

## REFLECTIONS FROM THE JOURNALS OF PROSECUTION CLINIC STUDENTS

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### I. IMPORTANCE OF JOURNALS IN PROSECUTION CLINIC

"It wasn't until I sat down to write this journal entry that I truly could appreciate what I had learned this week."<sup>1</sup>

This article contains reflections selected from Fall 2002 semester journals by students in the prosecution clinic at Loyola University New Orleans School of Law.<sup>2</sup> This is not the traditional law review article which looks deeply and analytically into one narrow section of law. Rather, it is my hope that these selections will create a mosaic of reflections which will themselves illustrate the critical importance of weekly student journals in a prosecution clinic.

Before turning to the most interesting part of the article, the student reflections, it is important to put the idea of journals in context. Journals are a time-tested method of encour-

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<sup>1</sup> Journal entry by MN, Sept. 11, 2002.

<sup>2</sup> Loyola has operated a prosecution clinic for nearly twenty years. Students are regularly placed in the District Attorney Offices of Orleans Parish and in Jefferson Parish. The expectation is that students will spend two semesters in the clinic. The students receive three hours of graded academic credit per semester and are expected to average at least twelve hours of clinical work each week, submit quality weekly journals, and participate in a weekly classroom component.

aging reflection.<sup>3</sup> Because reflection on experience is the core of clinical education, journals are particularly effective.<sup>4</sup>

Outplacement clinics and externships have distinct educational challenges over and above other types of clinical education.<sup>5</sup> Students are typically located off the law school campus

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<sup>3</sup> The premier article on the importance of journals in clinical settings is J.P. Ogilvy, *The Use of Journals in Legal Education: A Tool for Reflection*, 3 *C L. REV.* 55 (1996). Ogilvy's article details some of the history of the use of journals in other educational disciplines. *Id.* at 56-59 nn.3-4, 9.

Journals are also useful in cross disciplinary experiences:

A journal offers writers the opportunity to become participant/observers of their own learning, to describe a significant experience and to then reflect on that experience to see what they can learn from having had it. It offers an opportunity to practice education as making up and changing one's mind.

Mark Weisberg & Jacalyn Duffin, *Evoking The Moral Imagination: Using Stories to Teach Ethics and Professionalism to Nursing, Medical, and Law Students*, *CHANGE*, Jan. 1995, available at 1995 WL 3715077 (detailing the use of journals to help teach ethics and professionalism to nursing, medical, and law students).

Teachers use journals to reflect on their own experiences. See, e.g., Stacy Caplow, *A Year in Practice: The Journal of a Reflective Clinician*, 3 *CLINICAL L. REV.* 1 (1996) (reflecting on a year spent as an Assistant U.S. Attorney).

Other creative teachers use journals to enhance student understanding in classroom subjects. See, e.g., Charles R. Lawrence, III, *The Word and the River: Pedagogy as Scholarship as Struggle*, 65 *S. CAL. L. REV.* 2231, 2245-48 (1992) (discussing journals in extraordinary teaching experience).

<sup>4</sup> For an enlightening review of one student's clinic journals and the emotions and insights they contain, see Robert Rader, *Confessions of Guilt: A Clinic Student's Reflections on Representing Indigent Criminal Defendants*, 1 *CLIN. L. REV.* 299 (1994).

<sup>5</sup> One instructor offers some insight into these challenges:

[Third-year law students working and learning in a prosecutor office face] significant barriers to careful critical thinking in a fieldwork setting, including career anxiety, naivete, and supervisors or agency culture in which agency attorneys do not, or no longer, question policy or practice assumptions. Third-year students, who often exhibit academic fatigue, are often re-energized by the real world setting of externship, yet they continue to resist intellectualizing their experience.

Harriet N. Katz, *Using Faculty Tutorials to Foster Externship Students' Critical Reflection*, 5 *CLINICAL L. REV.* 437, 442 (1999).

and subject to supervision by other lawyers in addition to law school clinical faculty. This calls for creative methods of teaching and learning by clinic students and law school faculty.<sup>6</sup> Students who learn in an off-campus setting, with both on-site and on-campus supervisors, must take more independent responsibility for their educational experiences.<sup>7</sup> Faculty supervising off-site clinical students must develop multiple opportunities for feedback and critical reflection in order to compensate for the lack of direct on-campus faculty supervision.<sup>8</sup>

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For a description of the structural and institutional challenges of a law school prosecution clinic, see Karen Knight, *To Prosecute is Human*, 75 NEB. L. REV. 847 (1996). For a description of the inherent challenges of being a prosecutor, see Abbe Smith, *Can You be a Good Person and a Good Prosecutor?*, 14 GEO. J. LEGAL ETHICS 355 (2001).

<sup>6</sup> Several authors think learning in the middle of actual work is the best way of learning. See, e.g., Brook K. Baker, *Beyond MacCrate: The Role of Context, Experience, Theory, and Reflection in Ecological Learning*, 36 ARIZ. L. REV. 287 (1994).

One group of authors suggests that not only does much learning take place outside of educational institutions, but that it should. Daniel J. Givelber, et al., *Learning Through Work: An Empirical Study of Legal Internship*, 45 J. LEGAL ED. 1 (1995). Surveys of recent law school graduates found that law school educational opportunities actually ranked third, after repeated experience and on the job observation and advice. *Id.* at 17. In fact, law school nearly tied the educational experience from summer clerking, which came in a close fourth. *Id.*

<sup>7</sup> Stephen T. Maher, *The Praise of Folly: A Defense of Practice Supervision in Clinical Education*, 69 NEB. L. REV. 537, 545 (1990). Maher sees several aspects of outplacement clinical experiences, which others view as potential drawbacks, as opportunities and advantages for law students. Large dockets are more realistic than working on a small number of cases. *Id.* at 544-48. Less supervision and control allows students to assume significant responsibility as they demonstrate competence. *Id.* *Stress? That is the real world of lawyering. Id.*

<sup>8</sup> Harriet N. Katz, *Pedagogy: Using Faculty Tutorials to Foster Externship Students' Critical Reflection*, 5 CLINICAL L. REV. 437 (1999). Katz describes the division of responsibility between on-site and campus supervision as:

Overall, then, supervising attorneys at the placement provide task and technical supervision, an invaluable real-world context for student experience, and some critical discussion of experience. On-campus supervision

Thus, for outplacement clinics and externships, journals are essential tools for helping the student and teacher address issues of accountability, critical reflection on experience and pedagogy.

Each third year law student in the Loyola Prosecution Clinic is required to provide a weekly written journal briefly describing what kinds of work they did during the week, the hours they put in and some reflection on their actions.<sup>9</sup> The

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by faculty is the main vehicle for identifying students' individualized goals and supporting students' critical reflection on what they have learned.

