

**AALS Workshop for New Law School Teachers
June 27, 2008
Washington, D.C.**

James J. Tomkovicz, University of Iowa

Plenary Session — “CHALLENGING CONVERSATIONS IN THE CLASSROOM”

OUTLINE

A. INTRODUCTION

- I am *not* an expert on the subject of challenging conversations in the classroom. My experiences with challenging conversations in over twenty-five years of law teaching have been quite limited.
- I was selected to participate in this session of the workshop because of a single truly challenging experience I had over fifteen years ago, the first time I taught rape law as part of a first-year criminal law course. The experience led to an essay. One of the planners of this workshop is a former colleague who read that essay and thought it qualified me to discuss the topic of challenging conversations with new law teachers.
- I do have reflections based on that experience, based on subsequent experiences teaching rape, based on how I have handled a small number of other challenging situations, and based on others' experiences in other areas.

B. FOUNDATIONS FOR THE DISCUSSION

- My focus will not be on rape or any other particularly challenging subject, but, rather on lessons, strategies, and recommendations of general relevance and application.
- I don't have *the* answers to whether, when, and how to raise and handle controversial topics likely to lead to challenging classroom dialogues, but have input to offer that I hope will inform the decisions *you* will have to make.
- One factor that will bear on your decisions will be the milieus and atmospheres in your own institutions. There are real differences of environment that may have some bearing.

1. Challenging Topics

- Illustrative subjects—i.e., topics likely to give rise to challenging conversations: rape and sexual assault; abortion; race; gender; sexual orientation; gun control; war; religion; even environmental issues.

- The nature of “challenging” conversations—socially controversial; involve strong passions and emotions; students may well have personal stakes/involvement; discussion has the potential to become personal.

2. Different Contexts

- Challenging classroom conversations can arise in at least two distinct ways
- Students may unexpectedly raise the subjects in the context of other topics under discussion.
- An instructor may deliberately raise and address topics of the sort likely to produce such classroom discussions.
- In the latter case, a course may not generally be devoted to such topics, but may have one or two necessary or optional subjects that qualify. Alternatively, a specialized course may focus on controversial subject matter where the potential for challenging conversations is pervasive.
- The potential responses and strategies—as well as the risks and rewards—are different in the different contexts.

C. RISKS AND DANGERS

- The title of my essay on teaching rape refers to “Reasons, Risks, and Rewards.”
- First, we should consider some of the risks or dangers inherent in challenging conversations.
- Professional and Personal Perils and Prices for Faculty:
 - Immediate damage to the learning environment and educational process
 - Long-term damage to the learning environment and educational process
 - Professional standing and achievements: tenure and promotion/career harms
 - Time consumption before, during, after classes
 - Injuries to reputations
 - Emotional suffering
 - Harm to relationships with students

- Some of the same risks or dangers, however, can arise from *not* addressing controversial topics
- Professional and Personal Perils and Prices for Students
 - Impediments to learning in a particular class and more general harms to educational progress
 - Personal clashes/attacks in and out of the classroom
 - Reputational harm in law school
 - Emotional suffering due to personal involvement in/relationship to issues
 - Censorship, distraction, diversion, time consumption

D. REWARDS AND OPPORTUNITIES

- Offsetting or counterbalancing the risks and dangers are the rewards and opportunities for faculty and students which we should next consider
- Motivation, interest, and enhancements of the learning environment and educational process for both faculty and students
- Dislodging preconceptions/unmasking stereotypes/challenging assumptions/discouraging rigidity and encouraging listening/promoting openmindedness
- Channeling unfocused emotion into constructive legal reasoning and articulate argumentation and/or advocacy
- Modeling for students by faculty—education by example

E. ATTITUDES AND STRATEGIES

- Finally, we should consider how you might handle challenging classroom conversations—approaches and methods that can minimize the dangers and damage and maximize the opportunities and gains.

1. ATTITUDES

- Attitudes are an important aspect of a faculty member's approach to challenging conversations—whether planned or unexpected. Throughout, one should remain aware of and focused on the main goal of the law school classroom in mind: *legal education*.

- In addition, it seems advisable to be open and honest about the subject matter, the issues, the difficulties in addressing it.
- Approach subjects with a positive and confident attitude, not one of fear and dread.
- Remain calm throughout charged discussions and in dealing with difficult situations should they arise; be particularly attentive to avoid taking personal offense or showing irritation.
- Model decency, respect, fairness for others in both substance and expression.
- Sincerity and good faith go a long way toward cultivating student trust, which will sustain faculty should difficulties arise.

