

Eight Things to Do in the Allotted 20 Minutes

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1

Figuring Out What It Is We've Been Asked to Do

Who, sober and sane, without the influence of mind-bending drugs, or too many years in the law building without fresh air, would ever think of having first year law students, in a period of 2 hours, spend 20 minutes each with the teachers of their first year courses and call it an "introduction" to the course? *What were these people thinking?*

In trying to figure this out, I had an idea, of sorts, you know, the kind that turns out to be more amusing than helpful. This idea of criminal law in 20 minutes is like loading you on a bus, driving to the cinema, sitting outside in the bus, and having a chat about the movie we're going to watch next week.

This notion of meeting with you for 20 minutes just days before the *real thing* begins is just a touch odd. How so? you ask. Well, I suppose I should admit that these *first meetings*, whether of the 20 minute variety or what I'm calling the real thing on Tuesday is always a bit odd. I look around and ask: Who are these people? Where did they come from? What are they doing here? What kind of stories might they tell, if they were given the chance to tell one? And I suspect that it's ever bit as odd for you as it is me: Who is this man standing in front of the room? What does he think he's doing? How did he get here? Will he be a good teacher? What have I gotten myself into with this law school gig?

Let me take a different approach to this 20 Minute introduction to criminal law. Maybe, just maybe, your not supposed to learn anything at all from this meeting. Still, one suspects that someone, somewhere, sometime must have gotten the fancy notion that this 20 Minute intro would benefit you in some way. And maybe it will. Maybe on that first day when we get the course underway everyone will be cool, calm, and collected. Maybe this little Intro will be just what the doctor ordered.

Lesson from 20 Minutes of Puzzling Through This Odd Encounter: Beware of the programmers to whom you are about to entrust yourself. They may or may not know what's good for you.

2

A Legal Civics Lesson

Alright, now that you've taken this miniature critical poke at your colleagues, and at yourself, we are here because you and the institution you're a part of required us to be here. You've got an obligation to take this 20 Minute thing seriously. You really should make the endeavor as productive as you can. Maybe you can just tell something about the court system, or something like that.

I guess I could tell you something about the court system and the basic distinctions between civil and criminal law. I'm told that the majority of Americans do not know the three branches of government. Some of you may not be aware that you're going to be studying judicial opinions written by appellate court judges. (Is it really the case that you don't know the difference between a trial court judge and an appellate judge? Unlikely, I'd think, but anything is possible.) Or, we might shift our attention and talk about the civil and criminal distinction, and you might find this of interest since you're going to be taking a course in torts (a civil matter) and criminal law (a study of crimes for which you can be punished by fine and by imprisonment).

But look, it's Friday afternoon, and we have 20 Minutes. We both know that any effort to do any of this kind of basic, ground-level work would, first, bore you half to death. And second, I'd have to assume that you are thoroughly uneducated and that this kind of legal civics talk would provide information that you don't already know. The assumption sends a nasty signal to those of you who don't need this kind of legal civics lecture.

*Lesson from 20 Minutes of Legal Civics: Beware of those who purport to instruct you on the basics. They may be wasting your time. They may be talking to hear themselves talk (all the more possible in that if they want you to know this *stuff* then write it out and give it to or post it on a course website).*

3

Just Talk About Criminal Law

You really do need to stay focused. Time is short. Get to the point. Just tell us what criminal law is.

Of course, you've prescribed the impossible task: Would you ask your constitutional law teacher to tell you, in 20 minutes, what the Constitution is and how it works? That would elicit a smile, a frown, or a puzzled look. Or you might go to a political science professor or a professor of anthropology and ask: Can you tell me, in 20 minutes, what political science is, what anthropology is?

I think you could expect two different kinds of response.

First, the professor might say, simply, I can't pretend to do such a thing. You've posed an interesting question, and I know you're sincere in asking it. The problem is that my discipline is quite complex. I'd do you no favor by trying to answer your question. Any 20 minute answer I gave you would be so confined, so general, and thus, so misleading, that you'd be in danger of knowing something about my discipline but knowing, perhaps, far less than you thought you did. You've undoubtedly heard the old adage, "a little knowledge is a dangerous thing." Maybe it's not applicable here.

Of course, you might get an entirely different kind of response. There are professors who might relish this kind of exercise. And they might take it on for various reasons. Teachers tend to be dutiful soldiers. If the marching orders are a 20 minute lecture on the discipline—20 Minutes on Torts—then 20 minutes it will be. Your teacher may be dutiful in the sense that he doesn't want to get into trouble with the dean and his colleagues, and he gives his 20 minute lecture because he's required to do it (just like you're required to be present for the lecture). The teacher is getting paid to do this 20 minutes; it's just part of the job. And, one might note that 20 minutes talking about something he purportedly knows something about—how bad can that be? It's a bump in the road (if that), so do it and get on with it.

But there's another way in which a sense of duty is enacted. The teacher gives you the 20 Minute Lecture because he doesn't question its value. His colleagues, or someone in authority (or someone somewhere sometime) got up this idea of a 20 minute lecture, and they must have thought it was a good idea. Or, it may be that the little 20 minute dance on Friday before classes start on Monday has been around so long it has become a tradition. We have traditions delivered unto us. We adopt them without thinking about them, or they are just another of life's endless parade of nuisance. And yes, some of our traditions are quite wonderful. I think you'll find that law school has a good many traditions—things that get done just because they've always been done. Some of our traditions are endearing and some of them are a nuisance and some of them are just nonsense.

Lesson from the 20 Minute Non-Lecture on Criminal Law: Beware of those who do what they do out of a sense of duty, and those who pay special allegiance to observing traditions. They may be serving you well, and they may just be serving.

4

The Socratic Method

Well . . . you've made it clear that you don't think it possible to talk about criminal law in 20 minutes and you don't want to do a lecture on the legal system that might be helpful to some of us, maybe you could talk about the Socratic method. This is something we've heard a lot about, and we'd be interested in knowing whether it's the method you use, and what you think about

this way of teaching.

The so-called Socratic Method and its infamous use in law schools. Of course, you've heard about this interesting, important, controversial pedagogical method, and you're intrigued to see it in action. I might note that there's been a great deal written about the Socratic method—pro and con (in all honesty, more con than pro). But first, let me point out: Some teachers try to teach in a Socratic style and some don't. And let's admit: Some teachers who use a Socratic style teaching are better at it than others. Unfortunately, being bad at it doesn't seem to deter its use. And for a good many teachers who try to use the Socratic style, it ends up having quite little to do with Socrates. In this semi-Socratic way of teaching, about all it means is that the teacher values questions, asks a boat load of them, and is more unwilling than other teachers to lay out what it is she wants you to learn.

