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The Connected Lawyer: The Evolving “Operating System” of the Networked Professional

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INTRODUCTION

To become the absolute best place to work, communication and collaboration will be important, so we need to be working side-by-side. That is why it is critical that we are all present in our offices. Some of the best decisions and insights come from hallway and cafeteria discussions, meeting new people, and impromptu team meetings.

– Jackie Reses, Director of Human Resources Yahoo¹

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1. Kara Swisher, “Physically Together”: *Here’s the Internal Yahoo No-Work-From-Home Memo for Remote Workers and Maybe More*, All Things D (Feb. 22, 2013, 10:18 PM), <http://allthingsd.com/20130222/physically-together-heres-the-internal-yahoo-no-work-from-home-memo-which-extends-beyond-remote-workers/> (reporting on an excerpt of a supposed internal memorandum from Yahoo Human Resources Director Jackie Reses).

In this Essay, I encourage legal educators and practitioners to be aware of the science of emerging “social operating systems” based on the evolution of the Internet, social networks, and mobile devices.² This Essay will compare the latest works of social scientists and observers involved in the study of technological connectedness to frame the debate: whether individuals are becoming less interactive with others, or in contrast, forming a new social order of greater connectedness and empowered interaction—“networked individualism.”³ If professional interaction is an important component of developing a lawyer’s professional judgment and identity,⁴ the legal profession must prepare for generations of networked law students and attorneys who demand interaction with a professional system in the same way they experience connection in their social system. I argue that as technology evolves, new professionals will expect more autonomy and control over their interactions. The central thesis of this Essay is that technology allows greater control of an individual’s professional interactions, and this control can provide a benefit, but devices of connection can also serve as a barrier to the authentic experiences that provide professional learning and innovation.

In February 2013, Yahoo shocked many in the telecommuting world by requiring employees to be present in the office, ending all work from home and remote work arrangements.⁵ The decision angered many in the company and

2. LEE RAINIE & BARRY WELLMAN, NETWORKED: THE NEW SOCIAL OPERATING SYSTEM 6–7, 34 (2012); *see also* Jaqueline Olds, *Online Optimism*, 100 AM. SCIENTIST 514, 514, *available at* <http://www.americanscientist.org/bookshelf/pub/online-optimism> (reviewing RAINIE & WELLMAN, *supra*).

3. *See* Olds, *supra* note 2, at 514–515 (discussing the concept of “Networked Individualism” advanced by Rainie and Wellman and critics’ concerns about a networked society); *see also* RAINIE & WELLMAN, *supra* note 2, at 6–7, 34, 306 n.20 (contrasting the old social operating system of hierarchical bureaucracies, households, communities, and work groups with the traditional systems of connecting, communicating, and exchanging information).

4. Clifford S. Zimmerman, “Thinking Beyond My Own Interpretation”: *Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum*, 31 ARIZ. ST. L.J. 957, 987 (1999); *see also* Anthony L. Suchman et al., *Toward an Informal Curriculum that Teaches Professionalism: Transforming the Social Environment of a Medical School*, 19 J. GEN. INTERNAL MED. 501, 501-04 (2004).

5. *See* PBS NewsHour: *Will Yahoo! Ban on Employee Telecommuting From Home Ensure Innovation?* (PBS television broadcast Feb. 27, 2013), *available at* http://www.pbs.org/newshour/bb/business/jan-june13/workfromhome_02-27.html.

sparked national debates concerning women's rights in the workplace, productivity, and the challenges of managing an employee who works remotely.⁶ As moderators talked through these issues, the concept of innovation through interaction became part of the conversation. Yahoo's actions prompted management consultants to preach that innovation does indeed evolve through human face-to-face serendipitous contact.⁷ This Essay is about the legal community's need to engage in its own conversation about innovation through collaboration by discussing how professional judgment and identity evolve through unplanned face-to-face professional interaction. Lawyers must ask: does our increasing use of smartphones, tablets, social media, and the Internet diminish our ability to grow professionally?

