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Educating Lawyers: Law School and Beyond

By Harvey Gelb^{*}

Introduction

When I entered Harvard Law School in 1957, I began my serious study of the law that continued during 18 years as a practitioner and 33 years as a Law Professor. Even in retirement, I continue learning and writing about the law. But this essay is not simply about law school or technical legal learning. Instead, it represents my views of the lifelong learning needs of a lawyer from a much broader perspective. It is no revelation to state that lawyers must continue to learn throughout their active years of practice and that such learning is at times broad and deep. Furthermore, lawyers by dint of their methodology and knowledge, are often sought to do important volunteer work including being board members and leaders in philanthropic endeavors. Thus, the education of lawyers needs-in addition to professional legal learning- to be broad enough to help us deal with persons and situations we encounter professionally, as well as to participate in activities beneficial to humanity.

Education comes to us in various forms. We have college and law school and considerable prior preparatory education. It is sometimes presented in formal and often quite valuable packages following law school, such as continuing legal education programs. But self-education through observation, readings, radio and television and in other formats is important. It has been my experience that my

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continuing broad educational efforts have not only been helpful to my family and community but have enriched my life immeasurably.

I. Lawyer: Take Care of Yourself!

It may seem odd to begin an essay about the education of a lawyer with the subject of health. The medical profession's wise adage "Doctor heal thyself" carries good advice for lawyers. We know that our physical and mental condition affect the quality of our work and our lives in general. Indeed, our multi-dimensional lives as lawyers may take a significant toll on our well-being. We must, therefore, educate ourselves, about our health needs and the best ways to meet those needs. Another worthy saying comes to mind, "an ounce of prevention is worth a pound of cure." A good regimen of exercise and diet and whatever else it takes to make us as healthy as we can possibly be is vital.

The work of lawyers is often accompanied by a high degree of tension and fatigue. Our dealings with clients, adversaries, government officials, and others open us to their anxieties and problems as well as our own. We must cope with wins, losses, delays, uncertainties and compromises. In the course of our work, we may enter diverse environments, some more inviting than others, such as offices, conference rooms and hearing sites for purposes that may vary in the tensions they generate. We may walk, ride or even run from place to place. We engage in meetings and more meetings, some pleasant, some not, some short, some long, some tedious. We try to communicate with others orally and in writing. We sometimes experience difficulties, economic and otherwise, within our own firms. We juggle items on our schedules and face deadlines. Yet, despite adverse or energy-sapping conditions as we embrace each task, we must recover our mental acuity, stay alert and be able to draw effectively upon our abilities to think, speak, concentrate, listen, read and write.

For most of us, it takes more than just good genes to possess and utilize a healthy mind housed in a body adequate to its tasks. And so we need to become educated to our own health needs — to determine what best helps each of us to acquire and maintain the requisite health. We need to develop a fitness program tailored to our needs and have the self-discipline to follow it. The best laid plans will be to no avail if we frequently find excuses to avoid implementing them. In the effort to achieve good health, we may be aided by the teachings, advice and examples of others, so long as we recognize our special needs. Moreover, we must not deny ourselves the rest and recreation we need to perform well. For many of us, working seven days a week or fifty-two weeks per year or excessive hours per day can lead to poor health and mistakes in our work.

It is also important to deal with mental health. We need to learn to deal with commendation, condemnation and the uncertainties of silence. We must not be so fragile as to be crushed by what others say to us or what we say to ourselves. The books *Peace of Mind* by Rabbi Joshua Loth Liebman, and *Man's Search for Meaning in Life* by Dr. Victor Frankl have been particularly helpful to me. Rabbi Liebman's words helped me to protect my ego from the extreme ups and downs generated by praise or criticism. And Dr. Frankl's logotherapy discussions helped me understand the importance to my mental health in finding worthwhile meanings in what I do. Each of us needs to find what is helpful in achieving good mental health and to seek capable professional assistance when advisable.

II. Our Morale-Our Spirit

In our society some speak negatively and even cruelly of lawyers. In the face of the pressures of law practice and unfair criticism of our profession, keeping morale up and spirits high may be a challenge. In addition, we often face criticism as individuals which can undermine our ability to function at our best. We must assess our own worth realistically so that we can do our jobs without being unfairly

undermined by excessive self-doubt. While we can learn from constructive criticism, we must have the self-confidence based on a realistic self-appraisal to overcome our hurt feelings whether they develop from criticism -constructive or otherwise. Otherwise emotional trauma may interfere with our work. Perhaps, some of us will need competent advice to assist us in determining our suitability for continuing to practice law. It should be especially helpful to our morale and spirit, as an individual and as a part of the legal profession, to remember the enormous value of what we do in helping others and society as a whole. Reflecting on those roles should assist us in determining the worthwhile meanings in what we do.