The teachers who don't use the Socratic style adopt other styles for different reasons. They may want to be more in control of the classroom, or they may want to cater to your need to learn a big box of legal rules, and thus create the sense that they are teaching you what you really need to be a lawyer. My sense is that they are responding to your *wants* rather than your *needs* but this raises all kinds of issues that must await another day. The teacher who stays away from Socratic style teaching may simply want to lecture, that is, tell you what they want you to know and making it available directly from The Source. I should note that I don't have any pedagogical or philosophical objection to lectures. They can be done brilliantly, and as you probably already know, they can be a great waste of time. I'm certainly not of the notion that using a Socratic style of teaching is in all instances preferable to solid, informative lectures.

I noted that the use of the Socratic method in law school is controversial. Some law students loath the method. They don't like being put on the spot, and they don't like the pressure they feel when they try to talk about a case by responding to the questions of a law professor with 70 colleagues watching as the discussion takes place. You are, of course, in the spotlight. And yes, there is pressure; you need to know what you're talking about, and you need to express your thoughts coherently. The professor may be more or less gentle, more or less insistent on pushing you in a particular direction, more or less interesting in showing that you don't really know what you're talking about, and then, more or less disdainful of your responses. With all these "more or less" caveats, I'm basically saying that the Socratic method is as much a style (that is cultivated and acquired) as it is a method. For Socrates, the method was to chip through the layers of conventional thinking and congealed thought to get to the truth, a truth derived by communal understanding of what can be agreed upon. In the law school classroom use of questioning, there's not much focus on the truth, and often enough no sense of what the truth might be once you've undergone the stressful questions posed to you. For many students, the Socratic style teaching is ineffective and inefficient, and especially so if the teacher's questions are designed to help you extract rules of law from the cases. And, what can we say about the Socratic style of teaching in the hands of teachers who use it as an instrument of cruelty.

For still other students, the Socratic style teaching is a breath of fresh air. Many find it

invigorating. It gets you away from the steady drone of a teacher's lecture, and that weary feeling of having information and ideas *transmitted* to you. (Why aren't these seminal lectures videotaped or pod-cast? Why aren't the lectures printed?) A dialogue approach to teaching may not be efficient as a way to transmit information but it may be effective in getting you more personally involved in what you are trying to learn, and push you to take responsibility for your own learning. In law school, there is, in the various aspects of what we do, a subtle and sometimes not so subtle shifting of responsibility from teacher to initiate. We do this by spending less time on transmitting The Law and more time on pushing you to acquire an understanding of How Law Works. You'll undoubtedly have someone somewhere along the way, tell you that the purpose of law school is not to teach you the law but how to "think like a lawyer." There's all kinds of problems with this claim but one thing we can say about it is this: The use of Socratic style teaching is used—when it's used well—to get you to *think*. The emphasis is on thinking and talking about judicial opinions the way lawyers do, and to have you learn how to translate judicial opinions, not just so you can take a final examination on the rules of law you've learned, but for uses that a lawyer might need them. You'll amass notebooks full of legal rules but they turn out, ironically, to be only the surface of what you're trying to learn. The law, when there is anything we can call law, is quite readily available (well, almost, sometimes) but thinking carefully about the law and how it can, and can't, be applied is another matter. A serious claim can be made that it is Socratic style teaching that best prepares you for what lies ahead.

footnote: Again, there have been many law review articles written on Socratic style teaching, and a good many of them written with the idea that the Socratic method is wrong-headed. My colleague, Tom Eisele, at the University of Cincinnati, has written a fine article defending the Socratic method and I recommend it to you. See Thomas D. Eisele, *Bitter Knowledge: Socrates and Teaching by Disillusionment*, 45 Mercer L. Rev. 587 (1994). I have written a short article on Socrates and his teaching, and you may find it of interest as well. See James R. Elkins, *Socrates and the Socratic Method*, 14 Legal Stud. F. 231 (1990).

Lesson in This Little Talk about Socrates and the Use of His Name in Legal Education: Beware of those who give Socrates a bad name by trying to teach using a style that carries his name but little in the way of the spirit of his teaching. There are better and worse teachers who traffic in the name of Socrates. And, on this beware train of thought: Be cautious of buying in, uncritically, with the idea that there is something devious and stupid and cruel on the part of teachers who try to use the Socratic method and push you to the limits of your thinking.

5

A Teacher's Reflections

I'm beginning to see there's some things you're more interested in talking about than others. You weren't so keen on giving us a legal civics lecture, and so far you've said virtually nothing about criminal law. You seem to perk up a bit in talking about Socrates. There was a lift in your voice and it became rather clear that you hold Socrates in high regard. Maybe, we're on the right

track now. Is there anything you can tell us about yourself as a teacher, now that you've given us this clue by way of your avowed interest in Socrates?

I'm not so sure at all that you want a 20 Minute exposé of my life history as a teacher! But, your concern about me as your teacher is, I think, well-founded. I'm reminded here of Plato's account of Socrates and his concern about a young man who wants an introduction to Protagoras, a popular teacher of the day. In Plato's *Protagoras*—one of the early Socratic dialogues in which we see Socrates in action as a teacher—we find Hippocrates rushing in the early morning hours to see his friend and mentor, Socrates.¹ Hippocrates awakens Socrates with exciting news—Protagoras is in Athens. Hippocrates' early morning visit is occasioned by his fear that without Socrates' help, Protagoras, a well-known and popular teacher, will not accept him as a student. Hippocrates wants to study with Protagoras, or thinks he does, but he needs an introduction to Protagoras and a recommendation from a respected elder.

And what does Hippocrates hope to learn as a student of Protagoras? It is Socrates who poses the question, and if he had failed to do so, it seems unlikely that his young impetuous friend would have given the matter a second thought. Hippocrates knows little more than that Protagoras has a reputation among young Athenians as a teacher who can help them get ahead in public life. On closer questioning, Hippocrates admits that Protagoras is also known in Athens as a sophist. Hippocrates is not so sure he wants to become a sophist.

Sophists, you might know, were ancient teachers of rhetoric and philosophy. Prominent in the mid-5th century B.C., they are remembered now for their adroit, subtle, and sometimes specious, reasoning. Today, we associate sophistry with those who put forth fine sounding arguments that, subject to close scrutiny, turn out to be more polemic than substance. (We all exposed, these days, to political dogmatists and TV talking heads. Some fair number of these “talkers” are modern-day sophists.)