I. *THE COURTHOUSE LEARNING SOCIETY*

While researching another article, I came across an enlightening 1970 quote by Robert Maynard Hutchins, former dean of Yale Law School.⁸ The quote did not contribute to my project at the time, but his words stayed with me, especially as I observed my clinic law students assist me to meet my daily court obligations: negotiations, settlement conferences, hearings, and trials. At every moment, a smartphone was in hand or easily accessible. As the students efficiently performed their duties in open court, in the halls of the courthouse, or in judges' chambers, a hand-held device was a ubiquitous constant companion.

Hutchins argued that a new model of education was necessary to meet the rapidity of change brought about by a mechanized modern society.⁹ He noted that for the ancient

6. See Michael Martin, *Yahoo: A Telecommunication Breakdown?*, NPR (Mar. 4, 2013), <http://www.npr.org/player/v2/mediaPlayer.html?action=1&t=1&islist=false&id=173428362&m=173428355>.

7. See *PBS NewsHour*, *supra* note 5.

8. ROBERT M. HUTCHINS, *THE LEARNING SOCIETY* (1968). Hutchins also served as both President and Chancellor of the University of Chicago and was an innovator in the area of undergraduate education. See *The Presidents of the University of Chicago: A Centennial View*, Robert Maynard Hutchins, U. CHI. CENTENNIAL EXHIBITION CATALOGUES, http://www.lib.uchicago.edu/e/spcl/centcat/pres/presch05_01.html (last visited Dec. 20, 2013).

9. HUTCHINS, *supra* note 8, at 134–35.

Athenians, “education was not a segregated activity, conducted for certain hours, in certain places, at a certain time of life.”¹⁰ Rather, he argued, it was the culture of the city that educated the individual.¹¹ Individuals learned by participating in a continuous education provided by the “learning society” that was Athens.¹² I reflected on how many of my former students had learned about professional judgment in class but had developed a professional identity by interacting with a similar city of learning—the courthouse and its culture.

As I observed my students, phones in hand, I made two preliminary observations informed from my study of Hutchins words. First, my students were incredibly efficient and organized. Their use of technology allowed them to assist me at a very high logistical level. When I chided one student about how she was on her phone instead of helping me search for a piece of information in the court’s paper file, she smartly reminded me, with a big smile, that the same information could be obtained online, and she presented me with what I needed on her iPhone.

My first observation brought me back to Hutchins’ pre-Internet view of the mechanized society. He compared modern machines to the slaves belonging to the privileged citizenry of early Athens.¹³ Evolving machinery will provide the modern individual with the time and freedom to learn from the culture of a new emerging “learning society.”¹⁴ In the same way a few Athenians had the freedom (from manual work) to explore and learn from the city, my students had saved considerable time and avoided unnecessary effort by obtaining online information, coordinating our movements and actions around and in the courthouse by text, and creating a real time scheduling mechanism that linked seamlessly with the court’s docket schedule. Over the years, thanks to technology, my students and I have become more efficient advocates with more time to devote to serving clients’ needs.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

My second observation has to do with those moments in the professional environment of the courthouse when nothing of significance to our team or our clients was occurring, when we had to sit in one place and wait for a judge to become available, for a client to be transported, or for opposing counsel to arrive. Lawyers affectionately label these periods of time “hurry-up and wait.”¹⁵ When we had done all we could do up to that point, I would look around at my team and observe them on their phones, sometimes working my schedule for the next day, but mostly scanning texts and e-mails from friends, checking in on Facebook updates, or playing games. My team was not unique in this respect. For years I had noticed this phenomenon with lawyers from all disciplines and all experience levels, and I particularly observed this trend with newer attorneys and students.

This observation brought me back again to the words of Hutchins and his comparison of a modern learning society to the city of learning that was Athens. My students were so efficient that at times their smartphones served as barriers to their observing and interacting with the courthouse “learning society.”¹⁶ While we were waiting for the judge to take the bench, the students immersed in their smartphones, yet many interesting learning moments took place around them unnoticed: attorneys in animated conversations with clients, prosecutors engaged in negotiations, and court clerks desperately attempting to coordinate files and paperwork while discussing the organizational problems of the courts. The culture of the courthouse was alive and open for observation, interaction, education, and learning. On many occasions my students missed an opportunity to grow from their professional environment by removing themselves from their devices of connection and allowing themselves to grow bored. It was during those moments of boredom that past generations had participated in the culture of the “city” and learned the skills of their new profession.