Lawyers have been trained to find and interpret law. In the United States, individuals and entities are subject to federal, state and local governments, and the multitude of laws they produce. As lawyers many of us spend time helping people navigate the sea of laws that they encounter or that may affect them. This task involves finding and understanding the applicable law. A few examples of our roles:

- Sometimes government needs lawyers to draft and enforce law.
- Sometimes clients need lawyers to protect them against government.
- Sometimes clients need lawyers for commercial, property and employment matters.
- Sometimes clients need lawyers when they seek damages for alleged tort injuries, and sometimes they need lawyers to defend them against such claims.
- Sometimes lawyers help businesses raise capital or help persons who were defrauded into investing capital.

In helping others in these and other ways with legal matters and enabling them to function lawfully in our society, we are establishing a worthy meaning in

our lives. Self-recognition of that meaning ought to strengthen our morale and be good for our psychological health.

Additionally, we should gain satisfaction by considering the extent to which we are peacemakers. It is my belief that many people fail to realize how much lawyers prevent lawbreaking and conflict! It is often a lawyer's counseling which prevents crimes, torts, breaches of contract and other forms of improper conduct. Widespread disobedience to law would take more than a financial toll on society. It would increase injuries, disrupt relationships, call into play intrusive forces, prevent progress and cause chaos.

Even after conflict erupts, it is often lawyers – giving advice and utilizing skills – who help the parties to resolve it without resorting to a full-fledged court battle or to other methods of dispute resolution.

Lawyers are specially educated to spot many kinds of problems or issues and to develop ways to deal with them. After thorough investigation, a lawyer may be able to present a client with one or more possibilities for resolving a problem. Then the client, being properly informed by the lawyer, is in a position to choose a course of action. Conflict resolution may be seen as a subset of a larger and very valuable aspect of lawyer service: "problem solving." A client presents the following problem: How do I provide support for my minor child in the event of my death? A lawyer examining the relevant facts and circumstances can advise the client of possible support arrangements and with the client's consent take the necessary steps to provide for the child.

Another example: suppose a client wants to purchase the business of a corporation. One issue is the method of acquisition to be used. The lawyer handling the matter should be one who understands the advantages and disadvantages of various methods of acquisition; the client should be properly

advised of alternatives and enabled to make an informed decision about the path to follow.

Furthermore, our skills in problem solving may be useful in helping parties reach an agreement. For example, in a two-party negotiation each side may wish to cover a particular contractual responsibility in a way contradictory to the other. Astute lawyers may seek the underlying reasons for the opposing provisions and may determine that the actual needs of each side can be met with different provisions that are non-opposing or through a compromise acceptable to both. Thus, a potential stalemate or deal-breaker can be avoided.

When we consider the great value of our role in problem solving, conflict resolution and guiding persons to behave lawfully, we should be proud of and gain strength from the work we do.

III. Acquiring the Knowledge and Skills of a Lawyer

American law students have so much to learn. A good law school education provides an important part of the foundation of knowledge and techniques a beginning lawyer needs and the tools to continue learning once engaged in the practice of law. To begin with, a student must learn to think like a lawyer. Traditionally a large part of that thinking ability is acquired through the study of court opinions deciding actual cases. A particular course, such as Contracts, may use a casebook to present judicial opinions involving important contract law principles such as "offer and acceptance" or "breach of contract," and may also shed light on the reasoning, interpretive and analytical skills lawyers use. Instructors assign cases for class discussion. Students read them and try to identify the questions at issue, relevant facts, legal principles, holdings, and reasoning in each case. Cases may illustrate judicial dealing with common law, statutes and other embodiments of law. Furthermore, students must become aware of controversies that may arise between or among the parties in a case about what

really are its relevant facts and applicable law. They must learn rules which courts may employ to guide juries or judges, as the case may be, to decide issues of fact.

In class, students are often interrogated about the assigned cases and what they extracted from them. Classes of many instructors involve more discussion than lecturing. If things go as they should, students studying cases will not only learn their pertinent legal principles, but also their study of analytical, reasoning and interpretive techniques employed in resolving cases will help them learn how lawyers think. Thus, exposure to actual court opinions can help students learn to find and consider the issues involved in a case, build a foundation of knowledge in the subject being studied (which in our example is contract law) and furnish opportunities to see how lawyers apply law to facts.

