student so as to allow them to gain confidence in their ability to master the material while at the same time developing those skills that might be the hardest to master based on their learning profile.

To illustrate the implications of this variation in learning styles, it is useful to first describe each type of learner and then explain how the manner in which I teach Criminal Law endeavors to accommodate each student. I will again use the example of strict liability to accomplish this point.

Kolb characterizes convergers as preferring concrete, as opposed to abstract, analysis. As such, their strength lies in the practical application of ideas.<sup>10</sup> Engineers, Kolb notes, are typically convergers.<sup>11</sup> By contrast, divergers are highly imaginative and, as such, are best at brainstorming.<sup>12</sup> Students attracted to the humanities and liberal arts are typically divergers.<sup>13</sup> Assimilators, on the other hand, specialize in logic and inductive reasoning and, thus, tend to be attracted to mathematics and the sciences that rely on their affinity for the creation of theoretical models.<sup>14</sup> Accommodators differ sharply from assimilators. Accommodators are intuitive and quick-witted, but sometimes they are impatient problem solvers who favor trial-and-error

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9. Donald M. Wolfe & David A. Kolb, *Career Development, Personal Growth, and Experiential Learning*, in ORGANIZATIONAL PSYCHOLOGY: A BOOK OF READINGS 535, 542-43 (David A. Kolb et al. eds., 1979).

10. *See id.* at 542.

11. *Id.*

12. *Id.*

13. *See id.*

14. *See Wolfe & Kolb, supra* note 9, at 542.

methodologies. They are risk-takers who are attracted to business professions such as sales and marketing.<sup>15</sup>

For my teaching, the principal utility of those distinctions is not to categorize any given student as one type of learner or another. Indeed, it seems likely that most would manifest more than one learning style, even if one category predominated for a particular individual. The point is, rather, that in a large class we can expect that the students will process information in fundamentally different ways, roughly in the manner identified by Kolb. As such, our teaching methodology must reflect this diversity for a number of reasons.

First, each of the particular skills identified previously is important in legal practice. Faced with a novel legal problem, a practitioner should be creative enough to devise a number of plausible options, logical enough to construct relevant theoretical models, practical enough to apply those models accurately, and persuasive enough to win the case. Second, inasmuch as a student excels naturally at one or more of these skills, we would want to give her the chance to demonstrate this talent so that she builds confidence in her ability to lawyer. At the same time, we must help students to develop those skills for which they have a less natural affinity. To achieve this, it is important, as we get to know our students in the course of the semester, both to allow them to contribute when the task at hand calls upon their strength and to require them to participate when the problem is one with which they are less comfortable. While the latter might be a struggle, I find that students who have previously contributed effectively in class are sufficiently empowered to make them receptive to the challenge.

To illustrate my attempt to make operational Kolb's model, I return to strict liability. After placing the topic in context,<sup>16</sup> I typically present a problem, purposely exaggerated, that goes something like the following narrative:

Billy has a fever of 102 degrees. His mother purchases Children's Tylenol from the local drug store and carefully measures out an appropriate dose. Billy is soon asleep. Two hours later, when she checks on him, Billy is non-responsive. She rushes him to the hospital where testing reveals that Billy's blood contains high levels of morphine. When the remainder of the bottle of Tylenol is tested, it is determined to be pure morphine. How can we best prevent this sort of tragedy from repeating?

This introductory problem requires students to think creatively about the full range of legal options available—administrative, regulatory and criminal. As such, it complements the strengths of the diverger who is most comfortable “brainstorming.” My goal is to identify the various avenues down which we

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15. *See id.* at 542-43.

16. *See supra* notes 1-9 and accompanying text.

may travel, and the pros and cons of each. Ultimately, students are typically persuaded that the criminal law is an important adjunct in the remedial process.

