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DEVELOPING PROFESSIONAL IDENTITY THROUGH REFLECTIVE PRACTICE

*Suzanne Darrow-Kleinhaus**

I. INTRODUCTION

I had the opportunity recently to reread something I had written years earlier as a student. I had forgotten all about it until a colleague brought it to my attention when she asked for my permission to use it in class. She was preparing to teach Touro's Civil Practice Externship and found it among the materials a predecessor had collected in teaching the course. She thought her students might find it valuable — and perhaps enjoy reading it because they know me now as a faculty member.

I can see why she might think so: my paper speaks of so many things we try to tell our students but in a voice they might recognize as their own. Maybe she thought they would listen more readily to what I had to say — about the need to get practical experience while still in law school, about how that experience is essential to the making of informed career choices, and about what it means to be a professional engaged in the practice of law. So of course I said she could share my paper with her students. I was honored that she found it worthy of their time.

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Yet in reading the paper once again, I thought its usefulness might extend beyond this one class of Touro students. What I can see now from the vantage point of time and experience was that my professor's approach to teaching the course — integrating skills training with the development of professional identity through reflective practice — is a model that might be followed by others. Moreover, the approach might be adopted for use in other parts of the curriculum as well, thus providing a means for addressing the Carnegie Foundation's call for more "balanced learning" in law school.¹

According to the Foundation's report in *Educating Lawyers*, legal education could be significantly improved to "better serve the needs of the bar and the nation as a whole."² One way to do so, the authors suggest, is to create programs, curricula, and teaching models that provide "[g]reater coherence and integration in the law school experience."³ The integration of the three areas of law school pedagogy — the case-method teaching of doctrine and analysis, the clinical training of lawyering skills, and the contemplation of professional ethics and identity — is essential for preparing students to become lawyers.⁴

While it is beyond the scope of this paper to assess the

¹ WILLIAM SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND, & LEE S. SHULMAN, *EDUCATING LAWYERS* 15-17 (2007). This work is the culmination of a two-year study of legal education involving a comprehensive look at teaching and learning in sixteen American and Canadian law schools. In discussing the challenges of preparing law students for the practice of law and evaluating how well law schools are meeting this task, the authors write that:

[L]egal education may have a problem of diminishing returns — one that a better integration of the cognitive apprenticeship with the practical and professional could help to prevent. On the curricula level, this need for integration points toward a reconfigured third year (and probably some reconfiguration of the second year as well), marked by pedagogies of practice and professionalism that enable students to shift from the role of students to that of apprentice professionals.

Id. at 77.

² *Id.* at 90. A main contention of this book is that legal education could be significantly improved to provide more balanced learning between the theoretical and the practical. In fact, there has been movement in this direction: according to the authors, the past decade has seen "significant progress in legitimating and advancing the concerns of advocates of a different epistemology of professional learning, one that more intimately connects theoretical understanding with practical competence." *Id.* at 91.

³ *Id.* at 200-01. In turn, this reflective process will lead to innovations in teaching and scholarship, whereby the entire legal community will be enriched. SULLIVAN, ET AL., *supra* note 1, at 202.

⁴ *Id.* at 200-01.

Foundation's report, there is no doubt that the report will serve as a catalyst for rethinking the nature of legal education. *Educating Lawyers* raises critical questions and concerns, most notably the need for integration of the law student's learning experience.⁵ Certainly it will take the commitment and creativity of all involved to achieve the level of integration envisioned by the Carnegie Foundation.⁶ Very likely, it will also take changes to the core curriculum and to the way learning itself is structured and assessed.⁷ These are major undertakings and will not occur without considerable thought, discussion, work, and time.

Still, it might be possible to introduce some changes without disruption or difficulty by building, wherever possible, on what is already in place. Clinical-legal education comes first to mind when combining the theoretical with the practical but it is not our only teaching opportunity for doing so.⁸ The clinic is not the only academic setting for integrative teaching because it is not the only place where we teach, and students learn, by example. As law professors, we teach by example all the time, yet we do not make the practice deliberate.⁹ But we could. We could do this when we use the case method to teach the principle of *stare decisis* and development of the common law. We could do this when we use cases to

⁵ *Id.* at 191 ("We endorse a different strategy, which we call *integrative* rather than *additive*.").

