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SUPERVISING JUDICIAL EXTERNSHIPS: AN INTRODUCTION

By
Gerard J. Clark¹

I. Introduction

Judicial externships afford students the opportunity to observe and participate in the a wide variety of court room proceedings at close range.² Courthouses are exciting places because of the presence of many busy offices and agencies including clerks offices, probation offices, registries and others which attract large numbers of the bar and the public.³

¹Professor of Law, Suffolk University Law School. The author has directed and taught the school's Internship Program for ten years. He thanks Bernadette Feeley for comments and assistance.

²J. Daniel Mahoney, Law Clerks for Better or Worse? 54 Brook. L. Rev. 321 (1988)

³A 1986 survey of A.B.A. law schools indicated that virtually every law school in the country has some form of judicial internship program. William B. Powers, A Study of Contemporary Law School Curricula, Part II, Professional Skills Courses, p. 16 (1988)

This piece will discuss the supervision of law students who intern⁴ in the courts⁵ utilizing a classroom component taught by a faculty member or other law school supervisor. The class is designed to assist the student to focus upon the educational value of the field experience,⁶ which is typically, so rich that the student may experience a kind of sensory overload. The role of the supervisor is to assist the student by generalizing, by relating the experience to what is learned in law school and by alerting the student about what to look for.⁷

II. The Variety of Courts

The first question is what courts? A law school, located in a major city, will afford a wide variety of courts where placement is possible.⁸ A superior court⁹ is the court of general

⁴The term “intern” is a perfectly adequate term for study of the practitioner in action. Extern has crept into the language of late and has now been validated by the AALS Regulations e Rule 305. Both terms will be used herein.

⁵The assumption is that the student is interning directly for a particular judge. Some courts may attempt to establish a pooling arrangement for interns and clerks. These internships are usually less rich for the student. There may also be other internships at a court house with a magistrate, or in probation or in alternative dispute resolution, but these need to be carefully monitored for quality.

⁶There is, by now, a growing literature on the academic component. Stacy Caplow, From the Courtroom to the Classroom: Creating an Academic Component to Enhance the Skills and Values Learned in a Student Judicial Clerkship Clinic 75 Neb. L. Rev. 872, 886 (1996) (describing the classroom component at Brooklyn Law School); Linda F. Smith, The Judicial Clinic: Theory and Method in a Live Laboratory of Law 1993 Utah L. Rev. 429 (an intro to the design, oversight, instructional methods and the educational goals of the judicial clinic); Ogilvy, J.P. et al. Learning from Practice (West, 1998); Ogilvy, J.P., Introduction to the Symposium on Developments in Legal Externship Pedagogy 5 Clinical L. Rev. 337 (1999) (good bibliography); Daniel Givelber, Brook K. Baker, John McDevitt & Robyn Miliano, Learning Through Work: An Empirical Study of Legal Internship 54 J. Legal Educ. 1 (1995); Liz Ryan Cole, Lessons from a Semester in Practice 1 Clinical L. Rev. 173 (1994); Rebecca Cochoran, Judicial Externships: the Classroom Inside the Courthouse Anderson Publishing, 1999.

⁷Mary Jo Eyster, Designing and Teaching the Large Externship Clinic 5 Clinical L. Rev. 347 (1999) (comprehensive overview from the Brooklyn experience); Robert F. Seibal and Linda H. Morton, Field Placement Programs: Practices, Problems and Possibilities 2 Clinical L. Rev. 413 (1996) (description of the needs for institutional supports for the program)

⁸The placement process may attempt to match a student's skills and interests with a particular court. Students are then encouraged to send a letter and resume to the judge proposing an internship during a particular semester. A subsequent telephone inquiry should then schedule a meeting where the judge and student share goals and particulars, including duties, mutual schedules and concerns. Experience indicates that a minimum of ten hours per week is needed to acclimate to the position. Credit allocations should be adjusted according to time spent. At

jurisdiction which hears all kinds of cases, civil and criminal.¹⁰ Typically they are arranged along some geographic lines, often counties. They may also be separated into sessions, based upon subject matter. Typically, there is wide variety in the subject matter of cases, and lawyers who appear. Students may typically be assigned research on pending cases or invited to observe and participate at trials, motion sessions, and pre-trials.¹¹

Suffolk Law School, students are awarded a credit for each 45 hours spent at the placement over the course of a semester. Students can opt for between 2 and 5 credits

⁹The names may vary from state to state.