It is important for law schools to require courses designed to help students think like lawyers and obtain a good foundation for further law school study. Requiring courses in contracts, torts, property, criminal law, civil procedure, constitutional law and rules of professional conduct provides a reasonable way to achieve those objectives. It should be emphasized that the last course mentioned covers rules of behavior members of the legal profession are obligated to keep abreast of and follow. It is vital for lawyers to be mindful of the rules and revisions to them.

The practice of law involves different kinds of work. To give but two examples: a lawyer may engage in courtroom litigation between private parties or may aid a person in completing a business transaction involving the purchase of a factory. But these are not mutually exclusive career pursuits. Trial lawyers often need to master other areas of the law on which their litigations are based, and transactional lawyers should understand the consequences and some of the characteristics and risks of litigation in their fields. In addition, law students cannot

prophecy with certitude about the twists and turns their careers will take. Thus, a broad legal education is in their best interests.

Furthermore, students must learn how to do research to find and apply the law applicable to situations they confront. The complexity of their work is increased because of multiple governmental systems and sources of law in the United States. Law students and lawyers face continuing challenges to add to what they know and to keep up with changes. They must master and keep up to date with modern research technology.

Students should study some of the practical skills of lawyering including negotiating, legal writing and the art and procedures of practicing before courts, administrative agencies and arbitrators. Some clinics furnish actual experience, and other courses and competitions contribute to the development of practical skills.

Sad to say but some students enter law schools with little if any writing proficiency. While students do need to develop legal writing skills, some are handicapped in the pursuit of such skills vis-a-vis those who come well prepared as writers. To the extent that law school time is needed for developing fundamental writing proficiency, even grammar, when the student is learning to prepare briefs, and other documents used by lawyers, valuable student time and energy is lost. It is hard to believe that students who have already graduated from college would have fundamental writing deficiencies which place them at a disadvantage.

Although I have identified courses important enough to be required, it would be wrong to assume that faculties and other professionals are in unanimous agreement on curricular issues. There may be faculty controversies about what courses should be required or elective and how much time should be devoted to each. Furthermore, changes in the law and in the world in which we live may from time to time call for new curricular priorities. Bar examination requirements also need to be considered. Additionally, some faculty members may be influenced by

curricular trends or actions at specific schools they view with respect or as competitors. Ideally, in making curricular decisions faculties will act with their collective wisdom to serve the best interests of students.

There is some time left in the brief three years of law school for courses beyond those deemed necessary. In this year of 2020, courses touching on major issues of the times like global warming, immigration, and employee matters may be of great significance to students who wish to make an impact on our country and the world. Sometimes students elect courses based on their particular interests or expected fields of practice or to study with certain professors. Those reasons are quite acceptable to me. After all I opted to take Admiralty Law with Professor Mark Dewolfe Howe at Harvard primarily because of his fine reputation (he had been a law clerk to Justice Oliver Wendell Holmes) and because of my fascination with ships and the sea and novels I had read. I loved the course but never during my 18 years of practice had a case involving admiralty law. Still that branch of the law offered interesting comparisons with the common law and the various other courses I had been taking and one can learn a great deal from making comparisons.

IV. New Situations

The frequent need to deal with new situations provides a stimulating but challenging feature of the practice of law. Suppose a person is injured in a warehouse fire or an auto accident or when a ceiling collapses. A lawyer representing the injured party must become knowledgeable about the facts and law relevant to the client's claims. In considering factual matters, the lawyer may need to learn about the unfamiliar and acquire enough knowledge and understanding to be able to apply relevant tort law principles such as those regarding fault, causation, and damages. Mastery of both the factual and legal issues is essential for advising a client regarding the merits of a case, negotiating about a compromise,

and trying the case if necessary. Though daunting, the challenge to the lawyer may be quite interesting even when relevant facts are complex or technical.

In addition to personal injury cases like the above examples, attorneys may engage in extensive factual and legal study in order to render proper service in a variety of other matters. For example, advising clients about buying or selling a business, the type of entity best suited for their business, environmental issues, public offerings of stock, protection of trade secrets, or collective bargaining with an employee union requires study of the client's business and the legal milieu in which it operates. The acquisition of facts and legal study are also necessary in performing various other functions such as participating in negotiations and drafting documents.