15. For a definition, see, for example, *Hurry Up and Wait*, [URBANDICTIONARY.COM](http://www.urbandictionary.com/define.php?term=hurry%20up%20and%20wait), <http://www.urbandictionary.com/define.php?term=hurry%20up%20and%20wait> (last visited Dec. 20, 2013).

16. HUTCHINS, *supra* note 8, at 134–35 (discussing the term “learning society”).

II. “NETWORKED INDIVIDUALISM” AND THE NETWORKED PROFESSIONAL

In 2012, Lee Rainie and Berry Wellman, Directors of the Pew Research Center’s Internet & American Life Project and of NetLab at the University of Toronto, respectively, advanced the concept of “networked individualism,” where people are autonomous as they interact with many diverse individuals at the same time.¹⁷ Because of the “triple revolution,” which describes advances in mobile technology, the Internet, and social networking, we are experiencing a new social operating system that allows individuals to instantaneously connect to a diverse set of individuals and access information from any location.¹⁸

For Rainie and Wellman, networked individualism provides a technological path towards personal empowerment as users connect with distant and close friends in addition to acquaintances and strangers, all providing a community of real individuals who share information, provide assistance, and offer social opportunities.¹⁹ An individual’s networked community tends to be larger than a similar non-technologically connected group, it can be maintained at a fraction of the cost, and its maintenance requires less effort and time.²⁰ Technology allows diverse individual voices to be heard at all levels of society, as platforms of expression are freed from control and sanction.²¹ Community, religious, and work relationships have become less hierarchical as individuals and organizations create technology-assisted interactions free from bureaucracy and a traditional chain of command.²² People are connected to others like never before and, they argue, “not hooked on gadgets.”²³

17. See RAINIE & WELLMAN, *supra* note 2, at 6–7. As stated on the dust cover, “Lee Rainie is Director of the Pew Research Center’s Internet & American Life Project and former managing editor of *U.S. News and World Report*. Barry Wellman is the S.D. Clark Professor of Sociology at the University of Toronto, where he directs NetLab.” See also Olds, *supra* note 2, at 514–15.

18. See RAINIE & WELLMAN, *supra* note 2, at 11–12.

19. See *id.* at 13.

20. See *id.*; see also Olds, *supra* note 2, at 514.

21. See RAINIE & WELLMAN, *supra* note 2, at 14, 207–08.

22. See *id.* at 34.

23. See *id.* at 6.

For the practicing attorney, a similar “networked individualism”²⁴ evolves to a necessary networked professionalism, providing essential law-related information, function, and interaction.²⁵ The modern lawyer is connected with information when she utilizes her WestlawNext application in the middle of an evidentiary hearing to answer a legal question by the judge.²⁶ Walking the halls of the courthouse, she reviews a client’s complete court file on her phone by way of a state’s case search connection and then e-files a pleading in a courthouse hundreds of miles away.²⁷ She sends a text to opposing council informing him she is running late for a scheduled pre-trial conference. She runs her bar number through CaseNet to confirm she is not required to make an appearance in any other court.²⁸ As she waits for the judge to see her, she returns several client emails and checks the input of a nationally respected legal scholar on a list serve that she follows closely.²⁹ When her wait grows a little longer, she is able to learn

24. *See id.*

25. In this context, networked professionalism describes a professional operating system that is similar to the social operating system of “networked individualism,” representing how legal professionals “connect, communicate, and exchange information.” *Id.* at 7. *See generally* PRODUCTIVITY IN THE LEGAL PROFESSION: THE IMPACT OF MOBILE TECHNOLOGY, ALM LEGAL INTELLIGENCE (NOV. 2011) (providing the results and analysis of an online survey of lawyers inquiring about their use of mobile devices for work).

