

Teaching Seminars — Pedagogy and Potential

by Gary J. Simson*

I love teaching, especially seminars. In my many years of law teaching, I have taught a seminar in all but a handful of years, and in some years, I have taught two. My first experience teaching a seminar came in my very first semester of law teaching, and my most recent experience was in the semester that came to a close a couple of months ago.

In this essay, I hope to encourage other faculty to reap the benefits of seminars for their students and themselves that my students and I have enjoyed. Although the selection of subject area for the seminar is important to the seminar's success, I have long believed that the choice of format is even more important. As a result, in deciding whether to offer a seminar for the first time and, even more so, in deciding whether to continue offering a seminar, I have been strongly influenced by my judgment as to whether the subject area is well-suited for the format that I have in mind. Before turning to selection of subject matter, I therefore first discuss, and spend most of this essay discussing, the ingredients of, and rationale behind, the seminar format that I have come to use. That format is not dramatically different from the one that I used early in my career. It does include, however, a number of components that I have adopted over the years to respond to perceived shortcomings and that I would like to think qualify as improvements.

I. MY SEMINAR FORMAT

The centerpiece of my seminars has always been the students' papers. Broadly speaking, the early weeks of the semester are devoted to discussing assigned readings that I have put together with the students'

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preparation of a substantial research paper paramount in mind, and the final weeks are devoted to discussing the papers themselves. Other than the class meetings devoted to discussing the readings or papers, the seminar does not meet as a group. The seminar is structured in a way that the students do not start working on the papers until after the classes devoted to readings. To free up as much time as possible, within this framework, for the students to work on the papers, I schedule at least one make-up class early in the semester and at least one late in the semester. As a result, all the classes devoted to readings take place within roughly a three-week period at the start of the semester, and all the classes devoted to discussing the papers take place within roughly a three-week period at the end of the semester.

I typically begin the semester with five classes, each two hours apiece, in which we meet to discuss readings. The readings generally consist primarily of United States Supreme Court decisions that I have edited, but they also commonly include one or two lower court decisions, perhaps a statute or two, excerpts from law review articles, and a few brief transitional notes that I have written. As I explain to the students on the first day of the seminar, my principal focus in putting together the readings is the student papers to follow. In general, the readings are designed to serve two purposes: to ensure that the students have the basic background in the subject area of the seminar needed to prepare a substantial research paper in the area; and to stimulate the students' thinking about topics on which they would like to write.

I set aside the second hour of the fifth class for topic selection, but I begin to lay the groundwork for the topic selection on the first day of the seminar. At that time, I hand out a list of topics for consideration that I emphasize is intended to be suggestive and not exclusive. I tell the students that I will approve their writing on any of the topics on the list. In addition, however, I encourage them to think about the topics on the list as illustrating, in scope and ambition, the *type* of topics that I have in mind and that I invite them to propose.

On the first day of the seminar, I also tell the students that they are welcome to discuss with me at any time in the coming weeks any topics that they are considering for their papers. I make clear, however, that topic selection will be done as a group activity in the fifth class and that one of my objectives in that class will be to ensure a reasonable spread among paper topics. In keeping with that objective, I encourage the students each to try, during the weeks devoted to the readings, to identify as specifically as possible paper topics that he or she would be interested in pursuing. I tell them that, in the fifth class, I will begin the selection process by asking each student to tell me his or her first choice and then writing (or, in this era of computers and smartboards,

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projecting) everyone's first choice on the board in front of the room for all to see.

I promise the students in our initial class meeting that if any of them signed up for the seminar with his or her heart set on writing on a particular topic, I will not deny them that opportunity. I underline, however, that the final weeks of the semester devoted to discussing the papers will be far more beneficial and interesting for everyone if they as a group are reasonably flexible about their topics. As I explain to the class, it is hardly uncommon in the group selection process for two students to lay claim to the same first choice topic or to two topics that substantially overlap. Moreover, at times, the problem of topic duplication or substantial overlap extends to more than one pair of students. As I further explain, it almost invariably has been my experience that, with a minimum of prodding from me and peer pressure from the class, one or both of any two students with matching or substantially overlapping topics have offered to pursue instead his or her second choice topic, and it would be my hope that the current group of students show similar flexibility.

