

TRUE PROFESSIONALISM:

SHAPING YOUR MIND FOR LEGAL PRACTICE

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The single most important thing that a graduating law student should carry with them into the legal profession is the right attitude. This attitude is captured by the words "true professionalism". Those words are easy to say, but what do they mean exactly? And, going back one step, why do I think this is so?

Taking the second question first, it is necessary for you to appreciate that my belief is grounded in the nature of my own experience as both a law student and a lawyer. Legal studies offer a wonderful diversity of potential experiences and a broad range of possible careers. It follows that there will be a range of different beliefs about "the single most important thing". So it might help you to understand why I hold the belief that I do if I should try to lend a little context by saying something about my own experiences and career to begin with.

Time and Place

I studied towards a Bachelor of Economics/Bachelor of Laws at the Australian National University in Canberra. I then took up Articles of Clerkship at a medium sized, long established Melbourne firm, J.M. Smith & Emmerton. After 12 months as an articulated clerk, I was admitted to practice as a solicitor and stayed on at the firm. I worked with the same firm for more than 12 years – at all levels from articulated clerk through to partner - before making a career change and coming to UNE as an academic lawyer in 2003.

Over those 12 years, I experienced first hand some radical changes in the practice of law. The firm I joined was young and vibrant and felt like something of an extended family. There were eight partners (about half in their early 30's and half in their mid-40's, also with an even split between male and female) and about 30 other staff. We had modern premises high up in the old State Bank building, just across the road from the Melbourne GPO. Before my time, the firm had a more Rumpolean reputation (though excellent in law), with a more patriarchal structure spanning decades and a subterranean office - which was described to me in a way which conjures up images of cobwebbed law reports sitting precariously on groaning shelves. But then there was a "transition" to the younger brigade and things had moved on somewhat by the time I arrived.

By the mid-1990's, the prevailing view was that medium sized city law firms were being squeezed out of the Australian market for legal services. This was reduced to the slogan, "Get Bigger or Go Bust". There was a period where most law firms were engaging in discussions with other firms (both legal and accounting) about mergers and strategic alliances. The rush was on to survive by getting bigger and bigger. The wash-up for our firm was that it gobbled up some smaller practices and joined Gadens Ridgeway in Sydney and other interstate firms to form a national (though not integrated) practice. Soon after, this was re-badged "Gadens Lawyers" (as it still is today). The Melbourne firm later merged with another medium sized, long established city firm, Purves Clark Richards.

So, by 2003, Gadens Lawyers (Melbourne) had about 33 partners and 300 staff, forming part of a national legal group with over 85 partners and 720 staff. This placed Gadens Lawyers firmly within that category known in the market as "Second Tier". (The "First

Tier" legal behemoths are: Mallesons Stephen Jaques, Freehills, Allens Arthur Robinson, Minter Ellison and perhaps Clayton Utz – typically, these have over 200 partners and 600-700 lawyers.)

While "getting bigger" and "going national" were certainly part of a 90's trend, I should note in passing that some medium-sized firms explored other options for survival, for example, by developing expertise in niche areas. Gilbert & Tobin in Sydney is a good example of this, with their widely recognised expertise in telecommunications and information technology law.

All of the above discussion concerns institutional and structural change in the practice of law. But what about the day-to-day work itself? This changed as well. Over time, there was more pressure to bill clients and produce results. Client loyalty was replaced by tender processes. Some would say that firms became more commercially, rather than legally, orientated. I will develop this point further when talking below about professionalism. In the meantime, I should also say something about a recurring cycle, separate from the above more recent developments, which affects what lawyers do, at least in a collective sense.