26. *See* Ronald E. Wheeler, *Does WestlawNext Really Change Everything: The Implications of WestlawNext on Legal Research*, 103 LAW LIBR. J. 359, 360 (2011); Cynthia K. Heerboth, *Technology and Its Effects on the Judicial Process: From Judges to Litigators to Jurors*, PRECEDENT, Winter 2013, at 6 (describing how lawyers, judges and jurors are utilizing iPad applications and technology in general to connect with information and present evidence).

27. For examples of electronic or automated web based search services for state courts, open to the public or providing e-services to attorneys, see WISCONSIN COURT SYSTEM, <http://www.wicourts.gov/casesearch.htm> (last visited Dec. 20, 2013); STATE OF CONNECTICUT JUDICIAL BRANCH, <https://eservices.jud.ct.gov/login.aspx> (last visited Dec. 20, 2013); MICHIGAN COURTS, http://www.courts.michigan.gov/opinions_orders/case_search/pages/default.aspx (last visited Dec. 20, 2013). For a link to many state court web sites, see ILLINOIS COURTS, <http://www.state.il.us/court/General/map/USweb.asp> (last visited Dec. 20, 2013).

28. *See, e.g.*, YOUR MISSOURI COURTS, <https://www.courts.mo.gov/casenet/base/welcome.do> (last visited Dec. 20, 2013) (“Case.net is your access to the Missouri state courts automated case management system. From here you are able to inquire about case records including docket entries, parties, judgments and charges in public court.”).

29. For a list of discussion groups that are relevant to legal professionals, see WASHBURN UNIVERSITY SCHOOL OF LAW: WASHLAW, LEGAL RESEARCH ON THE WEB

on Facebook that her assistant has started jogging and that her boss invited her to a reception.

The above examples represent the networked professionalism of the modern practicing attorney. Similar to her personal life, the individual professional is connected to a network of human resources that can provide assistance and aid quickly for a fraction of the cost.³⁰ The connected attorney can reach out to superiors, colleagues, acquaintances, clients, and strangers located anywhere in the world for advice and aid in times of ethical uncertainty and professional need. Vast stores of both legal and non-legal information are available at any time from any location and are delivered to the palm of a lawyer's hand.³¹ For the connected lawyer, the courthouse is never closed, and most questions that previously required a trip to inspect a judge's file can now be answered at any time from any place.³² The modern attorney is never disconnected from her office and can coordinate the actions of her working team by way of text, email, photos, videos, and scans—even when she is in the middle of a trial or hearing.

Networked professionalism has given attorneys a greater platform for expression, allowing them to speak to the world about the plight of an individual client or an injustice that has assailed a people.³³ She is able to connect to professional organizations and groups of individuals who share professional goals and agendas.³⁴ Like no other time in history, the connected professional is able to recruit, assemble, and maintain a support group of other lawyers and colleagues of her choosing, providing her with a personal and professional network, contributing to her advancement, and survival. In short, the modern lawyer is an empowered professional who is

(WASHBURN DISCUSSION GROUPS), <http://www.washlaw.edu/listservs/> (last visited Dec. 20, 2013).

30. See RAINIE & WELLMAN, *supra* note 2, at 13; Olds, *supra* note 2, at 514.

31. See Wheeler, *supra* note 26, at 359–60. For a relevant synopsis of the “American Bar Association’s 2012 Legal Tech Survey,” see Nicole Black, *Legal Loop: 2012: The Year of the Mobile Lawyer?*, DAILY REC. (Dec. 21, 2012, 6:50 PM), <http://nydailyrecord.com/blog/2012/12/21/legal-loop-2012-the-year-of-the-mobile-lawyer/>.

32. See, e.g., YOUR MISSOURI COURTS, *supra* note 28.

33. See RAINIE & WELLMAN, *supra* note 2, at 207–10.

34. See, e.g., *Death Penalty Information Center*, FACEBOOK, <https://www.facebook.com/deathpenaltyinfo?v=wall> (last visited Dec. 20, 2013).

autonomous in her interactions with the world in large part because of the device she possesses in the palm of her hand.

But does this new professional operating system always benefit the professional development of the individual? In the next section, I address some of the concerns expressed by social critics, behavioral scientists, and legal educators.