Having reached that point, the next stage of the analysis requires the students to determine whom prosecutors should charge and what to charge them with. Answering these questions calls upon the interplay among the circumstances surrounding Billy's ingestion of the morphine, the parties who produced or contributed to those circumstances, and the policy objectives promoted by the actions taken. To the extent that consideration of potential defendants relies on intuitive reasoning that excludes individuals based on trial-and-error, this process favors the accommodator. The diverger is likely also to enjoy the creativity inherent in identifying potential prosecutorial targets and assessing the benefits of proceeding against them.

When we determine that it might make sense to go after high-ranking corporate officers, I ask the class to devise an appropriate liability standard. By focusing on the creation of theoretical models, this exercise is the province of the assimilator. By contrast, convergers and accommodators tend to struggle more with the abstraction inherent in this type of endeavor. It is important, though, for all students to grapple with problems of this nature because legal analysis is inevitably more than a concrete application of facts to standards or a process whereby the answers will emerge through trial and error.

The resistance of convergers and accommodators usually results in an initial stab at the problem that is largely unsatisfactory ("You should be liable if you have an important position in the company."). This is likely born of impatience<sup>17</sup> in the case of accommodators, and intellectual resistance<sup>18</sup> on the part of convergers; however, as discussed above, it is important that they not be let off the hook. Follow-up questioning, tailored to their particular weakness, can help develop these sorts of skills more completely. For example, an accommodator who responds too quickly might be encouraged to "slow down" and think about the positions different corporate officers might occupy in the company and how that should influence their liability. Convergers' resistance to abstraction, by contrast, can be addressed by moving them away from concrete analysis incrementally through a series of questions. For example, the instructor might begin by asking the student to think about two specific officers: the Chief Executive Officer (CEO) and the Chief Financial Officer. How do their responsibilities differ? What do those differences suggest about the liability of each for what happened? After the student concludes that only the CEO should be held responsible, the instructor might then ask her to formulate a theory of liability based on her reflections and observations. While this process might take some time, it is necessary to help students learn to think and to process information in a way that might be

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17. Wolfe & Kolb, *supra* note 9, at 543.

18. *Id.* at 542.

quite alien to them. As the semester wears on, they should become more accustomed to this type of analysis and thereby need less prompting.

After the students have developed a theoretical model to govern potential criminal liability, we turn to the cases and commentary. This stage is an opportunity for convergers to shine as they expound upon the relevant facts and holdings. This endeavor typically proves much more difficult for divergers, who might be interested in facts or issues that are tangential to the case or to the court's reasoning. In truth, however, *all* students, regardless of learning style, need practice learning how to read cases during their first year of law school.

Because of our previous discussions, we are able to enhance this process by relating the holdings back to our model to determine the extent to which the two fit together. Inasmuch as there are differences, I ask the students to comment on which approach is better from the standpoint of fairness and our goal of diminishing future threats to health and safety. By pursuing these different lines of inquiry, I hope to hone the students' analysis of cases, comparative legal doctrine, and public policy and to help them see the interconnectedness of all three.

### C. *The Impact of Technology*

To be effective, teaching must take account not only of differences in learning style, but also of the way in which electronic technology has impacted each students' processing of information. Rogelio Lasso has commented in this regard, that whereas text-based learning is fairly static, "[s]creen-based literacy is 'abstract, textual, visual, musical, social, and kinesthetic.'"<sup>19</sup> This revolution in information technology exhorts instructors to use teaching methods that are likewise more dynamic and allow students to use all of their senses—visual, aural and even haptic<sup>20</sup>—in perceiving and processing information.

Textual analysis is necessarily part of this process. Thus, I also spend a fair amount of time teaching students how to read a statute, because this is a fundamental skill that they will need to master both to pass the bar and to practice law successfully, regardless of the practice area they choose. Learning statutory construction need not be dry and tedious, however. To make it more accessible, I include fact patterns drawn from the news or popular culture. For example, at the beginning of Criminal Law, when we are exploring the parameters of the act requirement, I distribute California's stalking statute,<sup>21</sup> along with facts derived from the O.J. Simpson case. We begin by parsing the

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19. Lasso, *supra* note 1, at 23 (quoting John Seely Brown, *Growing Up Digital: How the Web Changes Work, Education, and the Ways People Learn*, CHANGE, Mar./Apr. 2000, at 12).