As I tell the students on the seminar's first day, each student is expected to devote the ten to twelve days immediately after the group topic selection to researching his or her topic and preparing for me (1) an outline that sets forth in as much detail as possible the student's plan for the organization and reasoning of the paper and (2) a list of the principal cases, books, and articles upon which the student expects to rely. To facilitate the students' research and outlining, I e-mail each of them within a day of the group topic selection a short list of sources that they should find useful in getting started. Having previously asked them to e-mail me the times during the week when they have class or other time commitments, I also send them at that point a schedule of the times two weeks hence at which they individually will meet with me in my office for about forty-five minutes to discuss the outline and list of sources submitted to me.

I typically spend at least an hour poring over each student's outline prior to the time that we meet to discuss it. As I tell the students as they embark on writing the outline, it has almost always been my experience that the more detailed the outline, the more assistance I can provide when we meet. With rare exception, outlining the organization and reasoning of a prospective written work of substantial scope and complexity is not something that law students are accustomed to doing. In my view, however, it is a highly valuable skill for them to learn, and seminars provide an excellent opportunity for them to learn it. The skill acquired will stand the students in good stead in later years in any of a host of capacities, ranging from associate in a law firm to general

counsel in a corporation to chair of a state bar committee, and more. At least at times, if not in fact often, they will need to do a brief or memo or report of sufficient scope and complexity that the task becomes much more difficult and the final product tends to suffer unless they first do an outline that reflects careful planning and organization.

If not required to submit a detailed outline before doing a first draft, students typically will proceed directly to drafting. In particular, it is all too tempting to get some ideas down on paper quickly in the form of a very rough draft. Rather than hold off on drafting until they have identified clearly in their minds the issues to be discussed and the optimal organization, most students will rely upon drafting and redrafting as a means of enabling them to think their way through, and discover the most effective way of addressing, their topic.

This alternative approach is easier than outlining in that it does not demand the type of patience, discipline, and foresight that outlining requires. However, it is also substantially less efficient. Considerable time savings are possible if one develops the skill of outlining. By learning to think through carefully, and do a detailed outline of, the paper before starting to draft, students can produce a fairly refined product in their first draft and a very refined one in their second. So doing, students can avoid the unhappy fate commonly experienced by practitioners of the draft-early approach: writing many arguments, transition sentences, and footnotes that become superfluous when the draft of which they initially were a part is substantially revised.

There is also good reason to believe that the final written product is apt to be more persuasively and cohesively crafted if it grew out of a detailed outline rather than a very rough draft. The relative brevity and spare structure of an outline tend to make the cogency and coherence of the line of argument stand out, for better or worse. In contrast, the pages of text and footnotes that constitute a draft tend to make cogency and coherence of argument more difficult to ascertain.

In the course of the individual outline meetings, I usually ask quite a few questions. At times, I do so because it is sufficiently unclear from the outline what the student hopes to do in the paper and how he or she hopes to do it that I am not able to be helpful without a fair amount of clarification on the student's part. In other instances, I have a reasonably good idea of what the student has in mind, but I think it raises a variety of problems. Rather than simply tell the student how I think he or she can best address or avoid those problems, I question the student rather socratically in an effort to get the student to work his or her way through the problems with me. I do not make a fetish of avoiding declarative sentences, but I do think that it is most effective to keep them to a minimum. Although I am trying in the meeting to help

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the student move forward on the paper, I am also, and probably even more so, trying to help the student learn how to do a difficult and important task. The student will become proficient in outlining only with practice, and in the course of the semester, there is an obvious limit to the number of opportunities for practice that I can supply. I am in a good position in the individual meeting, however, to help ensure that the student acquires a solid understanding of the type of thinking and discipline that effective outlining entails, and I believe that asking questions, rather than simply providing answers, is the best means of doing so.