Id. at 440; see also Robert Condlin, "Tastes Great, Less Filling": The Law School Clinic and Political Critique, 36 J. LEGAL ED. 45, 63-73 (1986) (detailing some positive ideas about off-site clinical experiences). Condlin suggests that the on-site supervisor has primary responsibility for the technical quality of the student's work and the clinical professor is tasked with developing policy and contextual analysis. Id. at 64-66.

Condlin, as a critic of conventional in-house clinics and a vigorous supporter of off-site clinical experiences, recognizes some of the inherent drawbacks in student learning in offices outside of the law school:

There are two principal quality control problems with externship instruction. First, it is difficult for externship students to know quickly when they are just practicing mistakes. Supervision is not as continuous as it is in the in-house clinic (the outside supervisor is also a full-time practitioner with other responsibilities), and a great deal of time can pass before mistakes come to light. Second, externship students have a greater tendency to accept supervisor (practitioner) advice uncritically, as received wisdom, than do clinic students. There is no ethos of listening critically, as there is in the clinic, and it is awkward for supervisors to try to prevent this from happening by intentionally criticizing their own actions.

Robert Condlin, Learning from Colleagues: A Case Study in the Relationship Between "Academic" and "Ecological" Clinical Education," 3 CLINICAL L. REV. 337, 431 (1997).

<sup>9</sup> After trying both, I have found that weekly journals are much better than journals submitted every two weeks. Because the students are forced to submit journals weekly, I think they reflect more frequently, making the experiences they reflect upon fresher.

These students were not required to address a certain topic in their journals. Their instructions were as follows:

The journal itself should discuss: the work you performed; your observations about any court appearances and the work of other lawyers, parties and witnesses you observed; ethical issues; how you evaluate the work you

2005]

*STUDENT'S JOURNALS*

1151

journals are not distributed to the class without prior permission of the students.<sup>10</sup>

Student journals are a critical part of the educational process in our prosecution clinic. Students are given guidelines for the journal before the semester starts. While I do not respond to every journal submitted by students, I do respond

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have done; and plans for expanding your knowledge and/or improving yourself as an advocate.

A journal can help you in several ways. First, writing will make you reflect on what you have learned in a specific and concrete fashion. Second, your journal will allow me to understand some of what you are learning in your experiences away from Loyola. Third, your journal will give you a record of your progress as a clinic law student.

Your journal should not just be a list of what you have done. Your notations about what time you spent each day will do that. Your journal should go over and above a record of the amount of time you spent and a list of activities you were involved in. Your journal should answer questions. What did I learn about the practice of law and about myself as a lawyer this week? What do I need to learn more about? Your journal should indicate what you are sensing, observing, thinking and feeling about your experiences with clients, the justice system, the lawyers you work with, and the lawyers you oppose. Apart from these guidelines, there are no strict requirements for what should be in your journal.

Why journal? Every excellent lawyer consciously and continually learns from their experiences. Excellent lawyers plan what they are going to do before they take action. After they act, they reflect on how their action measured up to their plans. Excellent lawyers ask themselves what worked best, what did not work as well as expected, and what she or he would do differently the next time they were in that situation. This is called self-reflection. As one tool to assist you in becoming more self-reflective you will keep a journal of your experiences as an outplacement clinic student. Writing about your work will give you a chance to reflect on it, and can encourage more thoughtful reflections.

Expectations for Students in Loyola Prosecution Clinic, Fall 2002. (On file with author).

<sup>10</sup> The journal entries quoted in this article are followed by correct dates, but by initials that have been changed in order to shield the student, supervisor, client and judicial identities. In some cases, minor changes have been made to make the entry more understandable.

regularly. Most frequently I write back with either compliments for insightful observations and accomplishments, encouragement when the journals express the inevitable disappointment or frustration of trial work, or questions to try to prompt more in depth reflections. Often the journals will be referenced in our weekly class meetings and used as stepping off points for discussion.

I find writing a journal is very useful for most students. Many really take to them and use them to tell me what they have been doing and to reflect on their experiences. Some, as you will see, are outstanding reflections on the practice of law and their own learning process. However, for some students the journals just never seem to click. In my experience, those for whom the journals do not work are far more likely to be among male students than females. Though they do the journals, they give terse dry summaries of what they have done and rarely reflect in a personal or meaningful way. Despite my questions to them trying to provoke more meaningful reflections, they are either not comfortable writing, reflecting or sharing.<sup>11</sup>

The journals allow students to give their emotional experiences and reactions to numerous situations and legal actions, including brutal crimes, police actions and inactions and judges. Additionally, they can reflect on career-oriented aspects of the clinic, such as whether they have received good or bad mentoring, their own sense of what they want to do as lawyers, how they want to act and what type of law they want to practice.

On a personal note, after spending several days re-reading a semester's worth of journals to prepare for this article and

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<sup>11</sup> I noticed I repeatedly asked students who were submitting short un-reflective journals: "Tell me some more about you. What are you learning about how to be a good lawyer? What are you learning about what your own strengths and weaknesses are?" That did seem to work for some, but for others, no.

I must admit I have not found an answer for the students who resist doing in-depth journals. I encourage more reflection, but it is rarely forthcoming. I am thinking about being more directive for those students, in part based on the results of my research for this article.

reading more of the literature about journals, I have concluded that I can and should do a better job responding. In re-reading these reflections to decide whether to use selections for this article, I realize that I missed several key opportunities to respond to the reflections. I usually have no trouble responding to great reflections, but I am less responsive to bad ones, like ones that criticize or display irritation at unrepresented defendants. On the other hand, I want students to be open and honest, so it will be a challenge to figure out exactly how to respond. I also often missed the humor. As a good clinical teacher should do, I resolve to learn from my experiences and try to do better.

## II. REFLECTIONS FROM PROSECUTION STUDENT JOURNALS

In this section of the article, the author is going to try to consciously step back a bit and allow the writings of the students illustrate what journals can do. Each of these selections was picked out of more than a hundred other journal entries because it struck a chord in this author. That chord might have been surprise, respect, awe or even humor. With any luck, a few will strike similar chords in the reader and you will see the importance of the journal exercise.

*A. Compassion for Defendants*

It is expected that prosecutors have compassion for the victims of crime.<sup>12</sup> Indeed, compassion is one of the qualities that should guide prosecutors.<sup>13</sup> But in my experience, compassion by prosecutors for defendants is also real, though rarely discussed.<sup>14</sup> The following reflections on defendants were written a month apart by two different students in the prosecution clinic.

Throughout my research on the case, it was easy to paint a picture in my mind of the defendant as a monster; someone absolutely revolting as being the one to have committed the crime. My actual exposure to this defendant sent my predisposition about him into total disarray. The defendant is young, clean-cut, and comes from a good

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<sup>12</sup> "He had great compassion for the people he represented and I see that quality in good prosecutors. They have compassion for victims of crime." In Profile—Thomas J. Esch, 33 PROSECUTOR Jan./Feb. 1999, at 13.