III. *THE COST OF NETWORKED PROFESSIONALISM*

In 2009, English Professor Mark Bauerlein advanced the concern of many social critics and traditional intellectuals, observing how our new digital environment is diminishing an individual's ability to interact in-person.³⁵ Because digital communications are based on the written word, younger members of society are becoming less proficient in reading non-verbal cues from others.³⁶ Bauerlein contrasts the ability to read the written word with the diminishing skill of a twenty-something to interpret the posture, gestures, mannerisms, expressions, and movements of others.³⁷ A silent language is communicated in an unspoken and often unconscious manner, conveying the feelings of the interacting parties in ways that the written word is unable to capture.³⁸ This evolving non-digital (body language) illiteracy contributes to younger generations becoming more self-absorbed and uncommunicative, distracted as they wait for the next text, tweet, or Facebook notification, and unaware of their own non-verbal communication to the people around them.³⁹ As I thought about Bauerlein's assessment, it struck me that individuals and potentially lawyers from the same culture who speak the same language and occupy the same space are utilizing two very different ways of communicating, connecting, and exchanging information (social operating systems).⁴⁰ For many, networked individualism

35. Mark Bauerlein, *Why Gen-Y Johnny Can't Read Nonverbal Cues*, WALL ST. J., Aug. 12, 2009, <http://online.wsj.com/article/SB10001424052970203863204574348493483201758.html>. Mark Bauerlein is also the author of the 2007 book *The Dumbest Generation: How the Digital Age Stupefies Young Americans and Jeopardizes Our Future (or, Don't Trust Anyone under 30)*.

36. See Bauerlein, *supra* note 35.

37. *Id.*

38. *Id.*

39. *Id.*

40. See RAINIE & WELLMAN, *supra* note 2, at 7.

advances a culture that promotes autonomy at the cost of “compromise for the convenience of others.”⁴¹ As the number and diversity of digital voices increase, a sense of community is lost as commonalities of interests and passions become harder to find.⁴² Identity becomes shaped less by the give-and-take of interaction and more by a firm declaration to the rest of the world. Being fully in control of our interactions has prevented us from being open to the unpredictability of human association.⁴³ We may not be hooked on gadgets,⁴⁴ but we are hooked on filtering the people with whom we want to associate and how we function within those interactions, proclaiming our ideas to the world unfiltered, and then deciding whether we want to receive a reaction or response.⁴⁵ In the non-digital world, such autonomy does not exist. Since legal work is the profession of human interaction, the question arises: how does networked professionalism effect the advancement of all who practice, teach, and study law?

Legal scholarship has acknowledged the same concerns expressed by social critiques asserting that many law professors are concerned about the ability of law students to concentrate on class discussion.⁴⁶ Because of their frequent use of technology in the classroom, students are distracted to the point of cognitive impairment, unable to engage in the intellectual demands of a class or clinical practice.⁴⁷ When students check e-mail or play games in the middle of a discussion conducted for their benefit, do they lose the necessary mental connection required to analyze complex legal issues? For some legal educators, a networked student is a distracted student, lacking the cognitive fitness necessary to accomplish the difficult job of legal reasoning.⁴⁸

41. Olds, *supra* note 2.

42. *Id.*

43. *Id.*

44. Compare RAINIE & WELLMAN, *supra* note 2, at 6, with Olds, *supra* note 2, at 515; see also SHERRY TURKLE, ALONE TOGETHER: WHY WE EXPECT MORE FROM TECHNOLOGY AND LESS FROM EACH OTHER 295 (2011).

45. See Olds, *supra* note 2, at 515.

46. See M. H. Sam Jacobson, *Paying Attention or Fatally Distracted? Concentration, Memory and Multi-Tasking in a Multi-Media World*, 16 LEGAL WRITING, 419, 419–420 (2010).