V. Information Gathering Techniques

Information gathering techniques benefit from experience. A lawyer should develop methods for effective interviews of clients and others, should be able to find and learn from experts where advisable and be knowledgeable about locating relevant documents and other facts. Being a good questioner, listener, observer and notetaker can be vital in obtaining information. The demonstrated strengths and weaknesses of investigative processes previously used will improve current and future techniques.

In addition, lawyers in the course of their work accumulate knowledge. In moving from one case to another, that knowledge may help significantly. Thus, an awareness of problems arising from a particular buy-sell or employment agreement may help in designing a better agreement. Moreover, it should be advantageous to be informed by prior experience about the terminology, customs, needs and interests of our clients. While it is natural and likely beneficial to look at each new situation for similarities and differences compared to past experiences, freshness and enthusiasm in spirit and study should characterize our work.

Although prior research and experience may be very useful, as time passes memories need to be refreshed, and past research requires updating. The relevant law or our analysis of it may change. New shafts of light often illuminate our understanding of past matters. Clients should receive no less than our best work, which precludes mere reliance on repetitions.

In taking advantage of past experience or available materials, lawyers often draw on form files from previous transactions for possible enlightenment or use. It is important to emphasize that lawyers should not overly rely on pre-existing forms whether found in publications or previously developed by themselves or their colleagues. A form may be helpful as a starting point and in creating a checklist of matters to cover. It may be suggestive of good language to deal with certain issues. It may even be found to be appropriate to use for some purposes. But sometimes a new form or one with substantial changes may be needed.

Just as physicians may change diagnoses and treatments as they proceed with a case, so too lawyers should be open to new ideas as they deal with a matter. An initial approach may be discarded after more thought or information. The ability to meaningfully review, reevaluate and revise one's own work or ideas is a priceless asset.

VI. Outside the Career Experience (The Open Mind)

What we have learned from parents, teachers, students, colleagues, friends, clients, journalists, historians, novelists, scientists and others has contributed to our knowledge as lawyers. In addition, our experience in working on non-lawyer jobs may contribute significantly to understanding a client's situation. Thus, a person who worked as a carpenter for a construction firm may better or more quickly understand problems in the construction industry when dealing with them as an attorney. Similarly, one who has worked at a deli in a grocery store may bring

direct experience to bear in dealing as a lawyer with the employment or inventory problems of such a store.

We should embrace opportunities to learn from others. In a Talmudic compilation, Ethics of the Fathers, the sage Ben Zoma asks, “who is wise” and responds: “He who learns from every man, . . .”¹ Even an open mind, however, needs to concentrate to learn. Impatience or other causes of inattention must be overcome. Some students in taking law school exams exhibit a tendency to analyze a question in a conclusory manner rather than with a discussion of the issues or matters that the question calls for. In law school, students are trained to see and analyze actual situations, examine examples of judicial and other determinations of relevant facts, applicable law, and issues that arise in cases, and evaluate the merits of potential claims. A willingness to open one’s mind to the various sides of a question is essential in law school and in the successful practice of law. A mind or attitude that prematurely or inappropriately reaches conclusions is especially self-defeating to the work of law students and lawyers.

VII. Lifelong Learning

Learning is a lifelong process and for lawyers it involves more than just continuous legal education. Lawyers must be able to communicate with and understand others. We must be well informed about changes in our society, the world, and even in ourselves. Learning and experience often contribute to changes in our perspectives and judgments. As our knowledge and wisdom grow our prior learning and experience may become more meaningful and useful. For example, new insights may emerge when we revisit judicial opinions, essays, movies, or novels. Reflection on prior experiences may deepen our understanding of them. And the mind must be exercised continually to maintain and even increase its

¹ Irving M. Bunim, Ethics from Sinai: an Eclectic, Wide-ranging Commentary on Pirke Avoth (New York:Philipp Feldheim, Inc., 1964) Volume 2, Perek IV, Mishnah 1, verse 1.

effectiveness. When President Franklin D. Roosevelt called on retired Justice Oliver Wendell Holmes, Holmes was in his library reading Plato. When Roosevelt asked why, Holmes, then in his 90s said: “To improve my mind, Mr. President.”² Continuous learning contributes to our work and our lives. In addition to the lessons of our own experience in the practice of law, learning from the work and ideas of other lawyers can be valuable.

