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REFLECTIONS FROM EMBASSY LAKES, FLORIDA: THE EFFECTIVE TEACHING OF CRIMINAL LAW

CHARLES I. LUGOSI*

When I learned the *Saint Louis University Law Journal* was seeking authors to contribute to its Teaching Criminal Law issue, I never imagined I would end up agreeing to be an author. I originally saw my role to simply refer the editors to Paul Robinson, a distinguished professor of Criminal Law at the University of Pennsylvania. He was in the process of developing an exciting new casebook I was hoping to field test as a first-year assistant professor at St. Thomas University School of Law in Miami. I was both surprised and honored to receive an invitation to contribute.

I decided to accept this invitation to write because I believe, as Peter Drucker at the Harvard Business School once observed, you can learn more from your mistakes than by doing things right in the first place. A mediocre approach will result in mediocrity.¹ Why not go for broke and be the best that you can be? Who better than a “rookie” law professor to make mistakes and pass on tips of what not to do?

Am I as a first-year law teacher able to give sage advice as to how to teach Criminal Law? I suppose in my fifteen years or so as a trial attorney specializing in murder cases, I became an educator of juries, teaching them how to sift through evidence, put the pieces of a puzzle together, and to find

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1. “The better a man is, the more mistakes he will make, for the more new things he will try. I would never promote to a top-level job a man who was not making mistakes . . . otherwise he is sure to be mediocre.” *The Effectiveness Coach: Maximizing Effectiveness Through Mastery Of Essential Skills, Great Quotes From Great Leaders*, at <http://www.theeffectivenesscoach.com/great%20Quotes.htm> (quoting Peter Drucker) (last visited Mar. 12, 2004).

reasonable doubt. Now I am an educator of a different kind. Returning to law school, first as a mature graduate student, and then as a teacher, were challenges that brought me into the twenty-first century and gave me a new perspective of the role of the educator.

After three wonderful years in Philadelphia, I accepted an offer to teach law at St. Thomas University in Miami Gardens, Florida. Shortly after arriving at our new home in Embassy Lakes, where I, my wife, and our four children were in the midst of unpacking two weeks before the start of classes, I learned that my new Associate Dean needed to be relieved of heavy teaching responsibilities. I was asked to teach a seminar to third-year students on the Sixth Amendment. The seminar was oversubscribed, as the Associate Dean was an outstanding teacher, and students who planned a career in criminal law had selected his seminar to fulfill their senior writing requirement.² It didn't take long for me to jump at the chance to teach these students. Over the next two days, I read the existing literature in the area and then, over the weekend, I created a new course that I named "The Sixth Amendment in the 21st Century."

I was intrigued and excited by the topics covered in the Sixth Amendment. Having an interest in the denial of constitutional rights to enemy combatants in the war against terrorism, I decided to make the course current, relevant, and historical. I completed a new syllabus and casebook in two days, using the research tools on a major online service to add additional cases. I divided the seminar into two parts, the first to give the students a solid foundation in the substantive law, and the second to provide structure for the writing of term papers.

I did not require the students to purchase a textbook. As a former practitioner who admired Lord Denning's ability to find law in ancient common law history to do justice in contemporary society,³ and as a disciple of

2. As a requirement for graduation, a student must write a significant analytical paper reflecting substantial legal research, original thought, proper writing style, and correct citation form. The writing requirement is not automatically satisfied by successfully completing the requirements of the seminar. See *St. Thomas University School of Law Catalogue 2003-04*, at p. 14.

3. In 1979, I had the privilege of meeting Alfred Thompson Denning, while he was still Master of the Rolls in London, England. I presented to him a photograph I took of him when he was awarded an Honorary Doctorate of Law degree at the University of Western Ontario. Lord Denning greatly influenced me both by his ability to write clear judgments and to unearth legal precedents where none were thought to exist. A classic example of his clear writing is found in this judgment:

Old Peter Beswick was a coal merchant in Eccles, Lancashire. He had no business premises. All he had was a lorry, scales and weights. He used to take the lorry to the yard of the National Coal Board, where he bagged coal and took it round to his customers in the neighbourhood. His nephew, John Joseph Beswick, helped him in the business.