2. STRATEGIES

- Entertain the possibility of prefatory remarks and advice/encouragement to the students concerning the perils of the conversations to come and how they might be on guard. Be forthright about your objectives in confronting the topic—which requires, of course, that you think through and focus on what those objectives are.
- Promote sensitivity without censorship, a difficult, but important balance. The object is a robust discussion that does not give gratuitous, unnecessary offense.
- Provoke discussion, but try not to be excessively provocative. Use of charged terminology can prove harmful whether or not the objectives seemed legitimate.
- Encourage genuine listening to the positions and viewpoints of others and practice it yourself.
- In other respects, treat the subject in the same way you would treat other topics, as one that deserves full consideration of all angles.
- Maintain control, which does *not* mean that you should dominate discussion. What it means is that you should make every effort to avoid the dangers, to prevent them from developing, and to intervene to terminate a situation that has grown harmful or to prevent certain students or certain viewpoints from dominating the discussion.
- Consider the possibility of having the students establish some ground rules for discussion.
- Neutrality and/or balance: I have distinct preferences with regard to these important subjects. Others disagree. I would recommend not taking sides, expressing one's

own views on issues generally, including (perhaps especially) issues of controversy that generate challenging conversations. I also suggest that a faculty member ensure balance on subjects if the students are not willing or able to provide it. Of course, doing so requires tact and care.

- Preparation is a key, as with all. Know, to the extent possible, where the pitfalls are and what sorts of responses you might employ. At least when the subjects are on the agenda you can be ready to deal with volatile developments. Consult colleagues with experience.
- When unexpected challenges arises (or you are otherwise unprepared to deal with a challenge), pause, take time, do not react instinctively, but, instead, be deliberate in responding. If necessary and feasible, consider postponing any response until later.
- Controversial subjects and examinations: When not important, germane, essential to your pedagogical goals, try to avoid fact patterns or questions on examinations that are likely to give provoke emotional reactions, touch on sensitivities.

F. CONCLUSIONS

- The risks and dangers are unavoidable because students will raise challenges you could or did not foresee and because unpredictable events are inherent in the dynamics of the classroom and the many, varied personalities that inhabit them.
- The risks can be kept relatively small, and, if handled well, one can typically conduct these conversations with no ill effects, but with very productive results. Damage is not inevitable and serious harm is almost always avoidable.
- One way to try to prevent harm is to avoid the subjects that lead to these conversations and to truncate any conversations that begin to go down such roads. (Obviously this does not apply to those who teach specialized courses on controversial topics.) This approach is not entirely risk-free, and, in my view, mistakenly forgoes the enormous educational benefits of productive confrontation.
- Back in 1992, I concluded my essay by saying that I believed one could defensibly choose to teach or not teach rape. In the years that have followed, I have always taught it, with only one or two minor glitches and, according to the students, with much success. My experiences provide ample reason to welcome opportunities to have such conversations.

Bibliography follows

BIBLIOGRAPHY

Selected Articles Related to Challenging Classroom Conversations: Law

- Patricia A. Cain, *Teaching Feminist Legal Theory at Texas: Listening to Difference and Exploring Connections*, 38 J. Legal Educ. 165 (1988)
- Samuel W. Calhoun, *Impartiality in the Classroom: A Personal Account of a Struggle to Be Evenhanded in Teaching About Abortion*, 45 J. Legal Educ. 99 (1995)
- Susan Estrich, *Teaching Rape*, 102 Yale L.J. 509 (1992)
- Curtis Nyquist, Patrick Ruiz, and Frank Smith, *Using Students as Discussion Leaders on Sexual Orientation and Gender Identity Issues in First-Year Courses*, 49 J. Legal Educ. 535 (1999)
- Judith A.M. Scully, *Seeing Color, Seeing Whiteness, Making Change: One Woman's Journey in Teaching Race and American Law*, 39 U. Tol. Lev. Rev. 59 (2007)
- James J. Tomkovicz, *On Teaching Rape: Reasons, Risks, and Rewards*, 102 Yale L.J. 481 (1992)
- Eugene Volokh, Robert J. Cottrol, Sanford Levinson, L.A. Powe Jr., and Glenn Harlan Reynolds, *The Second Amendment as Teaching Tool in Constitutional Law Classes*, 48 J. Legal Educ. 591 (1998)

Selected Articles Related to Challenging Classroom Conversations: Non Law

- Mark Berkson, *A Non-Muslim Teaching Islam: Pedagogical and Ethical Challenges*, *Teaching Theology and Religion*, vol. 8 no. 2 (2005)
- Lorraine Cohen, *Facilitating the Critique of Racism and Classism: An Experiential Model for Euro-American Middle-Class Students*, *Teaching Sociology*, Vol. 23, No. 2 (1995)
- Deborah R.E. Cotton, *Teaching controversial environmental issues: neutrality and balance in the reality of the classroom*, *Educational Research*, Vol.48,No. 2 (2006)
- Marcel Fredericks and Steven I. Miller, *Truth in Packaging: Teaching Controversial Topics to Undergraduates in the Human Sciences*, *Teaching Sociology*, Vol. 21, Nol. 2 (1993)
- Mathew N. Schmalz, *Scientology and Catholicism Do Mix: A Note on Teaching New Religions in a Catholic Classroom*, *Teaching Theology and Religion*, vol.9 no. 1 (2006)