¹⁰Farnsworth, An Introduction to the Legal System of the United States (1975)

¹¹Geoffrey C. Hazard and Michele Taruffo, American Civil Procedure (good basic introduction). For a more philosophical approach see Robert M. Cover and Owen Fiss, The Structure of Procedure Foundation Press, 1979

Family courts, often institutionally separate from the superior courts, decide matters involving divorce, separation, child custody, property settlements, alimony and the enforcement of these orders. The court is frequented by guardians ad litem, representatives of the departments of social services or youth services.¹² Typically the cases involve negotiation and settlement; full-blown trials are rare and pro se litigants are common.

The state district or municipal courts typically have jurisdiction over misdemeanors and have preliminary hearings in more serious crimes and may also have civil jurisdiction. As much as 75% of the work load of the court, however is criminal. Often more serious civil matters are removed to a superior court. These courts move in a rapid fashion and filing of briefs and the writing of judicial opinions is rare. The student in this kind of internship will be immersed in the activity of a fast moving court but may see a minimum of legal research.

The juvenile court is a court that hears cases of juvenile delinquencies, abuse and neglect, and persons in need of services.¹³ Again, social workers and guardians are frequent the court.

Specialized courts like land courts, probate courts and housing court with narrower subject matter jurisdictions can serve students with interests in the subject matter or students to whom the vast diversity of a court of general jurisdiction can appear overwhelming.

The appellate courts give students with good writing skills an opportunity to observe oral argument and get heavily involved in research assisting judges writing opinions for publication.¹⁴ Students are exposed to briefs and the appellate records from the courts below.

On the federal side the district court is the court of the general jurisdiction and an internship will often add prestige to a student's resume. The federal courts of appeals require high commitment and good qualifications. Federal judges usually have law clerks which provide additional opportunities for supervision and modeling.

The federal magistrate is a judge who does much that a district court judge would do, hearing criminal and civil matters in which a jury is waived.¹⁵ These courts have the time and the

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/ by Patricia A. Garcia, Unified family courts : justice delivered Chicago, Ill. : American Bar Association, Office of Justice Initiatives, 2001 (how the community, the bench and the bar can implement change in the system)

¹³ Susan O. White (ed.) Handbook of youth and justice New York : Kluwer Academic/Plenum Publishers, 2001 (Describing the interplay of the court and the welfare system)

¹⁴ Daniel J. Meador and Jordanna S. Bernstein, Appellate Courts in the United States West, 1994 (good basic introduction for the Appellate intern)

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Carroll Seron, The roles of magistrates in federal district courts Washington, D.C. : Federal Judicial Center, 1983

inclination to be deliberative and the atmosphere is slower and the level of practice includes many who specialize in the peculiar problems faced by federal courts.

The bankruptcy courts obviously hear bankruptcy matters. This highly specialized court has judges and litigants who spend a major part of their time on bankruptcy and the related issues of security interests and commercial law.¹⁶ Lawyers for large firms frequent this specialized court. The judges hold hearings and rely upon interns for research and writing.

¹⁶Micheal J. Herbert, Understanding Bankruptcy Matthew Bender, 1995

Depending on the preferences of a particular law school, and access, the class could include interns at administrative agencies, especially if the agency engages in adjudication, involving, for instance, workers compensation or civil service.¹⁷

III. The Role of Intern

The often solitary and sedentary life of the judge is often improved by the addition of an intelligent and enthusiastic intern, especially in those courts that are not supplied with law clerks. Obviously specialty courts may require course-work prerequisites. Placement is theoretically possible with any judge who is willing to act as a mentor,¹⁸ and to take on the responsibility of field supervision.¹⁹ The hope is that the court has the facilities, including space and access to books and computers, to accommodate the addition of the student intern. Subject to the constraints to the contrary that may be imposed by the judge-field supervisor, the student should become a bit of a courthouse gadfly, introducing him or herself to the other employees at the courthouse. The student should be ever ready to learn from everyone he or she meets. Clerks can explain the entry and assignment system of cases, the scheduling of motion sessions and internal courthouse politics. Probation officers can explain how they perform investigations for pre-sentence reports and the dynamics of the probation process. The student should have a candid discussion with the judge about the court's confidentiality requirements and the student must follow them scrupulously.²⁰

¹⁷Other such federal agencies include the National Labor Relations Board, the Department of Health and Human Services, Veteran's Administration. State agencies may adjudicate questions involving public utilities, insurance, motor vehicle and other licensing, pension eligibility, special education and many others. See generally, Strauss, The Place of the Agencies in Government: Separation of Powers and the Fourth Branch 84 Colum. L. Rev 573 (1984)