In March, 1962, old Peter Beswick and his wife were both over 70. He had had his leg amputated and was not in good health. The nephew was anxious to get hold of the

a distinguished law teacher,⁴ I strongly believe law students should read the actual cases, including dissenting opinions. Students need to learn to think for themselves. The description of cases summarized by another teacher in another time and context may have omitted portions of judicial opinions that are currently relevant and applicable.

I pressed ahead and enlisted the support of the Director of the St. Thomas Law Library⁵ and his very able staff.⁶ They expertly and kindly posted on my course's website my syllabus with links to all of the cases, and provided entire sets of each week's readings in "hard copies" that I photocopied and distributed at no charge to my students.⁷ Because there is no better way to learn than by teaching, I made sure I vigorously studied the cases just as I would prepare to be peppered with questions by the nine members of the United States Supreme Court. It took all of one week to read thousands of pages to get ready for the first day of class.

The first class was a time of mutual caution—getting to know one another. I requested from my students a brief one-page autobiography with a recent photograph. In this way, I hoped to get to know my students better, and to be able to tailor class discussions in such a way that would match the experience and interests of the class. Most of the students promptly complied. I quickly learned who took pride in their work, who did not procrastinate, and who was

business before the old man died. So they went to a solicitor, Mr. Ashcroft, who drew up an agreement for them.

Beswick v. Beswick, 1966 Ch. 538, 549 (Eng. C.A.). Lord Denning's skillful use of case law enabled him to develop the doctrine of promissory estoppel. *See* Cent. London Prop. Trust Ltd. v. High Trees House Ltd., 1947 K.B. 130 (1946). Being a teacher means to inspire students to blaze a new trail in the face of opposition. Lord Denning instinctively knew this:

What is the argument on the other side? Only this, that no case has been found in which it has been done before. That argument does not appeal to me in the least. If we never do anything which has not been done before, we shall never get anywhere. The law will stand still whilst the rest of the world goes on; and that will be bad for both.

Packer v. Packer, 1954 P. 15, 22 (Eng. C.A. 1953).

4. The teacher was Associate Dean Seth Kreimer, University of Pennsylvania Law School, winner of both the Lindback Foundation Award for Distinguished Teaching (1998) and the Harvey Levin Teaching Award (1997). His seminar, "The First Amendment in the 21st Century," consisted almost entirely of court judgments, including dissenting opinions. It was a huge amount of reading, but vastly rewarding and very enriching.

5. Gordon Russell is an extraordinary librarian who combined great ability with excellent technological savvy. He was a tower of strength, helping me to get my course off the ground. Recently, Professor Russell accepted an offer from the Charleston School of Law to serve as Associate Dean and Director of the Library. He will be sorely missed, not just as a colleague and friend, but also as a fellow Canadian and fellow graduate of my alma mater, the University of Western Ontario.

6. My deep appreciation is extended to Mr. Roy Balleste, Head of Public Services, and Mr. Jose Sanchez, Librarian, for their superior assistance throughout the Fall Semester of 2003.

7. I believe in using highlighter pens to underline and highlight important passages in cases.

able to follow instructions. At least one student expressed a desire to see deep course content, which influenced the workload of the course.

St. Thomas's mission is to graduate lawyers with integrity, morals, and a commitment to social justice. My third-year students would soon be prosecutors and defense attorneys. I saw it as my job to help each student attain their individual goals in the context of achieving the school's mission.

I placed a lot of emphasis on the coursework. I wanted to ensure that prior to the selection of a paper topic, each student was exposed to the various aspects of Sixth Amendment jurisprudence. I also hoped that a strong foundation would make researching the papers easier, leaving less work for later on. The coursework expanded beyond the historical and contemporary cases, concluding whenever possible with the legal response to terrorism since 9/11.

I summarized the course in the syllabus as follows:

This seminar reviews selected decisions of the United States Supreme Court, pertaining to the Sixth Amendment of the United States Constitution. The purpose of this seminar is to identify and to evaluate to what extent the Court has been true to preserving the core values enshrined in this Amendment and whether the Sixth Amendment has a meaningful role to play in the 21st Century. The jurisprudence of the Sixth Amendment is examined historically and discussed in the context of the current criminal prosecution of terrorists and enemy combatants who have been denied the right to counsel, the cross-examination of government witnesses, access to defense witnesses, and public trials.