20. *Id.* at 11.

21. CAL. PENAL CODE § 646.9 (West Supp. 2004).

meaning of the statute—the language of which is gloriously convoluted—and mapping out which section modifies or relates to which other section. After understanding how the law works, we then turn to the facts, which are purposely written to create arguments on both sides as to the defendant's potential guilt or innocence. Afterwards, students can rely on these examples to explore whether a broadly written stalking statute, such as California's, "pushes the constitutional envelope" by blurring the distinction between acts and thoughts and what the legislature's policy reasons might have been in drafting the statute as it did.

I find that blending legal doctrine and popular culture can be very effective. For example, after introducing the Model Penal Code's categories of culpability and rules governing the distribution of mens rea terms in a statute, I hand out a statute I created that criminalizes the destruction of state property. The statute contains various mens rea elements that the class must allocate appropriately under the rules at the outset. After doing so, they read comments, written in character, of four of the principals from the popular TV program "Roseanne."<sup>22</sup> Each character manifests a different state of mind with respect to his or her conduct in damaging the property at issue. I then ask students to determine which of the four characters is guilty based on their comments and the mens rea requirements of the statute. I find this exercise is very useful in getting students to think through and apply the different rules and culpability categories, and the accessible context makes the exercise fun for them.

As the foregoing suggests, I find problems an extremely useful part of my teaching and I use them regularly throughout the course. Hypotheticals alone are insufficient, however, to promote the dynamic learning that students need to achieve at their highest level. Not only are students accustomed to learning in a more multi-dimensional fashion, but not all students will glean information most effectively from printed materials. Thus, I try to incorporate other modalities into the classroom experience.

For example, because many students grasp material most effectively when it is presented visually and kinesthetically, I conduct a live-action, interactive review at the end of our lengthy section on homicide. I begin with stuffed animals—Winnie the Pooh one year, Tigger or a Teletubbie the next. I will utter a phrase ("Die, Pooh, die!") and throw the animal against the wall, "killing" it. I will then ask the students to contrast what they have just seen with the next "scene." In this snippet, I will use a different animal and engage in a dialogue with it in which I am pushing it ever closer to the edge of a steep cliff. I take care to note that I do not want it to die, but that I am interested in seeing how close to the edge I can push it without causing it to tumble over the edge. Inevitably, the animal falls over the cliff to its death. The students will

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22. *Roseanne* (ABC television series, Oct. 1988–May 1997).

recognize the first incident as murder and will have a robust debate as to whether the circumstances could support a murder one charge. The second exercise stimulates a discussion of depraved-heart murder with a particular focus on how substantial the risk was and the relevance of my conduct immediately following the tragedy (for example, strenuous efforts to save Pooh from falling off the edge versus indifferent inaction).

I also involve the students directly in the exercise. For example, at the beginning of the class, I hand a sealed envelope to a pre-selected student and instruct him or her to open it when cued and to read aloud (and with emotion!) what is written on the note card inside. At some point during the hour, I will then say: "Hey, Bill/Suzy, do you have something to say to me?" At this point, they open the envelope and read the printed message, which might be: "Professor, I want to tell you that I am sleeping with your wife," or "Professor, did you know I'm the one who pushed your granny down the stairs?," or "Professor, you want a piece of me? Bring it on, unless you're too weak or afraid." Upon hearing the statement, I take a (toy) pistol out of my pocket and shoot the student dead. This, of course, reviews the materials on common law voluntary manslaughter, modern statutory modifications to the common law rules, and the Model Penal Code approach in this area.