<sup>13</sup> JOHN J. DOUGLASS, ETHICAL ISSUES IN PROSECUTION 38 (1988) ("Notwithstanding the aid provided by 'written tablets' handed down from 'on high,' prosecutors must largely rely on their own understanding, integrity and compassion.").

<sup>14</sup> As Mark Baker states:

Unfortunately, the paranoia that lumps all defendants together as one big smelly animal cancels out the one real power a prosecutor wields: the discretion to offer clemency. Although more and more of their decision making powers are being taken away by statute in many states and the political and media pressure to be "tough on crime" is extremely intense, prosecutors still have the power and the obligation to look at each individual case and decide for themselves if this particular defendant deserves some consideration, some compassion. It is part of their responsibility to see that people don't get trampled unnecessarily by the law. Are there extenuating circumstances in the case? Is crime an anomaly in this person's life? Is the community better served by giving this defendant another chance? Losing sight of the good in people may be the prosecutor's ultimate crime against his profession and the people he serves.

MARK A. BAKER, D.A.: PROSECUTORS IN THEIR OWN WORDS 48 (1999).



2005]

STUDENT'S JOURNALS

1155

family. It is interesting how this may come into play in swaying the jury's decision just merely on outward facts about the defendant.

Another event that touched me today was watching a defendant apologize to the victim on his own accord. No one told the defendant to apologize, he just did. This particular defendant was out on bond. He acted responsibly by showing up for court. He was found guilty, so they handcuffed him and took him away. I felt very sorry for him. He was going away for one year for stealing some shorts from the Athlete's Foot. I felt really bad for him when he asked the judge if he could take his pajamas with him to jail. It was so sad. Even though I know I definitely want to be a criminal prosecutor, I know that sometimes it is going to be hard for me because sometimes I will feel bad for the defendant.<sup>16</sup>

### *B. Defense Lawyers*

Despite media stereotypes about the distance and animosity between prosecutors and criminal defense lawyers, the reality is quite different. For one thing, a large number of the criminal defense bar was once prosecutors and are familiar with the occupational challenges of the prosecution.<sup>17</sup> Secondly, given the large caseloads of current criminal dockets, few prosecutors maintain an antagonistic relationship with the entire defense bar, choosing rather to cooperate on a professional level with appropriate defense counsel.<sup>18</sup>

While there are student journals that discuss the shortcomings of defense counsel they have encountered, these two student reflections show how students who chose to be in a prosecution

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<sup>15</sup> Journal entry, BB, Sept. 26, 2002.

<sup>16</sup> Journal entry, TD, Oct. 30, 2002.

<sup>17</sup> PROSECUTORIAL RELATIONSHIPS IN CRIMINAL JUSTICE: ROLES AND FUNCTIONS OF THE PROSECUTOR 67 (John Jay Douglass ed., 1977).

<sup>18</sup> *Id.* at 67-91.

clinic, rather than a criminal defense clinic, can still learn from the other side.

Today, I had the opportunity to truly appreciate the extreme pressure which is placed upon the public defender. This morning during arraignments, she was assigned to represent three or four defendants, and she was running back and forth trying to deal with her other clients as well as represented the new ones. It was apparent she was exhausted and overworked but yet properly and adequately represented her clients. I also must note, however, that even given this environment, she showed such compassion for them and concern for their best interests.<sup>19</sup>

The defendant's attorney was truly masterful in the art of speaking to the jury in order to sway them personally to her side, as well as convey information that would be beneficial for a verdict in the defense's favor. This attorney accomplished this by doing all of the things right that the prosecuting attorney before her did wrong. Most obviously, she spoke to the people sitting in the jury box as if she were having an honest, one-on-one conversation with a singular person. Further establishing a bond between her and the people across from her, she included them in her hypothetical scenarios more naturally by dredging up small bits of information from their personal lives to include in the scenarios, thereby making the hypos more natural in the conversation. When she had to make a flat-out point favorable to her side, she did it cleverly, without beating them over the head with the obviousness of it. This was most evident when she spoke of reasonable doubt, saying, "You consider yourselves reasonable people, right? Well if you honestly doubt some of this evidence, isn't that reasonable doubt?" The effectiveness of this statement was so apparent, that several people in the courtroom reacted audibly with surprise and jubilation by the shrewdness of this revelation.

While her methods to this point were apparently superior, she showed her real genius later when she learned that one

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Journal entry, MN, Sept. 4, 2002.

2005]

*STUDENT'S JOURNALS*

1157

of the prospective jurors worked with drug addicts in their medical profession. At which point, the defense attorney began asking questions about the effects that drugs have on the memory and actions of people who are under the influence, thereby, unbeknownst to the jury, already beginning to attack the credibility of an upcoming witness who was on heroin when he saw the murder. Although the A.D.A. objected on the grounds that there was no expert witness in this case, the judge allowed this questioning to continue (also noteworthy is that the objection, in my opinion, should have been more along the lines that she was eliciting testimony from a juror or that it was irrelevant for the purposes of voir dire). Regardless, the defense attorney extracted all of the answers she was looking for concerning the effects of drugs on a person's ability to observe and relay pertinent information, and in effect, was already winning the case before it started.

Although I have learned much from the prosecutors I have observed in the courtroom, I never expected to learn so much from a defense attorney about how to conduct a trial as a prosecutor. Ultimately, I have found that sitting in a courtroom and watching a great lawyer at work is above and beyond any instruction I could receive in any other conventional form."<sup>20</sup>

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Journal entry, KK, Oct. 21, 2002.

*C. Determination and Work of Prosecutors  
Outside the Courtroom*

One of the real strengths of a clinical experience in an on-site prosecution clinic is that students are immersed into the environment of a real working prosecutor's office.<sup>21</sup> Because the prosecution student has quite a bit of in court time, she has the opportunity to see many kinds of behavior by other prosecutors and defense lawyers to either model or reject. But, just as important, if not more so, is the out-of-court time that the prosecution student is in the office. It is in that time that the truest work of trial advocacy takes place—trial preparation. It is the efforts of the student's supervisor and of others in the office that make impressions on the student.

