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Supervising Judicial Interns: A Primer

Gerard J. Clark†

I. INTRODUCTION

In surveying legal education over the past quarter century, one change that is often overlooked is the rise of internships¹—advanced educational experiences for which students gain academic credit in supervised professional placements outside the law school. Internships, like clinical experiences, augment the traditional classroom experience in a way advocated by the ABA in the MacCrate Report.² That oft-quoted report suggests that legal education is too narrowly focused upon doctrinal law and the case law system.³ It suggests that law school fails to instruct students in the skills and values that are crucial to the well-rounded lawyer.

No placement gives the student a greater appreciation for the breadth, the depth, and the reality of the law than placement with a judge who labors daily to apply its prescriptions to real cases. At least five of the ten skills of lawyering mentioned in the MacCrate Report can be learned by the judicial intern.⁴ The judge spends a great deal of time engaged in legal analysis and reasoning (Skill 2).⁵ Legal research (Skill 3)⁶ will frequently be necessary. The judge will often encourage negotiation (Skill 7)⁷ and may indeed participate in it him or herself. In turn, the student gains the opportunity to

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1. The dictionary defines an intern as "an advanced student or graduate usually in a professional field . . . gaining supervised practical experience." WEBSTER'S NINTH COLLEGIATE DICTIONARY 632 (1991). Although the term intern or internship is perfectly adequate, many law scholars insist on a neo-logism, "extern." See ABA Standards for Approval of Law Schools Std. 305.

2. ABA Section on Legal Education and Admissions to the Bar, *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (1992) [hereinafter MacCrate Report] (Robert MacCrate chaired the task force).

3. See generally Gerard J. Clark, *Report on the Task Force on Law Schools and the Profession: Narrowing the Gap by the American Bar Association Section of Legal Education and Admissions to the Bar*, 27 SUFFOLK U. L. REV. 1153 (1993) (book review) (critiquing MacCrate Report); see also Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, 8 CLINICAL L. REV. 109 (2001) (describing implementation of MacCrate at New England Law School and assessing its national impact after ten years).

4. See generally MacCrate Report, *supra* note 3.

5. MacCrate Report, *supra* note 3, at 151.

6. MacCrate Report, *supra* note 3, at 157.

7. MacCrate Report, *supra* note 3, at 185.

observe, at close range, the successful and unsuccessful strategies of litigation and alternative dispute resolution (Skill 8).⁸ Family and juvenile cases demand extensive problem solving (Skill 1).⁹ The MacCrate values focus on competence,¹⁰ and through active participation and observation the intern quickly learns the difference between competence and incompetence. Courts ought to be filled with law student interns much like a teaching hospital is filled with medical school interns.¹¹

Modern courts are anything but the staid, ivory tower institutions often portrayed in traditional law school classes. The courts are lively dynamic players in the everyday life of the community. They assume 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 of community values and individual rights. They symbolize government in an immediate and tangible way. They often play the role of social service agency, family regulator, substituted consentor, or keeper of the peace. They often regulate other branches of government, including the police and prisons, as well as the market for goods and services. They also enforce the deals and bargains made by business.

Courts often manage a public courthouse where the citizen may find a registry of deeds, a jail, and security guards. Courts also employ innumerable governmental employees and bureaucrats, some of whom may be unionized. Courts are the focus of almost half the nation's one million lawyers. As such, they may prepare budgets and appear before the legislature to seek approval of proposed expenditures.¹²

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

The variety found in typical state court systems is almost infinite. Courthouses also house many busy offices and agencies including clerks offices, probation offices, registries of deeds, and others that attract large numbers of the bar as well as the public. This fact is dawning on legal educators who are increasingly sending their students to these exciting placements.¹³ Further, these students are being welcomed by overworked

8. MacCrate Report, *supra* note 3, at 191.

9. MacCrate Report, *supra* note 3, at 141.

10. MacCrate Report, *supra* note 3, at 207.

11. See generally J. Daniel Mahoney, *Law Clerks for Better or Worse?*, 54 BROOK. L. REV. 321 (1988).

12. The chief justices of the state's highest court often make an annual report that summarizes significant developments and reports on financial matters. See *Annual Report on the State of the Massachusetts Court System: Fiscal Year 2002*, at <http://www.state.ma.us/courts/courtsandjudges/courts/supremejudicialcourt/AnnRepFY02.pdf> (last visited March 25, 2003).