Asking questions, rather than simply providing answers, is also valuable in terms of cultivating the skill or talent of creative thinking. Creative thinking is all too often neglected—or even, some would argue, suppressed—in law school. People often talk about law schools’ having the responsibility of teaching students to “think like a lawyer.” Personally, I have never been all that sure what people have in mind when they make that claim, and I strongly suspect that different people often mean very different things. Whatever they mean, however, I know that I disagree if it does not include teaching students to think creatively. In my view, a key ingredient of teaching students to think like a lawyer is fostering intellectual risk-taking—a willingness to think outside the box.

By asking the students questions much more than offering them directives, I believe that I am more likely in the individual meetings to draw them out and less likely to shut off unwittingly the students’ original lines of thought. To be sure, in some instances, a student idea that comes to light in one of the individual meetings is “original” simply because it is uniquely confused. More often, however, the idea is original in a positive way and genuinely reflects the fresh perspective that a thoughtful, intellectually curious student new to an area can bring to it. Students need to develop, and nurture during their career, habits of mind that are conducive to creativity. They need to become accustomed to questioning the received wisdom and to seeing things from a variety of perspectives. The scope and ambition of a substantial research paper invite original and innovative thinking, and in providing guidance to the student, I do my best to help and encourage the student to seize upon that invitation.

Almost invariably, at the end of the individual meeting, I tell the student that, before starting to write the paper, he or she should redo the outline with our conversation in mind. I always make a point of saying that I would welcome being shown the revised outline. In addition, if large-scale revision seems warranted, I go further and expressly ask the student to submit a revised outline to me.

I make clear to the students at the very start of the semester, and reiterate in the individual meetings, that they should feel free to contact me with questions at any time during the writing process. Nonetheless, students vary enormously in their readiness to take me up on the offer. Due to differences in personality and a variety of other factors, some students will contact me with questions repeatedly and without any prompting from me, while others will not reach out to me unless they are completely at a loss as to how to proceed and sometimes not even then. With students of the latter variety in mind, I schedule a brief “check in” meeting with every student a couple of weeks into the writing process.

The paper discussions that take place in the final weeks of the semester are not “presentations” in any sense of the word. They take a form much more akin to a “defense.” The papers that will be discussed in each class are due at least eight days prior to that class. I should note that I have the students select their due dates in the second class of the semester. In a seminar that very much depends for its success on the students’ handing in their papers by the due dates, I want to give them plenty of opportunity to plan their time for the semester in a manner that helps ensure that they complete the papers in timely fashion. With rare exception, the students select their due dates by volunteering for one or another of the due dates that I have identified as possibilities. To the extent that volunteering does not provide the desired number of papers for each date, I resort to lottery instead.

My administrative assistant makes hard copies of each paper for everyone in the class to pick up on the afternoon of the day on which the paper is handed in. Everyone is expected to read each paper prior to the class in which it is discussed. I designate two students well in advance to lead the class discussion of the paper and to submit written critiques of the paper to me on the day before the class. On the first day of the seminar, I tell the students that they each will be given two critique assignments, that I try to have each student critique papers that are quite different in topic than his or her own, and that the critique should identify and explain the paper’s principal strengths and weaknesses. I liken the critique to a book review, and to help give the students a better sense of what I expect in a critique, I hand out a sample critique. The sample is always an “A” critique submitted to me in the past, with the names of the critiquer and of the paper’s author deleted.

Although writing a good critique does not call for nearly the degree of organization and planning that writing a good research paper entails, a requirement that the students do two critiques is important in developing other skills. In particular, it pushes the students hard—perhaps harder than any other curricular activity—to exercise and hone their

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skills of critical analysis and exposition. Closely analyzing, and writing clearly, persuasively, and cohesively about, the virtues and flaws of another student's thirty-or-so page paper is an unusually demanding task.

I begin the discussion of a paper by asking one of the critiquers to state in a few sentences what he or she understands the author's basic project to be. Then, after asking the author whether he or she wishes to comment on the critiquer's brief statement or to add anything not mentioned in the paper before we begin discussing it, I ask that critiquer to get us started with a question for the author, and we proceed from there. For the author's sake, I make clear in the discussion of the very first paper that when students want to ask the author a question or make a comment, they are expected to raise their hands and not speak until I recognize them. I generally refrain from reining in the discussion unless it appears to be going seriously astray. I usually do not ask a question myself unless I think that the question is important and it appears that no one in the class is going to raise it. Although I do not know what everyone in the class is contemplating asking, I do have a good idea of what the critiquers have in mind based on the written critiques that they submitted to me the day before.