Likewise, to review felony murder, I have a group of students enact a brief skit that I have prepared in which they play the roles of felon, co-felon, storeowner, customer and police officer. By portraying different versions of the crime in which the identity of the shooter and the victim changes, I am able to review a number of core concepts, including causation, agency and the *Redline* limitation.<sup>23</sup>

I have found during the years that students not only enjoy the interactive review but that many report that, two or three years later when they are preparing for the criminal law section of the bar exam, it is this part of the course that they remember most vividly. Their recollections, moreover, aid their review of the material, suggesting that they recall more than having fun with stuffed animals and toy pistols one spring day in class. This result underscores Professor Lasso's belief that today's law students tend to be predominantly visual learners.<sup>24</sup>

The fact that many students might have a visual orientation to learning has inspired me to use visual exercises not only for review, but also when initially introducing a concept. For example, I find that students often struggle conceptually with the mens rea requirement of attempted crimes. My text focuses on one case in this area, *State v. Lyerla*,<sup>25</sup> in which the Supreme Court of South Dakota finds that the crime of attempted depraved heart murder is a

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23. See *Commonwealth v. Redline*, 137 A.2d 472 (Pa. 1958).

24. Lasso, *supra* note 1, at 29.

25. 424 N.W.2d 908 (S.D. 1988).

logical impossibility.<sup>26</sup> A dissenting judge disagrees, as do a minority of states.<sup>27</sup> To illustrate the justices' reasoning, I bring a child's "Cozy Coupe" (for example, a "Fred Flintstone" car that is a staple in most homes with young children) into class and place a driver and passenger inside (two stuffed animals, of course). I then place the car at the top of the stairs and tell the class that I think it would be "cool" to see how fast the car can careen down the stairs, "though I hope no one gets hurt too badly." After the car tumbles down the stairs, I run down and find the two ejected passengers lying on the ground. I tell the class that one has lived, but that the other one did not survive.

The students generally believe that I should be guilty of depraved-heart murder for the death, but should I be guilty of attempted murder for the passenger who lived? The discussion that follows tracks that of the majority and dissent in *Lyerla*. Interestingly, though, many students who had difficulty conceptualizing those same arguments when they read the case now report that they have a much clearer understanding of what the justices were saying. "Seeing" the case cemented their understanding.

Finally, I sometimes find it useful to reorganize or restructure materials in a more student-friendly format. This, too, can be accomplished in a way that taps into different modalities while complementing diverse learning styles. For example, I find that my text's treatment of self-defense to be difficult for students inasmuch as different portions of the standard are introduced at different times. To help consolidate their understanding, I distribute a three-by-four grid that asks three questions: Was the defendant's use of force actually necessary? Did the defendant honestly believe he needed to use force? Was the defendant's use of force reasonable? The constellation of yes-and-no answers to these questions produces four possible answers, one for each column: the conduct is justified, the conduct is excused, the defendant's criminal responsibility is mitigated, and the defendant is guilty as charged. This presentation of self-defense pulls together several of the analytical strands developed in the text and gives students a different "look" at the material that is particularly useful for those with a spatial orientation to learning.

### III. ENGAGING THE HEART

While engaging the mind is any professor's top priority, teaching is only maximally effective, in my opinion, when it also engages the heart. When some use this term, they reference primarily the instructor's creation of an emotional connection between the students and the material.<sup>28</sup> While I agree

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26. *Id.* at 911-13.

27. *See id.* at 913-15 (Sabers, J., dissenting).

28. *See, e.g.,* Alice M. Thomas, *Laying the Foundation for Better Student Learning in the Twenty-First Century: Incorporating an Integrated Theory of Legal Education into Doctrinal Pedagogy*, 6 WIDENER L. SYMP. J. 49, 93 n.209 (2000).

that this is an important aspiration, it is for me only part of the equation. Of equal, if not greater, importance are the professor's communication of passion for and about the material and the personal connection he or she forges with the students.

Passion for and about course material is essential in fostering "intellectual excitement" in students.<sup>29</sup> The way in which an instructor conveys this passion is dependent on the nature and format of the course and the professor's connection (or lack thereof) to the content of the course. For example, if I am teaching a seminar course in my specialty area, passion flows naturally from scholarly production. In addition, because the course is an upper-level elective chosen by the students, most of the students are inherently interested in the topic at the outset, making it easy to generate intellectual involvement.