¹⁸Stewart Macaulay, The Judge as Mentor: A Personal Memoir 36 L. Legal Ed. 144 (1986); John Kester, The Brighter Side of Clerkships 36 J. Legal Ed. 140 (1986); Abner Mikva, Judicial Clerkships: A Judge's View 36 J. Legal Ed. 150 (1986); Wald, Selecting Law Clerks 89 Mich L. Rev. 152 (1990)

¹⁹At Suffolk, we ask all supervisors to sign a letter committing themselves to principles of good supervision, namely a willingness and an ability to serve as teachers, as role models, as mentors and as friends. We subsequently send out a manual to first-time supervisors where we ask them to assist in the development of students' ability to learn from experience; in the promotion in students a sense of professional responsibility and of the variety of professional roles; in giving the student insight into the workings of the legal system; in the development of lawyering skills and in the immersion of the student into the realities of the life of the lawyer.

²⁰Jack B. Weinstein, Proper and Improper Interactions Between Bench and Law School: Law Student Practice, Law Student Clerkships and the Rules for Admission to the Federal Bar, 50 St. John's L. Rev. 441 at 445- 450 (1976); Caplow, op. cit. N. 53.

Internships, like clinical experiences, augment the traditional classroom experience in a way advocated by the ABA in the MacCrate Report²¹. That report suggested that the legal education was too narrowly focused upon doctrinal law and the case law system.²² It suggested that law school ignored instruction in both skills and values that are crucial to the well-rounded lawyer. At least five of the ten skills can be learned by the judicial intern. The judge spends a great deal of time engaged in legal analysis and reasoning (Skill 2)²³. Legal research (Skill 3)²⁴ will frequently be necessary. The judge will often encourage negotiation (Skill 7)²⁵ and may indeed participate in it him or herself. The student observes at close range the successful and unsuccessful strategies of litigation and perhaps also alternative dispute resolution (Skill 8)²⁶. Family and juvenile cases demand extensive problem solving (Skill 1).²⁷ The MacCrate values are all about competence²⁸ and the intern learns quickly the difference between competence and incompetence.

²¹ABA Section of Legal Education and Admissions to the Bar, Report of the Task Force on Law Schools and the Profession: Narrowing th Gap (1992)

²²Gerard J. Clark, Book Review, 27 Suffolk L. Rev. 1153 (1993) (Critique of the MacCrate Report.) Russell Engler The MacCrate Report Turns 10: Assessing its Impact and Identifying Gaps We Should Seek to Narrow 8 Clinical L. Rev. 110 (2001) (describing the implementation of MacCrate at New England Law School and assessing its national impact after 10 years)

²³Id, p. 151.

²⁴Id, p. 157.

²⁵Id, p. 185.

²⁶Id, p. 191

²⁷Id, p. 141.

²⁸Id, p. 207

A principle instructional methodology should be the deliberative process which is nicely introduced in The Reflective Practitioner by Donald Schoen.²⁹ The student learns the law by watching at close range how the judge uses it to decide the case. It requires technical rationality,³⁰ which includes knowledge of the applicable law. But more importantly it includes a confusion about a problem upon presentation. The professional then deals with the uncertainty, the uniqueness and the conflict. The facts are ambiguous, the objectives of the competing lawyers may be ambivalent and the law may be unclear. The judge often works in these indeterminate zones. At one point a solution to the problem emerges out of the chaos. The source of the solution may be instinct and intuition informed by experience and technical knowledge.

In journals which are handed to the faculty supervisor, but not shared with the field supervisor the student reflects on the experience of interning. The student is encouraged to quietly rehash the events of the day and evaluate them and develop a set of questions about things that were not understandable to him or her and create a strategy for future learning and a better understanding.³¹

III. The Caseload

A good first inquiry in the class is what kinds of cases does the court hear. This will require a review and expansion of the concept of subject matter jurisdiction from the course in civil procedure, which is typically limited to the subject matter jurisdiction of the United States district courts.³² The subject matter jurisdiction of the state courts can usually be found in the state statutes.³³ Those statutes may introduce the law-equity distinction.³⁴ Statutes concerning

²⁹Donald Schoen, The Reflective Practitioner:How Professionals Think in Action (1983) See also Educating the Reflective Practitioner: Toward a New Design for Teaching and Learning (1987,1990) For an excellent and thoughtful review se Richard K. Neumann Jr. Donald Schoen, The Reflective Practitioner and the Comparative Failures of Legal Education 6 Clinical Law Review 401 (2000)

³⁰The Reflective Practitioner at pp. 21-49.

³¹Student diaries should include personal reflections and commentaries on the experiences, including work-style of the supervisor, inter-personal relationships, the politics of the institution, observations about the speed, the fairness and the efficiency of the adjudicative process and the way that the student's own personal, political and social values relate to the way in which the courts work. Students should continuously be encouraged to verbalize what they are learning.