I instructed my students to read the entire assigned judgments, including the dissenting opinions. My goals were to introduce my students to the most important cases, give them an exciting course, stimulate their interest, and challenge their intellect.

The vast majority of the readings were photocopies of actual cases, inclusive of all opinions. I cautioned the students to focus on the pertinent parts of the cases and to skim the rest. I explained to them that this was good practice because attorneys who practiced litigation had this essential skill.

I arranged for the distribution on a weekly basis of a course packet of the required cases and the occasional article. The law school kindly absorbed this expense. The students, many of whom worked part-time to make ends meet, appreciated this saving of money.

I made three mistakes that I hope you will learn from. The first error resulted from inexperience. I had observed about five weeks into the course that one of my brightest students was not prepared for class. In addition, the student looked tired, lacked enthusiasm, and had been absent. I felt it was my job to get in touch with this student, to discover if anything was wrong. I

believe every student matters, and it is the responsibility of the instructor to care deeply about the welfare of his or her students.⁸

I discovered that my student was working more than forty hours per week for an eminent local attorney. I discovered my school had a rule that limited the working hours of full-time students to less than twenty hours per week. Any student who exceeded these hours was in jeopardy of being expelled from school.

What was I to do? I decided to give the student a break. I did not wish to be the catalyst that ruined this student's life. I met with the student, and he promised to follow the school's rule. In my desire to make sure my student was able to concentrate on the task of studying, I contacted the law firm.

Before long, I received an invitation to attend the Associate Dean's office. There I was gently rebuked. My conduct was excused due to my inexperience and good intentions. I learned that my job was to teach and not to rescue. In the future, an immediate referral to the administration was needed to take care of these kinds of issues. I determined it was prudent for me to develop a strong and open relationship with the Dean of Students.

A second problem was that the readings for my course were too heavy. I overlooked the fact that my seminar had only a two-credit weight. My own seminars when I was at law school were weighted at three credits. I had recently finished preparing in the spring and summer of 2003 two different three-credit courses on criminal law and white-collar crime. In the extremely short time I had to prepare my seminar in August 2003, I worked on the assumption I needed to prepare a three-credit course.

At the time, I thought the workload was reasonable, calculating that the assigned reading would take thirty minutes of reading a day. I assumed this was fine for a class that met once a week, from 10:20 a.m. to noon. I am a high achiever, have a high capacity for work, and read quickly. I have since learned it is all too easy to unfairly transfer my skills, standards, and expectations to students who are unique and different from me.

The third mistake arose from my inexperience in grading and my unfamiliarity with the school's grading system. In my desire to be fair, I decided to make the term paper worth only fifty percent of the final grade. I did this because I believe that a person can become an outstanding attorney without having written an academic paper. On the other hand, strong writing skills enhance an attorney's ability to be a fine advocate, especially in appellate practice. By allotting the other fifty percent of the final grade to class participation, I hoped to ensure the students would do all the assigned readings, contribute vigorously in class debates, attend class, and improve their final overall grade in the event of producing an inferior paper.

8. I had developed a practice of contacting each absent student to see if anything was wrong. Without exception, every student was delighted to hear from me.

In hindsight, I ought to have given more weight to the paper. The grading system at St. Thomas allowed me to give only these grades: A (4.0), B+ (3.5), B (3.0), C+ (2.5), C (2.0), C- (1.5), D (1.0), and F (0.0).⁹ In addition, the class average had to be between 2.75 and 3.5.¹⁰ Had I understood this system earlier, I could have saved myself from the dilemma of trying to assess a final grade to the student where by straight averaging resulted in a final grade of A- or B-. For example, a student could hypothetically earn a B for class participation, and a C+ on the paper. I was not allowed to give a grade of B-. I had to make a choice of assigning a final grade of either a B or a C+. Had I allocated unequal weight to class participation or to the paper, the assessment of the final grade would have been much easier.

What did I do right? Fortunately, a lot of good things happened, besides meeting the objectives described on the class syllabus.