I set aside forty-five minutes of class time for the discussion of each paper. I have found that forty-five minutes is almost always sufficient to give the ideas raised by the paper their due and that the discussion is almost always lively and even invigorating for that amount of time. For the author, the discussion of his or her paper is a rare, if not unique, law school experience in a couple of ways. First, it requires the student author to respond to a barrage of questions generally less predictable and more freewheeling than the sort typically encountered in a moot court oral argument or in a simulated argument in a legal writing or lawyering course. The skill of anticipating and responding to questions that is developed in those other contexts is developed even more fully in the paper defense. Second, the paper defense puts the student in the role of expert for a significant period of time. In and of itself, that is a valuable experience for the student to have. It gives him or her a sense of the fulfillment that comes with knowing things well and having others respect, and seek out, one's judgment and guidance in that sphere. As such, it inspires the student to seek to acquire in-depth understanding and genuine expertise in and after law school.

As long as the students' class schedules and the law school's room schedule allow me to extend the usual class time of two hours by a half hour, I will schedule as many as three papers for discussion in one class. I consistently have found that, with a five-minute break between papers, the students remain very engaged throughout the discussion of three

papers. In addition, I believe that it is optimal to devote no more than five class meetings to discussing papers, and if the seminar has more than ten students, there needs to be more than five such meetings unless three papers are discussed in some of them. As already discussed, in order to free up time for the students to work on their papers, it seems desirable to schedule in the final three weeks of the semester all the classes devoted to discussing the students' papers. Based in part on experience but on intuition as well, I am persuaded that if the class meets for paper discussions more than five times in that relatively short span of time, student enthusiasm and interest inevitably begin to flag.

In some instances a student's paper undoubtedly raises ideas that profitably could be discussed for more than forty-five minutes. I believe, however, that there are always important countervailing considerations that militate against extending the discussion time. Most obviously, because the class discussion of a paper primarily takes the form of a paper defense in which the author responds to a series of questions, it is a very intense, and at some point quite wearing, experience for the author. In the interest of keeping the paper discussion a positive experience for the author and not allowing it to become something dreaded by the student whose turn in the "hot seat" is yet to come, forty-five minutes of class time per paper seems about right.

II. SELECTING A SUBJECT AREA

Over the years, I have sampled a variety of different seminars, though all with a common denominator of constitutional law: The Sixth Amendment, The Fourteenth Amendment, Constitutional Criminal Procedure, The Constitution and the Schools, and The Religion Clauses of the First Amendment. As I think back on my decisions over the years whether to offer for the first time, or continue teaching, a seminar, I realize that my decisions essentially depended on whether I could answer each of the following questions in the affirmative. First, is the subject area of the seminar one that I am very interested in learning more about? Second, is my learning more about the subject area apt to spark ideas for scholarship? Third, is the subject area likely to strike a number of students as interesting and attract an enrollment of at least eight to ten? And fourth, is the subject area one that I can expect to cover in enough depth in the early weeks of the semester that each student will be well-positioned to write a paper sufficiently substantial to warrant being the focus of class discussion for forty-five minutes in the final weeks? To help illustrate the value of the preceding questions in deciding whether to offer, or continue offering, a particular seminar, I discuss below how the answers to those questions figured in my

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decisions whether to offer, or continue offering, the several seminars that I have taught.

The Sixth Amendment seminar that I offered in my first semester of law teaching proved especially short-lived. I abandoned it after only one try because I saw little prospect that it would draw at least the number of students—eight to ten—that I saw, and continue to see, as vital to help ensure lively and productive class discussion. I had decided to offer that rather uniquely focused seminar in the first place because, in the course of doing research for an article on jury nullification, I had run across a gem of a little book on the Sixth Amendment by Francis Heller, a University of Kansas legal scholar.¹ Although I found fascinating Heller's historical and doctrinal discussions of the Jury Trial Clause, the Confrontation Clause, the Speedy Trial Clause, and other criminal procedure protections of the Sixth Amendment, the seminar attracted in its debut fewer students than the number of the amendment that was its focus.