47. *Id.*

48. *Id.*

The problem is the same for non-academic field supervisors, as they fight the constant battle against clinic students' reliance on technology and their habit of texting and checking social media at inappropriate times.⁴⁹ Despite efforts to instill professionalism, many legal managers are finding that individual workers brought up in the digital age are in constant need of connection and rarely without a phone.⁵⁰ Newly connected professionals expect to multitask in their professional lives the same way they have come to operate multiple information systems in their personal lives. They want to remain in touch with friends and family at the same moment they are sitting in a meeting at an externship site or discussing the plight of a client with a supervisor.⁵¹ For the newly connected lawyer, does a delay in or an absence of information result in distracted impatience, requiring a constant flow of stimuli, with little tolerance for the depth of uninvited or unimagined professional interaction?⁵²

IV. DEPTH, TRUST, AND VALUE IN DIGITAL INTERACTION

The reality of our new age is that digital and non-digital interactions are interdependent. In this Section, I discuss how face-to-face interaction brings value to digital communications, satisfying an individual's need for depth and engagement. Lawyers bring an analogous value and trust to their digital connections by creating a professional identity, an identity and judgment formed in the uncontrolled non-digital world of professional relationships.

At the beginning of 2013, two innovators in the field of social media sat down with interviewer Charlie Rose and framed a discussion about how information is not necessarily knowledge and how technology does not necessarily provide a platform for meaningful, focused, and truly interactive conversation.⁵³ Biz

49. See Susan K. McClellan, *Externships for Millennial Generation Law Students: Bridging the Generation Gap*, 15 CLINICAL L. REV. 255, 270 (2009).

50. See *id.*

51. See *id.*

52. See generally Olds, *supra* note 2.

53. *Charlie Rose: Evan Williams & Biz Stone; David Chase* (PBS television broadcast Jan. 3, 2013) [hereinafter *Charlie Rose*], available at <http://www.hulu.com/watch/443775>.

Stone and Evan Williams, two of the creative minds behind Twitter, discussed the quest for on-line “long-form conversation.” They acknowledged that the modern day user of digital technology possesses a hunger for depth in their on-line interactions.⁵⁴ For the innovators of future “social operating systems,” the “short-form conversation” represents a digital past lacking adequate feedback mechanisms.⁵⁵ They seek a technology based in quality conversations, not dominated by popularity or the broadcasting of everyone’s quick opinion (“two cents”).⁵⁶ Today’s innovators envision new operating systems that address the connected individual’s need for engagement, focus, depth and knowledge, which are only fully satisfied to-date by the systemic feedback of face-to-face interaction.

The digital professional is no different than the private individual in her need for deep and focused interaction. From the evolving law clinics of the 1960s to the modern day externship, legal scholars find endless examples of students thirsting for face-to-face contact within their practice environment.⁵⁷ As students are bombarded with opinions and information in their digital connections, they seek out the interaction of teamwork, collaboration, and engagement with professional colleagues.⁵⁸ They want to present their ideas to real people, impacting the lives of real clients who face real problems. They want to voice their opinions in an environment that promotes professional curiosity and direct dialogue.⁵⁹ Until technology can provide an equivalent platform for deep, professional interaction, emerging social technologies must be recognized as tools of professional assistance, not instruments of professional development.

54. *Id.*

55. See RAINIE & WELLMAN, *supra* note 2, at 6–7 (defining the idea of a “new social operating system”). But see Charlie Rose, *supra* note 53 (maintaining the continued importance of the “short-form conversation” as they seek a new online engagement).

56. Charlie Rose, *supra* note 53.

57. See Meredith J. Ross, A “Systems” Approach to Clinical Legal Education, 13 CLINICAL L. REV. 779, 781 (2007). Professor Ross describes how students placed in prison facilities, for only observation, were approached by social workers and inmates. Members of the prison community began interacting with students. *Id.* at 789, 793.

58. See McClellan, *supra* note 49, at 276.

59. See *id.*

As the world becomes more digitally connected, management theorists have studied ways to transform information into value.⁶⁰ As information began to move quickly around the world, it became evident that relationships based on trust and human connection brought significance to each digital communication.⁶¹ Do short instant messages vary in impact, dependent on the depth of the previously existing relationship between the digital sender and receiver? In the digital world, a spectrum of value, made up of trust and emotion, is embedded in each piece of digital information.⁶² Rainie and Wellman observe that the evolution of networked individualism depends on how individuals can “trust one another across distances and groups.”⁶³ As digital users search for depth, they realize that impactful exchanges require a foundation of real world friendships and skills to build face-to-face relationships.⁶⁴ Similarly, lawyers require real world professional relationships to bring value and depth to their digital and non-digital interactions; they also need the professional skills to build and maintain relationships.