13. WILLIAM B. POWERS, A STUDY OF CONTEMPORARY LAW SCHOOL CURRICULA, PART II, PROFESSIONAL SKILLS COURSES 16 (1988). A 1986 survey of A.B.A. law schools indicated that virtually every

judges and courts where this injection of youthful energy and ambition is indeed appreciated.¹⁴

The law school can assist the student to focus upon the educational value of the field experience,¹⁵ which is typically so rich that the student may experience a kind of sensory overload. Faculty supervision should assist the student by relating the experience to what is learned in law school and by alerting the student about what to look for and what to draw from the experience.¹⁶

II. THE VARIETY OF COURTS

The first question a student must endeavor to answer is which court to apply to. Cities, where law schools are primarily located, will most often afford a wide variety of courts wherein placement is possible.¹⁷ A superior court¹⁸ is the court of general jurisdiction that hears all kinds of civil and criminal cases.¹⁹ Typically, they are arranged along geographic lines such as counties. They may also be separated into sessions based upon subject matter. Typically, superior courts hear cases of a varying and dynamic subject matter, and, as

law school in the country has some form of judicial internship program. *Id.*

14. One-half of the MacCrate Report seeks reformation of law schools. The other half is directed at the profession, stating that it has the duty to instruct law students in the skills, values, and traditions of the profession. See MacCrate Report, *supra* note 3, at 268. Courts have traditionally responded favorably to these calls, as evidenced by student practice rules. See MASS. SUP. CT. R. 3:03.

15. There is, by now, a growing literature on the academic component. See, e.g., 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 classroom component at Brooklyn Law School). See generally REBECCA COCHORAN, JUDICIAL EXTERNSHIPS: THE CLASSROOM INSIDE THE COURTHOUSE (1999); J.P. OGILVY ET AL., LEARNING FROM PRACTICE (1998); Liz Ryan Cole, *Lessons from a Semester in Practice*, 1 CLINICAL L. REV. 173 (1994); Daniel Givelber et al., *Learning Through Work: An Empirical Study of Legal Internship*, 54 J. LEGAL EDUC. 1 (1995); J.P. Ogilvy, *Introduction to the Symposium on Developments in Legal Externship Pedagogy*, 5 CLINICAL L. REV. 337 (1999) (citing many informative resources); Linda F. Smith, *The Judicial Clinic: Theory and Method in a Live Laboratory of Law*, 1993 UTAH L. REV. 429 (1993) (introducing design, oversight, instructional methods, and educational goals of judicial clinics).

16. See generally Mary Jo Eyster, *Designing and Teaching the Large Externship Clinic*, 5 CLINICAL L. REV. 347 (1999) (providing comprehensive overview from Brooklyn experience); Robert F. Seibal & Linda H. Morton, *Field Placement Programs: Practices, Problems and Possibilities*, 2 CLINICAL L. REV. 413 (1996) (describing need for institutional support of internship program).

17. The 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. Subsequently, the student should make a telephone inquiry to schedule a meeting in which the judge and student exchange internship goals and particulars, including duties, mutual schedules, and concerns. Experience indicates that a minimum of ten hours per week is necessary to acclimate the student to the position. Credit allocations should be adjusted according to time spent. At Suffolk Law School, students are awarded a credit for each 45 hours spent at the placement over the course of a semester. Students in the program can opt for between two and five credits per semester.

18. The names may vary from state to state.

19. See generally E. ALLEN FARNSWORTH, AN INTRODUCTION TO THE LEGAL SYSTEM OF THE UNITED STATES (1975).

such, the lawyers who appear before these courts hail from diverse fields and disciplines. Students may typically be assigned research on pending cases or invited to observe and participate at trials, motion sessions, and pre-trial hearings.²⁰

Family courts, often institutionally separate from the superior courts, decide and enforce matters involving divorce, separation, child custody, property settlements, and alimony. In addition to normal court personnel, this court is frequented by guardians ad litem and representatives of the departments of social services or youth services.²¹ Typically, the cases involve negotiation and settlement; therefore, full-scale trials are rare and *pro se* litigants common.

The state district or municipal courts typically have jurisdiction over misdemeanors, civil matters, and preliminary hearings in more serious crimes. As much as seventy-five percent of the workload of these courts, however, is criminal. These courts move in a rapid fashion and the writing and filing of briefs and judicial opinions is rare. Often, more serious civil matters are removed to a superior court in order to afford them more extensive treatment.