⁶ *Id.* at 200 ("On the part of faculty, it will require both drawing more fully on one's own experience and learning from each other. It will also require creativity.").

⁷ *Id.* at 88 ("Making part of the standard legal curriculum students' preparation for the transition to practice is likely to make law school a better support for the legal profession as a whole by providing more breadth and balance in students' education.").

⁸ SULLIVAN, ET AL., *supra* note 1, at 121. The Foundation observes that "clinics can be a key setting for integrating all of the elements of legal education, as students draw on and develop their doctrinal reasoning, lawyering skills, and ethical engagement, extending to contextual issues such as policy environment."

⁹ If it is said of History that it is "philosophy teaching by examples," so it is with law. Henry Steele Commager, *THE STUDY OF HISTORY* 91 (1966). In writing about the nature and study of History, Professor Commager quotes this most familiar definition of History. He writes:

[t]he phrase is Bolingbroke's, but Dionysius of Halicarnassus said the same thing two thousand years ago, and fifteen centuries later, Sir Walter Raleigh, who was an historian as well as an explorer, wrote that "the end and scope of all history" is "to teach us by examples of times past such wisdom as my guide our desires and actions."

Id.

teach mastery of the fundamentals of IRAC, the “Issue, Rule, Application, Conclusion” structure of legal analysis. We could do this when we use the Socratic Method to teach our students how to engage in the dialectic essential for critical analysis.¹⁰ We could do this when we use hypotheticals in class and on exams to simulate the types of problems our students might encounter in practice. Finally, we could do this when we use moot court competitions, drafting exercises, and client counseling and negotiations sessions to allow students to experience their future professional roles.

If we were to teach these areas deliberately, we would make visible that which is largely invisible — the process by which we think — and provide a model for our students to follow. By explaining what we expected our students to learn from these exercises rather than relying on them to make the connections for themselves, we would be providing the critical link for integrative thinking.¹¹ This type of deliberate and directed teaching would take more effort on our part but not so much as to make it unduly burdensome.

It is more likely, however, that the first steps toward enhanced integrative learning will occur in the clinical setting. But even here it is possible to combine more than theory with practice: guided by appropriate “leading questions,” students can be directed to expand their substantive and ethical understanding as well as develop their practical lawyering skills. Moreover, the clinic can be used as a vehicle for developing self-reflection, an essential skill for integrative learning.

¹⁰ SULLIVAN, ET AL., *supra* note 1, at 47. The case-dialogue method of teaching is the subject of much discussion in *Educating Lawyers*. In assessing the Socratic Method as a means of teaching students “to think like lawyers,” the authors acknowledge that the approach is often less than obvious to students. *Id.* Nonetheless, the case method remains the “signature pedagogy” of law school learning. *Id.*

¹¹ *Id.* at 109. In comparing contemporary legal writing instruction with Scott Turow’s experience in the middle 1970s, the authors note that today’s instructor “guides the analysis, providing feedback and modeling the use of the prompts in constructing a well-honed document.” SULLIVAN, ET AL., *supra* note 1, at 109. This type of learning in context consists of four steps: (1) the instructor defines the task; (2) the instructor provides a scaffold of prompts for engaging in the learning activity; (3) the student practices the activity; (4) the instructor coaches and models the activity to improve performance and provide strategies for improvement.

II. TOURO'S CIVIL PRACTICE EXTERNSHIP

In teaching Touro's Civil Practice Externship, Judge Battaglia used journal keeping to cultivate the skill of self-reflection. While not the only route for meeting the Foundation's call for law schools to more fully integrate the development of cognitive, practical, and ethical competencies, journal writing offers one possibility. And it does so in the simplest and most direct way possible: by requiring students to think and write about their clinic activities, the habit of learning to "think like a lawyer" is cultivated while performing the tasks of the lawyer.¹²

The Civil Practice Externship allows students to work in a wide variety of law office placements: private law firms; corporate law departments, government offices, public interest organizations, and non-profit settings. Consequently, students' experiences are as varied as the offices they join and their assignments are equally wide-ranging: they may attend court, mediation or arbitration proceedings, engage in interviewing, negotiating and counseling of clients, prepare government filings, and research and draft litigation documents. The placement choice is usually the student's own, assuring a high level of motivation to pursue a genuine area of interest.