The students liked the class discussions, which became heated and passionate at times. One of the students' favorite classes was the day before the execution of Paul Hill.¹¹ We had a class exercise that required pairs of students to argue opposite sides of a last ditch appeal before a single justice of the United States Supreme Court, yours truly, to save Hill's life. The mock appeal was particularly challenging because the students had identified their predetermined opinions the week before and were assigned to argue the case opposite to their inclinations. The arguments centered on whether the execution should proceed or not, given the fact that Hill had represented himself at trial after being granted his right to do so pursuant to the law in *Faretta v. California*.¹²

It was a fabulous class, with students rising to the challenge, thinking on their feet, and demonstrating their wit and wisdom. This class exercise was particularly relevant because my students gained a real appreciation of a case that otherwise might have been just a news story. I think Hill made a mistake not to seek an appeal by way of habeas corpus, for even my students who despised Hill made strong legal arguments on his behalf. Just to satisfy my curiosity, I conducted a poll at the end of our class. I discovered a significant proportion of the students who had argued the opposite side to their views reversed their previous opinion. This applied both to students who earlier wanted to see Hill executed, as well as to those who initially did not.

Another great class was the visit of Miami police chief, John Timoney, who met with us over seafood sandwiches, fresh fruit salads, and carrot juice in

9. *St. Thomas University School of Law Catalogue 2003-2004*, at p. 81.

10. *Id.*

11. Paul Jennings Hill was executed on September 3, 2003 for the murder of an abortion provider and his bodyguard. See Associated Press, *Unrepentant to the End: Paul Hill Becomes First Person Executed in U. S. for Anti-Abortion Slays* (Sept. 3, 2003), at http://abcnews.go.com/sections/us/GoodMorningAmerica/antiabortion_execution030903.html.

12. *Faretta v. California*, 422 U.S. 806, 808 (1975).

the luxurious Atrium Boardroom, which is reserved for faculty meetings and visiting dignitaries. Chief Timoney, accompanied by a former St. Thomas Law School Alumnus who was now the department's legal advisor, and by the department's public relations spokesman, spoke candidly off the record to the students in a direct refreshing way, handling tough questions with charm and truth. It was a pleasure for the students to meet someone whose reputation for integrity and fighting crime earned him the right to comment on the pressing issues of constitutional criminal law, the role of attorneys, and the role of the police.

The presence of the associate dean at this meeting was an honor. It was the first time he joined what would have been his class. We finished off the class with a group picture that was emailed to everyone. I was delighted that Chief Timoney attended, especially because he was under heavy time pressures to prepare for an upcoming gathering of world leaders in Miami,¹³ that required him to safeguard visitors from potentially violent demonstrators. Chief Timoney was true to his promise, earlier extended to me in Philadelphia, that he would come and speak to my Criminal Law class.

Our class also enjoyed watching the 1957 original black and white version of *12 Angry Men*, starring Henry Fonda.¹⁴ After watching the film, the class unanimously agreed that no less than a twelve-person jury was needed to try a criminal case. It was a nice way to cap our discussion on the ideal number of members that should serve on juries.

An optional class outing on a Friday afternoon attracted little interest. Two students out of 14 joined me for Chinese food and to see the new release of John Grisham's movie *Runaway Jury*.¹⁵ Lunch was my treat, but everyone paid his or her own way at the show.

St. Thomas is a wonderful place to give everyone an opportunity to obtain a legal education, regardless of background. Our student body is one of the most diverse in the nation. In practical terms, this meant some of my students struggled with the English language. Others had no training on how to write a legal research paper. From the very beginning of the course, I recommended a guide on legal writing.¹⁶

13. The FTAA (Free Trade of the Americas) Conference held in Miami, Florida, November 16-21, 2003 went smoothly, without any major disruptions by demonstrators. See Jane Bussey, *FTAA Aftermath: Timoney's work lauded: Greater Miami Chamber of Commerce rewards Police Chief John Timoney for his department's work during the FTAA meeting*, MIAMI HERALD, Dec. 4, 2003, at <http://www.miami.com/mld/miamiherald/business/7407510.htm>.