As much as clinic is about learning to practice the law in the courtroom, it is also about learning the real practice of law, such as dealing with police officers and victims as well as spending hours preparing for cases that are only going to plead anyway. But it's also about learning to pull your own weight, that you are accountable for your actions as well as being responsible in preparing and presenting case at trial. As part of that process, one must accept that even the minor tasks are part of the process of learning how to be an attorney. Spending the day telephoning police officers runs contrary to the glamorous vision of the life of a district attorney that TV programs show. But that is reality. We all know that the law can at times be tedious, difficult, frustrating and even sometimes a little monotonous. Much

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Givelber states:

Our data show that second- and third-year law students believe that they learn well from full-time work in law offices. The body of data makes sense in light of what we know about the role of context and collaborative work relationships in training a novice to perform highly skilled activities. It makes sense in light of a student's need to immerse herself in a professional role to develop a professional self and to maximize the satisfactions inherent in authentic performances of complex tasks.

Gilver et al., *supra* note 6, at 43.

like a marriage, when you decide to become a lawyer, you have to take the good with the bad. Before you can try a case, you have to do all the background work that is necessary to adequately prepare for trial. It wasn't until I sat down to write this journal entry that I truly could appreciate what I had learned this week.<sup>22</sup>

After I had already missed my class, I decided to stay late to help work on the docket and await the ruling from the court of appeals. Being there that late at night showed me a whole different side to the office. As I wandered around, you had to wonder whether the attorneys were dedicated or just downright crazy. No matter which theory you subscribe to, you have to admire the love for what they do. They have all been there since the early morning, had a full day of court and were going to be back in less than twelve hours to do it all again. And compound upon that these attorneys are making very little money, have absolutely no perks, and work with very little gratitude for what they do—or at least try to do. I have tremendous respect for all of them. They do the best with the cases they are given and have the drive to be good attorneys despite all the problems with the system in which they work. And of course, being there that late at night was a view into my future when I'm a “real” attorney and not just a clinic student with the luxury of leaving at a set time and with low responsibility.<sup>23</sup>

After having witnessed the people I work with put in hours not uncommonly until ten o'clock at night and sometimes waking up as early as 4:00 A.M., as well as sometimes trying up to five cases a day or waiting all night for a jury decision, I felt that the endurance of such hardships are also part of the experience working at the D. A.'s Office. So enormous and frequent are these sacrifices that I believe they are half of the lessons learned from the prosecuting experience, even compared to the legal jargon, trial practices, and the criminal justice methodology that also

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<sup>22</sup> Journal entry, MN, September 11, 2002.

<sup>23</sup> Journal entry, MN, Oct. 21, 2002.

must be absorbed. I had many grueling tasks before me this week, and if I put forth half the effort or made half the sacrifices that my coworkers make so frequently, then I feel that I have advanced in understanding the full implications involved with the job of prosecutor.<sup>24</sup>

#### *D. Humility*

Humility is not a word often associated with lawyers, law professors or law students. But humility, as all continual learners are often reminded, is in fact part of the threshold of learning.<sup>25</sup> These three journal entries demonstrate how students can really examine themselves and their roles in a critical way.

For the first time I have some real personal issues with a case. The defendant was found guilty. And, his little girl was there, she was like ten or eleven. And, when we walked out of the court she was screaming at us, like she hated us. And, I don't feel bad for the defendant, but I feel so bad for that little girl. I hope that I never stop feeling bad for the little girls, but I think that if I did this long enough I would. And, that frightens me.<sup>26</sup>

I did have the opportunity to go to the detective's bureau

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<sup>24</sup> Journal entry, KK, Oct. 24, 2002.

<sup>25</sup> Peter Dormer describes the role of humility in learning as follows:

[In general there are] "three stages in the intellectuals' sleight of hand when it comes to craft issues. The first is to begin by trying to take the learning of the craft seriously. The second is the realization that learning the craft is going to require much more time (and humility) than first envisaged. The third stage, because their own efforts are, understandably, not very good, is to dismiss the craft element as 'sterile and rule-bound' and claim as more expressive their 'freer' efforts."

Brett G. Scharffs, *Law As Craft*, 54 VAND. L. REV. 2245, 2323 (2001) (quoting PETER DORMER, *THE ART OF THE MAKER: SKILL AND ITS MEANING IN ART, CRAFT AND DESIGN* 40 (1994)).

<sup>26</sup> Journal entry, BD, Sept. 19, 2002.

this week about a matter. It was my first time there. I thought I was in a fairly friendly discussion with one detective, and he was asking me about school. He ended the conversation by saying: "Yeah, I guess pretty soon you'll graduate and have to deal with us 'dumb-ass' detectives." I didn't really know how to take this, so I attempted to cordially laugh it off. I know that the police are not particularly fond of attorneys, but I thought that was kind of a crazy comment to make.<sup>27</sup>

Today, I also got one of the nicest comments from our investigator, but it made me realize how the attorneys are viewed in the office by the non-attorneys. Bob (our investigator) in introducing me to one of the secretaries, said that I was one of the few people who has gone to law school and has remained a nice person and pleasant to deal with. Then again, it is easy to remain nice and easy to deal with when I'm usually not the one on the line with Judge A. It also made me stop and realize that I need to be constantly aware to check any attitude that I may want to have at the door when I enter the office.<sup>28</sup>

### *E. Humor*

"You can't be a prosecutor unless you have a sense of humor. You need a good sense of humor to survive all the tragedy we see in this business."<sup>29</sup>

Many people use humor to temper the effects of tragedy.<sup>30</sup> The life in criminal court is filled with tragedy. Tragedies of violence, greed, pain, betrayal, conflict, weapons, death, injury, attitude, rage and depression. No surprise the prosecution students are happy to report some humor in their journals.

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<sup>27</sup> Journal entry, BB, Nov. 7, 2002.

<sup>28</sup> Journal entry, MN, Nov. 20, 2002.

<sup>29</sup> In Profile—Ray Larson, 37 PROSECUTOR, May/June, 2003, at 26.

Ray Larson is Commonwealth Attorney for Fayette County, Kentucky.

<sup>30</sup> "I can only say that such humor is, in my opinion, not just common

Earlier this week in court, a rapper was supposed to be arraigned on a simple robbery charge. Because he is for some reason exempt from the criminal process, he decided not to show. The judge issued a *capias* for his arrest. Unfortunately, he recalled the *capias* when his attorney eventually came in and whined about his client's tour schedule. The judge set him for a later date. I hope others in a similar situation would be so fortunate. One of this guy's best known songs is apparently entitled "Back That Ass Up." When the judge reset the date, he admonished the defense attorney that his client "better back his ass into court." If nothing else this section of court is never boring.<sup>31</sup>

I feel fortunate that all of the police officers in my cases showed up considering that many police officers on that particular Thursday were not present in the courtroom because they were attending a full police funeral for a police dog killed in the line of duty several days earlier (the most unique excuse among many that I have heard over the course of the semester).<sup>32</sup>

The defense attorney, in a conciliatory tone said, "If I knew you were a law student, I wouldn't have given you so much shit." I still can't fathom how to react to that.<sup>33</sup>

The other unrepresented defendant accepts the state's plea offer on her petit theft charge. She was caught stealing at Wal-mart. Wal-mart vigorously pursues all their shoplifting cases. She is adjudged guilty, sentenced and finger-printed. Part of her sentence is that she must avoid all area Wal-marts. I know several people who just couldn't live with this sentence. They seem to live for their next visit to Wal-mart. It's like a religion over here. This defendant seems totally

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but essential when people face tragedy and injustice." Kathleen Wait, *Feminist Lawmaking On-Line: The Fivers Domestic Violence Listserv*, 11 J. GENDER SOCIAL POL'Y & LAW 877, 915 (2003) (internal citations omitted).