Different states may have a wide variety of more specialized courts. A juvenile court hears cases involving juvenile delinquencies, abuse and neglect, and persons in need of services,²² with the assistance of social workers and guardians. Specialized courts such as land courts, probate courts, and housing courts, have narrower subject matter jurisdiction.

Appellate courts provide a very different, but equally valuable, experience to the intern. The caseloads are smaller but the cases are more significant. This review of records from the courts below requires close examination and questions of law predominately. Publication of opinions requires extensive and high-quality research.²³

Turning to the federal side, the district court is the court of general jurisdiction, in many ways mirroring the state superior courts. The federal courts of appeals, like their state counterparts, require a commitment to research and writing and excellent qualifications. Federal judges usually have law clerks that provide additional opportunities for supervision and modeling.

The federal magistrate does much that a district court judge would do, such as hearing criminal and civil matters when a jury is waived.²⁴ These courts have the time and the inclination to be deliberative; the atmosphere is slower

20. See generally GEOFFREY C. HAZARD & MICHELE TARUFFO, *AMERICAN CIVIL PROCEDURE: AN INTRODUCTION* (1993); see also ROBERT M. COVER & OWEN FISS, *THE STRUCTURE OF PROCEDURE* (1979) (focusing on philosophical approach to civil procedure).

21. Patricia A. Garcia, *Unified Family Courts: Justice Delivered*, ABA Office of Justice Initiatives (2001) (noting ways community, bench, and bar can implement change in system).

22. SUSAN O. WHITE, *HANDBOOK OF YOUTH AND JUSTICE* (2001) (describing interplay of court and welfare system).

23. DANIEL J. MEADOR & JORDANNA S. BERNSTEIN, *APPELLATE COURTS IN THE UNITED STATES* (1994) (outlining U.S. appellate court system for students).

24. CARROLL SERON, *THE ROLES OF MAGISTRATES IN FEDERAL DISTRICT COURTS* (1983).

and the level of practice includes many who specialize in the peculiar problems faced by federal courts.

As is indicated in the name, the bankruptcy courts hear bankruptcy matters. This highly specialized court has judges and litigants who spend a majority of their time on bankruptcy and the related issues arising therefrom, such as security interests and commercial law.²⁵ Lawyers for large firms frequent this specialized court.

Many administrative agencies, especially those that engage in adjudication, can provide experiences for interns very similar to those in the courts. On the federal side, administrative judges hear cases involving the rights of federal employees, rights to a variety of entitlements, including disability benefits and veteran benefits, and the rights of non-citizens under the immigration and naturalization laws. On the state side, administrative agencies often adjudicate cases that apply the laws of worker's compensation, civil service, and special education.²⁶

III. THE ROLE OF INTERN

A. *In the Courthouse*

The addition of an intelligent and enthusiastic intern can improve the often solitary and sedentary life of the judge, especially in those courts that are not supplied with law clerks. Obviously, specialty courts may require course-work prerequisites. However, placement is theoretically possible with any judge who is willing to act as a mentor²⁷ and to take on the responsibility of field supervision,²⁸ provided the court has the facilities, including space and access to books and computers, to accommodate the addition of the student intern. This is very much the hope.

25. MICHEAL J. HERBERT, *UNDERSTANDING BANKRUPTCY* (1995).

26. Other such federal agencies include the National Labor Relations Board, the Department of Health and Human Services, and the Federal Aviation Administration. State agencies may also adjudicate questions involving issues relating to public utilities, insurance, licensing, pension eligibility, special education, and many others. See generally Peter L. Strauss, *The Place of the Agencies in Government: Separation of Powers and the Fourth Branch*, 84 COLUM. L. REV. 573 (1984).

27. See generally Stewart Macaulay, *The Judge as Mentor: A Personal Memoir*, 36 J. LEGAL EDUC. 144 (1986); John Kester, *The Brighter Side of Clerkships*, 36 J. LEGAL EDUC. 140 (1986); Abner Mikva, *Judicial Clerkships: A Judge's View*, 36 J. LEGAL EDUC. 150 (1986); Patricia M. Wald, *Selecting Law Clerks*, 89 MICH. L. REV. 152 (1990).

28. At 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, role models, mentors, and friends. We subsequently send out a manual to first-time supervisors wherein we ask them to assist in the development of students' ability to learn from experience; to promote in students an understanding of professional responsibility and a sense of the variety of professional roles; to give the students insight into the workings of the legal system; to develop lawyering skills; and to immerse the students into the realities of the life of a lawyer. See *Suffolk Law School Field Supervisor's Manual* (available from Office of Internship Programs, Bernadette Feeley, Director).