VIII. Fields of Interest

After law school, the learning process continues. We add to our knowledge and develop our skills through study and experience. We learn from mastering the facts and law pertinent to each matter with which we deal. We learn from readings, mentors, colleagues, clients, continuing legal education programs and even adversaries. Still, the complexity and diversity of the subjects dealt with by the legal profession necessitate self-limitation on the kind of work each of us can handle. For example, it is hard to imagine a lawyer concurrently and effectively serving clients in family, criminal, corporate, tax, copyright and employment law or that many of us would be happy or comfortable doing so. Lawyers need to concentrate on areas of practice in order to render efficient, cost effective, well informed and reliable service. Ideally, we determine fields in which to practice by realistically assessing our aptitudes, competencies and time limitations. Hopefully we avoid areas that are incompatible with our temperaments, interests, economic needs and lifestyles. We seek appropriate ways to keep learning about the substance, skills and changes occurring in our fields.

Just as experiences outside the practice of law prove valuable within it, so too what we learn in the course of our legal work is often of value in our private lives. Thus, the experience of dealing as lawyers with the family or business issues

² Catherine Drinker Bowen, Yankee from Olympus: Justice Holmes and His Family (Boston: Little, Brown and Company, 1944) 414.

of others may help us prevent or deal with our personal problems. Not surprisingly, our professional work may provide valuable lessons that can be passed on to others, and legal education and experience often enable lawyers to contribute effectively as community leaders and volunteers.

IX. Learning with self-respect

As beauty is in the eyes of the beholder, so too much of learning is a reflection not merely of the instructor's words but of how our minds receive and respond to the instruction. Some misunderstandings occur simply because a single word may have different meanings. Indeed, the word "sanction" has contradictory meanings. The meanings of words may evolve so that we need special guidance in trying to understand writings and speeches from the past. And the context in which words appear or the tone with which words are uttered affects our understanding of them. But some impact on what is transmitted is attributable to the interaction of the reader's or listener's mind with what the writer or speaker says. We may reap valuable ideas and learning from our own minds' responses to, or treatment of, what is said.

We must respect our own originality and mental initiatives. This need for self-respect is dramatically and persuasively set forth in Ralph Waldo Emerson's famous "Self-Reliance" essay. Emerson's words about consistency and nonconformity inspire both courage and rationality, two important qualities for a lawyer to have.

Often after I reviewed the facts and law of a situation, issues, insights, and approaches would come into my head at various times and places — perhaps even while in a shower or on a ride home. Emerson said, "A man should learn to detect and watch that gleam of light which flashes across his mind from within, more than

the luster of the firmament of bards and sages.”³ To this I would add that it is advisable to record the flashes as soon as possible after they come rather than to forget or struggle to remember them later.

Emerson also would free our minds to think as individuals and reject the pressures of conformity and consistency. He said, “Whoso would be a man must be a nonconformist. He who would gather immortal palms must not be hindered by the name of goodness, but must explore if it be goodness.”⁴ And he said, “A foolish consistency is the hobgoblin of little minds, adored by little statesmen and philosophers and divines.”⁵ As lawyers we especially recognize the values of consistency in the legal field, but we should be mindful nevertheless of what Emerson rightly objects to as a “foolish” consistency.

X. Oratory

Hearing oral presentations can be very helpful in teaching us to communicate persuasively. Oral presentations are often available even to those not present when they are delivered. Viewing the delivery of a speech makes it possible to study gestures, facial expressions, tempo, and pauses. The demeanor, volume, and inflections of a speaker are on display. We can experiment with approaches to speaking in various forums and with diverse audiences and try to determine what is most effective in each.

Besides learning delivery techniques from speakers, we are able to acquire knowledge and perhaps inspiration from them.

It has been enlightening for me to see and hear oratory on the screen, on television, in person, on recordings and even simply through reading. Examples of fine oratory abound. To name but three one can turn to Lincoln’s Gettysburg

³ Ralph Waldo Emerson, Essays: Second Series (Columbus, OH: Charles E. Merrill, 1969) 37.

⁴ *Id.* at 41

⁵ *Id.* at 47

Address, Franklin D. Roosevelt's first Inaugural Address, and Winston S. Churchill's speech after Britain's ally, France, was defeated and he prepared his people for the challenge ahead. Here is an excerpt reflecting inspiring and persuasive oratory at its best from the Churchill address:

What General Weygand called the Battle of France is over. I expect that the Battle of Britain is about to begin. Upon this battle depends the survival of Christian civilization. Upon it depends our own British life, and the long continuity of our institutions and our Empire. The whole fury and might of the enemy must very soon be turned on us. Hitler knows that he will have to break us in this Island or lose the war. If we can stand up to him, all Europe may be free and the life of the world may move forward into broad-sunlit uplands. But if we fail, then the whole world, including the United States, including all that we have known and cared for, will sink into the abyss of a new Dark Age made more sinister, and perhaps more protracted, by the lights of perverted science. Let us therefore brace ourselves to our duties, and so bear ourselves that, if the British Empire and its Commonwealth last for a thousand years, men will still say, 'This was their finest hour.'⁶

Whether for the practice of law or for other endeavors such as politics, or community or public service, it behooves us to learn to speak persuasively.

