THREE PERSPECTIVES OF THE LAW: ADVICE TO THE YOUNG LAWYER

INTRODUCTION

In a recent issue, the National Law Journal profiled two judicial opinions as significant. In the first, the Eighth Circuit Court of Appeals affirmed a search and seizure case out of the Western District of Missouri and, in the second, the United States Supreme Court resolved an important issue of statutory authority and interpretation. The judgment affirmed in the first case had been rendered by my brother, United States District Court Judge Gary A. Fenner. The head lawyer of the federal agency involved in the second case was my other brother, Robert M. Fenner. The article mentioned no names, so only the three of us—Gary, Bob, and myself—noticed this distinction.

The harbinger of spring for law faculty at Creighton University is when the newly elected editorial board sends representatives to the faculty offices in search of publication ideas. Last spring’s editor-in-chief, Ashleigh Bausch, and lead-articles editor, Mara Glaser, knew of my brother Gary because he regularly interviews at Creighton for clerks and he has sat on the panel judging the final round of our moot court tournament. Ms. Glaser, having clerked with a law firm in the District of Columbia, knew of my brother Bob. When this annual search for ideas became theirs, they discussed with me the unique situation in which my brothers and I find ourselves: Three brothers, the first lawyers in their family, who, by some measures, are at the top of their profession: the head lawyer for a federal regulatory agency; a federal district court judge; and a law professor: Three brothers who each ended up practicing law, in three diverse aspects, and each of whom could hardly be happier with his work.

The editors thought there might be something of value (perhaps even of interest) in our stories. Something about how the law offers unlimited opportunities for those who are willing to take advantage of them, and how my brothers and I evidence that hope. Something about the law being a rewarding profession still today. Something about what advice the three of us might be able to offer law students and young lawyers at the front end of the profession. They asked us to write, and we did, and here it is. Three short pieces by two of the best lawyers I know, and me.

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Paris, France
In my final year of college I had to give some serious consideration to what I was going to do next in my life. I am not a person who always wanted to be a lawyer. To the contrary, I thought that I would most likely pursue some kind of business career. However, as I approached my undergraduate degree, I had to seriously look at my options. At that point in time my brother Mike was in his third year of law school. Mike had done well in law school and seemed to enjoy the law. Mike was the single biggest influence in my decision to enroll in law school. If Mike had not pursued a legal career, I doubt that I would have either. I am very appreciative for Mike’s influence on me in this regard. I have been fortunate to have a very satisfying career and I have thoroughly enjoyed every position that I have held as a lawyer.

Even though I had somewhat of a late start in my goal of becoming a lawyer, I believe that it is extremely important that people set goals for both for the short term and the long term in regard to what they hope to accomplish. The goals you set should be realistic and attainable. Your goals should reflect what you want, not what you think someone else wants for you. Everyone has different influences and responsibilities in their lives and what is best for one person is not necessarily going to make someone else happy. I believe that you need to give serious thought to what you would like to do and then, as importantly, plan how you can go about getting there. Do not be afraid to take chances and be flexible in working toward your goals. If one approach does not work, try something else. A lot of people will give up when things get difficult. If you persevere, you will have an advantage over many of the people with whom you will be competing.

My first job as a lawyer was as an Assistant City Attorney in my hometown of St. Joseph, Missouri. The job available was as a trial lawyer, which is something that I did not think I would want to do while I was in law school. In law school the responsibility and pressure of being a trial lawyer seemed much too frightening. Nonetheless, that was the job I ended up taking and as an Assistant City Attorney I was trying cases on a regular basis. I discovered that I very much enjoyed trial work.

When I first went to work in the City Attorney's Office, I was assigned to prosecute the City's Municipal Court cases. Needless to say, Municipal Court was not anything like law school, but it was a good lesson in human nature and it did allow me to become very comfortable appearing in court.

One day a defendant was entering a plea of guilty in Municipal Court for a sentence of time served. The defendant was expressing his remorse for the conduct which brought him before the judge and was attempting to very sincerely advise the judge that he had learned his lesson and that he would not engage in any further criminal conduct. The judge accepted the plea and sentenced the defendant to time served, directing the jailer to return the defendant to jail to be released. This particular case was my last one for the day and I was gathering my belongings to return to my office when I was not able to find my gloves. After searching the courtroom in vain, it dawned on me that possibly the defendant was not as sincere in his repentance as he had represented to the judge. I looked out the window of the courtroom and saw the defendant walking back to the jail wearing my gloves. I retrieved my gloves and, fortunately for him, the defendant never appeared in Municipal Court again.