³²See generally Friedenthal, Kane and Miller, Civil Procedure 3rd Ed. West, Pub., 1999

³³Delmar Karlen, Civil Litigation, (1978) (great comprehensive introductory text); Sunderland, Problems Connected with the Operation of a State Court System 1950 Wisc. L. Rev. 585 (introducing the wide variety in state court systems)

³⁴Hazard and Taruffo, American Civil Procedure: An Introduction Yale U. Press, 1993 p. 15- 19 (explaining the law-equity distinction)

the adjudication of criminal cases often assign the less serious to a lower court, perhaps along some felony-misdemeanor distinction. That jurisdiction may include reviews of administrative agencies.³⁵ Appellate courts have similar statutory definitions of their jurisdiction which may provide for appeals from final (or non-final) judgments of designated lower courts and agencies.³⁶ Appeals by writ of error or other prerogative writs may also be provided for.³⁷

³⁵Thomas v. Union Carbide Agricultural Products Co. 473 U.S. 568 (1985) (Private rights of action can be vested in administrative agencies as long as there is Article III review)

³⁶Meador and Bernstein, Appellate Courts in the United States (West Pub., 1994)

³⁷id., p. 49 (appeal by extraordinary writs)

The class may likewise review the concept of jurisdiction over parties from civil procedure, including service of process on those present within the state as well as those subject to long-arm statutes³⁸. The concepts of in personam, in rem and quasi-in-rem can be reviewed. State and federal courts are also limited by venue statutes which also should be applied to criminal cases. Venue of state courts may indeed be very specifically limited to particular municipalities.

The state and federal judicial systems can be compared and the reasons behind the perceived need for lower federal courts can be explored. The difficult issue of the distinction between Article I courts and Article III courts can be specifically assigned to interns for magistrates and bankruptcy judges.³⁹

Caseload statistics for each of the courts represented by the students in the class should be researched and discussed.⁴⁰ The changes in these numbers over time is also of interest.

IV. Court Procedure

³⁸Joseph Glannon, Civil Procedure: Examples and Explanations 4th Ed. Pp. 23- 40.

³⁹United States v. Raddatz 447 U.S. 667 (1980) (a magistrate may hear a motion to suppress. See Redish, Legislative Courts, Administrative Agencies and the Northern Pipeline Decision 1983 Duke L. rev. 197.

⁴⁰For instance, The United States courts' web site (at <<www.uscourts.gov>>) publishes extensive statistical information on the courts. Students should be encouraged to visit these sites and draw conclusions about recent caseload trends. The 2001 report, for instance, discloses that 317,996 cases were filed in 2001, a drop of 2% from the previous year. 63,473 of these were criminal cases, in which drugs, firearms, fraud and immigration predominated. The civil docket was dominated with personal injury, prisoner petitions, civil rights and social security cases. Bankruptcies were up in 2001 by 0.5% to 1,307,857. Studying trends and comparing a particular district court with national filings is very instructive.

Similar state court materials are available from the State Justice Institute of the Conference of State Court Administrators, whose 2001 report discloses that there were 92 million new state court filings in 2001. Trends show increases in every major field since 1984: 66% in juvenile, 79% in domestic, 46% in criminal, and 30% in general civil. National Center for the State Courts, Examining the Work of State Courts, 2001: A National Perspective from the Court Statistics Project p.10. Individual state reports may be more useful. See e.g. Annual Report on the State of the Massachusetts Court system: Fiscal Year 2000

The intern will be immersed in court procedure and should be encouraged to make frequent use of the rules of civil and criminal procedure as well as any specific rules of the particular court. If the court is a trial court, the sources for the states rules of evidence and comparisons with the federal rules should be cited.⁴¹ If trial practice is particularly heavy, additional emphasis on evidence⁴² like expert testimony and Daubert⁴³ may prove effective.

Motion sessions⁴⁴ and pre-trial conferences⁴⁵ are always a particularly rich experience for the law student. Motions to dismiss⁴⁶ and for summary judgment⁴⁷ are usually accompanied by briefs and affidavits and the arguments frequently turn on highly contested questions of law. Judges may assign the intern the task of developing a bench memo for the argument. Other motions to amend pleadings⁴⁸, to join parties⁴⁹, extend times can demonstrate procedural rules clearly.⁵⁰ Discovery motions⁵¹ can introduce the intern to the realities of the fact finding process. Judges may further encourage settlement at these sessions.⁵² Courts typically bunch the hearing of these motions into a particular day and interns should make every effort to be present.