In a large, first-year required lecture course like Criminal Law, the context is decidedly different. While the budding prosecutors and criminal defense lawyers might enter the classroom on the first day with enthusiasm and zeal, others might be drawn far less to the material, or even turned off by it. My goal is, simply put, for every student to enjoy the course. I do not expect—or even hope—that all will decide to pursue a career in the criminal field; instead, I want them to look forward to coming to class while, at the same time, feeling intellectually challenged by the experience.

I use certain guiding principles to achieve these goals. First, I infuse my teaching with lots of energy. If the professor does not appear energized, he or she cannot expect the students to be energized. For me, energy translates into volume and movement. With respect to volume, while I do not believe that instructors need to shout, I do find that students are more attentive when the sound "surrounds" them. Thus, if an instructor is soft spoken, I would strongly recommend electronic amplification, preferably with a lapel microphone that does not hinder mobility.

Movement is, in my opinion, vitally important in creating a sense of classroom cohesion. Thus, when teaching a large class like Criminal Law, I move around the classroom continually, both side-to-side and up and down the stairs. While students sitting in the corner of the back row might be a bit disarmed at first when you are standing next to them, your presence in all parts of the classroom signals that students in the back row will play just as much of an integral a role in the classroom experience as those in the front or the middle of the room. It erases completely the idea that a student can "hide out" in the back or that the professor does not engage all parts of the classroom equally.

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29. See JOSEPH LOWMAN, *MASTERING THE TECHNIQUES OF TEACHING* 20-26, 31 (2d ed. 1995); see also Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75, 104 (2002).

Likewise, I rely on a variety of techniques to ensure that all students are attentive and participatory. First, I call on students randomly. If students believe that they might be called on at any time, they usually make sure they are prepared. Second, I call on many students during each class meeting. While some instructors call on a few students and stick with them for some time, I tend to do the opposite; I call on a great many and question them for a relatively short period of time. This approach promotes my objective of engaging the entire class in the learning process. It also further enhances preparation and attentiveness, since each student knows that he or she stands a fairly good chance of being called on every class. I will, on occasion, take volunteers, but I prefer not to rely on this method of Socratic dialogue because, in my experience, class sessions can quickly devolve into a conversation between the professor and a small handful of highly participatory students. When this happens, the rest of the class will rapidly “tune out” and glean little from the exchange.

My method does require students to participate, and some might be less comfortable than others doing so. To diminish anxiety, I explain in the first class that my purpose in calling on them frequently is to involve them in the discussion, not to evaluate their performance. I also remind them that they will generally not be “on the spot” for a long period of time. I invite them to come see me if they are uncomfortable with this approach. In my ten years of teaching Criminal Law, it has never happened.

In addition, when calling on students, I am always mindful of the “four corners” of the classroom. In a large lecture hall, where first-year classes like Criminal Law are usually held, it is a challenge to keep all students engaged throughout the sixty or ninety minutes. One technique that aids in this effort is to constantly move the discussion from top to bottom and side to side, thereby engaging all four corners of the classroom at all times. If, therefore, I have called on a student who sits in the bottom right-hand portion of the room, I will next choose someone who sits far away from her, perhaps in the upper left-hand corner. In this way, the conversation envelops the room, making everyone feel they are a part of the conversation. Conversely, if an instructor moves down a row calling on each person in sequence, eventually the attention of those students sitting in a distant part of the room will drift and they will not feel like they are part of the dialogue.

Making all students feel like a valuable part of the learning process creates a sense of the class as family. This interpersonal connection is integral to effective teaching. While a professor’s enthusiasm about the subject matter of the course and the students’ apprehension of it is central to the pedagogical mission, it is incomplete if he or she does not develop a rapport with the

students.<sup>30</sup> An instructor should communicate excitement not only about the law, but also about getting to know the students and ensuring that they are having a positive experience, both in and out of the classroom.