14. For a synopsis of this movie, see The Internet Movie Database, 12 ANGRY MEN (1957), at <http://www.imdb.com/title/tt0050083/>.

15. For a synopsis of the movie, see The Internet Movie Database, RUNAWAY JURY (2003), at <http://www.imdb.com/title/tt0313542/>.

16. Initially I recommended ELIZABETH FAJANS & MARY R. FALK, *SCHOLARLY WRITING FOR LAW STUDENTS: SEMINAR PAPERS, LAW REVIEW NOTES, AND LAW REVIEW COMPETITION*

Toward the end of the classes set aside for the coursework, I reviewed outlines of proposals for papers. There was one model outline, and the outlines of the other students went rapidly downhill from there. I quickly realized it was up to me to provide extracts from legal writing books on how to do an outline. I did so. I also required students to rewrite their outlines until they had one that was satisfactory. I requested that each student submit a draft copy of their paper for my review. I would then evaluate them by applying the school's standards for meeting the senior writing requirement. Only the rare paper passed my stringent review. The rest received detailed comments and an evaluation indicating the paper did not meet senior writing requirements.

There was time set aside in the syllabus for paper presentations. Rather than having each student simply recite a summary of what his or her paper was about, I decided to turn this time into peer review sessions. Prior to class, the students exchanged drafts of their papers (that had been reviewed already by me). Each student had two of his or her classmates assigned to read their papers, assess them based upon senior writing standards, and before the entire class, review the strong and weak points of the now peer-reviewed paper. Each student ended up having the opportunity to review two papers.

This exercise turned out to be a fabulous success. By becoming peer reviewers, each student was able to objectively learn what it took to author an acceptable paper. The students learned to criticize fairly in a sensitive way, protective of the feelings of their classmates. In the process, the students discovered what the topics and the ideas expressed in each paper were all about. Finally, each author had a chance to agree with or dispute the criticisms. Overall, this teaching technique was highly effective. Only a few students let down their classmates, by either not providing their paper in a timely way or by not preparing a review. Most students responded well, as they recognized this peer review process was for their benefit and they needed to work together as a team to succeed.

It was a learning exercise for me, too, because it confirmed that my prior criticisms were virtually the same as those identified by the students themselves. The students were then able to take another two weeks to revise their papers before submitting them to me for a final evaluation.

Toward the end of the term, one of my students remarked that he was learning so much from the seminar that he was able to apply what he was learning to his course in criminal procedure. The rigorous, intensive, and comprehensive approach to my teaching was apparently paying off big dividends for him elsewhere. A couple of weeks ago, I paused by the notice board, which identifies the top students in the school. The student who had thanked me for my teaching ended up earning the highest grade in my course,

as well as in Criminal Procedure and in Florida practice, and won a place on the Dean's Honor List.¹⁷ This student was obviously bright and probably would have done well regardless of who taught him. However, I hope that in some small way, my class prepared him to excel in his criminal procedure course.

The class participation grade reflected a wide range of ways students could earn high grades. The assessment criteria included: (1) quality participation in classroom discussions; (2) being prepared for class; (3) ability to answer questions; (4) classroom attendance; (5) performance in the Hill debate; (6) submissions of written questions for forwarding to police chief Timoney; (7) quality of participation in the open forum on the class's electronic website; (8) and the students' own self assessment of their overall class participation grade. Most of the students fairly assessed themselves, and they received the grade requested. A few received a higher or lower grade based on my own combined subjective and objective assessment.

In the end, the combined grade distribution was as follows: A (1); B+ (3); B (8), and C+ (2).¹⁸ Remarkably, these grades reflected real values. There was no grade inflation. No bell curve was applied. The students worked full measure for these results. Everyone accomplished his or her senior writing requirement.

It was my hope that teaching effectiveness, intensity, focus, and just plain old-fashioned hard work on a sustained basis in an environment that stimulated, motivated, and inspired, created the opportunity to achieve a respectable grade and build a solid foundation of knowledge, skill, and confidence to pass the bar exam.

My first student to graduate did so in December.¹⁹ It was a very special moment to see her accept her law degree, knowing that I helped prepare her for life and career. This was a moment of satisfaction that will hopefully not diminish over the years as I will witness more of my students walk across the front of the stage with eagerness, freshness and hope for the future. It is such a privilege to be a teacher.