In addition to the hours spent in the practice setting, externship students attend a three-hour weekly seminar. The seminar serves as a forum for sharing the students' experiences and thoughts on their placements. An experienced attorney (usually a faculty member with extensive practical experience) directs the seminar discussions and serves as the students' mentor throughout the process. Because of the wide range of possible student placements, it is necessary to find a common theme for discussions and assigned readings; the meaning of professionalism and the law student's development into a member of the legal profession provides this focus.

When I was a student in the externship, writing the journal required me to think about what I had learned over the course of my placement assignments in a way that just completing those assignments would not have let me do — nor would it have allowed me to recall them quite as vividly. This is true despite the variety and

¹² *Id.* at 81. The authors refer to this as a need for "A Continuum of Integration."

novelty of the research and writing assignments, negotiation and arbitration sessions, and attorney and client meetings. It was the reflection process that both ingrained the memory of these activities and caused me to consider their larger significance.

Clearly, this was the very reason for the journal requirement. Reflection is a critical part of the learning process and makes for an optimal learning experience.¹³ By going back over what had happened in the course of each assignment or activity, I was reliving them. In describing them to my professor, I was explaining them to myself. I was drawing inferences and making connections I would not otherwise have made. And the connections were analytic as well as practical because I was seeing the process of law as it worked with its substance.

Once again, this is nothing new: journal writing is a widely-used teaching tool.¹⁴ It was simply that I had not encountered it in any other aspect of my legal education — nor would I. Yet the processes of reflective thinking and writing are essential to the legal enterprise — how better to instill them in our students than to begin in as painless and profitable a means as journal writing. The benefits of such writing are long-term and its applications extend well beyond

¹³ Cognitivist learning theorists “believe that learners should be taught, as a regular part of course instruction, to be expert at metacognition. The term metacognition refers to the set of learning and study skills which encourage learners to be introspective, conscious, and vigilant about their own learning.” Michael Hunter Schwartz, *Teaching Law By Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO L. REV. 347, 376 (2001). See also Roy Stuckey, *Papers Presented at the UCLA/IALS conference on Enriching Clinical Education: Teaching with Purpose: Defining and Achieving Desired Outcomes in Clinical Law Courses*, 13 CLINICAL L. REV. 807, 813 (2007). He writes that:

Optimal learning from experience involves a continuous, circular four state sequence of experience, reflection, theory, and application. Experience is the immersing of one’s self in a task or similar event — the doing. Reflection involves stepping back and reflecting on both the cognitive and affective aspects of what happened or was done. Theory entails interpreting the task or event, making generalizations, or seeing the experience in a larger context. Application enables one to plan for or make predictions about encountering the event or task a second time.

Id.

Similarly, the authors of *EDUCATING LAWYERS* include the process of reflection as an important learning strategy implicit in the Socratic Method dialogue, noting that “[s]tudents learn best when they can ‘reflect on’ their knowledge and performance in relation to models supplied by the teacher.” See SULLIVAN, ET. AL., *supra* note 1, at 61.

¹⁴ *Id.* at 93.

a law school seminar log; the inculcation of the practice of reflective writing in law school would serve our students just as well when they enter the practice or teaching of law.

For example, I keep a log of my meetings with students. After each meeting, I note the topics we covered and my thoughts with respect to the student's progress and understanding of the material. If our meetings continue over time, which indeed many of them do, this lets me track an individual's development and see when and how real "learning moments" occurred. By capturing these moments on paper and reflecting on what we were engaged in that led to them, I can use what I have learned from working with one student to help other students in similar situations.¹⁵ This process has allowed me to replicate my experiences on a much larger scale and share what I have learned in other student meetings, in the classroom, and in writing texts on preparing for law school exams¹⁶ and the bar exam.¹⁷

III. CREATING JOURNAL WRITING OPPORTUNITIES FOR LAW STUDENTS

Unfortunately, not all students have the opportunity to take a clinic or a course where journal writing is required. Still, there are other areas in the law school curriculum that lend themselves to such an activity without creating an undue burden for our students or ourselves.¹⁸ One such possibility can be found in teaching assistant

¹⁵ While I value the process and nature of one-on-one work with students, it is incredibly demanding and time consuming. If such work can yield results beyond the individual, it should. The scarcity of resources at most law schools demands that if more can be made of the effort, then it should be.