⁴¹Federal Rules of Evidence (1975)

⁴²Friedenthal et al. Op. cit. P. 482. See also Mirjan Damaska, Presentation of evidence and Factfinding Precision 123 U. Pa. L. Rev. 1083 (1975) (thoughtful essay on the meaning of truth and falsehood in the adversarial process.

⁴³Daubert v. Merrell Dow Pharmaceuticals Co. 509 U.S. 579 (1993) (expanding the role of the trial judge in deciding the admissibility of expert testimony)

⁴⁴Many courts schedule as many as 25 motions arising out of 25 separate cases in one session. In these sessions students can see many lawyers and observe the lawyers attempt to gain tactical advantage through the use of procedural rules.

⁴⁵Rule 16, F.R.C.P.(in these informal sessions the lawyers meet with the court to plan the trial and other procedural matters)

⁴⁶F.R.C.P. Rule 12.

⁴⁷id., Rule 56

⁴⁸F.R.C.P. Rule 15.

⁴⁹Id., Rule 19

⁵⁰Rosenberg, Devising Procedures that are Civil to Promote Justice that is Civilized 69 Mich. L. Rev. 797 (1971)

⁵¹F.R.C.P. Rule 37

⁵²Settlement may involve the entry of judgment or a dismissal contingent upon compliance with an agreement.

Students may be encouraged to study collection procedures that parties and courts might use in collecting money judgments.⁵³ They should investigate the specific procedures for obtaining the various writs of attachment⁵⁴, garnishment⁵⁵ and sequestration and how the other offices at the courthouse, like the court clerk and the sheriff assist and participate in these procedures.

If the courts in question hear criminal cases, the institutions and procedures of law enforcement are numerous indeed. Students can get a first hand look at the application of the Fourth⁵⁶, Fifth⁵⁷, and Sixth Amendments⁵⁸ by the courts. Assuming that plea bargains are presented to the court, the intern should question what the judicial role is⁵⁹. Sentencing may be strictly limited by guidelines or widely discretionary and the merits of each system can be discussed.⁶⁰ If the court uses sentencing reports prepared by a probation department, interns should be encouraged to speak to the preparers of these reports and to the judges who make use of them. The various roles of court officers, sheriffs, and correctional officials in handling persons incarcerated should be isolated. Students should attempt to understand the differences in the types of incarceration in a state or federal system. Further the particular difficulties of disposition of juveniles have a vast literature.⁶¹

⁵³Cound, Friedenthal, Miller and Sexton, Civil Procedure, Cases and Materials 8th ed. West, 2001. See also Arthur A. Leff, Injury, Ignorance and Spite-The Dynamis of Coercive Collection 80 Yale L.J. 1 (analysis of the transactional costs in collections)

⁵⁴Mitchell v. W.T. Grant 416 U.S. 600 (1974) (Due process entitled a judgment creditor the right to be heard before sequestration)

⁵⁵Snaidach v. Family finance Corp. 395 U.S. 337 (1969) (wage garnishment must be preceded by notice and an opportunity to be heard)

⁵⁶Mapp v. Ohio 367 U.S. 643 (1961) (evidence seized in violation of the Fourth Amendment must be suppressed)

⁵⁷Miranda v. Arizona 384 U.S. 436 (1966) (suppressing confessions made without warnings)

⁵⁸Nix v. Whiteside 475 U.S. 157 (1986) (discussing the ethical limitations on defense counsel)

⁵⁹Bordenkircher v. Hayes 434 U.S. 357 (1978) (the use of duress in plea-bargaining)

⁶⁰Solem v. Helm 463 U.S. 277 (1983) (Eighth Amendment limitations on life sentences)

⁶¹Get a cite

Certain judicial internships may provide the student with the opportunity to be exposed to the whole field of judicial administration.⁶² The typical clerks office plays a role in filings of every sort. Clerks are often responsible for the issuance of summons, subpoenas, bench warrants, provisional writs and other process. They often are responsible for the assignment of cases and motions.⁶³ Observation of the procedures for doing this, whether manually or by computer, who does what and how, is valuable information that many a lawyer would like to have. Examination of these administrative questions leads to questions about delay⁶⁴, the efficiency⁶⁵ of the courts, the alienation they cause,⁶⁶ their limitations⁶⁷ and various proposals for court reform⁶⁸. Ultimately, how sensible is all of this?⁶⁹

V. The Judge

⁶²Dorothy W. Nelson, Judicial Administration and the Administration of Justice West Publishing, 1974.

