

At the Lectern

Thanking Lester Smith and Rethinking William Faulkner

Kenney Hegland

When was it? Twenty-five years ago? Thirty?

Whenever.

A man named Lester Smith gave a pot of money to the University of Arizona's College of Education. I don't recall how much, but he wanted it used to develop programs to fight drug abuse. Andy Silverman and I, then young law profs, saw an opportunity: We sure could use some of that money. We could produce a video which would show high school students what might happen to them if they used drugs: arrest, juvenile court, jail.

"We'll have a sentencing hearing. Send the kid to jail or put him on probation? The prosecutor and defense lawyer ask questions, make arguments, and then we stop. The audience decides."

"Right. We won't preach. No *Reefer Madness*.¹ We'll play it straight. Make it real."

Reality presents its own problems. Script lawyers. Don't let them do what they do when they have a chance to do it (lordy, are we wordy). Second, adults are more forgiving than teens. We asked a probation officer to give us a close case.

"Well, before the defendant would be sent to jail, he would have to have a lengthy arrest record, probably resisted arrest, at least some spitting and name calling, and, while not absolutely necessary, be a suspected vampire."

Kenney Hegland is the James E. Rogers Professor of Law, Emeritus, University of Arizona. He thanks the scores of actors, the hundreds of law students who have participated in these video projects, and the thousands of high school students who have debated them. And, of course, Carlos Terrazaz, videographer extraordinaire. Hegland's most recent project is a series of short videos discussing topics of interest to savvy seniors, such as Living Trusts, Reverse Mortgages, Raising Grandchildren and Avoiding Scams. They are found at www.heglandlaw.com.

1. *Reefer Madness* (Grand National Pictures 1936) was a cautionary movie about the dangers of becoming addicted to marijuana cigarettes ("reefers"). Whether or not anyone actually ever saw it, it became the dismissive punch line for all the cautionary tales we sat through in high school, from drugs to sex to drunken driving.

So our defendant, while not a Boy Scout, is a pretty good kid, without a prior record. He is even needed at home to babysit his little sister while his single mom works (suggesting, perhaps too subtly, that it's not just you who suffers). His offense: possessing drugs near school. An obvious case for probation? Not so for teen audiences; many, even those in juvenile lock-up, send him off anyway. "Do the crime, do the time!" (If you are a juvenile defendant, the last thing you want is a jury of your peers.)

We made our video.

Lester,² we heard, didn't like it. No matter, he started the fire. *We* liked the video; we liked doing it; we liked listening to high schools kids discuss it.

"Yuck! Where did they get that music?"

Another of life's hard lessons: Popular music (it was a time before everyone got into a hussy about copyright) has the shelf life of fish (which I just illustrated with my reference to Billy Joel). From then on, we stole only Verdi.

But the basic concept, getting kids to think hard about drugs, worked. At a bilingual class the kid in the back was speaking animated Spanish. I asked the teacher, "What's he saying?"

"Well, he doesn't think the judge was right in talking about sending a bad message to other students if he didn't put the defendant in jail. He's saying the judge should only consider what is best for the defendant, not use him as a lesson to teach others."

"Wow. Brilliant. I don't know if law students would come up with that."

"Oh, he's practicing. He is due in court tomorrow."

We were off to the races; over the years we produced eight videos. The early years were the salad years, before *U.S. News & World Report*, before "publish or perish" went from cocktail party rumor to website. We stayed pretty much under the radar, realizing that to get things done in the academy it is generally better *not* to ask. Still, colleagues generally applauded our efforts—premiers, with mucho vino, no doubt helped them overlook yet another year without an academic article in a leading journal. (Whether today's law schools would tolerate such non-traditional efforts deserves its own essay.)

Why high school videos? Why not articles on the economic implications of the mitigation rule? If pressed, we had our lofty response: to help teens avoid risky behavior and help them think through difficult problems. But really.

Stephen King is often asked: "Do you do it for the money?"

"I never set a single word down on paper with the thought of being paid for it. I have written because it filled me up. I did it for the buzz."³

2. Who was Lester Smith? How did he make his fortune? What were his goals in giving money to the university? Good questions all and, no doubt, all answerable on Google. But none of that was the Lester Smith I knew. To know it now would undercut my major theme: how we impact others is not by the length of our resumes but by the quality of our acts.
3. Stephen King, *On Writing: A Memoir of the Craft* 248 (Scribner 2000).

We did it for the buzz. You can too.