¹⁶ I wrote *Mastering the Law School Exam* because I found that there were enough common mistakes among law students in the way they approached their task of learning the law and how that translated on exams. SUZANNE DARROW-KLEINHAUS, *MASTERING THE LAW SCHOOL EXAM* (2007). Just think of how many bluebooks where you have written, "sketchy on the law," "conclusory statement," "missing analysis," and "disorganized." I suppose that deficiencies in law school exam writing are more akin to Tolstoy's happy families than the unhappy ones: "Happy families are all alike; every unhappy family is unhappy in its own way." LEO TOLSTOY, *ANNA KARENINA*, 17 (David Magarshack trans. 1961).

¹⁷ Similarly, I wrote the *Bar Exam in a Nutshell* after working one-on-one with dozens of New York bar exam "re-takers," reading several hundred "failing" bar exam essays, and finding the same mistakes being made over and over again. SUZANNE DARROW-KLEINHAUS, *BAR EXAM IN A NUTSHELL* (2d ed. 2009).

¹⁸ This requires some creativity on our part and the investment of time as well since we

programs. While each school's teaching assistant program is structured differently, in most cases there is a need for teaching assistants ("TAs") to be accountable for their time and activities. A log or journal fills this requirement quite nicely.

I had not considered this possibility until one of the Teaching Assistants in the program started sending me weekly reports describing what was happening during his sessions. What I liked most was that his reports were not simply laundry lists of tasks and topics; instead, he offered his commentary on what he thought was working and what was not. His "reflections" provided a window into what was going on during the sessions and resulted in program changes to make it more responsive to student needs. While critiquing TA sessions to assess their effectiveness is a subject discussed at weekly TA training sessions, there is never enough time to go into much detail — nor is this type of insight typically the result of a general discussion.

The TA report nicely fills this gap and serves two additional purposes as well: my need for accountability and insight into the program's daily operations, and the TA's need to reflect on the process in order to write thoughtfully about it. I drafted a form for TAs to follow, identifying basic topics to discuss as a guide, and required them to submit weekly status reports.

There is another reason I would like to see students have an opportunity to keep a journal at some point during their law school years. I want them to enjoy the same experience I had when reading

must read the journals and provide feedback for them to be of any real value to the student. In fact, we should welcome this opportunity to provide written feedback on our students' work. Behaviorist learning theory emphasizes the importance of opportunities for practice and structured feedback on such performance as essential for effective learning. *See, e.g.*, Schwartz, *supra* note 13, at 361-62 (discussing the negative impact of law school economics and professors' disincentive to employ more effective methods of teaching). Unfortunately, most law students receive little feedback on their work where it is limited to once, or at most twice, in a semester, through midterms and final exams. *Id.* Given the large size of most law classes, the difficulty for faculty of providing detailed feedback and personalized attention is just not practicable. *Id.* On the other hand, the small sections typical of clinic courses makes this a real possibility.

Not only is feedback essential to the learning process, but "Gen-Xers" expect it and seek it out. *See* Robin A. Boyle and Joanne Ingham, *Generation X in Law School: How These Law Students Are Different From Those Who Teach Them*, 56 J. LEGAL EDUC. 282 (June 2008) ("Students prefer to work with an authority figure present. An authority figure might be a professor, an advisor, an employer, or a mentor. Learners with this characteristic are most productive when they can ask questions, discuss ideas, or seek feedback from a person of authority.").

something I had written years before as a student. It was as if I had opened a time capsule and stepped back in time and place. Journals let us do this. They are a way to remind ourselves of where we have been so we will know where it is we want to go. We need such markers to help us remember.