My Municipal Court experience was a good introduction to the courtroom, but the cases became routine very quickly. I was relieved to be assigned to try circuit court cases after nine months in Municipal Court. In the following two and one-half years, I handled the City's Circuit Court litigation. This was a real sink or swim assignment with responsibility for very significant litigation for someone less than a year out of law school. Fortunately, I survived and learned a great deal about trying law suits in a short period of time.

While I enjoyed my position with the City, the pay and opportunities for advancement were limited. I knew that I had to think about where I really wanted to go in my career and what I had to do to get there. I tried to assess the opportunities available to me, along with my talents and abilities and what I believed I would find satisfying.

After leaving my job with the City, I was in private practice in St. Joseph in a small three lawyer office. At the time I left the City Attor-
ney's Office, I was also successful in being appointed to the St. Joseph City Council. One of the council members had been elected to the Missouri State Legislature and the vacancy was filled by appointment from the remaining eight council members. Part of my job responsibilities with the City had been to act as legal advisor to the City Council. Therefore, I was well known by the City Council. I made my interest in the vacancy known and I was successful in gaining the support of the majority of the remaining council members for the appointment. When my term on the City Council was about to expire, I had to decide whether I wanted to seek election to the City Council or do something else. I knew I enjoyed politics and trial work, and in 1978, I decided to seek election to a position as a Missouri State Circuit Judge. I was successful in that effort and I was re-elected as a Circuit Judge in 1982.

As a Circuit Judge, I had general jurisdiction over criminal and civil matters. I served as a Circuit Judge in St. Joseph for ten years until 1988. My most notable trial as a Circuit Judge was a matter that came to me in St. Joseph on a change of venue from St. Louis, Missouri. In this particular case the State was seeking the death penalty against a reputed mob boss from St. Louis. The case involved a car bombing that had received a great deal of publicity in the St. Louis area. In this particular case, two mob factions were at war with each other and there had been a series of car bombings. This was my first experience with the need for extremely tight security in a trial. There had been death threats against several of the witnesses in the case who were in the federal witness protection program. The courthouse was searched every morning by bomb sniffing dogs and metal detectors were erected at the entrance to my courtroom to screen everyone entering the courtroom. This was a very interesting and difficult case, as is any death penalty prosecution. During the course of the jury deliberations, there were two bomb threats against the jury. The jury returned a verdict of guilty and recommended a penalty of life imprisonment. The case was affirmed on appeal.

In another case that I will never forget, I was presiding in a divorce proceeding when the defendant became upset with my decision and as he left the courtroom pulled a revolver out of his boot threatening to shoot me. Fortunately, I had extra security in the courtroom because of my concern about the defendant's past behavior. The deputies present in the courtroom were able to take the gun from the defendant before anyone was hurt. The State then brought criminal charges against the defendant for attempted assault on me. The defendant went to trial and was ultimately convicted and sentenced to serve a year in the county jail. The criminal proceeding placed me in the position of being the victim in a criminal case, which I believe
helped me to better understand the frustration and anxiety that victims have to deal with in the legal process.

In 1988, I was appointed to the Missouri Court of Appeals.\textsuperscript{1} I served as a judge on the Missouri Court of Appeals for eight years writing hundreds of opinions in both civil and criminal cases. I enjoyed writing opinions and received a lot of satisfaction from being faced with some very complex problems that I was able to resolve. I found that if I would focus on one issue at a time, I was able to work my way through even the most difficult of cases. There was also a tremendous amount of satisfaction in knowing that your opinions held precedential value.

Next, in 1996 I was appointed to my current position as a District Judge for the United States District Court for the Western District of Missouri. The selection process for the federal judiciary was a very long and difficult process for me. When President Clinton took office in 1993, there were two vacancies on the Federal District Bench for the Western District of Missouri. Because there was no Democratic Senator from Missouri, the three Democratic Congresspersons from Missouri, whose districts were within the Western District of the Federal Judiciary, named a nominating commission to take applications and select six individuals for consideration. Once the six individuals were selected, the three congresspersons were unable to agree on two individuals to be nominated and all six names were submitted to the White House for the President to make the final selection. My name was one of the six submitted in June of 1993. That was the beginning of the long process which finally ended with my appointment in July of 1996. Without a strong will to persevere, the support of my brothers and many good friends, I never would have been able to achieve my goal of being appointed to the Federal District Court. Because I consider myself fortunate to have accomplished many of my goals, I would like to share some of the things that I believe help people reach their goals.