Subject to the constraints that may be imposed by the judge-field supervisor,²⁹ the student should become a bit of a courthouse gadfly, introducing him or herself to the other employees and personnel at the courthouse. Clerks can explain the entry and assignment system of cases, the scheduling of motion sessions, and the internal courthouse politics. Probation officers can explain how investigations are performed for pre-sentence reports and highlight the dynamics of the probation process.

A principle instructional methodology should be the deliberative process which is treated effectively in *The Reflective Practitioner* by Donald Schoen.³⁰ In their capacity as interns, students learn the law by watching at close range how judges utilize this approach to decide cases. It requires technical rationality,³¹ which necessitates knowledge of the applicable law. A case generates confusion about a problem upon presentation because of its uncertainty, its uniqueness, and its conflict. The facts may be ambiguous, the objectives of the competing lawyers may be ambivalent, and the law may be unclear. The judge-professional works in these indeterminate zones. At some 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.

B. Beyond the Courthouse

It is imperative that a courthouse experience be supplemented with a classroom component that may vary from semester to semester in response to actual student placements. Introductory classes should focus on the intern-supervisor relationship and how to make the most of it. Students should do individual reports on the subject matter and geographical jurisdiction of the court, procedural rules, and the caseload. Subsequent topics might include the judicial temperament, backlog, court reform, juries, courthouse politics, and the effects of publicity.

Written journals provide an opportunity for the student to reflect on the internship experience. They encourage the student to quietly rehash and evaluate the events of the day. The student may then develop a set of questions about things that were unclear and create a strategy for future learning and better understanding.

Student diaries should include personal reflections and commentaries on the

29. See generally Jack 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 (1976).

30. DONALD SCHOEN, *THE REFLECTIVE PRACTITIONER: HOW PROFESSIONALS THINK IN ACTION* (1983); see also DONALD SCHOEN, *EDUCATING THE REFLECTIVE PRACTITIONER: TOWARD A NEW DESIGN FOR TEACHING AND LEARNING* (1987); Richard K. Neumann Jr., *Donald Schoen, The Reflective Practitioner, and the Comparative Failures of Legal Education*, 6 CLINICAL L. REV. 401 (2000).

31. Neumann, *supra* note 31, at 404-17.

student's experience, including work-style of the supervisor, inter-personal relationships between co-workers, the politics of the institution, and observations about the speed, fairness, and efficiency of the adjudicative process. The student should further note the way that the student's own personal, political, and social values relate to the way the courts work. Students should continuously be encouraged to verbalize what they are learning.

IV. THE CASELOAD

An intern may/should initially inquire into the types of cases the court hears and the volume of the cases. This requires 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 state statutes.³³ Those statutes may introduce the law-equity distinction.³⁴ Statutes concerning 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 both final and non-final judgments of designated lower courts and agencies.³⁶ Statutes may also provide for appeals by writ of error or other prerogative writs.³⁷

The course might likewise review concepts from civil procedure, including jurisdiction over parties, and service of process on those present within the state as well as those subject to long-arm statutes.³⁸ The concepts of in personam, in rem, and quasi-in-rem may be addressed. State and federal courts are also limited by venue statutes, which are applied to criminal cases. Venue of state courts may indeed be specifically limited to particular municipalities.

The state and federal judicial systems can be compared, and the reasons behind the perceived need for additional lower federal courts can be explored. The difficult issue of the distinction between Article I courts and Article III

32. See generally JACK H. FRIEDENTHAL ET AL., CIVIL PROCEDURE (1999).

33. See generally DELMAR KARLEN, CIVIL LITIGATION (1978) (presenting comprehensive picture of the civil courts); Edson R. Sunderland, *Problems Connected with the Operation of a State Court System*, 1950 WIS. L. REV. 585 (introducing wide variety in state court systems).

34. GEOFFREY C. HAZARD & MICHELE TARUFFO, AMERICAN CIVIL PROCEDURE: AN INTRODUCTION (1993) (explaining law-equity distinction).

35. *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568 (1985) (allowing private rights of action vested in administrative agencies as long as Article III review available).

36. DANIEL JOHN MEADOR & JORDANA SIMONE BERNSTEIN, APPELLATE COURTS IN THE UNITED STATES (1994).

37. *Id.* at 49 (stating many states allow writs of mandamus, certiorari, and coram nobis as substitute to notice of appeal).