Of course, Hippocrates doesn't want to become a sophist, but he does desire to be a man clever at speaking. The power of speech was highly regarded in ancient Athens, as today, and Hippocrates wishes to study with a teacher who can teach him this clever public speaking. Protagoras is prominent among those who purport to teach this skill and those who seek to learn it.

Socrates, concerned that Hippocrates has unwittingly set off to become a sophist, and will learn how to make arguments without regard to their consequences, pointedly reminds his young friend

¹ There are numerous translations of this early Socratic dialogue, known as *Protagoras*. The translation I've found most useful, and have taught in a law school course on Socrates and the Socratic Method, is the translation by B.A.F. Hubbard and E. S. Kornofsky published by the University of Chicago Press. My thanks to Lewis LaRue, at Washington & Lee, who introduced me to the Hubbard and Kornofsky translation and guided my first reading of it.

I might note that the Hippocrates in *Protagoras* is not the Hippocrates of the Hippocratic oath, the early Greek physician.

what is at stake in becoming a student of Protagoras. Socrates tells Hippocrates

“What’s this? You do not know what a risk you are about to take with your mind (psyche)? If you had to place your body in somebody’s care at the risk of its becoming good or bad, you would make a thorough inquiry to establish whether it was advisable or not, and consult the opinions of your friends and relations, and spend several days considering it; but now that something is at stake which you value more highly . . . by which your entire welfare is determined . . . you didn’t consult your father, or your brother, or any of your friends, including me. . . . [F]irst thing in the morning you turn up, without giving any account of [Protagoras] . . . or asking for any advice about whether you ought to place yourself in his hands or not, and you are ready to spend both your own money and that of your friends, as though you had already arrived at the considered judgment . . . when you neither know him . . . nor have you ever spoken with him before. [Y]ou call him a sophist, and yet, asked what a sophist is, you show manifest ignorance, though you mean to put yourself in his hands.”

Many of you, like Hippocrates, have set out to study with teachers without knowing what it is, actually, that they will teach you. You’ll hear law teachers say: *We teach law not so much as we do teach you to “think like a lawyer.”* That seems to suggest that your teachers want to help you develop not just another way of thinking but a *mind* that makes it possible, day in and day out, to do the kind of thinking that lawyers do. What some of you may find, and others of you fear, is that when you learn to think like a lawyer, you give up, willingly or with resistance, or maybe even unconsciously, other ways of thinking that might be quite valuable. So, this idea that you’ve taken up the study of law and you’re going to be developing a new mind, or a new mind-set, or a new way of thinking—and this way of thinking is sufficiently powerful that it can drive out other ways of thinking, and is sufficiently powerful that it can dominate your thinking—well, that begins to sound like a situation that Socrates might want to have you address.

We need not reduce law students to caricature, to suggest that many of you rush, in a heated sprint, to acquire the clever magic of a legal mind. You might want to be concerned, that in this mad rush to become a lawyer that you do not become a modern day sophist.

a brief note: In your haste to become a lawyer, to survive the rigors of the law school *rites of passage*, you may well find that you hear your colleagues speak scripted parts in a drama that make you sound like little lawyer caricatures. You may even hear yourself talking this way! I suspect you’ll begin to hear these *scripts* in the days and weeks ahead. Obviously, some of you are not so young, and not so impetuous, as was Hippocrates. You may well be aware of what you’ve gotten yourself into, and have already begin to develop strategies that will help you develop the kind of mind you want and will best need to be the lawyer you want to be.

There’s a great deal more to say about this business of learning to think like a lawyer. You may find that you will be musing about it for the rest of your life.

Lesson in this Story from Plato's Account of Socrates and His Conversation with Hippocrates: Beware of those who claim that they want to teach you to “think like a lawyer.” Maybe they’ve thought carefully about what they teach and maybe they’ve haven’t. Maybe you want to think like a lawyer and maybe you don’t! You may want to think like a lawyer and think a lot of other ways as well. Beware, beware.

6

Real Autobiographical Reflections?

Ah, professor, you've made an interesting move here. We ask you to talk a little about yourself as a teacher, and you end up talking still again about Socrates and this young man, Hippocrates. I guess you've been talking, in an indirect way, about yourself here but what we had in mind was something really autobiographical, something we didn't need to translate.

Well, as you may know, Socrates himself was quite crafty in his conversations. Maybe what you are saying is that I’ve tried to trick you into believing I was responding to your concern, answering your question, when I was actually doing something else. Of course, I don’t have anything like the pedagogical skills that Socrates had, and you’ve caught me dead to rights in slipping past your question.

So . . . you want something autobiographical. It’s August now, the early days of August as I write and here I am already thinking about my 20 Minute Lecture, 20 Friday minutes in the spotlight. I might tell you that for almost 40 years now I’ve kept a journal, and I recommend it that you consider keeping one about your law school experience. On August 2nd, I wrote a journal entry that might of interest to you.

We all have, I think, a diurnal sense of the seasons. The drawing within in winter. The expectations that come with spring. The sense of freedom associated with summer, or at least that I’ve always associated with it. The turn to seriousness—back to school—as the dog days of summer descend upon us. And even before we’ve gotten back to school, there’s often that feel in the air some day somewhere along in August that suggest that summer has lost its vitality—the day when you can actually feel a “fall chill” in the air and you know it as a portent of still another new season and a new semester. .

But it’s not of the seasons that I write . . . or so I want to think. It’s actually about you!

When I finish up the semester’s work in late April and early May, I vow to never think about teaching again. No, not for the reason you might think. I know nothing of burn-out, or the kind of fatigue that might settle in upon someone who has been doing the same monotonous job for over three decades. I will tell you this: I had

rather teach than to eat. I still take pleasure in this work I've been doing for 33 years now.

What interests me now is not that unfaithful promise I make to myself every May about never thinking about teaching law again. In August I break that promise as regularly as a man my age goes in for his yearly medical assessment—an appointment with a doctor who never says, honestly, “you’ve got a problem, you’re getting old.” I break this promise to myself like the farmer heads back to the field in the spring to plow or picks his corn in the fall. The farmer and I know the seasons, and so I do my promise-breaking in that small cycle of reoccurrence: *this is the time when I start thinking about what I’ll say to you on that first day, on that day of the fateful encounter of strangers.*

I’m already, now, in these weeks before we begin, already thinking about you. I know you don’t know me. I don’t know you. And, that my friends—if I may use the term loosely—is an interesting situation. We’re going to do our 20 Minutes together and in doing it, we’re going to know the meaning of strange. You’ll be staring at me—silent. I’ll be talking, perhaps nervously, or perhaps not. Maybe, I’ll hear myself saying something that makes good sense, and maybe I’ll just hear myself talking. I don’t at all mean to undermine the seriousness of the occasion—we’ve set out upon something of a journey together. Of course, if I get too serious and start talking about *the great journey that lies ahead*, you’re going to think I’m . . . well, strange. Or, maybe you’ll think I’m being earnest but misguided. Maybe you’ll think I’m pretentious, and a tiresome pseud-intellectual. Or maybe, you’ll think I read too many New Age books from the 1970s. Or maybe, simply that this is no way for a grown man to be talking on a Friday just days before one begins the study of law! I can assure you, I have no idea what you might be thinking!