I believe that once you decide what you hope to accomplish, that there are some basic things that you need to help reach your goals: 1) education and the ability to do well; 2) motivation to work as hard, if not harder, than others with whom you have to compete; 3) willingness to take calculated risks; 4) fairness in your dealings with other people and the ability to treat others with consideration and respect; and 5) the good fortune of being in the right place at the right time.

\textsuperscript{1} In Missouri, trial judges are elected except for the trial judges in St. Louis, Kansas City, and a few other counties. Judges on the Missouri Court of Appeals and the Missouri Supreme Court are nominated by a selection panel and appointed by the Governor. This process for nomination and appointment is known throughout the country as the Missouri Plan, although not all judges in Missouri are selected by this process.
Education and Ability

Education opens doors for you and distinguishes an individual as a person of ability and perseverance, both of which are important attributes in the work force. By enrolling in and completing law school, an individual exhibits that he or she has the ability to compete and succeed. It is also important to recognize the need to constantly improve your education and to help yourself through the experience and knowledge of others. The law is constantly evolving and you have to be self-motivated to continue your education throughout the course of your career. Your education as a lawyer will never end. You will be constantly challenged and your knowledge of the law will grow with every task you undertake.

Motivation

Most students have worked hard and sacrificed a lot to be in law school and in that sense law students have already established themselves as individuals who are willing to work for what they want. That sense of motivation and commitment is extremely important in the work force. There is no substitute for hard work to make yourself stand out. If I was not always willing to work as hard or harder than my peers, I would not have accomplished half of what I have in my career. Life is full of choices. You have to choose what is important to you and then be willing to work hard for what you want. It is equally important to balance your work with the rest of your life, but you have to be willing to give any job you undertake your best effort if you want to succeed and get ahead.

Risks

Almost any new job, job change or promotion that you consider comes with some risk. If you are working toward a goal you have to be willing to take calculated risks. You will always wonder if a new job or promotion will work out. Will you be successful and will you enjoy what you are considering doing? You will be the best judge of those decisions, but if you are afraid to take chances you will not be able to go as far in whatever you choose to do. You have to accurately assess your strengths and weaknesses and determine where it is best for you to apply yourself.

Treating Others with Consideration and Respect

No one can accomplish anything by themselves. You have to have the support and help of the people around you, namely your family, your friends, and your fellow workers. What people think of you, how
they react to you, and whether they like and respect you, makes all the difference in regard to how successful you will be. If you are fair with the people you come into contact, they will generally be fair with you, they will want to help you, and they will help to promote your interests. If you give people reason to distrust and dislike you not only will they not go out of their way to help you, but many of them will want to see you fail. People can be your biggest ally or your worst adversary and to the greatest extent it depends upon how you treat them. You should always treat people with respect, regardless of their position or stature in life. If you do, I believe that you will be rewarded both personally and professionally.

RIGHT PLACE — RIGHT TIME

In addition to everything else, you have to have a certain amount of luck in whatever you pursue. You have to be applying when the job you want is open. You have to have the experience and training required when the promotion you want becomes available and oftentimes you have to have the right chemistry with the person who is making the decision. Generally, when I am hiring a new employee, I can narrow the field to 3 or 4 applicants any one of whom I believe to be well suited for a given position. From that point, I just have to decide which one I have the best gut feeling about.

CONCLUSION

I hope that my reflections are of some interest and help to you as you look ahead to what I am confident will be a rewarding and fulfilling career. When I graduated from law school, I was most interested in a position with a private law firm in St. Joseph, but the opportunities that I sought were not available to me at that time. Nonetheless, by working hard and taking advantage of the opportunities that did present themselves to me, I have been fortunate to be successful in the matters that I have pursued. Remember that if one thing does not work out, there will always be other opportunities. It is important for you to remain positive and confident.
I was talking with two economist friends recently when one asked if we had seen the recent news articles on two far away galaxies that are about to collide. Before I could respond, the other said “Yes, and I understand that with the Hubble telescope on maximum resolution, you can just make out the lawyers rushing to the crash site.” Tolerating the latest lawyer jokes from friends is definitely not one of the reasons I entered this profession. However, one thing I have learned after over twenty years of rewarding but hard work, and countless pressure filled days, is the importance of finding things to laugh about, even when it is at my own expense.