<sup>31</sup> Journal entry, HU, Oct. 21, 2002.

<sup>32</sup> Journal entry, KK, Nov. 14, 2002.

<sup>33</sup> Journal entry, HU, Aug. 30, 2002.



2005]

## STUDENT'S JOURNALS

1163

nonchalant about the whole thing. Just another day at the office. I look at the file and see that she has a "prior" two months before of shoplifting at J.C. Penney. Talk about irritating.<sup>34</sup>

If you are assigned to Section X, schedule your hours to coincide with days that the court will handle jury trials. Do this not only for experience purposes but also for the free lunch. The free lunch is probably the only perk you get for all the work you do. The Judge loves to order from Pampy's. I personally recommend the barbecue ribs. The sauce is perfect and the mess potential is minimal.<sup>35</sup>

*F. Judges*

No explanation needed.<sup>36</sup>

The atmosphere of the courts is definitely governed by the attitude of the judges. Judges live by their own rules—ones that are not completely fair!!! While I think that some of the rulings that the judge in my court, Section X, makes are absurd, at least he is nice enough and doesn't talk to/treat people like slaves/inferiors/dirt. Not so in Section Y. That judge should be disciplined. He was so rude to the attorneys. He was constantly yelling for the forty-five minutes that I was there. I was physically sick watching that judge. Section X is a bit unorganized but pretty mellow. Section Y is extremely tense and suffocating. Thank goodness that I am assigned to Section X.<sup>37</sup>

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<sup>34</sup> Journal entry, MZ, June 5, 2002.

<sup>35</sup> Journal entry, HU, Dec. 6, 2002, part of Letter to Successor in Clinic.

<sup>36</sup> Names deleted to protect the teacher.

<sup>37</sup> Journal entry, TD, Oct. 22, 2002.

### *G. Jury Selection*

What trial lawyer or clinic professor has not been educated by answers in jury selection? These two students found insights from jury selections in New Orleans.

On Tuesday I observed a well-executed voir dire conducted by RJ. He skillfully interwove the elements and facts of the case into his questions in a conversational manner. He made a most complex process appear deceptively simple.

At one point he asked the panel members if they had any relatives that were victims of violent crimes. I was awestruck to hear that about half of the prospective jurors had family members that were murdered. I've seen the horrendous murder statistics concerning New Orleans, but they don't have the same effect as hearing nine of eighteen randomly selected people recount their tragedies.<sup>38</sup>

As I listened to some of the prospective juror's responses to voir dire questions, I was reminded of the different perspective I have from some of the members of jury pool. Having grown up in suburbia, I believe that one of my goals from my experience at the Orleans DA office will be to learn to see the case from the perspective of a juror and remove my own perceptions and prejudices from my presentation of the evidence and case. I know this is something I will most likely struggle with during this year but that it is a skill I need to acquire.<sup>39</sup>

### *H. Learning from Mistakes*

"I have children and I teach them to learn from their mistakes. To what extent do prosecutors, federal prosecutors in particular, learn from their mistakes?"<sup>40</sup>

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<sup>38</sup> Journal entry, HS, Oct. 10, 2002.

<sup>39</sup> Journal entry, MN, Sept. 4, 2002.

<sup>40</sup> Bruce Green et al., Panel Discussion: The Regulation and Ethical Re-

2005]

## STUDENT'S JOURNALS

1165

Given all the mistakes that are made by students and professors, it would be great to think that we learn from all our mistakes. But, in fact, we learn from some and repeat others. Here, one student makes a mistake and is upset not because of the mistake, but because of its impact on a respected supervisor. The second student is really reflective, because there were no objective outward consequences for his mistake, just his own sense of value.

Tuesday was a pretty upsetting day for me. I told K that I would write a writ for him. And, I got the dates wrong. Which is absolutely all my fault. Over lunch I brought the subject up, because I thought the transcript was in, and I wanted to get started on it. But, I was told that the deadline was long gone. He told me that I disappointed him. I was devastated. I would've preferred if he had yelled at me or called me an idiot. I really admire K, and its important to me what he thinks of me. That's the worst thing he could've told me. I'm so mad at myself, because it is all my fault.<sup>41</sup>

Judge E deferred the ruling pending the defendant's performance during drug court or active probation. As I thanked my officers outside of the courtroom, the defendant walked out with the most smug expression and arrogant swagger. Unbeknownst to him, the officers hung around to arrest him on other outstanding warrants. The defendant's demeanor transformed instantly as the officers cuffed him. The officers conducted the arrest with an air of joviality and I had to suppress the urge to snicker. To this day, I am unable to ascertain why I had this reaction, which after the fact, felt really inappropriate.<sup>42</sup>

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sponsibilities of Federal Prosecutors, 26 *FORDHAM URBAN L.J.* 737, 757 (1999).

<sup>41</sup> Journal entry, BD, Aug. 29, 2002.

<sup>42</sup> Journal entry, HU, Sept. 21, 2002.

*I. Questioning the System*

Questions and critical reflections on the criminal justice system are extremely important for law students, since this is often the first and the freshest look they will have at how the system operates. They may lose that critical perspective once they become more accustomed to their place in the system.<sup>43</sup> Questions about the assembly line of plea bargaining,<sup>44</sup> the different treatment and definition of certain crimes,<sup>45</sup> the way people get depersonalized,<sup>46</sup> all come forth in criminal court.

All clinical students experience “disorienting moments” when events occur around them that challenge their understanding of the legal world.<sup>47</sup> Journals ought to capture some of those mo-

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<sup>43</sup> Third-year law students working and learning in a prosecutor office face “significant barriers to careful critical thinking in a fieldwork setting, including career anxiety, naivete, and supervisors or agency culture in which agency attorneys do not, or no longer, question policy or practice assumptions.” Katz, *supra* note 5, at 442.

<sup>44</sup>

“[W]e must all recognize that the United States Supreme Court, in the case of *Santobello v. New York*, 404 U.S. 257 (1971), legitimized that bastard child of the criminal justice system known as ‘plea bargaining.’ . . . Plain and simple, the marketplace has come to the courtroom. The game of numbers and the necessity to maintain effective court dockets have caused our prosecutors to bargain for reduction of charges and to negotiate for terms and conditions of sentence.