There are various ways in which I try to get to know my students and enhance their enjoyment of law school. First, I make a concerted effort at the beginning of each semester to get to know each student's name. This personalizes the interaction immediately and tells the student that you do not consider him or her to be some anonymous body occupying the chair for fourteen weeks. To aid in this endeavor, I use a seating chart and ask the students to remain in their chosen spot for at least the first several weeks. I also use last names for the first few weeks and then later switch to first names. As I explain to each class, I have found during the years that this approach cements both names in my memory and helps me to remember them in the years after Criminal Law has ended.

Second, I rely on praise and humor to create a comfortable atmosphere. Educational psychologists have found that students learn better when they are empowered, and validation is the key to empowerment.<sup>31</sup> It is important, therefore, to give students positive feedback when they have offered a particularly good analysis of, or insight into, the material. To be meaningful, praise must be handed out discriminately, but it is equally important to support all students' efforts, even though some might offer praiseworthy remarks more often than others. To this end, when calling on a struggling student, my request might be more straightforward—for example, to outline the relevant facts of the case. If he or she performs well, and is lauded for those efforts, the resultant boost in confidence might improve that student's ability to tackle a more complicated assignment the next time.

Humor can be a very effective classroom tool. Not only does it reduce the tension that surrounds the first-year of law school, but students are often more expressive and creative when they feel relaxed. It is no surprise then that research suggests that humor aids learning and reflects positively on the instructor.<sup>32</sup> I use humor a great deal when I teach, often involving the students. They enjoy it, though care must always be taken not to offend, either by singling out a student in an unflattering manner or by making light of an otherwise serious subject or fact pattern.

I also make myself available to students whenever possible outside of class. I tell them that my door is (almost) always open and, that if they need to see me, they should feel free to stop by. I also encourage students to come by if they are seeking general advice on curricular or extracurricular matters. I

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30. See Hess, *supra* note 29, at 82-83 (noting that interpersonal rapport with students is a critical component of teaching success); see also LOWMAN, *supra* note 29, at 26-37.

31. See Thomas, *supra* note 28, at 121.

32. See Hess, *supra* note 29, at 105.

find that getting to know students in a one-on-one or group exchange in my office enriches both their and my experience and promotes the general cohesiveness of the classroom experience.

A professor's accessibility can also prove important for other reasons. On one occasion, for example, a student confided in me that she had been battered by her ex-husband, and thus, she was not sure she would be able to remain in class during our discussion of *State v. Leidholm*,<sup>33</sup> one of my textbook's principal cases on self-defense where the defendant was a battered spouse who had killed her husband. I thanked the student for trusting me enough to share this information. Her generosity also made me realize that, while students should always have the freedom to fully express their opinions, they should be mindful of the sensitivities that those around them might have based on background or personal experience. Accordingly, when teaching sexual assault, I always begin by reminding the class that available data suggests that at least one person in the room has been a victim of sexual assault. Thus, when discussing these materials, I ask the students to consider how their remarks would be heard by someone who might have been in a position similar to that of the complainant in the case.

The purpose of this prologue is not to prevent a full and frank discussion of the case law or to chill the expression of viewpoints contrary to those espoused by the complainant in any given case. Such a goal would offend our mission of training students to think critically and to express opposing arguments persuasively. It is not the content of any student's position that is at issue, but rather the manner of expressing that viewpoint. Sensitivity to the vulnerabilities of others does not suppress dialogue; rather, it promotes it by creating an atmosphere of trust and mutual respect that is both humane and essential to effective advocacy.

#### IV. CONCLUSION

As I noted at the beginning of this essay, there is a certain artificiality in my separation of engaging the mind and the heart. The two, in fact, are inextricably linked in my teaching. In every Criminal Law class, I try to spark intellectual excitement and discovery while communicating to each student that his or her experience and understanding of the material matters to me. While the foregoing details my philosophy and the pedagogical techniques that I favor, a professor's success in the classroom is not a function merely of the adoption of a certain theory or approach. There are certain intangibles, such as the connection between instructor and student, that weigh heavily in the equation and cannot be inculcated. Each professor must, in the end, find his or her voice and let the students hear it.

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33. 334 N.W.2d 811 (N.D. 1983).