38. See generally JOSEPH GLANNON, CIVIL PROCEDURE: EXAMPLES AND EXPLANATIONS (2001).

courts can be specifically assigned to interns for magistrates and bankruptcy judges.³⁹

Caseload statistics for each of the courts and their changes give interesting perspectives into the law. For instance, the United States courts' web site publishes extensive statistical information on the courts.⁴⁰ Intern supervisors should encourage students to visit these sites and draw conclusions from recent caseload trends. The 2001 report, for instance, discloses that 317,996 cases were filed in 2001, a drop of two percent from the previous year. Of these, 63,473 were criminal cases, in which drugs, firearms, fraud, and immigration predominated. The civil docket was mainly comprised of personal injury, prisoner petition, civil rights, and social security cases. Bankruptcies were up by 0.5 percent in 2001, totaling 1,307,857. Further, 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 ninety-two million new state court filings in 2001. Trends show increases in every major field since 1984: 66 percent in juvenile, 79 percent in domestic, 46 percent in criminal, and 30 percent in general civil.⁴¹

V. APPLICATION OF PROCEDURAL RULES

The rules of civil and criminal procedure as well as any specific rules of the particular court govern the processes of adjudication. Trial courts apply rules of evidence comparable to the federal rules. Questions involving expert testimony⁴² and *Daubert*⁴³ are common. Objections to testimony and offers of proof are decided in rapid-fire fashion.

39. *United States v. Raddatz*, 447 U.S. 667 (1980) (holding magistrate may hear motion to suppress); see also Martin H. Redish, *Legislative Courts, Administrative Agencies and the Northern Pipeline Decision*, 1983 DUKE L.J. 197 (1983).

40. See *Wiretap Reports*, at <http://www.uscourts.gov/statisticsalreports.html> (last visited Apr. 1, 2003).

41. National Center for the State Courts, *Examining the Work of State Courts, 2001: A National Perspective from the Court Statistics Project*, at 10. Individual state reports may be more useful. See *Annual Report on the State of the Massachusetts Court System: Fiscal Year 2000*.

42. See generally FRIEDENTHAL ET AL., *supra* note 33; see also Mirjan Damaska, *Presentation of Evidence and Factfinding Precision*, 123 U. PA. L. REV. 1083 (1975) (noting meaning of truth and falsehood in adversarial process).

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

A court manages its calendar through motion sessions⁴⁴ and pre-trial conferences.⁴⁵ Motions to dismiss⁴⁶ and for summary judgment⁴⁷ are usually accompanied by briefs and affidavits in which the arguments frequently turn on highly contested questions of law. Judges often like to rely on bench memos for the argument. Other motions to amend pleadings,⁴⁸ to join parties,⁴⁹ or to extend times require careful application of procedural rules.⁵⁰ Discovery motions⁵¹ demonstrate the difficulties of the fact finding process. Judges may further encourage settlement at these motion hearings. Courts utilize collection procedures to enforce money judgments.⁵² These may include attachment,⁵³ garnishment,⁵⁴ and sequestration, which are often enforced by other offices at the courthouse like the court clerk and the sheriff.

The institutions and procedures for the enforcement of criminal law are on clear display at the courthouse. The Fourth,⁵⁵ Fifth,⁵⁶ and Sixth Amendments⁵⁷ are applied daily by the courts. Plea bargains are presented to the court.⁵⁸ Sentencing may be strictly imposed and limited by guidelines, or given wide discretion, and the merits of each system can be debated and discussed.⁵⁹ Sentencing reports are prepared by a probation department and used by the sentencing judges. Court officers, sheriffs, and corrections officials participate in handling incarcerated persons. Incarceration in a state or federal system can differ greatly. Further, the particular difficulties inherent in the disposition of juveniles have generated a vast literature.⁶⁰

44. Many courts schedule as many as twenty-five motions arising out of twenty-five 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.

45. FED. R. CIV. P. 16. In these informal sessions lawyers meet with the court to plan trial and procedural matters. *Id.*

46. FED. R. CIV. P. 12.

47. FED. R. CIV. P. 56.

48. FED. R. CIV. P. 15.

49. FED. R. CIV. P. 19.

50. Maurice Rosenberg, *Devising Procedures that Are Civil to Promote Justice that Is Civilized*, 69 MICH. L. REV. 797 (1971).