DOUGLASS *ed.*, *supra* note 17, at 80.

<sup>45</sup> For some examples of many critiques of disparate treatment in the criminal justice system, see Robert H. Humphrey, *Domestic Violence; Detection, Prosecution and Defense*, 51 R.I.B.J., Jan./Feb. 2003, at 5; Gregory D. Smith, *Disparate Impact of Federal Sentencing Guidelines on Indians in Indian Country: Why Congress Should Run the Erie Railroad into the Major Crimes Act*, 27 HAMLIN L. REV. 483 (2004); Miriam Stohs, *Racism in the Juvenile Justice System: A Critical Perspective*, 2 WHITTIER J. CHILD & FAM. ADVOC. 97 (2003).

<sup>46</sup> Markus Dirk Dubber, *Policing Possession: The War on Crime and the End of Criminal Law*, 91 J. CRIM. L. & CRIMINOLOGY 829, 934-94 (2001).

<sup>47</sup>

Fran Quigley describes this learning process as follows:

ments. These journal entries do.

As one final passing observation today, I truly saw the law as a business this morning. Over the past two years in my classes, some of my professors have used that term but it wasn't until today that I truly understood what that could mean in practice.

Towards the end of the proceedings this morning, the public defender had lined up three defendants she was representing all of which had been arraigned that morning. The judge went down the line, accepting their guilty pleas and going through the plea colloquy with each defendant. But that's not to say that they did not receive good representation or a fair disposition of their case. However, as I watched the defendants in the line, there was some element that the courtroom was more of a fast food process rather than the idealistic notions which television and movies place in our head. I saw the public defenders, assistant district attorneys and judges as providing a service where the goal is to dispose of the cases as quickly as possible while still effectuating justice. Every player has a role to help the business run efficiently.<sup>48</sup>

On Tuesday it struck me that the majority of time spent in court is devoted to scheduling things for later dates. I realize now that the criminal justice system is, in the truest sense, a system.<sup>49</sup>

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Adult learning theory maintains that when a learner begins describing an experience with the phrase, "I just couldn't believe it when I saw . . .," an opportunity for significant learning has been opened. This phenomenon is called the "disorienting moment," when the learner confronts an experience that is disorienting or even disturbing because the experience cannot be easily explained by reference to the learner's prior understanding—referred to in learning theory as "meaning schemes"—of how the world works.

Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 *CLINICAL L. REV.* 37, 51-52 (1995):

<sup>48</sup> Journal entry, MN, Sept. 4, 2002.

<sup>49</sup> Journal entry, HU, Sept. 12, 2002.

Thursday I was supposed to do motions, but they all got continued. Today I was supposed to go to trial and do voir dire, but the defendant never showed up. I am learning that you must have patience when dealing with the court system. But, it is a very hard lesson to learn.<sup>50</sup>

I learned that the Louisiana legislature thinks that anything but normal man/woman sex is unnatural. Solicitation for crimes against nature is more severe than prostitution. Crimes against nature includes oral sex. So if someone offers oral sex for money and someone else offers "regular" sex for money, the one offering oral sex will be punished harsher than the other one offering "regular" sex if convicted. This is archaic thinking to me.<sup>51</sup>

The reality of being a prosecutor hit me today. The murder trial that I was involved in finished and a verdict of guilty came back. That in itself does not really bother me. After reading the file and hearing the defendant admit his actions, I know that a killer has been taken off of the streets. However, this case has made me realize my fears of becoming a prosecutor. I have always been concerned that in my path to prosecuting that I may have to do things that I either didn't feel comfortable with or didn't feel 100% sure that I was personally doing the right thing. Let me just say again that there was nothing like that in this murder trial. This trial has just made me understand that my job as a prosecutor will not be to put nameless, faceless defendant number 739E in jail. As a prosecutor I hold the balance of someone's life in my hands. What I choose to do and who I choose to prosecute (when I am finally allowed to exercise prosecutorial discretion) is a big deal. I guess that while I realized what the job was and what it entailed I could never understand the magnitude of power and responsibility that will be handed over to me as a twenty-five year old "kid" who just passed the bar until now.<sup>52</sup>

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<sup>50</sup> Journal entry, BD, Oct. 17, 2002.

<sup>51</sup> Journal entry, TD, Oct. 30, 2002.

<sup>52</sup> Journal entry, Sept. 19, 2002.

This week has had the greatest impact on my view of the legal profession since I started working at the DA's office. One of the first journals that I composed, I wrote about the inherent problem with being able to separate personal feelings from the work at hand, and not allow it to influence the work at hand. Today, we began a trial for aggravated sexual battery. It was the story of a step-father who abused his step-daughter from the time she was seven. It was heart-breaking to hear the victim testify. Beyond this, there are three specific things about the trial that made the greatest impressions on me.

First, although I have seen quite a few trials at this point, most of the cases are dealing with drugs (simple possession, or with intent to distribute). This was the first truly "controversial" case I have seen, and it astounded me that the victim was sitting not ten feet away from the defendant. One minute was a moment of great emotion on the stand, and the next, the victim was sitting right next to me talking about the weather. Perhaps it is my remaining perception from TV shows, that a trial is more isolated—more controlled. I simply could not help feeling uneasy at the situation. I felt so uncomfortable, as if I was the one that should feel embarrassed or scared, although I could not really determine why I felt this. I really had to remind myself that I was just there to do a job, and then I felt fine, until something else that was said would make me cringe.

Second, I have spent two years in law school reading many non-sensical judicial rulings. Today, I saw the non-sensical process in action. The defense attorney proceeded to ask a question that is strictly prohibited by the code of evidence. This was swiftly followed by an objection by the State, and this began a confusing process where it seemed that the judge actually took his attention away from the solitaire game on his computer and decided to pay attention. The judge then ignored the code of evidence and allowed the question. However, it was funny—the defense attorney knew that he should not have asked the question, and he voluntarily decided to tone down the substance of the question. Why would the judge do this? I know that this is why there is an appeals process, but it still made no sense to

see this happen.

Third, because it is a sex offense, identification of the defendant's genital area was vital to the case. To do this, there was a large color photograph of the defendant's genital area that was almost "freely" circulated throughout the courtroom. I know that this was the process, and it was necessary for the case — it was still shocking that it was passed around so easily especially considering that the trial is technically open to the public. But then, does a defendant have any reasonable expectation of privacy, or protection for their dignity?