17. Eric G. Marshall earned the book award for the Sixth Amendment in the 21st Century course. He plans to work as a prosecutor upon his admission to the Florida Bar.

18. The paper grades were distributed as follows: A (2); B+ (4); B (3); and C+ (5). Class participation grades were distributed as follows: A (2); B+ (2); B (6); C+ (2) and C (2). The class participation grades tended to pull up the paper grades, with the exception of two students who had good papers. One improved to a final grade of C+, and the other to a final grade of B.

19. Connie L. Kuhn will be working at the State Attorney's Office in Fort Meyers, Florida, following her call to the Florida Bar. I appreciate the very nice letter she wrote to me, thanking me for "a great semester" and that I was "one of the only professors" she had who made her "take a stand and think critically about an issue." Letter from Connie L. Kuhn, J.D. St. Thomas University School of Law, 2003, to Charles Lugosi, Assistant Professor of Law, St. Thomas University School of Law (undated, received Dec. 2003) (on file with author).

But what about the point of this Article, how to teach Criminal Law? Is there something magical about this particular subject that distinguishes it from teaching another subject, like Contract Law?

The profiles of my students revealed a deep interest in the subject of criminal law that showed something more than a career interest to prosecute or defend. They shared a passion for justice that was more than an abiding respect for the law. Their very souls thirsted for the punishment of the factually guilty and the acquittal of the morally innocent. Throughout the term, I attempted to help my students discover the roots of justice and injustice and to expose injustice with every case they studied.

I practiced criminal law, initially as a prosecutor, but mostly as a murder defense attorney prior to returning to school to pursue post-graduate law degrees. With the benefit of my experience as a seasoned trial lawyer, I shared my secrets of how to dissect a case, with a keen eye for detail, beginning with who the judge was, the facts, and an awareness of the time and political context in which the case was decided. I stressed the importance of dissenting judgments as predictors of the winds of change or as stubborn refusals to relinquish entrenched ideas. I tried to make the law come alive, inviting students to read from the cases in a dramatic way the famous and infamous words of judges and the arguments of counsel that forever echo in our minds.²⁰

Criminal law affects us to the core of our being, for all of us have been touched by a raw experience of injustice that clings to us today. The Criminal Law teacher must be alert to these sensitivities and draw out of the students their own self-awareness of prejudices and misconceptions tangled with emotional feelings that get in the way of doing justice. A cold, clinical, technical approach is not the answer, as Criminal Law also requires a sound understanding of the human condition, compassion, and mercy.

Understanding constitutional criminal procedure, as expressed in the Sixth Amendment, requires more than the mechanical ability to cite precedent and to apply law. Creativity, purpose, historical appreciation, and natural justice are all part of the recipe for success of a great trial lawyer. Courage, fortitude, stamina, personal integrity, and a willingness to sacrifice one's life make up the rest of the secret ingredients. Everyone can figure out you need intelligence, knowledge, and mastery of the subject to do the job. But

20. I am forever grateful to my colleague and formidable courtroom opponent, the late Alan Bates, Q.C., who shared with me his favorite biography of one of the most courageous barristers who risked everything for the cause of justice, Lord Thomas Erskine. This classic book is a true gem that I enthusiastically recommend to anyone who is contemplating a vocation in criminal law: LLOYD PAUL STRYKER, *FOR THE DEFENSE: THOMAS ERSKINE, THE MOST ENLIGHTENED LIBERAL OF HIS TIMES, 1750-1823* (1947).

becoming a great criminal lawyer can be greatly assisted by having a great Criminal Law teacher.²¹

Teaching students to think for themselves “outside of the box,” to see issues from a fresh perspective, and to identify moral, ethical, and justice issues at the heart of a case will elevate the ordinary into the next level of the extraordinary. We greatly benefited from an outstanding law review article that cleverly took the reader outside of the United States and then home again to shed a fresh perspective on jury trials and the current war on terrorism.²²

Powell v. Alabama,²³ *Gideon v. Wainwright*,²⁴ *Jencks v. United States*,²⁵ *Chambers v. Mississippi*,²⁶ and *Duncan v. Louisiana*²⁷ were momentous cases. Extending the law in these cases to accomplish justice was not an accident waiting to happen that fortuitously changed the law. It was greatness. Greatness on the part of the attorneys who had a vision of justice, to which others were blind, and persevered against all obstacles. Greatness on the part of the justices who recognized the opportunities before them and seized the moment before it passed from their grasp.