I want my students to write so they, too, will remember. I want them to remember why they came to law school and what they learned along the way. I want them to remember how they struggled with the material and learned it when they thought they never would. I want them to remember that the time they spent learning the law will be with them always, and if ever they forget what it is all about, they have only to find it again in what they wrote. Or so it has been for me.

IV. THE VALUE OF THE CLINIC PLACEMENT: PROVIDING THE ABILITY TO CHOOSE

The value of an externship or clinic experience, as well as its role in helping students learn about and adjust to their future roles as professionals, is heavily discussed and debated in the academic literature.¹⁹ From what I have read, much of what has been written has been from the institution's point of view.²⁰ A student's perspective might be of some value in the discussion. Since my experience

¹⁹ See Stuckey, *supra* note 13, at 814-816. The author's belief is that "clinical teachers have failed to articulate and demonstrate the important learning that occurs uniquely or can be accomplished best in clinical law courses." *Id.* at 807. Even a brief excursion into the literature indicates a wealth of scholarship and competing visions as to what should be taught in clinical programs and how. *Id.*

²⁰ Brook K. Baker, *Beyond MacCrate: The Role of Context, Experience, Theory and Reflection in Ecological Learning*, 36 ARIZ. L. REV. 287, 290 (1994). In observing that much has been written about the conventional Langdellian classroom and the supervisory process of clinicians, Professor Baker notes:

Most legal scholars . . . have written primarily from an educator-centered and school-centered perspective because teaching in the classroom and the clinic constitute the context and practice of the people who write law review articles. But what about the students' learning perspective and what about the non-clinical world of practice? . . . Is there data which illuminates whether and under what circumstances students learn well "on the job" and what distinguishes a better learning experience from a worse one?

Id.

reflects both that of the student and the educator,²¹ it might be helpful. It is from this dual perspective that I offer what I have written about my externship experience.

I chose my placement in a public sector labor law firm. I needed to see if the type of law I thought I wanted to practice was indeed what it seemed to be. I needed to be pretty sure before I made my next career move. Hopefully, the externship experience would help me with this decision. I suspect many law students share this view — that externships and clinics are a good way to get a sense of what a particular area of law might be like while getting some hands-on experience to build a resume. I was ready for this; I just wasn't ready for the rest of what I learned — which had far more to do about what I wanted from the practice of law than the practice of law itself.

The following was my final assignment for the Civil Practice Externship. I have made no changes or corrections; it is exactly as I submitted it at the end of the semester.

My first thought when confronted with this assignment to assess my clinic experience was “thank goodness I chose the civil clinic.” It was everything I had wanted it to be — and not because I received a job offer — but because it provided me with hands-on, practical experience in a law office setting. I needed this opportunity to determine whether I really wanted to practice labor and employment law; I needed it as well to learn about the type of environment in which I wanted to practice.

One of the most difficult decisions any person will make is choosing a career. Yet so many of us choose without any real knowledge. As we discussed in our seminar, many of us came to law school because others, usually our family or friends, said that we would “make good lawyers.” They thought so because we had good communications skills or we were always arguing or we were good writers. But we did not know that we would “make good lawyers” because we really did not know what lawyers “did” — unless we were lucky enough to have one in the family and even then our know-

²¹ Since 2003, I have been responsible for directing Touro's Academic Development programs, which span the entire length of the legal educational process, from orientation to bar examination preparation and counseling. This includes training and supervising teaching assistants, teaching sections of Contracts for students in academic difficulty, working with students on an individual basis, conducting skills training workshops, developing appropriate student learning materials, and coordinating and teaching in bar-preparation programs.

ledge was limited to that particular lawyer's experience.

I liked this seminar discussion because it made me examine my decision to be a lawyer once again and from a new perspective. This time I was looking at my choice from the vantage point of having made it through most of my legal education and after having worked for several months in a law office. Perhaps now I was in a better position to judge whether or not I had finally taken the right road. I had thought about my decision many times, and I had been asked about it many times. I had written about why I wanted to go to law school when I filled out applications to law school and then again when one of my professors had asked his students to write about why we were in law school so that he would have a better understanding of us.