⁶³Karlen, Judicial Administration- the American Experience (1970)

⁶⁴Maurice Rosenberg, Court Congestion: Status, Causes and Proposed Remedies and also Edward L. Barrett, Criminal Justice: The Problem of Mass Production both essays can be found in Harry W. Jones, (ed.) The Courts, the Public, and the Law Explosion Prentice Hall, 1965. John M. Greacen, What Standards Should We Use to Judge Our Courts? 72 *Judicature* 23 (1988)

⁶⁵Richard A. Posner, An Economic Approach to Legal Procedure and Judicial Administration 2 *J. of Legal Studies* 399 (1973) (use of the tools of economics in judging court efficiency)

⁶⁶Jerry L. Mashaw, The Supreme Court's Due Process Calculus- Three Factors in Search of a Theory of Value 44 *U. Chi. L. Rev.* 28 ((suggesting the need for a sense of participation in the process for the litigants)

⁶⁷Lon L. Fuller, The Forms and Limits of Adjudication 92 *Harv. L. Rev.* 353 (1978) (adjudication provides the injection of rationality into human affairs)

⁶⁸Pound, The Causes of Popular Dissatisfaction with the Administration of Justice 40 *American L Rev.* 729 (1906) reprinted in 8 *Baylor L. Rev.* 1 (1956) (an early call for court reform and simplification, as fresh today as it was almost 100 years ago. Jerome Frank, Courts on Trial (articulate call for court reform) ; also Are Judges Human? 80 *U. Pa. L. Rev.* 17 (1931) (Debunking judging from a realistic perspective);

⁶⁹Arthur A. Leff, Law and 87 *Yale L.J.* 989 (1978) (humorous and incisive analysis of American judicial procedure); for another flight into incisive fantasy, see Lon Fuller, The Case of Spelucean Explorers 62 *Harv. L. Rev.* 616 (1949) (after fictional explorers are trapped without food, they draw lots, kill and eat the unlucky fellow. Fuller then composes five court opinions finding them guilty of murder)

The relationship between the judge and the intern is the key to a quality experience.⁷⁰ It can vary widely from court to court and from judge to judge. In the richest of experiences, the judge invites the intern to join him or her in the courtroom and in chambers and makes the intern a full participant in the deliberative process by sharing the contents of the court file, seeking research assistance, discussing the quality of presentation made to the courts by the advocates, and ruminating with the intern (and other law clerks, at times) as to how to decide the matter before the court and what the conflicting policies, principles and considerations are. The manner in which a judge decides a case is one of the most discussed jurisprudential questions in all of American law.⁷¹ Does the judge approach a case with an open mind?⁷² Does he or she have pre-conceptions that affect the decision. Does the judge have some kind of felt sense of justice which he or she applies in most cases.⁷³ Does the judge make a sincere attempt to follow the law?⁷⁴ If so, the student should be encouraged to articulate it. What about the principals of equity, or of cost-benefit.⁷⁵ Is the judge a stickler for procedure or does he or she liberally grant waivers or extensions of time.⁷⁶ The experience is less rich if the judge merely treats the intern as a

⁷⁰As a final paper in my course, students must write a study of their judge. What does the judge do when not on the bench; to whom must he or she interrelate; whom does he or she manage and with what management style? Also evaluate the judge's skills, job satisfaction, self-image, frustrations, accountability, etc. How did the judges get to their present position, where might they go next, how much do they earn, what kind of hours do they put in? Do they relate to the larger bar establishment? Are the judges in the courthouse friends with one another? Finally how does the student respond to all of this; is this the kind job the student would like? If so why, if not, why not?

Ideally the research methodology for this assignment is osmosis- by working with the judge and observing him or her these things are learned over time; at times the student might see fit to ask some of these questions outright, but not if the student suspects that such an inquiry would not be appreciated.

⁷¹Edward H. Levi, An Introduction to Legal Reasoning 15 U. Chi.L. rev. 501 (1948); Ruggero J. Aldisert, The Judicial Process 2d Ed. (West Publishing, 1996)(for a great compilation of materials on the judicial reasoning process)

⁷²Henry J. Friendly, Reactions of a Lawyer-Newly Become Judge 71 Yale L. Rev. 218 (1961) (explaining the reason for the decision is tricky business)

⁷³Alex Kozinski, What I Ate for Breakfast and Other Mysteries of Judicial Decision Making 26 Loy. L.A. L. Rev. 993 (1993); Joseph C. Hutcheson, jr., The Judgment Intuitive: The Function of the "Hunch" in the Judicial Decision 14 Cornell L.Q. 274 (1929)

⁷⁴Martin Shapiro, Toward a Theory of Stare Decisis 1 J. Legal Stud. 125 (1972) (use of communications theory to investigate the validity of stare decisis); Felix Frankfurter, Some Reflection on the Reading of Statutes 47 Colum. L. Rev. 527 (1947) (statutory interpretation deciphered)

⁷⁵Maurice Rosenberg, Judicial Discretion of the Trial Court, Viewed From Above, 22 Syracuse L. Rev. 635 (1971)

research assistant, assigning questions arising out of cases in short weekly meetings.