So, it’s August . . . it’s the season, again, to break my promise, and to start thinking about teaching.

Lesson to be Learned from this Further Effort at Telling Us About Yourself as a Teacher: Beware of the baggage that teachers bring with them to the course. It may affect what is that they teach, and how they do the teaching they try to do. Of course, you too bring along some baggage with you, and you might want to assess what it is that you carry with you, and what purpose it serves, and how it sometimes gets you into trouble with yourself.

7

Teaching Criminal Law

Well, I guess we can say you’ve told us a little bit about yourself, actually quite little. But mostly I get the sense, that you want to evade the spirit of our inquiry. Either you’re downright reticent

or simply not being forthcoming. Maybe you simply don't want us to know anything about you. Instead of pressing you on this point, maybe you could say something about the fact that you teach criminal law.

I'm not, contrary to what you may want to think, trying to avoid your questions about who I am. It's an important question and of late I've been trying to answer it in my own writing. I've been working on a book manuscript this summer—a manuscript I've been putting together for over a decade now—that provides an account of my teaching, and the kind of teacher I've tried to be. I call the essays in the a “backroads tour of legal education.” At least one of the essays is of an autobiographical nature. I'll be perfectly happy to make that chapter, or the entire book, available for your perusal.

So, about this matter of teaching criminal law. There have been two distinct phases in my career as a criminal law teacher. I taught the course in the mid-1970s when I first began teaching at DePaul University. Then, when I joined the faculty at West Virginia in 1977, the basic criminal law course was taught by two veteran members of the faculty, Dean Willard Lorenson and Professor Frank Cleckley, who is still a member of the faculty. With the criminal law course amply covered, the nearest I could get to the course was criminal procedure and so I taught criminal procedure for several years. I found that I didn't much care for the course. More accurately, what I didn't care for was the way the Supreme Court was dealing with its interpretation of the 4th, 5th, and 6th Amendments—the heart of the criminal procedure course—and I simply never found a way to teach the course in opposition to what the Supreme Court was doing and at the same time have the course serve the purpose it was designed to serve. What I found was that I didn't want to try to deal with the *politics* of the criminal procedure cases. I was more than ready to let someone else tackle the course, and so, when Gerry Ashdown joined the faculty, and was interested in teaching both criminal law and criminal procedure, I gladly handed over the criminal procedure course to him.

Then, in 2001, Dean Lorenson had retired and Frank Cleckley was on medical leave, and I ended up teaching criminal law again after a hiatus of some 20 years. It was, I must say, a bit odd to be thinking about teaching the course again, and, yes, quite wonderful. But more about that later . . .

The first decision that confronted me that summer as I began to think about teaching criminal law again after such a long absence was to simply try to figure out what casebook to use. When I taught the course at DePaul there was no more than four or five casebooks available and I rather liked the Kadish and Paulsen book. (My criminal lawyer professor when I was a student, John Batt, used his own materials, and so I had no first-hand knowledge of any of the criminal law books. I remember thinking, at the time, that the Kadish and Paulsen book was quite sophisticated—and more theoretical in orientation than the others.) So, my first thought in selecting a book for the course was to pick up the latest edition of Kadish and Paulsen, give it a once over, and pick up where I left off twenty years ago.

[The old Kadish and Paulsen criminal law casebook is now Kadish, Schulhofer, and Steiker,

Criminal Law and Its Processes: Cases And Materials, and is now in its 8th edition. The book has, undoubtedly undergone more than one major overhauls since I taught the new 1975 edition. So far as I know, no one at West Virginia has used the Kadish book. Gerry Ashdown is a co-author of his own criminal law book and uses it for his criminal law course.]

So, it's May, 2001, and I'm staring at a stack of 8 or 10 criminal law books on my porch desk—they all said CRIMINAL LAW on the cover. I know, with a kind of sinking feeling, that a quick once isn't going to work. I know that choosing the wrong casebook will make teaching the course ever so much more difficult, and I'm not looking to make trouble for myself. For twenty years, I'd been teaching courses that allowed me to create my own course materials and it was going to be hard enough to teach, again, one of these ponderous casebooks. Teaching a bad case book is like trying to make do with a bad marriage. It can be done but it's not the kind of thing you'd wish on anyone. So, I get each of these summer mornings, brew a pot of coffee, and took off to the porch with my first cup of coffee of the day with a single pressing question: How am I going to figure out which criminal law book to use?

My first preference, in every course I teach, is to create and teach materials that I've personally selected and can vouch for. I know that's not going to be possible in a course like criminal law, especially after not teaching the course for so many years. It would require the entire summer to select and edit the cases. It would be a daunting task, so daunting I don't want to think about it. It would take stamina, guts, and months and months of reading criminal law cases to pull it off. Then, of course, I'd be teaching a set of xeroxed cases that many of you would view with suspicion because they aren't bound in a "real book." I decide to find a course casebook.

So, for weeks on end, I surround myself with criminal law books. I start by reading the background and introductory sections, moving from book to book. Most of the casebooks include, early on, a chapter on punishment; almost all of them have several hundred pages of background and introductory readings. I spent my first weeks of my return to criminal law perusing these introductory chapters, and trying to get a feel for the different books. My first reaction, left me a bit weak in the knee, and a slightly sick feeling: Maybe this decision to teach criminal law is a mistake. The material I'm reading in these introductory chapters doesn't remind me of anything that I remember from the course. Yes, the theoretical material I'm reading is interesting enough but it's quite abstract—there are more "readings" than "cases." I have trouble trying to figure out how these introductory chapters could be taught, and how to do it in a way that would keep you interested in criminal law. What I begin to realize is that I've grown weary of sociological and theoretical abstractions. Over the years, I've been accused of being somewhat theoretical and philosophical in my teaching but in recent years I've grown more concerned about finding ways of teaching that bear more directly on ways of thinking about law and lawyering that you can put to use. Reading these introductory chapters of the criminal law books begins to distress me. Maybe, I've made a mistake in agreeing to teach criminal law again!