I have had a rather extensive work history before coming to law school. But never a career. There is an enormous difference between having a job (even a well-paying, respected job) and having a professional career but I had never realized just how great this difference was until we started to examine in our seminar discussions just what makes the law a profession.

As a technical writer for one of the most dynamic, high technology companies on Long Island, I had enjoyed some celebrity. Since "technical" has acquired an almost "sexy" connotation, meaning "cutting-edge," when people learned where I worked and the kind of work I performed, they were often impressed. Although they did not really understand the nature of my work (not even my mother understood what I did), because it was technical and involved computers, they were somewhat in awe. I was too, but not for the same reasons.

During my college career, there were no courses in technical writing and I had never even remotely contemplated such a future. I learned on the job out of necessity, not out of choice. I had been a history major in both undergraduate and graduate school and while history majors are not known for their technical expertise, we are recognized for our ability to think logically and critically, research and organize information, and find order in chaos. I learned to use common sense and trust my judgment. I realized the importance of asking questions and paying close attention to every detail.

I believe that these skills enabled me to achieve some success in law school and have prepared me as well for actual practice. I

have relied on them often during my internship. They have given me perspective and an ability to appreciate my clinic experience for what it has been — a unique opportunity to choose my future based on knowledge rather than be forced by necessity and happenstance into just any area of the law or firm which makes me an offer.

As a result of my clinic experience, I have gained an understanding of what it is I want from my work, and it is not just a sizeable paycheck. Money is important because we cannot exist without it but there are other considerations which are equally important. First, I learned that my time has enormous value to me and I want to work in an environment which values it as well. After working for so many years for employers who had no consideration for the lives or well-being of their employees, I wanted to work for and with people who did. This goes to the quality of life and there is a quality to one's work life just as there is a quality to one's life in general and it is particularly true that the one directly affects the other.

Second, I realized how important it was that I feel comfortable with the people with whom I would be working. This would allow me to focus on learning without fear — fear of making a mistake or saying the wrong thing. Unfortunately, in my prior work experience, I had worked for a company where every word and facial expression was scrutinized and criticized. The management style was to create an atmosphere of fear and terror. Every action of the employee was controlled and analyzed so that it had come to the point where I no longer had any confidence in my ability to think for myself. I worried endlessly over every little thing and I no longer felt competent to choose even the type of copy paper to use for a particular manual. This was precisely the effect my manager had sought to achieve. Well, it might have been her goal but it was certainly not mine. So I found another job but it took months before I recovered my feelings of self-worth and competence. Despite my horrible experience, I learned a valuable lesson: I would never again work for an employer that required complete domination and control over its employees.

Third, I understood how important it was to me to be connected to my work. For the very first time, I feel as if I own my work — I am connected to what I do, and what I write, and what I think. For all of my years in the workplace, I had felt separate from my work but now I am not. It is who I am. I know that this may be

hard for you to believe as you read these words, but I am actually crying as I write them — crying because I am so happy. I never thought that I would feel this way. Before coming to Touro, I had stopped believing in the future and in finding a way out of the cubicle in which I had been working. I thought that all I had to look forward to was more years writing manuals about products I had not designed and “ghostwriting” articles for others about their work and achievements. The words may have been mine but nothing else.

Coming to law school and working at Solomon, Richman, Greenberg has changed all that. Gone is the frustration and hopelessness and despair I had felt for so many years. Yes, law school has been demanding, but no more demanding than any of my employers. Learning the law has been liberating and sometimes I feel selfish but mostly I feel privileged to be here. I have taken delight in every class (even Civil Procedure) and it has been a joy to return to the world of ideas, where the need to question is valued and assumptions are to be challenged.

I suppose that my years in the workplace have had a lot to do with how much I have enjoyed law school. Certainly it has colored my choice of which area of the law to pursue. Since the workplace has been so much a part of my life, it seems only natural that I would feel most comfortable with labor and employment law. And as we all know, we are likely to be most productive and successful when we are doing that which we like and that for which we are best suited.