Subsequently, I attempted to remedy the Sixth Amendment seminar's low enrollment without straying very far from its subject area. I offered a Constitutional Criminal Procedure seminar, which broadened the Sixth Amendment seminar's focus from the criminal procedure protections of a single amendment to the criminal procedure protections found anywhere in the Constitution. So doing, I managed to deal effectively with the student enrollment concern underlying my third question above, but in the process, I undermined the cohesiveness in subject matter implicitly required by my fourth question. Constitutional criminal procedure was simply too expansive a subject to attempt to address effectively within the contemplated format. After teaching it a couple of times, I tried to make the coverage problem more manageable by requiring a criminal procedure course as a prerequisite. That alteration, however, only succeeded in reinstating the low enrollment problem that had led me in the first place to abandon the Sixth Amendment seminar in favor of one in constitutional criminal procedure. In addition, my research and writing had moved sufficiently far away from constitutional criminal procedure that my interest in continuing to teach in the area had waned. Although the students enrolled in the seminar always seemed reasonably content with it, I decided after a few tries that it was time to move on.

I replaced the Constitutional Criminal Procedure seminar in my teaching repertoire with a seminar on *The Constitution and the Schools*. Although *The Constitution and the Schools* was oversubscribed and well

1. FRANCIS H. HELLER, *THE SIXTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES: A STUDY IN CONSTITUTIONAL DEVELOPMENT* (1951).

received both years that I offered it, I became persuaded that it raised even more serious cohesiveness problems than the Constitutional Criminal Procedure seminar. As diverse as the range of issues may be that come within the ambit of constitutional criminal procedure, the array of constitutional issues in the education realm is even more diverse. Consider, for example, how very differently one would go about analyzing the Establishment Clause issue raised by aid to parochial schools, the Fourth Amendment unreasonable-search-and-seizure issue raised by requiring high school athletes to submit to drug tests, and the Equal Protection issue raised by busing to achieve racial balance in the district's schools. The issues fairly understood as within the scope of a Constitution and the Schools seminar are in many instances so little related that it is almost impossible to provide meaningful background in the readings and discussion early in the semester for the paper-writing that needs to follow. Moreover, unless the professor opts to limit artificially the range of paper topics open to the students, the students almost invariably end up writing on topics so different from one another that they often lack the basic knowledge needed to discuss and critique effectively one another's papers.

Although I taught none of the three seminars discussed above more than three times, I have ended up teaching two seminars—The Fourteenth Amendment and The Religion Clauses of the First Amendment—more than a dozen times apiece. I first taught The Fourteenth Amendment seminar in my second semester of law teaching, I taught it almost annually for the next fifteen or so years, and I returned to it this past semester after more than a decade away. I began teaching The Religion Clauses of the First Amendment about a dozen years into my teaching career, and I have taught it frequently since then, most recently in 2009.

The two seminars that I have taught most often are very different from one another in terms of both scope of coverage and scope of prior knowledge presupposed. The Fourteenth Amendment seminar is plainly the more wide-ranging of the two in scope of coverage. As even a cursory glance at the table of contents of a constitutional law casebook would confirm, the range of constitutional issues encompassed by the Fourteenth Amendment's Equal Protection and Due Process Clauses is enormous. Nonetheless, that amendment has lent itself well to a seminar with the format described in Part I because, at every law school where I have taught, I have been able to assume that the students already have spent at least four or five weeks on equal protection and due process issues in the required Constitutional Law course.

Because of the students' significant prior knowledge in the area, I have not felt obliged, in putting together the materials for discussion in

the early weeks of The Fourteenth Amendment seminar, to try to familiarize the students with basic principles of equal protection and due process or with the major cases in those areas. Instead, primarily with an eye to generating a broad range of paper topics, I have selected materials—primarily Supreme Court cases, but to some extent, lower court decisions and law review articles—that would give the students more of an in-depth look at several issues to which their Constitutional Law class devoted relatively little time. Thus, for example, the materials that I most recently used examined in some detail alienage classifications, single-sex schools, and competing theories of congressional authority under section five of the amendment.