51. FED. R. CIV. P. 37 (dictating sanctions for failure to comply with procedural rules).

52. See generally JOHN J. COUND ET AL., *CIVIL PROCEDURE, CASES AND MATERIALS* (2001); see also Arthur A. Leff, *Injury, Ignorance and Spite—The Dynamics of Coercive Collection*, 80 YALE L.J. 1 (1970) (analyzing transactional costs in collections).

53. *Mitchell v. W.T. Grant*, 416 U.S. 600, 618-20 (1974) (entitling judgment creditor right to a hearing before sequestration).

54. *Snaidach v. Family Fin. Corp.*, 395 U.S. 337, 341-42 (1969) (holding notice and opportunity to speak must precede wage garnishment).

55. *Mapp v. Ohio*, 367 U.S. 643, 660 (1961) (suppressing evidence seized in violation of Fourth Amendment).

56. *Miranda v. Arizona*, 384 U.S. 436, 498 (1966) (suppressing confessions made without warnings).

57. *Nix v. Whiteside*, 475 U.S. 157 (1986) (discussing ethical limitations on defense counsel).

58. *Bordenkircher v. Hayes*, 434 U.S. 357, 361 (1978) (detailing use of duress in plea-bargaining).

59. *Solem v. Helm*, 463 U.S. 277 (1983) (discussing Eighth Amendment limitations on life sentences).

60. See generally HELENA P. VON PFEIL, *JUVENILE RIGHTS SINCE 1967: AN ANNOTATED, INDEXED BIBLIOGRAPHY* (1974).

The typical clerks' office plays an important role in judicial administration.⁶¹ Clerks are often responsible for the issuance of summons, subpoenas, bench warrants, provisional writs and other process. They are often responsible for the assignment of cases and motions.⁶² Observing 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 the delay,⁶³ the efficiency⁶⁴ of the courts, the alienation they cause,⁶⁵ their limitations,⁶⁶ and various proposals for court reform.⁶⁷ Ultimately, how sensible is all of this?⁶⁸

VI. THE JUDGE

The student intern studies the judge.⁶⁹ The judge can invite 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 the presentation made to the court by the advocates. The judge may also ruminate with the intern (and

61. DOROTHY W. NELSON, *JUDICIAL ADMINISTRATION AND THE ADMINISTRATION OF JUSTICE* (1974).

62. DELMAR KARLEN, *JUDICIAL ADMINISTRATION: THE AMERICAN EXPERIENCE* (1970).

63. MAURICE ROSENBERG, *COURT CONGESTION: STATUS, CAUSES AND PROPOSED REMEDIES*; EDWARD L. BARRETT, *CRIMINAL JUSTICE: THE PROBLEM OF MASS PRODUCTION*, reprinted in HARRY W. JONES, *THE COURTS, THE PUBLIC, AND THE LAW EXPLOSION* (1965); see also John M. Greacen, *What Standards Should We Use to Judge Our Courts?*, 72 *JUDICATURE* 23 (1988).

64. Richard A. Posner, *An Economic Approach to Legal Procedure and Judicial Administration*, 2 *J. LEGAL STUD.* 399 (1973) (using tools of economics in judging court efficiency).

65. Jerry L. Mashaw, *The Supreme Court's Due Process Calculus—Three Factors in Search of a Theory of Value*, 44 *U. CHI. L. REV.* 28 (1976) (suggesting need for litigants to participate in process).

66. Lon L. Fuller, *The Forms and Limits of Adjudication*, 92 *HARV. L. REV.* 353 (1978) (adjudication provides injection of rationality into human affairs).

67. Roscoe Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 40 *AM. L. REV.* 729 (1906), reprinted in 8 *BAYLOR L. REV.* 1 (1956) (calling for court reform and simplification, as fresh today as almost 100 years ago); see also JEROME FRANK, *COURTS ON TRIAL* (1963) (articulating call for court reform); Jerome Frank, *Are Judges Human?*, 80 *U. PA. L. REV.* 17 (1931) (debunking judging from realistic perspective).