Lawyers bring value, depth, and trust to their professional operating system by way of their professional judgment and identity. If peers, colleagues, and clients understand the professional judgment of a lawyer, then all lawyers’ digital and non-digital communications carry a greater impact. The shortest message or word can hold great weight if the professional judgment and identity of a lawyer are valued. The networked professional faces a challenge: identity and judgment are developed and recognized in the face-to-face world of non-digital relationships.⁶⁵ Neuroscientists have determined that all five senses are needed to properly develop judgment.⁶⁶

60. See PETER SENGE ET AL., *PRESENCE: EXPLORING PROFOUND CHANGE IN PEOPLE, ORGANIZATIONS, AND SOCIETY* 210 (2005).

61. See *id.*

62. See *id.*

63. RAINIE & WELLMAN, *supra* note 2, at 57.

64. TURKLE, *supra* note 44, at 270–72.

65. See Jaqueline Olds, *Digital Dystopia*, AM. SCIENTIST 344, 345 (2011), available at <http://www.americanscientist.org/bookshelf/pub/digital-dystopia> (reviewing TURKLE, *supra* note 44).

66. See JACQUELINE OLDS & RICHARD S. SCHWARTZ, *THE LONELY AMERICAN: DRIFTING APART IN THE TWENTY-FIRST CENTURY* 103–04 (2010).

Professional identities are shaped by the social environment of the professional setting.⁶⁷ If an authentic real world community (engaging all the senses) is needed to develop a professional, then the evolving professional life of a lawyer must include exposure to the inconvenient and uncontrolled world of face-to-face professional interaction.

V. The Autonomy of Networked Professionalism

For every article that proclaims the detrimental effects of our newly networked yet insular society, another study exists asserting that a modern connected culture allows for increased interaction and expression.⁶⁸ For the legal profession, this evolving discussion may miss the point. Like all other individuals, lawyers differ in their spectrum of interaction with others and differ in how their gadgets aid in their interactions. What sets the legal profession apart from other disciplines is how it uses the tools of human interaction to moderate the interactions of individuals.⁶⁹ From participating in jury trials to crafting appellate arguments to navigating the halls of a juvenile detention center to walking the halls of Congress, to teaching law courses and clinical practicum, lawyers and future lawyers use myriad tools of human interaction to communicate with others. But to remain proficient in the tools of our profession, all lawyers must remain open to the unplanned, unexpected, and at times unwanted human dealings that contribute to our growing skill set.⁷⁰ Do we become better lawyers when we are able to control our professional environment? Or is greater growth achievable from the serendipitous professional moments experienced in, what Hutchins called, the “learning society” of Athens,⁷¹ where lawyers are not autonomous in controlling how they learn from their interactions?

For all the advantages of the new social operating system that is networked individualism, the greatest disadvantage may

67. See Anthony L. Suchman et al., *Toward an Informal Curriculum that Teaches Professionalism: Transforming the Social Environment of a Medical School*, 19 J. GEN. INTERNAL MED. 501, 501–04 (2004).

68. OLDS & SCHWARTZ, *supra* note 66, at 96–97.

69. See David B. Wexler & Bruce J. Winick, *Foreword of SUSAN L. BROOKS ET AL., RELATIONSHIP-CENTERED LAWYERING: SOCIAL SCIENCE THEORY FOR TRANSFORMING LEGAL PRACTICE* (2010).