But the decision had been made and it would have required a good bit of wrangling and swimming upstream to undo it, if that could have been accomplished at all. I decided, at that

point, that if I was going to teach criminal law I was going to have to find something that I (if not my students) found interesting enough to help me get through these early summer days. I don't mind working during the summer to get a new course ready for prime time, but I'll be damned if I do it, and bore myself silly.

At this juncture, I decided, on a fine late spring-like day in mid-May, that what I needed was not background readings, not page upon page of sociological abstractions about crimes and criminals, not the standard litany of theories of punishment—no, what I needed was crime, not more talk *about* crime. I picked up one of the books, thumbed my way past the principles of punishment chapter, and the chapters on *actus reus* and *mens rea* and *causation* until I got to homicide. And when I got to the *murder* cases, I had something of a revelation: I'm no longer dragging myself off to the porch each morning to face still another day of doubt. Reading the murder cases, I know, really for the first time, that I'm quite pleased at the thought of again teaching criminal law. Murder is gruesome business and there's no pleasure to be had in thinking about a society in which this sort of thing happens with such frequency but I find these homicide cases quite fascinating. The facts are vivid and unforgettable. There's no question, in most of these cases that someone needs to be punished. The question is trying to fit the egregious harm with a set of criminal law rules that are fair and results in a just punishment.²

² What I discovered in reading the homicide cases was that I might indeed need some theory to teach criminal law, but oddly enough not the kind of theory found in the introductory chapters of the criminal law casebooks. It dawned on me that I didn't need so much the "theories of punishment" to know that punishment for murder (and other crimes) is something we most definitely want to do. We may over punish for particular crimes, and we may create harm as we punish but it's no longer, in my view, a great innovation (as I may have once thought) to begin the study of criminal law with a study of theories of punishment.

I do not mean to suggest that the theories of punishment do not deserve study. I think, however, if you take the idea of "punishment" seriously, you end up with an entirely different course than the course in criminal law that I want to teach. Of course, we could teach criminal law with punishment being the central theme. The course might begin with a day spent at the county jail. We could arrange to have you locked-up for 24 hours to get a feel for what it's like to be in jail. Or, we could get some former prisoners to stop by the law school and talk with you about prison life. We could watch some prison films. You could drive around the state and visit our state and nearby Federal prisons. (Question: How many of you know where the state's prisons are located? Do any of these names sound familiar? Anthony Correctional Center, White Sulphur Springs, Greenbrier County; Beckley Correctional Center, Raleigh County; Charleston Work Release Center; Denmark Correctional Center, Hillsboro, Pocahontas County; Huntington Work Release Center, Cabell County; Huttonsville Correctional Center, Randolph County; Lakin Correctional Center, West Columbia; Mt. Olive Correction Complex, Fayette County; Northern Correctional Complex, Moundsville, Marshall County; Ohio County Correctional Complex, Wheeling, Ohio County; Pruntytown Correctional Center, Grafton, Ohio County; Saint Marys Correctional Center, Pleasants County.) Did you know that we have several Federal prisons located in West Virginia? Federal Correctional Institution, Glenville, Gilmer County; Federal

footnote: After spending several weeks with the criminal law casebooks, I finally selected Joshua Dressler's *Cases and Materials on Criminal Law*. The Dressler book is notable, I think, for Dressler's selection of cases. He has an eye for cases that keep us awake, and keep us reading. I found some of the textbooks more intent on coverage of legal doctrine than in the selection of cases designed to keep the material alive. Any casebook, Dressler included, will put you to sleep after awhile. Consequently, as the course progresses I introduce a good number of West Virginia cases. What I have in mind is not to focus the course on West Virginia law but to have you get some idea of how the West Virginia Supreme Court of Appeal—the state's highest appellate court—goes about deciding criminal law cases.

Lesson to Be Drawn From this Commentary on Finding the Homicide Cases: Beware of teachers and the decisions they make about the nature of the course they will teach.

8

Finding My Way to Criminal Law

Is there any chance we could get you to talk more about how you first got the idea to teach criminal law? What brings someone like you to teach a course like this (knowing, of course, so little as we do about the nature of the course)?

I can see that we're getting back around to autobiographical work here. That's fine. You might be

Correctional Institution, Morgantown; Federal Prison Camp, Alderson (a women's facility). How many of you here have ever been in a prison? (I will not ask how many of you have served time in jail!)

A study of punishment might provide you with some surprising figures: Did you know that as of December 31, 2004, there was 2,267, 287 people incarcerated in local, state and federal prisons? At the end of the year, 2004, West Virginia had 5,067 inmates in state and federal correctional facilities. Did you know that there were 104, 848 women in state and federal correctional

facilities as of the end of 2004. The statistics on punishment, the monetary outlay to punish by incarceration, and the condition of our prisons, and the policies we implement in filling them is, of course, more than enough for a law school criminal law course. This is not, of course, the course I'm going to teach. But the course I teach will most definitely be influenced by that summer with my porch desk piled high with criminal law books. It was the murder cases that rescued me that summer, and it will be homicide cases that provide the backbone of the criminal law course that I will try to teach.

In the study of homicide, as I undertake it, and use it as the focus of our study of various criminal law doctrines, it's not until we get to a "mercy killing" case like *State v. Forrest* (North Carolina, 1987) that we are really pushed to think about punishment (unless of course, you ask whether the doctors charged with murder and conspiracy for murder in one of the first cases that we read—*Barber v. Superior Court*—should be punished as murderers.

interested to know that as a law student, I assumed I would be a trial lawyer, and I further assumed I'd be a criminal trial lawyer. It was an assumption so firmly, so deeply, embedded, and without a shred of any foundation for it, that I realize now that it was something of a personal myth. You'll be amused, perhaps, if I tell you that I sometimes, still, imagine that I am a trial lawyer! Of course, I'm a teacher, a teacher who has returned to the courtroom so seldom as a lawyer that I can count the times on the fingers of a single hand the number of times I've been in the courtroom with a client standing beside me.

When I went to law school I knew absolutely nothing about lawyers, nothing law, and nothing about courtroom trials. The only lawyer I knew personally was a circuit judge who happened to be a high school friend's father. Judge Osborne was a rather formidable man, and while I said hello to him on the occasions when I happened to be my friend, his son, Bill, I don't ever recall actually talking to the man.

My interests in high school were quite remote from the law. I assumed, in those days, that I'd be an electrical engineer. The judge's son and I were both interested in electronics, and we were both amateur radio operators. I operated under the call sign, K4YTD. I spent a good deal of my spare time, especially in the late night hours when radio communications were best, talking to ham radio operators around the world. Bill Osborne went on to get a Ph.D. in electrical engineering and has been dean of several electrical engineering colleges. I exchanged email messages with Bill a couple of years ago after having lost contact with him and I learned that he's still an amateur radio operator. I gave up my FCC amateur radio license a good many years ago; sometimes I think I might have another go at it. Bill's younger brother, Tom, I didn't know very well at all until he went to law school. Tom Osborne is now a prominent lawyer in Paducah, Kentucky.