In thinking about the nature of my work experience at Solomon, Richman, Greenberg, I can honestly say that it has been varied and challenging enough to give me a true sense of what I can look forward to when I begin my permanent, full-time employment. I know that I have so much to learn, but I know that I will be able to learn in a nurturing, caring environment where my judgment and skills are valued. There is an easy balance between control, supervision, and independence so that I feel comfortable in undertaking each assignment.

The clinic has been invaluable to me and as far as I can see, my classmates are likely to tell you the same. It appears that we have all chosen our placements wisely (except, perhaps for the one or two who ended up with supervisors who were less than “supervisory” and that, of course, was not the student’s choice) in that we have selected the area of law or type of environment in which we thought

we would like to concentrate. This is critical to the success of the experience. So if I were to have a suggestion about the future of the clinic, I would strongly recommend that each student come to the clinic with a strong sense of what he or she wants to get out of it — to test some theories about what they think they want against the realities. In this way, the student will be in the best possible position to choose a future direction.

I so strongly believe in the value of a clinic experience that I have encouraged my daughter to participate in the internships offered at her university. While in life, there are no dress rehearsals, the clinic is a close second for career choices. A clinic will be invaluable to her in helping her decide whether a career in marketing is really what she would like to pursue. I would, however, also like to see her participate in the type of seminar we have enjoyed. In thinking about our seminars, I have realized that even though my work experience was limited to only one particular setting, by listening and talking to the other students in the clinic, I learned about a dozen other law practices and practitioners.

I have learned so much because we have been so sharing with each other. I have vicariously experienced what the other students have experienced and can say that no, I would never want to work for an insurance company or “do” personal liability work or spend my days working in a clinic with the “about to be homeless.” I have learned that there are those people who prefer the order and security of insurance work but that is not me. It sounds too much like the routine of the workplace I had in working for software companies and manufacturers. Even the structure of the work environment would not be to my liking since it appears so political — I have had enough of that! And while at first I thought I would like to be in-house counsel to a corporation, I have learned that this too has its downside and would be very much like the experience I have already had and know all too well. Of course this time around I would be the “attorney” and a “professional” but from what we have learned from Phyllis and Jennifer, in-house counsel can be and often is treated just like any other “employee” and is subject to the whims and personalities of the CEO and the balance sheet.

I can hear you saying to yourself as you read this that I am jumping to conclusions and that even in a law firm, I am subject to the personalities of the partners and my supervisor, and of course the

demand for billable hours never ceases, so that I have not escaped these demons. But there are major differences between “working for a corporation” as compared to “practicing in a law firm”: law firms have clients and so there is greater opportunity to vary the type of work, dilute the impact of any one personality, and perhaps most important, influence the direction of the firm. It also allows for more opportunity for growth for the lawyer — he or she can bring in clients and add to the growth of the firm. In-house counsel, on the other hand, can advise in legal matters and write procedures to ward off potential litigation (i.e., Jennifer’s sexual harassment manual) but for the most part, in-house counsel plays a minor role in setting corporate policy and mission. That is most usually determined by the corporation’s product itself. Counsel offers legal support, answers legal questions, and bails the corporation out of legal problems, but the legal matters of the corporation are really peripheral to the operations of the corporation whereas in a law firm, the law is central to its operation.

And I want to be where the law itself is at the center of what I do and where it is valued and used, and not seen as something that just gets in the way of what the corporation really wants to do. I may be somewhat harsh in my criticism but I have worked for a corporation in a position which is usually reserved for attorneys (regulatory compliance) and this position is seen by management as a necessary evil. I would research the applicable statutory provisions and advise on corporate policy but mostly I was a lone voice which management did not want to hear if it conflicted in any way with what they wanted to do — compliance with the law was a “nuisance.” While everything is not perfect in a law firm and clients would prefer not to hear that the law requires them to take an action they would rather not, the position of the attorney in this case is different — and it goes to independence, the very topic we discussed in class. I believe that the lawyer practicing in a law firm with other attorneys is more independent in his relation to the law than the attorney who works for a corporation. While in theory there is not supposed to be a difference (the Code of Professional Responsibility certainly does not distinguish in the attorney’s obligation to his profession according to the setting) my experience and those of my classmates seem to indicate that quite the opposite is true.