I have not at all limited the students in their selection of paper topics to the topics covered in the assigned readings. In fact, I state explicitly that they are entirely free to pursue a topic that is not covered in the readings but that intrigued them when they studied it in Constitutional Law. I also provide some encouragement for them to do so by handing out on the first day of the seminar a list of paper topics for consideration—a list that I made clear is intended to be nonexclusive and purely suggestive—that includes a number of topics not covered in the readings.

My Religion Clauses of the First Amendment seminar proceeds on a very different assumption than the Fourteenth Amendment seminar in terms of students' prior knowledge in the area. In essence, I assume that the students enrolled in the seminar know little about the two clauses, Establishment and Free Exercise, that are the seminar's focus. With rare exception, faculty teaching the required Constitutional Law course do not attempt to cover in any detail the First Amendment's Establishment and Free Exercises Clauses. In addition, although one or two students already may have taken a First Amendment course, it is unusual for such a course to spend more than a couple of weeks on the Religion Clauses. The Free Speech Clause is typically the course's overriding concern.

In keeping with the assumption that the seminar students are essentially new to Establishment and Free Exercise issues, I attempt to provide the students in the early weeks of the seminar with a fairly comprehensive view of the range of issues encompassed by the two clauses. With minor exception, the readings that I put together for class discussion in five two-hour classes early in the semester consist of the key Supreme Court cases in the area. Although the Religion Clauses raise a host of fascinating issues, it is entirely feasible in those five classes to give the students a solid grounding in the relevant case law and doctrines and a good sense of the issues most in controversy. At the end of those classes, each student should be in a good position to make an informed decision about a paper topic that lends itself to being the

basis for a substantial paper and that will hold his or her interest. Each student should also have the background knowledge needed to pursue that topic in a thoughtful and creative way.

III. CONCLUSION: A NOTE ON LEARNING BY TEACHING

As indicated in Part II, I am strongly influenced in selecting the subject area of a seminar by whether the subject area is one that I am interested in learning more about and by whether such learning is apt to lead to scholarship. In closing, I would like to make explicit an assumption that helps explain the importance that I attach to these considerations. That assumption is that seminars offer a special opportunity for individual growth for faculty as well as students.

Faculty learn a great deal the first time that they teach any subject, regardless of whether they do so in a seminar or, instead, in the form of a standard “lecture” or non-writing course. However, at least if offered in the format discussed above in Part I, seminars offer faculty an opportunity for *continual* learning that is demonstrably greater than that offered by standard courses. Because the student papers are so central to the format that I use and because students vary from year to year both in the topics that they choose and in their approaches to particular topics, seminars offer a relatively fresh source of faculty learning and inspiration, even when repeated multiple times.

Having taught a seminar on a few occasions while serving as dean, I would like to call attention to the special benefits that teaching seminars offers to deans. Given the numerous demands on a dean’s time, it is hardly surprising that deans commonly forgo teaching and often do not stay actively involved in their academic field. Seminars offer deans both a manageable way of continuing in the classroom and an efficient means of remaining abreast of, and intellectually engaged in, their principal area of law.²

In short, seminars have great potential for students and faculty alike. I believe that, for my students and myself, the seminar format and the

2. For discussion of the reasons for and against deans teaching, see Gary J. Simson, *To Teach or Not to Teach*, 39 U. TOL. L. REV. 375 (2008). As indicated in that essay, I believe that a strong case exists for deans teaching not only seminars but also standard courses that can reasonably be taught in a two-hour, one-day-a-week format. In my deanship at Mercer, as well as my earlier deanship at Case Western Reserve, I have not taught at all in the first semester of the deanship, but then, with one exception, I have taught a seminar or a two-hour course in alternate semesters. The exception is the current semester (spring 2012), when I am teaching first-year Constitutional Law, a four-hour course, in a two-day format. As to whether this departure from my one-day-a-week prescription ultimately proves well- or ill-advised, stay tuned.

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approach to selecting a subject area that I have taken have yielded various positive results. I hope that this essay encourages more faculty –deans included–to offer seminars and gives all seminar teachers food for thought as to how seminars are most usefully taught.