

the YOUNG LAWYER

ABA American Bar Association
Young Lawyers Division

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THE ADVICE ISSUE

ABA YLD's 2009 Teleconference Series

FIRST TUESDAYS BIMONTHLY @ 1-2 PM EASTERN TIME
STARTING IN JANUARY 2009

Start your legal career off right: invest in the ABA YLD's 2009 Teleconference Series focused on the anatomy of a trial and appeal. Armed with seasoned lawyer expertise, there's no need to fear your first approach (or the ones that follow!) to the bench.

JANUARY 6, 2009

Anatomy of a Trial Series: Opening Statements/Direct Examination

Ideal for young lawyers who want to start the new year off right by refreshing their opening statement and direct examination skills! Participants will gain confidence in their opening statement structure and direct examination style after listening to seasoned trial lawyers offer their insights. During the program, participants will learn how to make a positive and lasting impact on the fact-finder through focused direct examination and numerous other do's and don'ts when presenting a case. At the end of this program, participants will have gleaned insight on how to craft persuasive opening statements that will lure the trier-of-fact to their client's position from the beginning.



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MARCH 3, 2009

Anatomy of a Trial Series: Cross-Examination

Perfect for young lawyers who want to welcome the longer days of spring by learning how to conduct blistering cross-examinations! Participants will discover the most effective delivery techniques of a cross-examination, which is arguably the most pivotal aspect of a trial. During the program, seasoned trial lawyers will articulate how to "tell your story" through organized and compelling cross-examination, all while casting doubt on the opponent's witness.

MAY 5, 2009

Anatomy of a Trial Series: Closing Arguments

For young lawyers who want to get ready for summer by packing away those cold weather clothes and learning how to pack up their cases into a final summation. Every lawyer knows that a strong closing will cinch the case. Participants will learn how to put the finishing touches on their cases by articulating their clients' position to the court in a polished, organized, and effective manner.



JULY 7, 2009

Elevating Your Advocacy: Understanding the Differences Between Litigating in Trial and Appellate Courts

Just right for young lawyers who want to celebrate Independence Day by exercising their clients' right to appeal and learning the ins and outs of appellate practice. This program is designed principally for practitioners seeking to improve their appellate advocacy skills, including trial lawyers who handle their own appeals and less experienced lawyers who may not yet have had the opportunity to explore the differences inherent in appellate litigation. Our panel of appellate judges who have previously served as trial judges will provide a "don't miss" perspective on this critical aspect of the litigation process. Participants will even learn how to overcome the special challenges associated with presenting a case to judges who may lack familiarity with the trial record.

SEPTEMBER 1, 2009

Anatomy of an Appeal, Part I: Procedure

It's back to school time, and back to the books for appellate advocacy skills! Join our seasoned presenters as they teach participants the procedural and preliminary aspects of an appeal, including post-judgment motions, preservation of error considerations, different procedural rules, and their importance in pursuing a successful appeal.



NOVEMBER 3, 2009

Anatomy of an Appeal Part II: Persuasion

Learn how to woo the appellate court with specialized techniques. In this program experienced appellate lawyers will teach the nuances between trial and appellate court persuasion—from initial and answer brief to oral argument.

Seven Secrets Your Boss Wants You to Know (But Won't Tell You)

By G. Grant Dixon III

You studied for years, passed the bar, and finally landed your first "real" legal job. But here is a news flash: you know very little about what it takes to succeed on the job. Your legal acumen and hard work are important, but you need more. After years of legal

practice both as an employee and a boss, I have learned the following secrets to success that I know will help you too.

Secret 1: Bring in more than you cost.

Most new associates are very concerned with their starting

salaries, benefits, and office locations. However, most associates never consider what law firms expect in return. Good employees pay attention to the bottom line, no matter where they are on the letterhead.

There are two parts to this equation: income and expense. De-

termining a lawyer's contribution to the income side of the practice is fairly easy. You simply track the amount of fees from your hourly billing. If you are a contingent-fee lawyer, figure the fees you generate from the cases you resolve.

Expenses can be more difficult to gauge. Your salary is easy. But what about benefits? While you won't have precise numbers, experts tell us that, on average, your benefits cost about 36 percent of your salary. If you have a legal assistant, fancy office, or great health insurance, your

expense is far higher. Even your high estimate of the cost of your benefits is probably low.

After figuring these two numbers, keep track of them on a weekly, monthly, and yearly basis. Your boss does. If at the end of the year you bring in more than you cost, your boss will be happy.

Secret 2: Work when your boss works.

Your boss wants to know that you are working hard and doing good work. In the practice of law, tracking work product is

■ continued on page 2

It's Back to Basics for Junior Business Lawyers

By Edwin L. Miller Jr. and Howard E. Berkenblit

There's an increasingly common lament among partners in corporate law firms like ours: many junior associates are rushing to complete the drafting tasks assigned to them and failing to take time to do them carefully and do them well. To put it bluntly, we hear seasoned lawyers often complain that their associates turn in sloppy work that lacks intellectual curiosity.

Perhaps it is a result of the generational difference. Whatever the reasons, we feel younger attor-



neys often need a "back to basics" primer to reinforce the importance of sweating the small stuff when drafting corporate agreements.

Don't assume an agreement is perfect because it was used before. Unlike litigation, a large portion of corporate law is based on contract agreements, e.g., merger agreements, licenses, and stock purchases. Generally, lawyers do not have to reinvent the wheel, but they do need to make sure that they are using the right wheel and adapt it appropriately. We have seen associates take a form that was used for another client and simply change the dates, terms, and names of the parties involved for other clients. A contract form should be a starting point, not a template for a cut-and-paste job. Always consider the client. If you are

representing a buyer in a merger, then use a buyer-friendly form.