Perhaps this is an area where law schools could provide more encouragement and opportunities for student progress.

XI. Good Listening

Learning from conversation is enhanced if we listen carefully, ask good questions, respond reasonably, and put forth our views in an appropriate manner.

To the extent that we preempt the opportunity of others to speak, we obviously lose the benefit of learning from them. Our own soliloquies may be purposive like filibusters or they may be unintentional and unproductive of any advantage to us. They may have a negative impact on our business and social relations.

⁶ Winston Churchill, Never Give In!: The Best of Winston Churchill's Speeches (New York: Hyperion, 2003) 229.

Many occasions illustrate the need for attentive listening. Hearing and understanding what our electrician, physician, plumber, lawyer, teacher, auto mechanic, classmate, parents and others tell us are often important. Education, safety, health, entertainment, occupational activity and moral behavior may all be impacted by the quality of our listening. Good listening at times contributes to our relationships with others and the value and even pleasure of conversations.

Highly developed listening skills are certainly of considerable value to lawyers. The listening skills required of the lawyer engaged in a trial are well publicized. Movies and television (even if they have technical flaws) have depicted examinations and cross examinations of witnesses, objections by lawyers, rulings of judges and other aspects of trials in ways that we can see the need for “good” listening by attorneys. They must comprehend what is being said and often make quick decisions on whether and how to respond.

But attentive listening is also necessary for lawyers in what may often be less dramatic settings such as client interviews, business negotiations, or settlement discussions.

There are ways to improve the harvest we reap from the communications of others. Here are five keys followed by a discussion of each:

1. Prepare effectively.
2. Beware of bias.
3. Limit interruptions.
4. Provide a suitable environment.
5. Take good notes.

1. Preparation

We should prepare ourselves for what we anticipate will be covered or said. In our first semester at the Harvard Law School, we students were required to participate in moot court in the Ames Competition. We divided into two-person

teams (with each team representing either the appellant or appellee) that had to face off one team against another in appellate court hypothetical cases. We wrote briefs dealing with the issues presented and prepared for and engaged in oral argument before three-judge panels. Brief-writing was itself quite a challenge, but for many of us the prospect of oral arguments was more frightening. Although we each prepared a monologue to present to the court advocating a decision in our favor, we were advised to be ready for an onslaught of interrupting questions by the judges. We were told that it was important to focus on these questions even if they diverted us from our planned presentations. This competition involved the most painstaking preparation for me, a true novice. I tried to anticipate the judges' questions and develop answers to them. We needed to be familiar with precedents, policies and other relevant materials as well as the various arguments that we and our opponents might make. We could practice our arguments and responses by ourselves or with others, prepare index cards for reference, and perform with our cards and notes, perhaps at a podium or at a dresser mirror. Many of us experienced anxiety about our upcoming effort to argue a case. Our few minutes in the moot court spotlight were preceded by many hours of vital preparation, a phenomenon repeated in preparing for arguments before courts later in life. Appropriate preparation for trials, appeals, administrative hearings and arbitrations is imperative.

Transactional law work also requires extensive preparation. Clients may be involved in manufacturing, health care, and commercial matters, among others. They may need the help of lawyers for a wide variety of transactional matters, involving such things as purchases, sales, employment agreements, and internal business matters like those related to the formation and operation of corporations, limited liability companies or other entities. Lawyers need to be familiar with relevant background and terminology from their clients' businesses in order to

advise them, participate effectively in negotiations, draft documents, engage in discussion and possibly even litigation.

One of the most difficult things to judge is when to exercise self-restraint and say “enough” to our research, editing, redrafting or other preparation on a matter and move forward. Sometimes we unnecessarily create stumbling blocks to our own progress and cause inappropriate delays for others and ourselves. Hopefully, experience and proper self-confidence will guide us in determining when the “enough” moment has arrived.