Lawyers in the context of my direct experience might broadly be divided between commercial lawyers and litigators. The commercial lawyers are the "deal-makers" - largely involved in negotiating and documenting commercial arrangements. Many commercial lawyers never see a courtroom, except perhaps as a witness to a transaction. Their role is more an advisory one – about what can and cannot be done within the law and how to extract the most concessions from the other side through negotiations. This is

sometimes described as "front-end" work. The litigators step in when the commercial arrangements fall apart and there is a dispute ("back-end" work). Litigators advise about, but also engage, the legal battle in a dispute – whether in a mediation or courtroom, and through the steps leading up to these stages. Of course, there is not a truly hard line between the commercial lawyers and litigators. For instance, insolvency, employment or intellectual property lawyers can (and do) apply their special expertise at both front and back-ends. But, generally speaking, firms are organised into practice groups which fall within one or the other of these two kinds of legal work.

The recurring cycle mentioned above reflects the economic cycle. For instance, during booming economic times, the commercial lawyers are in hot demand – with all sorts of business being transacted (mergers, sales etc) and new projects undertaken. During depressed economic times, litigation lawyers become flat out as everybody points the finger at everyone else amidst the smoking wreckage of the economy. The recession of the late 80's and early 90's took quite a few years to be mopped up by the litigators but, by the mid-90's, the commercial lawyers again became "flavour of the month" – and, consequently, the area of most demand for new recruits. Now, though, perhaps with the housing boom punctured and the US economy in deep deficit, the pendulum might be about to swing back again?

So, in summary to this point, my experience and legal career has been somewhat narrow (when viewed against the full range of possibilities) but, in some ways I hope, deep. My experience is confined in many ways to: a commercial (rather than criminal) kind of firm; a city (Melbourne) rather than other cities or the country; a single medium-large firm rather than small or other such firms; acting as a litigator rather than a commercial

lawyer; and to a slice of time comprising the period 1990-2002. So this is where I am coming from.

It seems to me that so much of having a successful career in law is about being in the right place at the right time but, more than that, also being primed and ready to make an upward jump. In one sense, the timing for someone starting off in a legal career really turns upon something outside their control – the need to get a job, now! But in a larger sense, the firms you approach and the legal industry as a whole will be ticking away to their own timepieces – so just be aware of that. And give a good deal of thought about putting yourself into the "right place" for you (whether firm, town, suburb, city, State).

In talking about time and place, David Maister has some useful advice about what sort of time horizon to set yourself:

Few career choices are forever. The choice to be made is not what you want to do with your entire career, but which next challenge would fulfill you...

Successful professionals don't focus on where they want to end up ultimately – few of us are that prescient. Rather, they focus on what they're going to do next...

Don't try to plan too far ahead... Choose something that will be exciting and challenging, and will make you happy for maybe the next few years. The longer term will take care of itself.¹

Apart from positioning yourself in terms of "time and place", the other thing within your control is your capacity to be "primed and ready" to make an upward jump – including the jump from law student to legal practitioner. This is the subject of the next section.

¹ David Maister, *True Professionalism – The Courage to Care About Your People, Your Clients, and Your Career* (1997) 35.

Primed and Ready

Being "primed and ready" to make an upward jump has, I think, two main components: (1) competence (ie sufficient legal skills and knowledge); and (2) the right attitude, which I have described as "true professionalism".

In talking about the competence of graduating law students moving into private practice, I have a view from both sides of the fence. Apart from my own experience making this transition, I am now teaching some later-year law units to undergraduates. I was also involved at Gadens Lawyers in reviewing hundreds of applications and conducting dozens of interviews for article clerkships with the firm. I also know something about how new recruits are looked upon and identified for future career advancement within a firm.

From a law firm's perspective, competence is a given. I mean this in two ways. First, the demand for places with the larger commercial firms is such that only graduates with excellent academic results make it through the first cut. As a general guide only, you should strive to achieve a Distinction average if you want to be in the running. It helps a good deal to be able to say that you have a degree "with Honours", especially of the "1st Class" or "2A" variety. It is because of the high (and even) academic calibre of applicants who make it to interview that employers can afford to focus on other traits in making their final selection (such as attitude and motivation).

