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NOTHING UNDONE

*Dan Rosen**

THERE was a time when I knew everything about the law. I remember it quite clearly. It was during my second year as a law student at SMU. Oh, of course there were a few more details that I had to go to class to learn about—things such as the evidentiary rules governing the use of prior inculpatory statements, or the statutory definition of an “insider” whose short-swing profits would be viewed as improper under the Securities Acts—but these were merely the kind of things that Albert Einstein said he never bothered to memorize because he could always just look up.

Sometime during that year—I’m not sure exactly when—I ran across a faculty member who taught mass communications law, a subject about which there remained nothing for me even to look up. One day the opportunity presented itself for us to have a conversation about this subject. It was a very bad day. This teacher began to ask me questions that I couldn’t answer. So, I did what any law student with a residue of self-respect would do under the circumstances: I faked it.

It didn’t work. The teacher told me so—not directly, but by following up with other questions that left my logic looking like one of those phony Rolex watches sold on the backstreets of New York.

Perhaps because Ellen Solender was born in New York, she recognized the scam. However, having lived in Dallas for more than thirty years by that time, she had acquired enough of the genteelness of the South to let me leave without having lost all of my face. Or maybe she was just born that way.

In any case, it was the beginning of the end. Having been acupuncture by this kindly-looking, soft-spoken woman, my period of perfect knowledge ended, never to return. There were only two choices: to hide and hope she wouldn’t tell anybody else, or to learn from her. Fortunately, I selected the latter. That’s what happens when under the care of a skilled acupuncturist. At first it hurts, but then the blocked passages are opened and energy (or, in this case, education) can enter.

While everyone’s experience may not give rise to a pins and needles metaphor, there are surely countless similar stories that could be told by the thousands of students who have been educated by Ellen Solender since she joined the SMU faculty.

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To those of us who are her students, there are really at least four Ellen Solenders. For example, I know her as the First Amendment and Mass Media expert whose influence—especially in the area of libel and slander—radiates far beyond the already wide borders of the State of Texas. Others may talk about the Ellen Solender whose teaching helped create a climate of greater care and concern within the state for those caught up in the family law system, especially children. Still others know Ellen Solender as the professor who taught them how lawyers write. Perhaps the largest group consists of those to whom she introduced the mysteries of Torts. (P.S. to Ellen: Just who was right on that proximate cause/duty to the world business anyway?)

In addition to all this, Professor Solender provided a great lesson simply by being there. By that I mean that for much of her tenure at SMU, there were not many women on the faculty. For women students, her presence surely reaffirmed their decision to enter what had been known as mostly a male profession. For male students, her obvious command of the material and the classroom helped us realize that we would be enriched, not emasculated, by the entrance of women into the ceremonial battleground of law that had been almost exclusively ours. In fact, she showed many of us that it might be possible to resolve disputes without doing battle—an idea none too popular at the outset among us 20-30 year old would-be litigators whose testosterone counts far exceeded our LSAT scores.

Cutting the demographic pizza yet a different way, Professor Solender also gave courage to students who waited a few years before entering law school. In her case, it was more than twenty years. Having graduated from college in the mid-1940s, she waited to start law school until the late 1960s, became an editor of what was then the Southwestern Law Journal (those prone to nostalgia, please weep here at the mention of our publication's glorious now-retired name), and joined the faculty soon after graduation in the early 1970s.

Angst is not in short supply among those who have been away from the classroom for some time. The example of Ellen Solender provided proof that unlike the 100 yard-dash, success in studying law is not restricted to those just on either side of the legal voting age. A thirty-something Carl Lewis may be near the end of his career as a track star, but Ellen Solender was just getting started at forty-five.

Women of about the same generation as Ellen Solender faced great difficulties in entering the legal profession, and most of them began at an earlier age. Supreme Court Justice Sandra Day O'Connor, for example, graduated third in her class at Stanford, but couldn't find a job. Justice Ruth Bader Ginsburg was number one at Columbia, but had to wait several years before finding a teaching position anywhere.

In a similar vein, Ellen Solender's career in law teaching began as an "instructor," which was legal academia's way of making use of talented women without giving them full-fledged membership in the fraternity of

the faculty. To its credit, however, SMU placed her on the tenure track after three years, and she eventually became a full Professor.

In writing a dedication such as this, there is always the danger of delivering too much praise. Like a letter of recommendation, a dedication devoid of human frailty lacks credibility. Even Mother Teresa surely has her bad days. So, let me think

Got it! That handwriting; it looks like it was made on an Etch-a-Sketch. The lines all go up and down or left and right at ninety degree angles. No circles or curves. Maybe it's meant to be read with special 3-D glasses or something; I don't know. Anyway, don't forget your Rosetta stone if you plan to transcribe her handwritten notes.

At commencement ceremonies, it is obligatory to remind graduates that this is a time of beginning, not ending. The same is true of retirement, although we seldom think that way. Two thousand years or so ago, the Chinese father of Taoism—Lao Tzu—understood this lesson quite well.

“When there is nothing to be done,” he wrote, “then nothing is left undone.”

For those of a slothful disposition, the sentence seems to give permission to permanently park oneself before the television, preferably with a refrigerator within arm's reach. That's not what he meant, however.

Even in ancient China, ordinary life was full of anxiety—too much to do; not enough time in which to do it. As if that weren't enough, along came Confucius, who had a rule for every occasion. Lao Tzu's admonition was to cleanse oneself psychologically of all such external obligations and watch the goodness of spirit and deeds emerge naturally. The less you're *forced* to do, the better you *will do*.

It's a good idea, but it was hard for most people to pull it off then and perhaps even harder still today. Retirement, however, is the perfect chance. Even with the tyranny of class schedules and faculty meetings and—worse yet—committee meetings, Ellen Solender accomplished quite a bit. Now that there is nothing to be done, we can only look forward with great anticipation to all the new things she will not leave undone.

Articles