The great Criminal Law teacher lights the path of justice for his students to walk with confidence and courage, enabling each one to recognize those once-in-a-lifetime opportunities that test a person’s character to take on a case, no matter the cost, to the very end, even if that destiny means failure in the eyes of the world. In criminal law, success is measured neither by money, nor by the trappings of success, but by the achievement of justice.

Criminal law is an essential part of the essence of the rule of law²⁸ that predates the Constitution. The rule of law in this country is preserved by

21. I was fortunate to have extraordinary Criminal Law professors and teachers who inspired me with their teaching and personal example. I will always be very grateful to Professor Peter Barton and retired professor Robert S. MacKay, former Dean of the Faculty of Law at the University of Western Ontario, and my Ontario Bar Admission Course Instructor, distinguished practitioner Brian H. Greenspan, Q.C. of Toronto, Ontario, Canada.

22. Hon. John C. Coughenour, *Canary in the Coal Mine: The Importance of the Trial Jury: Reflections on Russia’s Revival of Trial by Jury: History Demands that we ask Difficult Questions Regarding Terror Trials, Procedures to Combat Terrorism, and Our Federal Sentencing Regime*, 26 SEATTLE U. L. REV. 399 (2003).

23. 287 U.S. 45 (1932).

24. 372 U.S. 335 (1963).

25. 353 U.S. 657 (1957).

26. 410 U.S. 284 (1973).

27. 391 U.S. 145 (1968).

28. I define the “rule of law” as government bylaws that people of moral conscience are willing to obey because the laws are inherently just. The ideal of the “rule of law” is to live in a democratic society that places constitutional limits on the power of government, permanently protects inalienable human rights and fundamental freedoms from undue encroachment, and provides equality before laws administered by an independent judiciary. I define “rule by law” as the antithesis of the “rule of law,” meaning to be governed in any society, including democratic societies, where the government may exercise arbitrary executive powers and may abridge at will

various checks and balances in the constitutional structure and is assisted by the division of powers between the different branches of government.²⁹ Criminal law plays a key role in this republican form of government and in the system of checks and balances by reserving to juries the power to nullify a verdict.³⁰ Throughout the Constitution and the Bill of Rights are articles³¹ that specifically refer to the jury and its role to safeguard liberty to ensure that never again will the people of this country be under the heel of a tyrant.

The first line of defense for the preservation of the rule of law is the lawyers who fight for justice in the trenches. History teaches us that despotic rulers, seeking to impose their will on their subjects through coercion and violence first eliminate their most feared opposition, the fearless criminal defense lawyer and the prosecutor who cannot be bought.³²

For this reason, teaching Criminal Law, whether in the form of criminal law theory, criminal procedure, or constitutional criminal procedure, plays a vital role in training future generations who will lift up the standard of liberty, the rule of law, and the pursuit of justice. What can be nobler than the precious responsibility to uphold the sacred trust that is given to us teachers of Criminal Law?

Did I accomplish these ideals and fulfill my responsibility as one of the guardians of the rule of law? The “jury” of my students is still out, and will be, for a very long time. It will take a lifetime to discover if in some way my former students have contributed to the betterment of this country and for what it stands. Perhaps they will be the “jury” that preserves the rule of law in the face of unjust laws that inspired Lord Devlin to write that the jury “is the lamp that shows that freedom lives.”³³

All I have for now are words of appreciation from a few students and responses on fourteen evaluation forms. While most of my students thought I

constitutional civil liberties. The main difference between these opposite concepts is that *justice* is the defining characteristic in a society governed by “rule of law,” and *deferential obedience* is the defining characteristic in a “rule by law” society.