You'll get to work with folks from your university's drama department. Interdisciplinary boots on the ground. Auditions. You sit behind a card table in a large empty room. The actor enters, alone, walks to the table, distributes a CV, replete with color photo, and says, "I will be doing so and so from act 2 of such and such play." Not knowing what to expect, you nod and, wham!, screams, curses, falls, and lingering, yet thankfully peaceful, death. The actor springs to life and exits. The drama prof, who is helping out, handles the cuts. Not our post-law school as Evil Empire, "You were terrific and it was a very hard decision but..." instead, their, "*Go home.*"

Actors are terrific to work with. They are energetic and upbeat (even if they don't have jobs next year). They work for practically nothing (each of our videos cost about \$5,000 to produce). Best of all, unlike lawyers, they don't try to rewrite the script.

Editing takes the longest. In the early days we could do our own, taking the shots from one reel and recording them on another.

"To be or...well, you know, like...not to be..."

We could edit out "...well, you know, like..." only to find that, the actor who was at first looking directly at the camera is now suddenly scratching his nose. Then came computers and video experts, and eventually we were sidelined. Marvelous things can now be accomplished. Scene II can become Scene IV at the push of a button; that close-up we dropped hours ago can be instantly brought back for another look now that it might fit better. Against all odds, omelets emerge as eggs.

But even in the 21st century, editing can be a nightmare. No matter how careful the scripting, no matter how precise the filming, there will always be "Why didn't we have her say, 'Frankly, my dear, I don't give a damn!'"? Writing is easier: you can see what's not there and simply move the cursor. With video, you can edit *out* but not *in*.

The videos each run about twenty-five minutes, leaving time for discussion, all relate to the legal consequences of particular actions, and most follow the same basic format. The video will present the conflict, often in the form of a trial or judicial hearing, and, after the competing positions are articulated, turn the matter over to the audience to decide the matter. They have dealt with drug use, teen parenting, drunk driving, date rape, and domestic violence.

They are not devoid of academic legal stuff. After one of the trial videos, a second part raises questions about the exclusionary rule, jury nullification, and the role of lawyers: should lawyers impeach truthful witnesses and defend the guilty? In another, the students are placed in the role of U.S. Supreme Court justices and, after argument, are asked to decide the constitutionality of a state statute. After they decide, the next video segment raises questions concerning judicial review, original intent versus living constitution, and legal reasoning

itself, which, it develops, is much like arguing spilt milk as a toddler: “It was an accident” (facts), “You didn’t punish Sis” (precedent), and “Don’t send me to my room unless I have done something very bad” (policy).

Currently distributed by The Discovery Channel (which, by the way, pays better than the *Harvard Law Review*), the videos have had a good run.⁴ Hundreds of thousands of high school students across the country have wrestled with the dilemmas they presented. We have used them to anchor our high school teaching program. Over the years, hundreds of law students have taught once a week for seven or eight weeks in local high schools. More recently, we have used the videos in our Juvenile Detention Program where law students spend a weekend discussing law and life with incarcerated teens. We also use the videos in our summer Law Camp, a one-week camp for high school students taught by law students.

The importance of law students and lawyers in classrooms, particularly inner city schools, cannot be overstated. Years ago, there was a study of which school administrators embraced the Supreme Court’s school prayer decision and which resisted. It came down, pretty much, to their attitude toward the Court which, in turn, pretty much came down to their early experiences with lawyers: did they buy them a popsicle or did they kick their puppy?⁵ Many inner city teens don’t know lawyers and think of them as a different, and hostile, breed. Once an inmate at our juvenile detention facility wrote me a letter after two of our students had presented a program there. “Man, I hate lawyers. But these two would help me.”

Then there is the effect on the law students. As part of our Juvenile Detention Program “Pre-Program Hype,” we tell students that they can change lives. Almost all of our students write that it was one of the best things they did in law school. As one wrote:

I don’t know if I changed any lives, but the program changed mine. Driving by a corner with teens hanging out, I no longer see a group of scary thugs. I see a group of scared kids trying to get by. At my law firm, I will work at juvenile hall as my community service.

The substantive goals? We address issues that matter. We hope to change behavior, not by preaching, but by showing them the real life consequences of bad choices: urge a drunk friend to go on a beer run, and you and your family may end up liable for putting another friend in a wheelchair; go to a party, hear “no” as “yes,” and you may end up in prison; make a lot of *small* bad decisions (cutting classes, doing drugs), and the *big* bad decision may become inevitable.