I am the youngest of the three brothers. I think that circumstance was good training for my job as General Counsel of a Federal agency with an independent three member board. In fact, as I think back on childhood memories, I see a connection with each of our career paths. Mike is the oldest. He liked being the oldest, and believing he was “in charge.” He was very smart and worked hard. He had that sense of self-assurance that often comes with being the oldest sibling. I never resented it, in fact I looked up to him. In a sense, I was his first student. Now he is a law professor. Gary, the middle brother, was the wise one. He knew what to do and say in any situation. Being in the middle, he learned to compromise, but he also knew when to make a decision and stand by it. Now he is a Federal judge.

When asked what led me to my career path, I usually say that I wanted to be a government attorney ever since I was a little boy. The truth, however, is that I chose a career in government service almost by happenstance. When I graduated from law school over twenty three years ago, my neighbor was secretary to the General Counsel of a small Federal agency. There was a staff attorney vacancy, and she told him to hire me. She only recently retired from the same agency where I now serve. While I obviously cannot say that any grand design on my part led me here, I can say that I have no regrets. Public service is an honorable and rewarding vocation. It will not make you rich in the financial sense, but the experience of helping to make public policy, and of seeing the positive effects of an agency that does it job well, is a reward that is priceless. As a side benefit, there is also the fact that you do not have to hustle clients.

Whatever career path one either chooses or happens into in the law, I will offer some common sense advice that, if followed, is guaranteed to lead to success and happiness:

1. Work hard. The Boy Scouts are right. There is no substitute for being prepared. (If “be prepared” is also the Girl Scouts’ motto, then they are right too.)

2. Tell the truth. When you do not know the answer, say so, then find out. When you make a mistake, admit it. Phony answers and excuses do not solve problems, they compound them.

3. Do what your conscience tells you is right and do not worry about the consequences.

4. Know when to step away from work and make time for the people you love. It is way more important than work.

5. Be kind. It is the only way to make this a better world. And as a side benefit, it might help improve the image of our profession.

6. Find things to laugh about, even when it is at your expense. People who laugh a lot are happy people, and otherwise what is the point?
In 1966, I graduated from college unprepared, pretty much, for any occupation for which I was suited. I had had a series of jobs from warehouseman to truck driver, from janitor to dairy-department manager each of which I loved, but none of which could have been a career for me. I faced a choice, a very simple choice: more education or the draft. More education meant continuing one of the things at which I was really good; the draft meant Vietnam. In a way, out of this tragedy, I was lucky: I did not need to find my own direction; John F. Kennedy and Lyndon Johnson provided it for me.

Law school, Vietnam? Vietnam, law school?

The minute I showed up at the University of Missouri-Kansas City School of Law, I knew I was home. I am one of the lucky ones who, sometime early in law school, felt that little pop and thought: “This is for me.” I loved the way lawyers looked at things. I loved the way they thought about things. I loved the respect that people had for the law. I loved the way they could make a difference.

I saw that John Adams had made a difference, that Abraham Lincoln and Atticus Finch had made a difference. Clarence Darrow, Thurgood Marshall, and Robert Kennedy each had made a difference. F. Lee Bailey continues to make a difference. I saw that great social change was led by lawyers, real and fictional, and I could see that this was important work if it was done right.

I was not naïve, not totally, at least: I understood that for every Atticus Finch, there was a prosecutor blinded by racism. For every Thurgood Marshall, there was a lawyer defending the school board’s decision to make black children walk to public school, while the white kids rode busses, busses that would drive right by the African-American kids, on the rainy days splashing mud on them as it passed. For every F. Lee Bailey, there was a prosecutor fueled by nothing more than his own political ambition and are willing to allow the media to run rough-shod over his case, turning the trial into a circus from which only he benefited. I saw that not all lawyers were to be emulated but that every lawyer has the potential to make a difference — for better or for worse.

From the UMKC School of Law I went to Washington, D.C. and to the United States Department of Justice ("DOJ"), to yet another job
that I truly loved. DOJ is an exciting place to be a lawyer. Just ask my brother, Bob, who is the legal counsel for the federal agency that regulates federal credit unions; his job is not unlike my DOJ job, and he has stayed with it as a career. Just ask the many of our graduates working at DOJ today. DOJ is a particularly exciting place to be a young lawyer. I found myself flying all over the country, defending civil actions against the federal government. (I was pleasantly surprised later, after I had taught awhile, to see one of the cases I had handled show up in the Constitutional Law book I was using.)