Fictional television shows expose us to many topics that we find shocking today, but we are aware that those scenarios stay in the fictional world. This case and the events that transpired were a wake-up call—perhaps my first exposure to the vile life that some people live, and the fear and anguish that a victim holds inside. Today was real . . . <sup>53</sup>

### *J. Race*

I was a Special Assistant United States Attorney in the District of Columbia in 1990. I prosecuted people accused of misdemeanor crimes, mainly the drug and gun cases that overwhelm the local courts of most American cities. As a federal prosecutor, I represented the United States of America and used that power to put people, mainly African-American men, in prison. I am also an African-American man. While at the U.S. Attorney's office, I made two discoveries that profoundly changed the way I viewed my work as a prosecutor and my responsibilities as a black person.

The first discovery occurred during a training session for new Assistants conducted by experienced prosecutors. We rookies were informed that we would lose many of our cases, despite having persuaded a jury beyond a reasonable doubt that the defendant was guilty. We would lose because some black jurors would refuse to convict black defendants who they knew were guilty.



The second discovery was related to the first, but was even more unsettling. It occurred during the trial of Marion Barry, then the second-term mayor of the District of Columbia. Barry was being prosecuted by my office for drug possession and perjury. I learned, to my surprise, that some of my fellow African-American prosecutors hoped that the mayor would be acquitted, despite the fact that he was obviously guilty of at least one of the charges—he had smoked cocaine on FBI videotape. These black prosecutors wanted their office to lose its case because they believed that the prosecution of Barry was racist.<sup>54</sup>

When it comes to juries, DAs in Sacramento know they're lucky. The jury pool—potential jurors are taken from drivers' license numbers—is solid in California's capital. The county is a healthy mix of urban and suburban. Jurors are pulled from the full county. It's not like downtown L. A. or Washington, D.C., where minorities dominate the pool and you're stuck with a lot of people inherently suspicious of a criminal justice system still run by white people who arrest, prosecute, and judge minorities.<sup>55</sup>

The issues of race and crime are intertwined.<sup>56</sup> This is revealed every day in most criminal courts, certainly in this area of the country. Race comes to the fore often in the case of views about the police<sup>57</sup> and the actions and inactions of juries.<sup>58</sup>

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<sup>54</sup> Paul Butler, *Racially Based Jury Nullification: Black Power in the Criminal Justice System*, 105 *YALE L.J.* 677, 678 (1995).

<sup>55</sup> GARY DELSOHN, *THE PROSECUTORS: A YEAR IN THE LIFE OF A DISTRICT ATTORNEY'S OFFICE* 51 (2003).

<sup>56</sup> RANDALL KENNEDY, *RACE CRIME AND THE LAW* (1997). See Chapters "Playing the Race Card in a Criminal Trial," "Race, Law, and Punishment: the Death Penalty," and "Race, Law, and Punishment: The War on Drugs." *Id.* at 256-387.

<sup>57</sup> For example, are higher arrests for crack use versus cocaine use based on race or class? William J. Stuntz, *Race, Class, and Drugs*, 98 *COLUM. L. REV.* 1795, 1796 (1998); see also Randall Kennedy, *The State, Criminal Law, and Racial Discrimination: A Comment*, 107 *HARV. L. REV.* 1255, 1266-70 (1994).

<sup>58</sup> Samuel R. Sommers & Phoebe C. Ellsworth, *How Much Do We Really Know About Race and Juries? A Review of Social Science Theory and Re-*

I was somewhat surprised by the views of the police officers by the community. J asked the prospective jurors how do they rate the New Orleans Police Department on a scale of 1-10. The African American prospective jurors tended to rate the police officers lower than the Caucasian members of the panel. Also, when the defense attorney asked the members of the panel whether they believed that police officers lie and may even lie to protect a fellow officer, there was an audible response from the panel as well as from other prospective jurors seated in the courtroom. Not one juror responded they believed that a police officer would not lie to protect a fellow officer.

I became mindful of how race can unfortunately sometimes become an element in cases completely unrelated to that issue. The juror's opinions of police officers and race can go to the heart of the state's case regarding possible tactical decisions made during trial. Here, the state presented two white police officers in trial against a black defendant. Both J and I were mindful of this fact when deciding how many officers to place on the stand to prevent the image that the state was ganging up on this defendant.<sup>59</sup>

The verdict was an interesting story in itself —to me, this case clearly appeared as an example of how race can

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search." 78 CHI. KENT L. REV. 997 (2003). This fascinating article concludes:

Our review suggests that White jurors are indeed influenced by a defendant's race, but this influence is not consistent across cases. Contrary to common assumption, obviously racially charged trials may not be the ones in which racial bias is most likely. Psychological research and theory suggest that White juror bias may be a more serious concern in run-of-the-mill cases when racial issues are not salient and White jurors are not alerted to the need to guard against prejudice. In the few studies that have included enough Black jurors to allow for meaningful statistical comparisons by juror race, a different pattern emerges. Black mock jurors seem to be influenced by a defendant's race regardless of the salience of racial issues at trial, suggesting that additional theory and research is needed in order to better predict the motivations and judgments of minority jurors.

Id. at 1029-30.

<sup>59</sup>

Journal entry, MN, Sept. 4, 2002.

impact divisions between jury members. The defendant was a young black male with potential gang affiliation. The jury was composed of ten young to old white women, and two middle-aged black men. The evidence (including DNA evidence) and testimony were clearly against the defendant, however, the two black men on the jury were still the only two not-guilty votes. I know many have asked the same question, but will race ever stop being an issue????<sup>60</sup>

### *K. Victims*

The role of the victim in the criminal justice system is growing but still relatively new.<sup>61</sup> In a 1982 book, *The Prosecution Function*, the authors have a chapter on ethical considerations that has subsections for "Obligation to the Defendant," "Obligation to the Criminal-Justice System," and "Duty to the Public."<sup>62</sup> The victim is not mentioned in the entire chapter. In fact, there is not even an entry for victim in the index of the entire book.

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<sup>60</sup> Journal entry, BB, Oct. 24, 2002.

<sup>61</sup> Stacy Caplow describes the role of the victim in one setting as follows:

In New York City, on any given day, there are close to 2,000 lawyers prosecuting cases in the state courts of five counties. Many of them are no more than three years out of law school. If my own experience is representative, no one seriously teaches them how to relate to crime victims. This is not to suggest that all or even most ADAs are insensitive, abusive, or callous in their treatment of crime victims. However, the very nature of their authority, their power, and their ability to control often makes this relationship invisible and beyond critique. Moreover, since young prosecutors usually learn their styles and attitudes from more senior role models in the office who have internalized this power, bad habits often are passed along to the next generation.

Stacy Caplow, What If There Is No Client? Prosecutors as "Counsellors" of Crime Victims, 5 CLINICAL L. REV. 1, 16 n.47 (1998).

<sup>62</sup> DAVID M. NISSMAN & ED HAGEN, THE PROSECUTION FUNCTION 7-12 (1982).