68. Arthur A. Leff, *Law and*, 87 *YALE L.J.* 989 (1978) (providing 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. *Id.*

69. As a final paper in my course, students must write a study of their judge. This study should explore questions such as: 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, the student must evaluate the judge's skills, job satisfaction, self-image, frustrations, accountability, etc. Further, students evaluate how judges rose to their present position and where they might go next. Also explored is how much do they earn and what kind of hours do they put in; do they relate to the larger bar establishment; and are they friends with the other judges in the courthouse? Finally, how does the student respond to all of this—is this the kind of 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. Thus, the use of judgment and discretion is necessary.

other law clerks, at times) as to what the conflicting policies, principles and considerations are, and, ultimately, how to decide the matter before the court. The manner in which a judge decides a case generates many questions and, thus, is one of the most discussed jurisprudential questions in all of American law.⁷⁰ Does the judge approach a case with an open mind?⁷¹ Does he or she have pre-conceptions that affect the decision? Does the judge have some kind of felt sense of justice that he or she applies in most cases?⁷² Does the judge make a sincere attempt to follow the law?⁷³ What about the principals of equity, or of cost-benefit?⁷⁴ Is the judge a stickler for procedure or does he or she liberally grant waivers or time extensions?⁷⁵

What are the unspoken values of the court? Does the judge ever consult the Code of Judicial Ethics?⁷⁶ Have attorneys ever sought his or her disqualification?⁷⁷ If so, why? How did the judge react to the motion?⁷⁸ 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?⁷⁹ What about juries and the judges relationship to juries?⁸⁰

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 in assisting the court to function smoothly? How do politics influence the court? Was the judge appointed? If so, by whom? And why? If elected, what were the issues?⁸¹ What are the merits and

70. See generally Edward H. Levi, *An Introduction to Legal Reasoning*, 15 U. CHI. L. REV. 501 (1948); RUGGERO J. ALDISERT, *THE JUDICIAL PROCESS* (1996) (discussing materials on judicial reasoning process).

71. Henry J. Friendly, *Reactions of a Lawyer—Newly Become Judge*, 71 YALE L.J. 218 (1961) (characterizing reasons behind decisions as tricky business).

72. See generally Alex 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).

73. Martin Shapiro, *Toward a Theory of Stare Decisis*, 1 J. LEGAL STUD. 125 (1972) (using communications theory to investigate validity of stare decisis); Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 COLUM. L. REV. 527 (1947) (deciphering statutory interpretation).

74. Maurice Rosenberg, *Judicial Discretion of the Trial Court, Viewed from Above*, 22 SYRACUSE L. REV. 635 (1971).

75. Thurmond Arnold, *The Role of Substantive Law and Procedure in the Legal Process*, 45 HARV. L. REV. 617 (1932) (positing judges as bureaucrats).

76. See generally MODEL CODE OF JUDICIAL CONDUCT (1990).

77. *Id.* Canon 4 concerns common conflicts that may be raised in a recusal motion.

78. Gail Diane Cox, *Conduct Injudicious*, NAT'L L.J., Apr. 22, 2002, at 1 (surveying annual worst courtroom behavior by judges).

79. FED. R. CIV. P. 52.

80. See generally Walter W. Steele & Elizabeth G. Thornburg, *Jury Instructions: A Persistent Failure to Communicate*, 67 N.C. L. REV. 77 (1988).

81. See *Republican Party of Minnesota v. White*, 122 S. Ct. 2528, 2534 (2002). Here, the Court invalidated a provision of the Code of Judicial Ethics that prohibited comment by a candidate for judicial office on "disputed issues of law or politics." *Id.*

liabilities of the two systems?⁸² 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, if so, what is the agenda? Does the judge have extra-judicial roles, as hospital board member, or little league coach? The goal here is to humanize the process and to show that judges and courts are influenced by the same factors that influence other institutions in society.

VII. THE LAWYERS

The intern typically will have the opportunity to observe hundreds of lawyers who come before the court. The supervisor should attempt to pique the curiosity of the intern in this regard. Who are the lawyers who appear before the court? If the court has a large criminal docket, many prosecutors and defenders are likely. Thus, questions arise: Who is the prosecutor⁸³ 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.⁸⁴ What kinds of budgetary constraints do these offices have and how does that affect trials?

What are the characteristics of other litigators? If the court has a large personal injury docket, what are the differences between the plaintiff's bar and the defense bar?⁸⁵ How does the contingent fee system play out in court? What are the practice settings of the lawyers? Are they solo practitioners?⁸⁶ Big firm lawyers?⁸⁷ Government lawyers?

82. See generally 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 CAP. U. L. REV. 625 (2002).

83. See generally JAMES B. STEWART, *THE PROSECUTORS* (1987) (providing insider account of prosecution at Justice Department during Reagan administration).

84. See generally JAMES J. KUNEN, *HOW CAN YOU DEFEND THESE PEOPLE* (1983); MARTIN GARBUS, *READY FOR THE DEFENSE* (1971); SEYMOUR WISHMAN, *CONFESSIONS OF A CRIMINAL LAWYER* (1981).