2. Bias

I have seen bias in listeners’ faces — not just a bias that influences their views — but also one that closes their minds. At times we must listen to those with whom we disagree because they may have something to teach us or that we may need to hear if only to rebut. Sadly, I admit to poor listening and comprehension of some views I later learned to respect or even adopt. Lawyers, of course, are accustomed to hearing adverse views from those with whom they argue or negotiate. Still we must guard against those emotions which destroy our ability to deal effectively with our tasks. We may need to cultivate good humor as an antidote to the ill effects of bias against those with whom we deal or what they say.

3. Interruptions

We must subdue our own inclination to prematurely interrupt the speaker, become the center of attention, and demonstrate our brilliance. Indeed, we must even prevent our silent cerebrations from interfering with our attentive listening and yet find a way to make note of those that are worthy. As earlier noted, we may have trouble letting a speaker go on. We want to be the center of attention. Our own views or questions bubble up in our throats clamoring to be released. Or we want to interrupt what seems to us to be boring, repetitive, or unreasonable. And so, we interrupt listening to the speaker, allow our inner thoughts and questions to

seize our minds and interfere with or block outside communication. Difficult as it is, we must capture our thoughts or questions of value without missing what the speaker is saying. Such thoughts and questions may be very valuable. We must force ourselves to hear and record two voices, one outside and one within us. As challenging as that sounds, it is really something we often do. Also, the occasional involuntary daydream that drifts into our minds may interfere with what we are hearing. Of course, there are times when interrupting a speaker is appropriate or necessary. Nothing said here is intended to preclude interruptions dictated by good judgment.

4. Environment for Communication

Providing an environment to foster concentration on what is said improves verbal communication. Modern technology has greatly increased the challenge of potential distractions. An office or conference room should be used wisely to promote listening and speaking. The atmosphere should enable effective communication in accordance with the purpose of the meeting. Unnecessary interruptions should be avoided.

5. Notetaking

During my life I have experienced certain enlightening moments with long-range impacts at unexpected times. I was a sophomore at a Harvard history class when I noticed an upperclassman, who was known to be highly successful, assiduously taking notes as the Professor lectured. After class, when I made a casual comment to him about his note-taking, he said that he wrote down everything the Professor said. Although that had not been my note-taking method, it struck me as an eminently reasonable approach for me to use in helping with exam preparation. It freed me from extra effort and uncertainty in trying to reconstruct a significant part of the course – the professor's lectures. Later, I simply reduced the notes to outlines that would be easier to remember and

supplemented them with course book and other pertinent materials. While others may have enjoyed success with other approaches, the process I described helped me to learn and I believe to obtain better exam results. It helped me overcome my listening frailties such as daydreaming because I had to listen well enough to write and, at least, I would have the opportunity to learn what was said from my notes. However, in our activities as lawyers we may often deal with situations in which we cannot focus sufficiently on notetaking. There are, for example, occasions like trials or appellate arguments when our concentration must be primarily on what is said and how to respond. In such situations it may be necessary to delegate to others the primary responsibility for good notetaking.

XII. Sensitivity and Human Relations

What is learned in the practice of law and from our broader education and experience increases knowledge about others and ourselves. Hopefully our learning sensitizes us more to the problems of clients and others. I once heard a medical school dean tell undergraduates aspiring to be physicians to minimize preparatory medical courses and maximize a broad education. Physicians after all must be proficient in human relations, and so, I would add, must lawyers. Some knowledge of psychology and the values and traditions others hold dear is vital. We must acquire an understanding of others, including clients, lawyers, witnesses, judges and jurors.

Dealing with people in a humane way helps to build relationships. It may help too in our interactions with clients, colleagues, witnesses and even adversaries. It may also be healthful for us in preventing the harm that would plague us from our own immoral, unfair or grouchy behavior. Dealing humanely requires us to recognize the anxieties of others who deal with us, to return phone calls and communicate properly with clients who may be worried about or need to be kept informed in matters entrusted to us.

Literature can be helpful in sensitizing us to the meaning of disappointment or defeat to ourselves and others. Some lines from Emily Dickinson are illustrative:

Not one of all the purple Host
Who took the flag today
Can tell the definition
So clear of Victory
As he defeated — dying
On whose forbidden ear
The distant strains of triumph
Break agonized and clear!⁷

Lectures, movies, fiction and non-fiction and various other learning opportunities can furnish insights into the feelings and ideas of others. Broadly educating ourselves as we travel through life benefits our work and enriches our lives.