Secondly, once a graduate starts off at a firm, a level of competence appropriate for that level is assumed and expected. You are more likely to stand out for acts of incompetence (sometimes jokingly referred to as "CLM's" – career limiting moves) rather than for

doing your job a bit above your employer's expectations. Mostly, incompetence at this level relates closely to deficiencies with writing and research. Predominantly, legal work in these sorts of firms is about writing letters and drafting documents with a great deal of precision. Language is a lawyer's "tool of trade", much as a monkey-wrench is that of a plumber. You should take advantage of the opportunities offered during your degree to achieve a professional proficiency with written expression. The same applies to legal research. Otherwise, these deficiencies will quickly be exposed in practice.

It follows that, if basic competence is pretty much a given, then much turns upon having the right attitude. So, what do I mean by "true professionalism"?

I think there are at least four things - all of which flow from a single source - which perhaps combine to make up this concept. First, such a professional displays openness to learning and new experience. You should do the boring bits of the job cheerfully and with open eyes – always curious and observing how things work (as an articled clerk, for me this involved doing a good deal of photocopying and running deliveries to the Court registry and elsewhere). Do not be too impatient about rising up the ranks. Any sense of arrogance in a newly admitted lawyer is a major turn-off for professional colleagues and support staff.

A major milestone, through your early experiences, is to become conscious of your limitations. This is a step up from the "fearful ignorance" which most of us feel when entering into a whole new world. Once you are so conscious, you are able to judge when (and when not) to seek help. Striking the right balance is vital. If you do not seek help when you should, then matters can go right off the rails very quickly - with disastrous

consequences. On the other hand, if you are forever lingering around your supervising partner for guidance, then this can become a hindrance as well. Partners are too busy to spend their whole time helping new staff with things that they should be able to find out for themselves. This capacity to strike the right balance is valued more highly by those above than you might appreciate. If this is achieved, then you acquire status as having a kind of judgment which can be trusted and relied upon.

Related to this point, you should value the experience that others have acquired and try to tap into it. Once inside a firm, the single most important thing you can acquire is a mentor who takes a personal interest in your career and professional development. With the time-cost pressures which apply now within firms (more than ever before), such mentors are becoming quite a rare species. So from your point of view, the best you can do is to present yourself in a way (set out in more detail below) which sets yourself apart as warranting this kind of special attention. Also, you have to show that you are willing and open to allowing yourself to be mentored. The benefits and insights to be gleaned from this sort of relationship (which I have been lucky enough to have) are simply priceless. This sort of relationship does not develop overnight. In the meantime, you can still learn a great deal (for example) from chatting with a crusty old barrister or solicitor during any old interlude in court proceedings!

Secondly, you should get into the habit of rolling up your sleeves and getting down into the detail of the law and the facts. Cases are frequently won by the side whose lawyers have taken the time and effort to delve deeper into the case. Legal teams are often put together so that the more senior members can focus on strategy and innovative "big picture" solutions, relying upon more junior lawyers to bring into the team an accurate

account of the detail. You must do this thoroughly and well. There are no short cuts here – it is just hard work. You need to display a commitment to "quality" in all of your work. It helps if you have taken this approach to your studies as an undergraduate.

Thirdly, it is vital to preserve your independence and integrity. No matter how much clients may not want to hear it, your role is to give frank and fearless legal advice. You will frequently be tested on this. One reason why I respect my principal mentor so much is that I frequently saw him deliver "no case" advice to the rich and powerful in the face of the most difficult circumstances, where they were so very desperate to sue. The most precious thing you can cultivate within yourself is this sort of detached and independent judgment. This is especially so in the current commercialised context of legal practice.

Related to this is the question of integrity. It is always best to admit mistakes as soon as possible, rather than wait for others to uncover them. Further, there is no sooner way to lose the respect of your peers than dishonesty. In settlement negotiations one day, an opposing solicitor assured me that his client was making a final offer, would not pay a single cent more and would not even consider any further counter-offer our client might wish to put. Two minutes later, his client accepted a much higher counter-offer. At that moment, our barrister turned to me and said that this solicitor had just lost all credibility. The legal world is small enough for people to file these sorts of things away for future reference. Short-term expediency is never worth sacrificing your personal integrity.