29. See generally, LOUIS FISHER, AMERICAN CONSTITUTIONAL LAW (5th ed. 2003).

30. See Jury Nullification and the Rule of Law, at <http://www.friesian.com/nullif.htm>.

31. See, e.g., U.S. CONST. art. III, § 2, cl. 3; U.S. CONST. amend. V, VI, VII.

32. Shakespeare honored lawyers by pointing out the fact that tyrants who seek to destroy life, liberty, and the rule of law eliminate the legal profession. It is Dick the Butcher, a supporter of the anarchist Jack Cade, who is forever immortalized by his utterance, “The first thing we do, let’s kill all the lawyers.” WILLIAM SHAKESPEARE, THE SECOND PART OF KING HENRY VI, act 4. sc. 2. A less famous quote, attributed to Adolph Hitler, underscores the importance of an independent criminal bar: “I shall not rest until every German sees it is a shameful thing to be a lawyer.” Watergate Special Prosecutor Leon Jaworsky observed in 1974, “When dictators and tyrants seek to destroy the freedoms of men, their first target is the legal profession and through it the rule of law.” For these and other quotes, see *About Lawyers*, at <http://www.linka.ca/about.htm>.

33. HON. SIR PATRICK DEVLIN, TRIAL BY JURY 164 (1956).

had excellent teaching skills and was open minded, thought the course was excellent, would take another course with me, and assessed me an overall excellent teacher, there were two exceptions to this pattern. One student graded me poorly in virtually every category, and another saw me as an average instructor. In discussions with colleagues, much to my relief, I was told these were excellent evaluations—for you can never please everyone in the class.

Predictably, the students suggested I ease up on the workload. One said I should give a warning at the beginning of the first class and say, “This will be the most work you will ever do in law school.” Another thought the course was worth four credits. I agree with the students that the amount of reading needs to be cut down considerably, or restructured from its present form.

It would be ideal to expand the present course to cover two semesters. The first semester would cover coursework, not just on the Sixth Amendment, and include criminal law topics of current interest—falling within the scope of any other parts of the Constitution, such as the Fourth and Fifth Amendments. The second half of the course would then be devoted to writing a paper of publishable quality, and incorporate the teaching of how to write a paper, professor review, and peer review. The proper weight for such a course would be four credits.

Some of the other student evaluation comments affirmed my teaching methods. One student wrote, “Expected high things from you and treated you with respect.” Another said, “I really enjoyed the class and am sad that I will not have the opportunity to have you again.” A third student stated, “I enjoyed the professor’s knowledge of the subject as well as the ‘Socratic method’ or interaction with the class.” A fourth student placed a large star beside this comment, “Learned more than I probably would have learned in another class.”

During the fall semester, I was offered the chance to teach as a guest instructor in a first-year Criminal Law class on the subject of homicide. I eagerly accepted. I ended up teaching one full class on the differences between murder and manslaughter, and part of another, on the use of forensic DNA evidence to exonerate the innocent.

The experience was wonderful. It was like being a grandparent—having all the fun without the responsibility. Drawing on my rich practice repertoire of “war stories,” I liberally sprinkled my teaching with examples that entertained and brought the classroom to life. My time as a guest teacher, however, evaporated all too soon.

Nevertheless, I learned from the forty-six students in this first-year Criminal Law class who also evaluated me. The results were uniformly excellent—they were even better than those in my seminar. On the key question of evaluating overall teaching excellence, I received an average score of 4.86 out of 5. The comments of the students described me as “excellent,

enthusiastic, interesting through an entertaining teaching style, experienced, tangible and personal, and very knowledgeable with a natural gift for teaching.”

I think to be the best teacher you can be is to speak from your heart with a passion for justice. People instinctively know the difference between someone who is talking at you and someone who is talking with you. Having a sense of mission and destiny, with a strong moral compass for guidance and an unfailing purpose to instill greatness in your students, will inspire you and them to attain the very worthy and noblest of goals of a Criminal Law teacher—to preserve and protect the rule of law. “To you from failing hands we throw [t]he torch; be yours to hold it high.”³⁴

34. LIEUT. COL. JOHN MCCRAE, M.D., IN FLANDERS FIELDS AND OTHER POEMS 3 (1919).