Forgive my digression. I'm reasonably confident you have minimal interest in hearing about my days as an amateur radio operator and the Osborne family. This is the problem with autobiography . . . you never quite know what kind of story you may end up telling.

But the digression does get me back to Western Kentucky. I grew up in the part of the state we called the Jackson Purchase in a law abiding family of parents, grandparents and great-grandparents, aunts and uncles, and cousins. No one, it seems strayed very far away from home. We were a law abiding family in a law abiding rural area. We lived in a dry county in western Kentucky, so we had no bars, and no crime associated with drinking and late night carousing. Marshall County was and remains to this day sufficiently rural—the largest town, Benton, the county seat, had a population of 3,000; it's now 4,367—so we had nothing like urban crime. There were some local businessmen in town but I don't recall ever hearing anything about fraud or embezzlement; we knew nothing about white-collar crime. There weren't any great social or class differences—or so I thought at the time—and so we didn't have the crimes of violence committed by the “have nots” against those who have something that can be stolen. We had a murder case every quarter century or so. There was talk that the local bank at Hardin, a bank no longer in existence (indeed, Hardin itself barely continues to exist), was robbed maybe a 100

years ago and the robbers were never caught. I must tell you that I've not bothered to check out this story and there may be absolutely nothing to it.

Growing up in this rural, relatively crime free community (and yes, I'm confident we had unreported crime, domestic violence, unconsensual sex crimes), it's something of a great leap to find myself in law school, and that I'm interested in criminal law. That happened, I think, mostly because one of my teachers happened to be a man named John Batt. Batt was an impressive man, he seemed to know everything—or so it seemed to me at the time. And if I may put it bluntly, he was a bit wild. By that I mean he had a dance in his movement; he leaked charisma. Some of us were drawn to that, others were not. Batt was dramatically different from all my other teachers; he always seemed more alive to me. And yes, he could be intense. I sometimes got the feeling that he might leap out of his own skin. In the classroom, Batt never used notes, and while he made up everything we did in class off-the-cuff, it always seemed so perfectly composed. This was teaching as a jazz musician would do it. Good stuff, and I found it all quite fascinating.

I think it's accurate to say I wouldn't be teaching criminal law, and most likely I'd not be a law teacher, if it had not been for John Batt. He was, I think, the first real "wild man" I'd ever had as a teacher. Most teachers walk and talk . . . well, like teachers. They all begin to sound the same. Of course, you don't have to go so far with schooling to find good teachers and those who come close to being bad. There are thoughtful teachers and hacks, teachers who want to teach and those who teach like they're passing out chow to soldiers. All said, I simply never had a more creative, wildly innovative teacher than John Batt.

And what do I mean by saying that he was wild? John Batt, simply put, didn't do what was expected him, and he didn't mind the heat from his students or his colleagues that came along from going his own way. He was wild to me then, and now, because he was different. Some of us chalked that difference up as brilliance. We saw his brilliance in the great flash of his ideas, and in the uncontainable energy that he brought with him into the classroom. I had a good many buttoned-down, no nonsense teachers in law school—some of them quite good. John Batt, in his wild approach, made everything he told us look enticing. I'd never seen anything of his kind before, and only a few times since.

The first thing Batt did was give us a hand-out of 12 or 14 pages that presented the common law definitions of homicide, rape, assault and battery, burglary, larceny, fraud, embezzlement, and conspiracy. He told us, "There it is, criminal law in a nutshell, all the crimes, the crimes defined. Now, with that done, we can get on to thinking about criminals." Batt's idea of criminal law was to introduce us—and introduction is the right word here since we knew nothing—to what he called "the criminal mind." He talked several days about Sigmund Freud, who I had never heard of (and I've been reading Freud ever since).

Batt, of course knew that he had some sophisticated students from Louisville and Lexington, but what he had mostly was a roomful of dutiful students who had grown up in little towns and rural areas all around Kentucky and most of us had very like exposure to crime and the criminal justice

system. It's probably fair to say that most of us had never known anyone who had been to jail. What Batt had us studying was *The Other*, and a world that we knew nothing about.

Our first "case study" in criminal law—John Batt style—was the case of a doctor, obsessed with a Hungarian fan dancer, who, spurned as a lover, kidnaped the fan dancer, and tortured her by tanning her alive with sulfuric acid. We were shocked and appalled—speechless really—at the savage brutality of the crime. What John Batt had in mind for us was in our study of the Hungarian fan dancer case was to devise a defense for the doctor. A defense? Who could think of such a thing? Prosecuting the doctor for the murder of the Hungarian fan dancer would be relatively easy, there was no lack of evidence against the crazy doctor. And yes, we were quite stunned to find ourselves trying to puzzle through the doctor's defense. Just how crazy was he and how is that craziness going to play out in the prosecution of the doctor? Of course, one might assume, that Batt had every reason to believe that we would be stunned, and all the more so in what he was asking us to do—that is, in what he was asking us to learn. Some of us, as it turned out, would learn a great deal. It wasn't so much the idea of defending the doctor in the murder case that enthralled me, as it was that first taste, that first glimpse into a hidden and forbidden world—the world where people do *savage* things and go to prison for doing it—the world where lawyers come up against all this that is forbidden, wrong, and evil. I had the feeling, reading that first case study in crime, that I had departed for a world that would take me far from home. As Dorothy, in *The Wizard of Oz*, having just arrived in Oz, still quite in awe, says, "Toto, I've a feeling we're not in Kansas any more." It was that criminal law course with John Batt that gave me the first inkling that I might actually be a lawyer someday. There was no way to know then just how few years I would actually practice law.

With that first exposure to John Batt and the world of criminals and the criminal mind, I got the notion that I'd be a defense lawyer. But those who take up with the law find that they have before them a great many choices. I learned that to be defense lawyer, I'd have to forego being a constitutional lawyer! And it became apparent that if I wanted to be constitutional lawyer or a criminal defense lawyer, that it would be difficult to do that in a rural area in Western Kentucky. Most of us have to make choices along the way, and the choices often take us places we had not planned to go.