Fourthly, you should display the courtesy and respect that people expect of a true professional. Do not fall into the trap of being hyper-critical of legal opponents or anyone else. Over time, you will see that barristers or solicitors opposed to you one

week, may be on the same side as you (but with a different client) the next week.

Another aspect derives from putting the client's interests ahead of personal interests and friendships. For example, I have seen one senior QC battling out in court with an opposing QC - who happened to be the "best man" at his wedding! Such relationships do not intrude into "true professionalism". Opposing clients, sometimes barely restrained from having a punch-up on the steps of the court, often find it difficult to accept watching opposing counsel and solicitors engaging with common courtesy and civility. But it is only through that kind of objective detachment that the client's interests can properly be represented and advocated.

Related to this, it is vital to develop positive relationships – a "network" if you like – generally. This is vital if you are to build your own client base. There is also an "elevator effect" within the profession. For example, as an articled clerk, I recall briefing a struggling junior barrister (he shared a small room in chambers with two others, their three desks pushed together) in a "crash and bash" Magistrates' Court matter. This relationship developed over the years until, quite a while later, as a partner in my firm I found myself briefing this same barrister (now a QC) in a major Supreme Court action. Keep in touch with your friends from Law School. The chances are that you will call them up for one reason or another in a work context (eg to act as an interstate agent), long after you have gone your separate ways. One day, you might even find yourself appearing before one of them as a Judge!

All of the above aspects of professionalism are attitudinal rather than just a "skill set".

To a large extent, the necessary skills and competencies are a product of having the right

attitude in the first place. All of this is probably well summarised by David Maister, when he says:

...real professionalism has little, if anything, to do with which business you are in, what role within that business you perform, or how many degrees you have. Rather, it implies a pride in work, a commitment to quality, a dedication to the interests of the client, and a sincere desire to help.²

The Source Of It All

So what is the common source of all of these aspects of "true professionalism"? It seems to me that they all boil down to a single energy source which might be described as "passion and enthusiasm". As David Maister says:

In predicting professional success, enthusiasm and passion (and the hard work they inspire) count for much more than an extra piece of ability.³

You need to be motivated and enthusiastic about your work. This is the sort of energy which inspires the determination and persistence necessary to achieve at a high level. Colleagues and clients notice this. It quickly becomes infectious and people then want to get you involved. But how and where can this energy be found?

Put simply, passion and enthusiasm is generated by doing what you care about. So if you cannot carry this sort of energy into your legal studies - if you do not care, nor feel able to take a professional approach to your work as a law student - then you really need to ask whether a legal career is the thing for you.

But if you do care, and if you do take a professional approach to your studies, then in making the transition from "energised" law student to "professional" lawyer the key is to

² Ibid 17.

³ Ibid 31.

look within and try to understand what it is – within that vast array of possibilities open to you - that you really want to do. Again, drawing on Maister, this whole discussion reduces to this final piece of advice:

*Focus on being the best you can be at what you want to do.*⁴

CAREER RESEARCH TIPS

Students looking for a career in private legal practice should do some research. Of course, you should surf the net and read law firm web-sites. Firms go to some length to present a message (or recruitment blurb) in such a way so as to attract the sort of people they are looking for. Every Friday, the Australian Financial Review has a few pages on "Legal Affairs", which you should follow. Every couple of years, Lexis Nexus publishes "Legal Profiles". This has detailed information about the legal marketplace across Australia and by State, together with trends and tribulations, and detail about recent activity and law firm rankings by area of law. For an even larger perspective of the trends and future of legal practice – and your place within it - I recommend Richard Susskind, *Transforming the Law* (2000). For an insight into how those who run law firms think, and what they look for in new recruits, you should read the "guru", David Maister, *True Professionalism – The Courage to care About Your People, Your Clients and Your Career* (1997).

⁴ Ibid 30.