While it is important to acquire the understanding and sensitivity to be able to give comfort and advice where appropriate to persons in distress, the need for intellectual modesty is ever-present. In my early days as a college freshman, my class was required to read about Freudian psychology. Some of us became intoxicated with Freudian terminology and ideas and exposed each other to our infantile and obnoxious analyses of each other's psychological problems. Whether a college freshman or a well-trained lawyer, it is good to remember Alexander Pope's words:

A little learning is a dang'rous thing;
Drink deep, or taste not the Pierian spring;
There shallow draughts intoxicate the brain,

⁷ Thomas H. Johnson, ed. The Complete Poems of Emily Dickinson (Boston: Little, Brown 1960) 35.

And drinking largely sobers us again.⁸

Some lawyers exceed their competency in giving marital, business, or psychological advice to clients. At times clients seek our advice on such matters; at other times we volunteer it. Clients may overestimate our wisdom, but we must exercise self-restraint, overcome our pride, and know how to admit to a lack of knowledge. We should also postpone answering their legal questions until we have had the opportunity to give them proper consideration and on occasion perhaps even refer clients to specialists. Off-the-cuff or hastily formed opinions can be hazardous, and our clients may need others to help them with matters on which we lack the requisite knowledge or experience.

When we meet with clients, we should be careful not to cause them anxiety through our careless use of language, or the tone of our voices, or even our facial expressions. It may be that our body language reflects our own pain or worry and has no connection to them or their case, but they may not realize that. There is a danger that facial expressions or tone of voice may indicate pain, anxiety or negativity regarding a client's behavior or case, or character, which is completely unintended. Once someone told me a story about a problem she had and, according to her, worry appeared in my face, worry that caused her anxiety. The truth is I was unaware that I was conveying any such attitude about the problem. We should all be well aware of the differences in meaning conveyed by one's tone of voice. Just think back to the different meaning a mother's summons to come home can have based on her tone.

It is a good idea for lawyers to develop an appropriate demeanor and method of communication for client sessions and counseling so as not to create unwarranted discomfort. I have found too that good humor in one's dealings with

⁸ Oscar Williams, Ed. *Immortal Poems of the English Language: An Anthology* (New York: Washington Square Press, Pocket Books 1952) 163.

others can be healthful and even helpful in negotiations, discussions, and other situations.

There may also be times when client conduct, though not illegal, is violative of a lawyer's own values. The conflict may be serious enough to destroy the lawyer-client relationship. Otherwise lawyers should generally be reluctant to be judgmental. Reflecting our judgmental disapproval of client behavior through our demeanor or expressions may be unfair and needlessly hurtful to our clients. Indeed, as the years roll by one may become less judgmental of the behavior of others as one changes or becomes less sure that one's own way in particular matters is the only right way – or even right at all. As we learn more through study or experience, we may sometimes become far more modest about what we are sure of than when we were in our younger years.

In 1787 at the Constitutional Convention Benjamin Franklin, in urging the delegates to sign the Constitution, brilliantly made this point as follows:

I confess that I do not entirely approve of this Constitution at present; but, sir, I am not sure I shall never approve of it, for, having lived long, I have experienced many instances of being obliged, by better information or fuller consideration, to change opinions even on important subjects, which I once thought right, but found to be otherwise. It is therefore that, the older I grow, the more apt I am to doubt my own judgment of others. Most men, indeed, as well as most sects in religion, think themselves in possession of all truth, and that wherever others differ from them, it is so far error.⁹

Clients who ask questions of their lawyers deserve our attention even for therapeutic reasons. We may not be able to solve their problems or respond effectively but our listening to them, certainly, not as a psychiatrist would, but as one human being to another, may be of some comfort.

⁹ Lewis Copeland and Lawrence W. Lamm, eds. The World's Great Speeches (New York: Dover 1973) 236.

I confess without guilt that my liberal arts education helped open my life to much enjoyment. I learned that I could enjoy and benefit from studies of Greek and Shakespearean plays, American and other literature, movies, plays, paintings, sculpture, history, political science and even television. Dedication to the practice of law does not and must not preclude spending time in enriching one's education about and enjoyment of other subjects. Such enrichment and enjoyment are important to one's mental health and may help us contribute successfully to the well-being of others. Furthermore, when one considers the broad scope of the work of many lawyers, some of our liberal arts learning may prove relevant to professional services we render.

In conclusion, let us remember that as we engage in the practice of law and live our lives, we will have many opportunities to be kind, well-mannered, and treat others as we would have them treat us. Hopefully, we will respond to these opportunities in the right way.