Yet over the past few decades, there has been an explosion of interest in trying to allow the victim to reclaim a place in the criminal process.<sup>63</sup> Prosecution offices are trying to be more sensitive to the needs of victims.<sup>64</sup> These journal entries show the impact of victims on prosecution students.

Today I sat in on a meeting with T, my prosecutor, interviewing a witness. She described, with a shaky voice, how a man in a car had ran over and killed one of her friends. It occurred to me that T was doing much more than reconfirming the information written in the police report. She spent much more time comforting and explaining the trial process to the witness than she did asking her questions about the night. Being engrossed in the process of law, specifically criminal prosecution, might make one forget about the compassion needed by people who are frightened of the enormity and consequences of the process of testifying in a trial. T definitely has not succumbed to taking these people for granted, as witnessed by her gentle reassurance and offers to help in any way she could of this witness, from offering her transportation, to offering to let her come watch another trial, to telling her that she could call at any time, to finally letting this witness know how important she is and how brave she will have to be to aid the process of justice.<sup>65</sup>

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<sup>63</sup> See generally Caplow, *supra* note 61. Caplow gives a great discussion about the new role of victims and new ways that prosecutors can develop a victim-sensitive, if not victim-centered, criminal prosecution practice.

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[M]ore often than not a victim's reaction to the disposition of a case has less to do with the number of years of penitentiary time the defendant receives than the level and quality of interaction with the prosecutor or victim advocate throughout the process. Unless the prosecutor's office is committed to effective staff training, this important lesson can go unlearned. Victims are re-traumatized, this time by the system, and the healing process for the victim deteriorates, as does the prosecutor's relationship with the community.

THE PROSECUTOR'S DESKBOOK: ETHICAL ISSUES AND EMERGING ROLES FOR 21ST CENTURY PROSECUTORS 410 (1977).

<sup>65</sup>

Journal entry, KK, Sept. 9, 2002.

J L was out of our section today trying a murder case in Section Z. She had asked me to call a victim who lives out of state to update her on the status of the case and check on her availability for trial. And of course, while I had her on the phone, talk to her about the case. Although this seemed like a simple request, it proved to be a phone call that I believe I will remember for quite a long time. The victim had been visiting New Orleans with a friend of hers around Memorial Day this year. As they were walking down the street, they were run over by an individual in a truck who "went crazy." According to the victim, the defendant in the case exhibited no remorse as he ran over them and dragged one of the women six to seven feet under the car until she came to rest in the middle of the street. She died later on that evening as did her four-month old son who the victim I spoke with had been pushing in the stroller.

It's so easy to read a police report and think academically about the people, places and things contained within. But it's another to hear a sobbing victim, angry at the law and the defendant, telling her story to you on the phone, trying to come to grips with the loss of her dear friend and her own injuries.

I consider myself to be a fairly empathic person, but it was such a difficult phone call. I can read the report and look at the photos and video but I cannot even begin to comprehend what she went through that day. Something she said to me on the phone stuck in my head and it's because she's right. What sense of justice is it when the man that ran over and killed her friend and a child is walking the streets? It was so frustrating to not have an answer for her because I hadn't read enough of the file to understand why he was only charged with lesser charges. But I highly doubt any explanation I would have offered her would have been sufficient. And every ounce of me wanted to reassure her on the phone that we would make sure he paid for what he did and that her friend's death would not have been in vain. But I knew better. The last thing I wanted to do was promise her

something that I know we may not be able to accomplish. I hope that she realized I was sincere that we were going to work hard and do our best and hopefully we will get a favorable result.

After I hung up the phone, I went to go talk to my junior ADA about the phone call. As I was sitting there, I realized that it will never get easier because it will always be someone's brother, sister, mother, father, friend.

I remember J telling me how much she dreaded calling the rape victim last week after they found him not guilty. I can't imagine being the one that would have to telephone this victim the day after trial if we would lose. I now understand why attorneys take their cases so personally. I know that one day I may reach that point where I can disconnect the emotion somewhat. But I can see this case being one of those cases where you don't want to lose sight of that emotional aspect because it is such a horrible crime. With time, I will learn what to say and how to react but I know it will not be an easy road getting there. But that's not such a bad thing. I have already gotten so much out of this experience and every day that I'm there it only furthers my resolve that I have chosen the right career path, no matter what side of the fence I may end up on.<sup>66</sup>

### III. CONCLUSION

[L]aw school, I believe, primarily trains students to listen, think and talk the way that law school prefers. Then what is the law school's educational function? To drive you so mad with its incessant drill that you decide to educate yourself. The process appears terribly wasteful, yet some do get educated. If the teacher had a big stick and hit you over the head every time you tried to get him to educate you, the thing would be done in less than a semester. It seems to me that this is the Zen Method of education, so of course I can't claim to have invented it.<sup>67</sup>

Clinical education, when done well, is about self-learning, figuring out how to keep learning from experience. These journal selections of students in a prosecution clinic illustrate how

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<sup>67</sup> Donald A. Schon, *Educating the Reflective Legal Practitioner*, 2 *CLINICAL L. REV.* 231, 250 (1995). Schon says that students must first learn by doing-in order to know what it is that they are doing. Second, students begin to do it in the presence of a senior practitioner who is good at doing it and whose business it is to help you try to learn how to do it. Third, students do it with others who are also trying to learn how to do it. Fourth, you re-do it in the virtual world of theory, of rehearsal, of practice, or of drafting. *Id.* at 248

In the best educational settings, Schon finds there is: a profound sense of mystery. This feeling resulted from the fact that the students literally do not know what they were doing, and their teachers could not tell them—because what the teachers knew how to say the students could not at that point in their experience understand. The students had to have the kind of experience of trying to do the thing before they would be ready to understand the kind of explanations that the teachers could give them about what they were doing.

One consequence of this is that some of the students pick up the idea that these infuriating teachers will never tell them—that somehow they will have to find out for themselves. They are right, and their insight is absolutely critical: they do have to educate themselves in this new context.

*Id.* at 249.

journals can be one way that students can continue to learn about themselves, continue to reflect on what they are experiencing, and to continually determine where they are on the never-ending path to self-learning.<sup>68</sup>

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<sup>68</sup> Journals also help instructors learn more about the practice of law, about their students and, occasionally, about themselves. Consider one final selection from a student journal. While it might also appear self-serving, I think that it does show some humor and also shows how closely the students are watching us. During the semester in question I traveled to Iraq as a part of a peace delegation with the group Voices in the Wilderness, <http://www.vitw.org>. One prosecution student wrote me in his journal: "I hope all goes well in Iraq. I must admit, it is a noble and most courageous endeavor. If nothing else, it proves that your posters of Ghandi and MLK aren't merely office decor." Journal entry, HU, Sept. 21, 2002.



2005]

*STUDENT'S JOURNALS*

1179