4. If you are interested in more information on specific videos, contact me at hegland@law.arizona.edu.

5. William K. Muir, *Law and Attitude Change/Prayer in the Public Schools 60-61* (Univ. of Chicago Press 1967). The author suggests that folks who don’t like lawyers recall bad incidents rather than the incidents leading to the bad opinion. But I am convinced that the egg came before the chicken.

Our educational philosophy has been: don't treat teens as problems to be solved; rather enlist them in the solutions. This shift in perspective gets around. "Oh no, not another 'Don't do this' video." It gives the teens an ownership interest in prevention. "If I was a legislator, what would I do to stop drug use, increase sentences, education, random testing?"

We academics like to think, and we may actually be right, that forcing folks to struggle with tough problems makes them smarter and better at handling the problems that will surely come their way.

First, you have to get them interested. Teens, like us, like talking about things they know. In the HBO series, *The Wire*, inner city high school students, who may not have known much about history or what a slide rule is for, became animated when they tried to figure out what would help in craps games and what made for a good "corner boy," one who sells drugs to passing customers. They were talking about drugs but they were no longer making wisecracks; they were focused as they learned to express difficult points, to listen, and to realize that they too were "experts"—that they knew things they didn't know they knew.

I believe it was Paul Freund, the legendary Harvard Constitutional Law professor, who said that legal reasoning is "yes...but" reasoning. "Yes, if your runner is stealing product, whack him, *but* how can you be sure it's him? And can you replace him with someone you can trust?"

Max Weber wrote:

The primary task of a useful teacher is to teach his students to recognize "inconvenient" facts—I mean facts that are inconvenient to their...opinion. I believe the teacher accomplishes more than a mere intellectual task if he compels his audience to accustom itself to the existence of such facts. I would be so immodest as to apply the expression "moral achievement"....⁶

For some reason, I have always liked the quote. Law students, having suffered the Socratic Method, should be good at pointing out inconvenient facts.

My editor at this journal asked me to "expound just a bit on how making these videos influenced your law teaching." Brilliant. Brilliant but next to impossible. A few things jump out however.

I ran across an insight that pretty much explains the human condition. Brent Gibbs, a drama professor who specializes in fight scenes, instructs: "Even if you are fighting for your life, you never have just one emotion. Sometimes you are murderous, sometimes panicked, sometimes confident, sometimes unsure, sometimes even forgiving." I share this with anyone who will listen. First year students need to avoid stereotyping clients, plaintiffs are not only and always interested in more money, defendants are not only and always interested in escaping all liability (despite what the cases suggest). Elder Law students need

6. Max Weber, Lecture at Munich University: Science as a Vocation (1918).

to know, when it comes to mourning, it will not be only and always grief but it will be interrupted by moments of relief, of excitement about the future and, indeed, of humor. Don't feel guilty.

I used an acting exercise in my classes. It gets students on their feet, gets them working closely with a colleague, and gets them thinking hard about the various ways one can interpret language. It also convinces them that much of human communication is nonverbal (and hence they should put away their computers and actually look at the prof). Working with the same script, pairs of students spend fifteen minutes figuring out who they are. Then they present their scene and the rest of us have to figure out who they are. The script:

A: Hi!

B: Hello.

A: How's everything?

B: Fine. I guess.

A: Do you know what time it is?

B: No. Not exactly.

A: Don't you have a watch?

B: Not on me.

A: Well?

B: Well, what?

A: What did you do last night?

B: What do you mean?

A: What did you do last night?

B: Nothing.

A: Nothing?

B: I said, nothing!

A: I'm sorry I asked.

B: That's all right.

Some students think they are a couple after last night's fight, some a parent and a resentful teen, some in a bar, some in an interrogation room. One imaginative answer was that the pair was God and a sinner. One lesson is that it is not enough to read lines, that what we say (and what we do) is motivated and in a context. It is not enough to respond angrily to "What did you do last night?" To make the line believable, you must know what you did last night and why you don't want this particular other to know, even if these matters are not in the script. But I guess the main thing that came from making the videos was the realization that there is no one way to be a law professor and that made all the difference.

Back to Lester Smith. Without him, without his gift of long ago, none of this would have happened. No videos, no law students spending a weekend at juvenile hall, and no discussion in Kansas about how a victim should respond to domestic violence. Surely Andy and I would have had different careers, perhaps getting an article or two in a leading journal, pushing our school's rankings up a smidgen. But our careers would not have been nearly as much fun nor, I believe, would we have done nearly as much good.

But what of William Faulkner?

"The past is never dead. It's not even past."⁷

Sometimes that's a good thing.

7. This famous quote is found in *Requiem for a Nun*, act 2, sc. 1 (Garland 1951).