70. TURKLE, *supra* note 44, at 14–15.

71. HUTCHINS, *supra* note 8, at 134–35.

be control.⁷² People can limit the purpose, depth, place, time, and target of their interactions. People can control their connections to other people, choosing individuals who look like them, act like them, and think like them. When connected, we are able to dictate our comfort level by controlling the diversity of people and ideas that enter our digital world. In the real face-to-face world, not designed for our comfort and control, such autonomy is not possible. And when we look at the work of Stone and Williams and the quest for innovation by Yahoo CEO Marissa Mayer, we find that such autonomy may not always be desired.⁷³

The authenticity and diversity of an interactive legal work or learning environment provides the professional with a place that promotes growth and knowledge.⁷⁴ Our tools of connection allow us to communicate more effectively with more people and practice with more information at our disposal. But, our tools of connection can also act as a barrier to our professional growth and development by allowing us to control our level of cognitive engagement with others.⁷⁵ How do we continue on a path towards greater levels of legal analysis if we shut out the discussions around us and enter a world that we control? Legal scholarship demonstrates the desire of law students to be challenged mentally and emotionally by an authentic practice environment that pushes them to new levels of professional complexity.⁷⁶ Such an environment demonstrates that legal information obtained on the iPad is not the same as legal analytical knowledge obtained from the cognitive exercise of uncontrolled dialogue.⁷⁷

CONCLUSION

Just before last year's winter break, I observed my students (phones in hand) hug clerks, say goodbye to bailiffs, and speak with judges about their holiday plans. They were leaving people

72. TURKLE, *supra* note 44, at 295.

73. Charlie Rose, *supra* note 53; see also PBS NewsHour, *supra* note 5.

74. See Brook K. Baker, *Beyond MacCrate: The Role of Context, Experience, Theory, and Reflection in Ecological Learning*, 36 ARIZ. L. REV. 287, 317 (1994).

75. Jacobson, *supra* note 46, at 420-21; see also OLDS, *supra* note 65, at 345.

76. McClellan, *supra* note 49, at 276-77.

77. Charlie Rose, *supra* note 53.

who had helped them learn and grow. The face-to-face interactions they experienced were never controlled and at times were not very comfortable. But because of these experiences, they evolved, developed professional judgment, and started to form their professional identities. Their mobile devices allowed them to be better informed and efficient in their interactions, but it was the face-to-face interaction itself that brought value to their learning.⁷⁸

As I observed their final interactions at a micro level, on a macro level I reflected on how the legal profession and legal education could do more to join the concepts of networked professionalism and face-to-face contact to acknowledge and teach the importance of connectedness alongside the values of uncontrolled professional interaction. The simplistic act of banning the use of devices in courts, classes, and meetings by students and lawyers is an outdated technique that does little to promote attentiveness and engagement.⁷⁹ Rather, a profession-wide dialogue is needed on how lawyers can maximize their connection to people and information with the goal of bringing value and trust to both digital and non-digital interaction. The legal academy and legal mentors have an obligation to educate the newer members of our profession on how solutions to problems can evolve in a moment of perceived boredom, when a practitioner is doing nothing but observing, listening, and thinking, and how professional innovation can develop from unplanned “discussions” and “meetings.”⁸⁰ All lawyers need to learn and then teach the importance of both technological connection and non-connection, being mindful that the next generation of lawyers will have never experienced a world without social media and smartphones.

As much as I was informed by Hutchins when he analogized Athens to a modern day mechanized learning society, I am still

78. OLDS, *supra* note 65, at 345.

79. See McClellan, *supra* note 49, at 276–77; see also Robin A. Boyle, *Should Laptops Be Banned? Providing a Robust Classroom Learning Experience Within Limits*, 20 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 8, 13 (2011), available at <https://info.legalsolutions.thomsonreuters.com/pdf/perspec/2011-fall/2011-fall-2.pdf>.

80. TURKLE, *supra* note 44, at 166–67, 179, 203, 272. In many of Turkle’s testimonials, lawyers confess that their use of technology has diminished their ability to think in-depth about problems. Also, they admit that because of technology they interact less with colleagues. See *supra* note 1 and accompanying text.

unsatisfied with how Athenian slavery comports to the advances in technology we experience today or even to the time when Hutchins made his comments. Connectedness allows us as lawyers and individuals to engage with others more efficiently, but it also has a cost. The flaw in how the upper class Athenians conducted their interactions was that they had to control slaves rather than free a people who they could openly engage with in discourse and commerce. This sense of control is what ties many of us to our devices. On occasion, all legal professionals should raise their gaze off the screen, risking boredom and discomfort, to experience the authentic professional city of learning that surrounds every lawyer.