Actually, this is not so difficult to understand. A corporation

has an identity and a mission and it has nothing to do with the law. The law never enters into the equation. There is only an implicit understanding that what the corporation intends to do is not an illegal enterprise. But a law firm is first and foremost about the practice of law. And for me, right now, this is exactly where I want to be and where I need to be.

“Professionalism” and “the Type of Lawyer I Want to Be”

In thinking further about our class discussions and my Professional Responsibility class discussions on “Professionalism,” I had the following thoughts:

The idea of professionalism comes from both within and without. The “without” is all the outward manifestations and trappings of “professionalism” — the associations, the regulation or self-regulation, the Codes and the Rules, the licenses, the status, etc.

But the “within” is the sense of professionalism with which the individual imbues each task and act he or she performs. In this respect, I believe that I was a “professional” in the work I performed prior to law school. Professionalism was in my behavior with others and in the work I produced. In some sense, professionalism has more to do with the way one conducts oneself than simply the fact that there is an association or special rules of conduct. I believe the whole debate about “professionalism” is about an attempt to impose it from without on individuals who are sorely lacking it from within. And we have seen evidence of it all semester: attorneys who are not prepared at EBTs or hearings, or trials, attorneys who are late to appointments, to court, with their papers.

Thus while the outward trappings of professionalism are important to the outside community, what may be most important is the sense of professionalism which each of us brings to the endeavor. In thinking about what type of lawyer I want to be, therefore, I think the real question is what type of person I want to be. It is the type of person I am that determines the type of lawyer I will be. I believe that this is what I have responded to in Harry’s personality [Harry is a partner in the law firm and my supervising attorney] and how he practices law. He treats clients the way he wants to be treated — with honesty and fairness. He listens carefully and responds, not reacts. Yes, I have heard him pound his fist on the table when the

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battle becomes heated, but he knows how to leave something on the negotiating table and not to go so far that there is no going back. This is not something the law can teach you. It is about what it means to be a human being.

Some Final Thoughts

1. The importance of good writing skills

In many respects, I have been successful in law school and in my placement because I have strong writing skills. I have been asked many times how I learned to write for so many varied enterprises and especially how I made the transition to legal writing. If I have been successful at all, it has been because I have taken Hemingway's advice as my guide: "a writer's problem does not change. It is how to write truly and having found what is true, to project it in such a way that it becomes part of the experience of the person who reads it."

I have shared this advice with others and they have found it helpful. Even now, when I am not sure where to begin or how to proceed, I read these words and they guide me. I think that too many people think that writing is a mystery and it is simply a dialogue between the writer and the reader.

2. What is exciting about the law

During one of our seminar discussions about the practice of law as an art, you mentioned that part of the art of law is the fact that lawyers "create" law. This is so true and a very large part of the reason I came to law school. What I had found most challenging and interesting about the regulatory work I had performed at Bennett X-Ray involved the vague areas, where the FDA has not yet provided formal guidelines and had left it open to interpretation. This allowed room for innovation and creativity. What I had not realized at that time was this was how the law evolved.

3. Building bridges and connections

As a history major, I had learned the value of reading carefully, thinking critically, and writing clearly. But the discipline of history also teaches us to see beyond the immediate, to escape “present-mindedness” in order to take a larger perspective. It teaches the value of diversity and the need to keep an openness of mind and spirit to knowledge and understanding from all disciplines and from all people. I believe that the same approach applies to the study and practice of law. To do otherwise is limiting and destructive.

4. *The value of patience, humility, and perseverance*

These are the most difficult lessons to learn but learn them we must. And once again, history is our teacher. I have learned to measure progress as change over time and therefore I am not to be defeated by what at first appears hopeless. I can appreciate the value of taking small steps forward and not be overwhelmed by the entirety of an enterprise. I have learned the value of perseverance and hard work because that is all there is in the end — the triumph usually goes to the one who carefully prepares and endures.

It may seem strange that as I begin the practice of law, I take with me the same heroes who have accompanied me thus far — Benjamin Franklin, Thomas Jefferson, F. Scott Fitzgerald and now, Justice William J. Brennan, Jr. — but maybe not so strange after all.