After my wife Anne and I had our first child — now herself a lawyer in Atlanta — we decided it was time to move from D.C. As a young married couple from Missouri, we did not know how to raise a child in an apartment, and we were not interested in a long commute. But where could I find a job as exciting and rewarding as the one at DOJ? Where could I find a job with the same highs (and lows) and dealing with the same important political issues? Teaching Constitutional Law, that is where. I was, after all, one of the lucky few who actually had been able to practice constitutional law.

I interviewed for a number of teaching jobs and chose Creighton. My wife and I liked the location: near our parents, but not too near. The city was the right size city for the kind of life we wanted to lead (and someone lied to us about the weather). We also liked the people associated with Creighton — we were recruited by people like Rodney Shkolnick and his wife Lois — and their commitment that the primary job of a teacher is to teach and that the teacher's primary responsibility is to his or her students. To me, that was important. This is a concept that has always made sense to me: teachers are paid to teach. I was joining a faculty that liked its work, and that liked each other. Warren Buffett has said that each day when he arrives at work he feels like tap dancing. I was joining a faculty of tap dancers.

I have never had a job that I did not love. I am blessed that way, and I think my brothers would say the same thing. It must be one of the things passed on to us from our parents. I am not sure whether the gift is simply the love of whatever it is you happen to be doing — an ability to see the value in every job — or the gift of being able to know what it is you love, and to pursue that. But I do know this: one of the great lessons I have learned is that we do have time in this life, and we choose how to use it. We can use it well, or we can use it poorly and the responsibility for how we use it is no one's but our own.

I have also learned this about how to use that time: pursue what is it that you like doing. If you are doing work that you do not love, do other work. If you are not energized by writing, then do not be a writer; if you are not excited by teaching, then by all means do some-
thing other than teach; if you must drag yourself out of bed and into your law office, then do not drag yourself into your law office, dance your way into somewhere else. As Joseph Campbell put it: "Follow your bliss."

Follow your bliss and, in the process, treat those you encounter with respect. Follow that golden rule in any career, the law included; never forget to treat every client as you would want to be treated yourself. Law is a business and, if you follow that rule, your business will be better, and you will be happier. Besides, you never know which student will someday come to you with a terrific opportunity to consult on a major, novel, and terribly important First Amendment issue; or who will end up the Supreme Court; or what opposing counsel may be someone from whom you will need a favor somewhere down the line. If I can recall the quotation correctly, this part of my advice is this: ‘Do unto the least of my brethren as you would do unto Me.’

I have said that I have never had a job I did not love. It is also true, however, that I have never had a job I loved as much as the one I have now: Professor of Law at Creighton University. Here are some of the things I love about it:

1. Making new friends. Each year I meet a new group of intelligent, thoughtful new students, some of whom remain friends for life.
2. Having colleagues I respect and look forward to seeing each day.
4. Making a difference in the law, here and there. Being cited by the Nebraska Supreme Court. Working up a book of pattern jury instructions for use in civil cases throughout the State of Nebraska. Handling a case, or assisting someone with a case, that raises important constitutional issues, or an important point of evidence law, and affecting the law without getting a citation out of it.
5. Having the luxury to think about the things in the law that interest me. Imagine the fun of being able to spend weeks at a time thinking about hearsay, for example.
6. Teaching. Just the joy of standing up there and teaching.
7. Also, of course, I like this about it: Sabbaticals. This semester, I am on sabbatical. As I write this, my wife and I are on a nearly six-month stay in France; we have an apartment in Paris. (We extended a hand to someone once, with no thought that there was anything in it for us but extending our hands, and here we are at his mother’s apartment in Paris.)
My brother, Gary is a United States District Court judge; he thinks that is a pretty good job. My brother, Bob is the head lawyer for an entire federal agency; he thinks that is a pretty good job. I am a law professor; I think that is a pretty good job. All three of us are right. All three of us love our work; and all three of us have jobs where we do make a difference (for better or for worse). We each have found careers we love, and have been successful at them. If it is a competition, however, then to my brothers I say: Ce semestre, je suis le gagneur. Au revoir!