I did manage, along the way, to have still more glimpses at the practice of criminal law. I happened to be in law school during the Vietnam War, and as a result of the war lost my graduate school deferment. I ended up getting drafted into the U.S. Army, and after three semesters of law school I found myself doing basic training at Fort Campbell, and then being assigned to Fort Bragg, North Carolina to work in the Special Operations Forces (Green Beret) JAG office. I wasn't a lawyer as yet, and the JAG officers didn't have law clerks, so I became, de facto, the office manager. I supervised the flow of documents, learned to keep the xerox machine humming, and was self-appointed master of an ancient furnace that keep our offices somewhat heated in the chilly winter days of a North Carolina winter. Most days I was designed by Major Wold, the head Green Beret JAG officer, to get his lunch. My day-in-day-out legal task was to help prepare wills and powers-of-attorney for the special operations forces that were heading off

to Vietnam. (I wrote so many wills during my stay at Fort Bragg that it was over 35 years before I could stand the thought of sitting down with a lawyer and working on a will for myself.)

My time at Fort Bragg would have been far more enjoyable—if that's the right word—if I hadn't spent a good part of my time in Fayetteville, anxious to learn when I'd be sent to Vietnam. The levy that called for new troops for that hell-ish war came from the Pentagon about every six weeks. Almost everyone I knew at Fort Bragg was on their way to Vietnam—the occasional lucky soul got orders for Korea—or returning from the war. The Vietnam war was the name of the game when I was in the Army, and I assumed I'd be in the middle of it before I could get back to Kentucky and finish law school. I waited, and waited . . . and waited. I don't know, and will never know, what happened. My name never appeared on the Vietnam levy, and I ended up doing my entire tour of duty at Fort Bragg. I knew what was going on in Vietnam . . . or so I thought, and I knew I didn't want any part of that war. I consider myself a most fortunate man in staying at Fort Bragg. I didn't finally get to Vietnam until 1998, and at that point, I was just another traveler.

Least you think, I've gotten completely off track here, there was an aspect of the Fort Bragg stay that is related to my teaching criminal law. I arrived at Fort Bragg, sometime in late March, 1969. On February 18th, in 1970, I got things ready at the JAG office for another day's business. I had breakfast in the Army mess hall at the usual ungodly hour that soldiers begin their day, and without a radio or newspaper had no idea that this day would be any different than the several hundred that preceded it. When Captain Baker, one of the JAG lawyers, arrived that morning he told me that the family of one of the Green Beret doctors who lived in an Army post apartment had been murdered the previous evening. About all we knew at that point was that Colette MacDonald had been murdered, along with the two MacDonald girls, Kimberley and Kristen. Captain MacDonald had been injured in an attach by unknown assailants and was in the hospital.

Captain MacDonald was released from the hospital a week later and at this point we're all following the case in the news. Then, in early April, 1970 Captain MacDonald was informed that he was a suspect in the case and was placed under house arrest as the investigation proceeded. He arrived one morning, a few days later, at the JAG office, walked up to my desk with two armed guards accompanying him, and I stood up to salute him. "Captain," I said, to break the silence. MacDonald, reading my nametag, said, "Sargent Elkins, I'm Jeffrey MacDonald, I think I need to see a lawyer." That was April, 1970. In May, the Army formally charged MacDonald with the murder of his wife and two young children. The Article 32 hearing—something akin to a grand jury proceeding, only held as a kind of mini-trial with defense counsel present and conducting cross-examination of the witnesses—got under way in July, 1970. Colonel Rock, the Army hearing officer issued his report in October, 1970 just as I was heading back to the University of Kentucky to finish my law degree. Colonel Rock concluded that there was insufficient evidence on which to base a murder charge against Captain McDonald.

MacDonald was discharged from the Army in December, 1970, but the investigation in the case continued. On January 24, 1975, a Federal Grand Jury in Raleigh, North Carolina indicted

MacDonald for the murder of his wife and children. The case went to the Supreme Court on grounds that MacDonald had been denied a “speedy trial,” and after winning in the 4th Circuit on that issue, the Supreme Court reversed and gave the green light for the trial on the murder charges. The trial finally got underway in Raleigh, North Carolina, in July, 1979. After an eight week trial, MacDonald was convicted. He appealed his conviction and again won a favorable decision in the 4th Circuit. He had his usual bad luck with the Supreme Court, and in March, 1982, the Court overturned the 4th Circuit speedy trial decision and MacDonald was carted off to prison. He is presently incarcerated at a Federal facility at Cumberland, Maryland.

MacDonald has, from the time of the first investigation of the case in 1970, maintained his innocence. For more than 25 years now, he has sought a new trial and exoneration.

The MacDonald case became known worldwide with the publication of Joe McGinnis’s book, *Fatal Vision* in 1984 (and a rather bad made-for-TV film based on the book that followed). McGinnis, who had full access to the defense team during the 1979 trial, did a hatchet job on MacDonald and used the book to try to convince readers that MacDonald committed the killings. I didn’t spend enough time with Captain MacDonald to get to know him very well but I read enough of the legal documents at the time of the original Army investigation, and have now followed the case over the years, and a few years ago taught an “advanced criminal law” course that focused on the MacDonald case where students read the entire eight week trial transcript. I have serious doubts about the sufficiency of the evidence at the 1979 trial to support the conviction. I’d put my money on the proposition that MacDonald is innocent.

For those, who want a much better picture of the overall case, and in particular, a chilling account of the government’s misconduct in the case, you’re advised to seek out, Jerry Potter & Fred Bost, *Fatal Justice: Reinvestigating the MacDonald Murders* (W.W. Norton & Co., 1997). [For photographs of Jeffrey MacDonald, a case chronology, and legal updates, see <http://www.themacdonaldcase.org> And, I might note, Wikipedia has a good entry on the Jeffrey MacDonald case.]

I survived my twenty-one months as a soldier, and headed back to Kentucky to become a lawyer. My next criminal law related stop along the way came the summer before I finished law school. I was a law clerk, the first I think, at the U.S. Attorney’s Office in Lexington. When I arrived that summer, 1971, at the U.S. Attorney’s Office, no one knew quite what to have me do. I eventually find a niche writing appellate briefs for 6th Circuit cases, but before I got settled in to do that, I hung out with the lawyers in the office, most notable of them, an old lawyer from Eastern Kentucky named Moss Noble. Most days someone from the office would invite me to lunch, and we sometimes joined by ATF agents. I learned from these lawyers that in addition to being a criminal defense lawyer, I might want to consider being a prosecutor. I’d have given a golden nugget or two if I could have stayed on as a prosecutor there in the U.S. Attorney’s office after I finished law school but that didn’t happen. The Lexington U.S. Attorney’s office is quite small, and openings were few and far between. And, I might note, that I was of the wrong political party.

Eugene Siler, the U.S. Attorney, introduced me to one of the Federal judges in the Eastern District of Kentucky, and recommended me as a clerk. The problem was that the Judge had someone from his hometown getting ready to graduate a few months after I got out, and the clerkship didn't happen.