⁷⁶Arnold, The Role of Substantive Law and Procedure in the Legal Process 45 Harvard L. Rev. (1932) (judges are bureaucrats)

The intern who has the opportunity to get to know the judge personally can gain a great deal from the experience. Students should be encouraged to reflect on the unspoken values of the court. One such value is frequently not to waste the court's valuable time. Does the judge ever consult the Code of Judicial Ethics⁷⁷? Have attorneys ever sought his or her disqualification⁷⁸? If so, why? How did the judge react to the motion?⁷⁹ Is settlement or plea-bargaining explicitly encouraged by the judge? Does the court have access, on a formal or an informal basis, to alternative dispute resolution? Does the court use masters or other alternative hearing officers.⁸⁰ What about juries and the judges relationship to juries?⁸¹

The intern should be encouraged to get to know the other support personnel at the court. Judges frequently have secretaries, clerks, court officers and court reporters. What do each of these players do? How do they inter-relate with the judge? Is that relationship successful assisting the court to function smoothly? How does politics influence the court? Was the judge appointed? If so, by whom? And why? If elected, what were the issues?⁸² What are the merits and liabilities of the two systems⁸³? How does the legislature or the executive branch influence the court? Does the court experience budgetary issues with the legislature? How does the mass media affect the court? Is the coverage of the courts fair? How does the judge treat juries? How do jury trials differ from bench trials?

Finally, does the judge play other roles? Does he or she have other administrative duties? Does he or she sit on any judicial committees or attend judicial conferences. Are there periodic meetings at the courthouse and what is the agenda? Does the judge have extra-judicial roles, as hospital board member, or little league coach?

VI. The Lawyers

⁷⁷ABA Model Code of Judicial Conduct (1990)

⁷⁸Id, Canon 4 concerns common conflicts that may be raised in a recusal motion.

⁷⁹National Law Journal, Conduct Injudicious April 22, 2002 (annual survey of the worst in courtroom behavior by judges)

⁸⁰F.R.C.P. Rule 52

⁸¹Walter W. Steele and Elizabeth G. Thornburg, Jury Instructions: A Persistent Failure to Communicate 67 N.C. L. Rev. 77 (1988)

⁸²In Republican Party of Minnesota v. Kelly, the U.S. Supreme Court is expected to rule on the application of First Amendment Free Speech guarantees as applied to a candidate for a judgeship.

⁸³ Kelley Armitage, Denial Ain't Just a River in Egypt: A Thorough Review of Judicial Elections, Merit Selection and the Role of State Judges in Society 29 Capital University Law Review 625 (2002)

The intern should be encouraged to pay attention to the lawyers who appear before the court. If the court has a large criminal docket, the intern will likely see many prosecutors and defenders. Who is the prosecutor⁸⁴ or district attorney and how did he or she achieve that office how big is the office? How does the office interact with local police departments? Similar questions can be asked about the defender's office.⁸⁵ What kinds of budgetary constraints do these offices have and how does that affect trials?

What are the characteristics of the other litigators? If the court has a large personal injury docket, what are the differences between the plaintiff's bar and the defense bar?⁸⁶ How does the contingent fee system play out in court? What are the practice settings of the lawyers? Are they solo practitioners⁸⁷? Big firm lawyers⁸⁸? Government lawyers?

What kind of tactics are most successful in influencing the court? What tactics offend the court?⁸⁹ What about the calls by the organized bar to promote civility among lawyers?⁹⁰ How often does the judge feel it necessary to control the behavior of lawyers that appear in court? Is

⁸⁴See Stewart, The Prosecutors, (an insider account of prosecution at the Justice Department in the Reagan administration)

⁸⁵See generally, Kunen, How Can You Defend These People, Garlins Ready for the Defense, Wishman, Confessions of a Criminal Lawyer.

⁸⁶Gerard J. Clark, American Lawyers in the Year 2000:An Introduction 33 Suff. L. Rev.293 (2000) (Survey of the whole profession)

⁸⁷See generally Carlin, Lawyers on their Own: A Study of Individual Practitioners in Chicago, (1962) Rutgers University Press See generally, Williams, P. C., From Metropolis to Mayberry..., A Lawyer's Guide to Small Town Law Practice, Chicago. ABA General Practice Section, 1996. See generally, Handler, The Lawyer and His Community: The Practicing Bar in a Middle-sized City University of Wisconsin Press (1967); Movin' to Main Street, ABA Journal April, 2000, p. 90.