85. See generally Gerard J. Clark, *American Lawyers in the Year 2000: An Introduction*, 33 SUFFOLK U. L. REV. 293 (2000) (surveying profession).

86. See generally JEROME CARLIN, *LAWYERS ON THEIR OWN: A STUDY OF INDIVIDUAL PRACTITIONERS IN CHICAGO* (1962); PHILIP C. WILLIAMS, *FROM METROPOLIS TO MAYBERRY: A LAWYER'S GUIDE TO SMALL TOWN LAW PRACTICE* (ABA General Practice Section, 1996); JOEL HANDLER, *THE LAWYER AND HIS COMMUNITY: THE PRACTICING BAR IN A MIDDLE-SIZED CITY* (1967); Jill Schachner Chanen, *Movin' to Main Street: How to Leave a Big City Firm and Set up a Small Town Practice*, 86 A.B.A. J. 90 (2000).

87. See Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871 (1999) (detailing negative appraisal of life of associates in large firm); see also ERWIN O. SMIGEL, *WALL STREET LAWYERS* (1964); JOSEPH C. GOULDEN, *THE SUPERLAWYERS* (1971); JAMES B. STEWART, *THE PARTNERS* (1983).

What kind of tactics are most successful in influencing the court? What tactics offend the court?⁸⁸ What about the calls by the organized bar to promote civility among lawyers?⁸⁹ How often does the judge feel it necessary to control the behavior of lawyers that appear in court? Is Rule 11 or some similar sanction imposed?⁹⁰ If so, how freely? Against whom? And for what infractions?⁹¹ The interplay between the bench and the bar is a dynamic and multi-layered phenomenon; the intern should study it diligently.

VIII. THE LITIGANTS

Finally, what are the characteristics of the litigants? Statistics have shown the criminal defendant will be overwhelmingly poor, between eighteen and twenty-five years of age, and minority.⁹² The female defendants will often be charged with shoplifting or prostitution. The involvement of drugs⁹³ and alcohol is also common. 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.⁹⁴

Pro se litigants present distinctive difficulties, especially in family law cases. An understanding of the cost of a lawyer and the income necessary to pay that cost can be learned as well. Courts also interact with the mentally ill.

Who are the repeat players in the civil courts? Banks, credit card companies,⁹⁵ municipalities, and hospitals bring many collection actions.⁹⁶ Insurance companies frequently represent defendants. Unions enforce their rights. Manufacturers defend their products.

88. William H. Simon, *The Ideology of Advocacy*, 1978 WIS. L. REV. 29 (1978) (establishing neutral partisanship as proper role for lawyer).

89. ABA Comm'n on Professionalism, "... In the Spirit of Public Service:" *A Blueprint for the Rekindling of Lawyer Professionalism* (1986), reprinted in 112 F.R.D. 243 (1986) (suggesting civility has declined in bar and needs renewal).

90. FED. R. CIV. P. 11.

91. Stephen R. Rippes & John N. Drowatzky, *Federal Rule 11: Are the Federal District Courts Usurping the Disciplinary Functions of the Bar?*, 32 VAL. U. L. REV. 67 (1997).

92. See generally, ANDREW VON HIRSCH, PAST OR FUTURE CRIMES: DESERVEDNESS AND DANGEROUSNESS IN THE SENTENCING OF CRIMINALS (1987).

93. Panel Discussion, *The Drugging of the Courts: How Sick Is the Patient and What Is the Treatment?*, 73 JUDICATURE 314 (1990).

94. MICHAEL J. HINDELGANG ET AL., VICTIMS OF PERSONAL CRIME: AN EMPIRICAL FOUNDATION FOR A THEORY OF PERSONAL VICTIMIZATION (1978).

95. See Elizabeth Warren, *A Quiet Attack on Women*, N.Y. TIMES, May 20, 2002, at 23. This article suggests that recent reforms advocated for bankruptcy court will discriminate against women who use Bankruptcy Court more often than men.

96. See generally Marc Galanter, *Why the "Haves" Come out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC'Y REV. 95 (1974) (positing litigation favors repeat players).

IX. CONCLUSION

Judicial internships are an underutilized resource available to the nation's law students. Calls for injecting realism into legal education are by no means new. It is difficult to overstate the value of the opportunity to observe, at very close range, the activities of a decision-maker who is daily on the front lines, attempting to resolve the disputes produced by our complex society. Judges welcome students. Law schools need to do more to organize and institutionalize these opportunities.