Then, I had a good thing come my way, quite unexpected. An old friend from law school, Winston Miller, was at the Department of Justice and he called me up and told me he was joining a new litigation section at the Civil Division that was going to handle the economic stabilization wage and price control program that President Nixon and Congress had recently created. I knew nothing about wage and price controls designed to harness runaway inflation but then we'd never had such a peacetime regulatory program and everyone knew it was going to be, from a legal standpoint, open field running. When Winston Miller asked if I'd be interested in a position with the new DJ section, I realized that it was a perfectly good opportunity to get my feet on the ground as a lawyer.

So, law degree in hand, the bar examination behind me, and a summer's experience writing briefs for the 6th Circuit while I clerked at the U.S. Attorney's office, I was on my way to Washington, D.C. as a litigation lawyer in the Economic Stabilization Section, Civil Division, Department of Justice. I joined Steve Pickard, recently arrived from Kansas—who I thought of at the time as an experienced lawyer with about a year under his belt—and I began to work on the price control cases. (There was specialization even in our small section. Some of us worked on price control cases, others on the wage control cases.) I read case files by day, and Kenneth Culp Davis's treatise on administrative law at night. I didn't take the administrative law course as a student, and knew absolutely nothing about administrative procedure.

The Economic Stabilization Section was quite small—there may have been 10 or so of us including, Bill Nelson, the section chief, and a couple of assistant section chiefs, Gerald Freed and Stanley Rose. I liked Bill Nelson and I found him to be a good lawyer. He ran a tight ship, and he gave us, all, all the work we could handle. He wasn't much to second-guess our work, and he had a relatively gentle touch when it came to trying to make sure we got things right. Freed was another story, and I must say I never trusted him. He had been brought in from Baltimore to give the section some litigation heft but I didn't much care for working with him. Stanley Rose was near retirement age, and his litigation years were behind him. He did, however, know how to wield a red pencil when it came to reviewing briefs. He had a reputation for requesting so many changes on the briefs we submitted to him for review that I was advised to keep all my old drafts of the brief and when I'd exhausted myself on trying to get it right, I could recycle older versions of the brief until Stanley finally decided he would sign off on a final version. I have a fortunate lapse of memory now and can't recall whether I ever had to draw on this advice or not.

The wage and price control program wasn't meant to be permanent, and after something like a year and half of litigation around the country—almost all of the litigation was handled directly from the Department of Justice—things began to wind down. When our section was assigned to work on renegotiation of profits of military contracts in cases to be tried before the Court of

Claims—where I was duly admitted to practice—I knew my days at the Civil Division were numbered. Steve Pickard, my friend and office mate at the Department of Justice, had made friends in high places, and decided to join the U.S. Attorney’s Office in Alexandria, Virginia. With my old hiking buddy gone, I knew I had to find a new home. I applied to Yale for an LL.M. and got myself appointed, finally, as an Assistant U.S. Attorney at Newark, New Jersey where I took over as the lead Federal prosecutor on a white-collar crime investigation involving fraud by real estate brokers and mortgage companies in securing FHA loans. I worked exclusively on that investigation, coordinating the FBI and HUD investigators, and presented grand jury testimony that resulted in an indictment of one of New Jersey’s largest mortgage companies.

I might still to this day be a Federal prosecutor but for the simple fact that I was living in East Orange, New Jersey, working in Newark, a city that in the early ’70s was still a city in ruins from the ’67 Newark race riots. (It may still be a city in ruins for all I know!) I left the U.S. Attorney’s Office because I got accepted in the LL.M. program at Yale Law School, and I didn’t want to pass that up. John Batt had studied at Yale, as did Henry Seney, another professor I found quite brilliant. And, I knew that Newark, New Jersey was no place for a man from Kentucky to be working. I might have given up on the year at Yale if I could have gotten a position in the U.S. Attorney’s Office in Lexington but that office had become all the more political over the years, and unlike the Newark office where I received my appointment without reference to my political party, you had to belong to the right political party to secure an appointment in Lexington. I was, of course, still of the wrong party, and that left me heading off for the year at Yale.

After completing the LL.M. year at Yale, where I took law and psychiatry courses with Dr. Jay Katz, wrote a paper on corporate criminality in a white-collar crime course taught by Steve Duke, had my first introduction to legal history taught by Robert Cover and Robert Stevens, had my second go at jurisprudence with Michael Reisman, another version of law and anthropology that I first took while a student at Kentucky, and finally, my first formal course in administrative law with the estimable, Geoffrey Hazard.

It was quite a year and I found nothing at Yale to convince me that I did not want to teach law. What I didn’t know when I headed off to Yale was that I would never practice law again. When I left New Haven for Chicago in 1975, for my first year of teaching at DePaul University, what I found was that I liked the the big windy city, and I had some wonderful students, still high on the ’70s and ready for anything I might want to try as a teacher. I also found that the Dean at DePaul was a very very crazy man and he left me no choice but think about life elsewhere. (A few years after I left DePaul, Dean Groll, died from a fire in his apartment.) I gave considerable thought to cashing it in and heading off to live in Scotland at a new age commune—Findhorn—that I’d been reading about. The Findhorn website provides the following summary description of where I thought I might be heading: “[Findhorn] is a spiritual community, ecovillage and an international centre for holistic education, helping to unfold a new human consciousness and create a positive and sustainable future.”

I decided to let DePaul pay for a little mini-winter vacation before my departure, and in January I

headed to San Antonio for the annual American Association of Law Schools (AALS) meeting. I happened to run into Tom Cady on the bus from the airport to the hotel. I was offered a position here at West Virginia in 1975 when I started teaching at DePaul but I still had big-city-itis and Chicago trumped Morgantown easy enough. Tom and I chatted a bit on the bus and he asked me how I liked DePaul. I told him it was fine but that I'd gotten cross-ways with the Dean who'd made it abundantly clear that I had no future at DePaul. I told Cady that several of my colleagues at DePaul and I were going to publically resign and head the movement for Dean Groll's dismissal. You can be sure there's not much future for an untenured professor in that kind of situation. When Cady asked me if I might still be interested in coming to West Virginia, I told him I was. He said, "call Bill Lorensen, the Dean, when you get back to Chicago, and we'll make it happen." Tom must have talked to Lorensen; a telephone call a week later and I was on my way to West Virginia. Thirty-two years later, I'm still here. But then, so is Tom Cady!

Lesson from this Extended Autobiographical Note: Beware of those teachers of whom you know nothing. Keep your eye on those who are willing to tell you their life story.