⁸⁸See Schiltz, On Being Happy, Healthy and Ethical Member of an Unhappy, Unhealthy and UnEthical Profession, 52 Vanderbilt L. Rev. 871 (1999) for a very negative appraisal of the life of the associate in a large firm. But see the rest of the volume, Attorney Well-Being in Large Firms: Choices Facing Young Lawyers. See Smigel Wall Street Lawyers, Goulden, The Superlawyers and The Million Dollar Lawyers, Stewart, The Partners

⁸⁹William H. Simon, The Ideology of Advocacy 1978 Wis L.Rev. 29 (establishing neutral partisanship as the proper role for the lawyer)

⁹⁰ABA Com'n on Professionalism, "... In the Spirit of Public Service": A Blueprint for the Rekindling of Lawyer Professionalism 112 F.R.D. 243 (1986) (suggesting that civility has declined in the bar and is in need of renewal)

Rule 11 or some similar sanction imposed⁹¹? If so, how freely? Against whom? And for what infractions?⁹²

VII. The Litigants

Finally, the intern should be encouraged to describe the characteristics of the litigants. Undoubtedly, the criminal defendant will be overwhelmingly poor, between 18 and 25 years of age and minority.⁹³ The women will often be charged with shoplifting or prostitution. The involvement of drugs⁹⁴ and alcohol will also be apparent. Recidivism rates will be high. Demographic studies of the population of criminal defendants can inform the intern's interest. Often the court must engage in very specific explanation of the implications of a guilty plea and the defendant may have an inability to understand. Translators are often needed as well. Victim-witness advocates can also inform the intern about the results of crime.⁹⁵

Interns will likely observe many pro se litigants especially in the family law field. An understanding of the cost of a lawyer and the income necessary to be able to pay that amount can be learned as well. Courts interact with the mentally ill as well.

Who are the repeat players in the civil courts. Banks, credit card companies⁹⁶, municipalities and hospital bring many collection actions.⁹⁷ Insurance companies frequent the courts as well.

VIII. Conclusion

⁹¹F.R.C.P. Rule 11.

⁹²Ripps and Drowatsky, Federal Rule 11: Are the Federal District Courts Usurping the Disciplinary Functions of the Bar? 32 Valparaiso L. Rev. 67 (1997)

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Andrew von Hirsch, Past or Future Crimes: Deservedness and Dangerousness in the Sentencing of Criminals New Brunswick : Rutgers University Press, 1987

⁹⁴The Drugging of the Courts: How Sick is the Patient and What is the Treatment? 73 Judicature 314 (1990)

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Hindelang, Michael J. et al., Victims of personal crime : an empirical foundation for a theory of personal victimization Cambridge, Mass. : Ballinger Pub. Co., c1978

⁹⁶See Elizabeth Warren, A Quiet Attack on Women N.Y. Times May 20, 2002 p. 23 (suggesting that recent reforms advocated for the Bankruptcy Court will discriminate against women who use the Bankruptcy Court 300,000 times more often than men.)

⁹⁷Galanter, Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change 9 L. & Society Rev. 95 (1974) (litigation favors repeat players)

The intern will most likely learn that the courts are not the staid, ivory tower institutions often presented in traditional law school classes. The courts are lively dynamic players in the everyday life of the community. They play the widest variety of roles. They dispense justice and punishment in criminal cases and resolve or mediate disputes in civil cases. They find, follow and, at times, declare the law.

They are often the sage teacher about community values and individual rights. They symbolize government in an immediate and tangible way. They often play the role of social service agency, or family regulator or substituted consentor or keeper of the peace. They often regulate other branches of government including the police and prisons, as well as the market and enforce the deals and bargains made by business

Courts often manage a public courthouse where the citizen may find a registry, a jail, security guards and employ numerous governmental employees and bureaucrats, some of whom may be unionized, and provide a living for almost half the nations 1 million lawyers. As such, they may prepare budgets and appear before the legislature to seek approval of proposed expenditures.⁹⁸

They often provide catharsis for some nagging community problem by providing, and at times limiting access to, information. They vindicate and validate the positions of the prevailing parties. They provide theater and an endless amount of fodder for the local news media.

The supervisor's job is to keep the student focused and keep the student from drowning.

⁹⁸The chief justices of the state's highest court often make an annual report which summarize significant developments and report on financial matters. See e.g. Annual Report on the State of the Massachusetts Court System: Fical Year 2000