Think before you draft, and ask plenty of questions. When a partner asks you to draft documents for a purchase transaction, for example, make sure you understand what the client wants from the arrangement. Talk to the partner in charge to learn potential hot buttons. If your client has done similar deals before, take the time to find out if the same issues still apply.

Compare drafts. Draft agreements may go through dozens of variations before they are completed. If your client completed a similar merger once before, look back at every single draft of that agreement to see what concessions were made in the process. You want to be a zealous advocate for your client, and you don't want to inadvertently build in a concession that doesn't need to be there before negotiations begin.

Don't be a wimp, but don't be a jerk either. That is, make sure your first draft adequately represents the wishes of your

clients; yet don't be so aggressively one-sided that you tick off the opposing side. Make the first draft as reasonable as possible while working to promote your client's interests. Coming off too assertively in the first round of a contract negotiation will reflect poorly on your client (and on the partners in your firm).

Beware of the "replace all" function. Different terms may have different meanings, depending on the structure of a deal. For example, replacing "securities" with "shares" can result in the "Shares and Exchange Commission" if you don't review all changes.

Use the Internet. It is a treasure trove of forms and not just templates. For example, check SEC filings to see how opposing counsel executed a similar deal with another company. You can become a smarter drafter and a cleverer negotiator by analyzing what types of issues the opposition agreed to in prior deals. The Internet also can help you learn more about industry standards, which can help if you are draft-

ing a deal in an unfamiliar area.

There's always room for improvement. Just because the senior partner at your firm drafted a successful deal a few years ago doesn't mean that the form can't be improved.

Don't just go through the motions. Partners appreciate when you worry about clients along with them and when you take ownership of the project. Law firms want bright young minds, not robots.

Keep in mind that partners look for three major qualities in associates: the ability to communicate effectively, a willingness to learn, and the quality of work presented. Master the basics to lay a strong foundation for your legal career.

Find a valuable list of background reading and writing tips for young business lawyers online at www.abanet.org/yld/publications/home.shtml.

Edwin L. Miller Jr. and Howard E. Berkenblit are partners in the law firm of Sullivan & Worcester LLP, with offices in Boston, New York, and Washington, D.C.

Seven Secrets

■ continued from page 1

challenging. One way your boss will check on your work is by seeing you at work. This may seem petty, but it is not. Seeing you there creates an impression that you are working hard.

If your boss is a morning person, become a morning person and be there when she arrives. If she works late in the evening, pattern your work schedule accordingly. Seeing you there before she arrives and after she leaves tells her that you are working longer and, therefore, harder.

Secret 3: Big Brother is watching.

A prudent boss knows what her employees are doing most of the time. In this technological age, your boss may be tracking when you log in and out of your computer and what programs you are accessing and for how long.

Your boss also will closely inspect your work product. Do

your documents, memos, or e-mails (yes, e-mails count) have typographical or grammatical errors? Are your assignments completed on time? If you have problems in those areas, it will be noticed.

As important, or perhaps more important, is how you present yourself in public. Do you arrive on time for your appointments? Are you well prepared? If you appear in court, are you professional and respectful to judges and opponents? A good boss will check with judges and your opponents to see what they think about you. Perform well here and you will do well.

Secret 4: Be very careful about politics.

My first job in the legal community was as a copy clerk in Des Moines, Iowa. The firm's founding partner once warned me, "Be very, very careful about office politics." What he taught me (and it has proven true) is that expressing your views at the office on topics outside of

your work assignments can be deadly. Use the rule your mother taught you: "If you can't say something nice, don't say anything at all." Mom's advice will serve you well.

Secret 5: Respect the staff.

Nearly every young lawyer underestimates the importance of office staff. The staff is a key to how well an office functions. Your boss knows how important the staff is—she probably hired them! She will be very upset if you do not treat the staff with courtesy and respect.

Staff also has far more influence over your career than you might realize. Although your boss might know your legal abilities, she knows little of your interactions with other people (see Secret 3). Your boss will rely on the staff's knowledge of you when she makes decisions about your career. If you are not well regarded by the staff, your boss will know. The Golden Rule applies: treat others the way you would like to be treated.

Secret 6: Dress for success.

Every office has a "clothing dynamic." As the new kid on the block, you need to quickly learn the real dress code of your office and fit in. Wear clothes of the same general style as the people above you in the office, including your boss. "Dress for the job you want" is good advice.

Secret 7: Confess and fix your mistakes.

This is perhaps the most important secret. You are human. You are going to make mistakes, no matter how hard you try. After all it is called "a practice" for a reason. Your boss knows you will make mistakes. She agreed to take on that risk by hiring you.

And here is another revelation: your boss wants to know about your mistakes. Why? She wants to try to fix them! Many errors can be corrected. Many difficulties can be overcome. But if she does not know about them, she cannot fix them.

How you confess your mistakes is as important as why. Meet your boss quickly in person

to explain what has happened. Have the facts at the ready. Have the documents with you. Be prepared to explain what happened in plain, simple, precise terms. Expect to be grilled.

Then take it one step further. Be ready to discuss how you propose to fix your mistake. Be ready to explain what you learned from this mistake and how you plan on preventing it from happening again. An error from which you learn is an education.

Your boss wants you to succeed. In many ways, her success depends on yours. While many of these seven secrets may seem simple, following them will help lay groundwork so your legal abilities can truly shine. Work hard, do good work, and follow these principles. If you do, you will be well on your way to success.

G. Grant Dixon III is a trial lawyer representing victims of in personal injury and wrongful death cases at Dixon Law Office in LaGrange, Illinois. He can be contacted at GGD@dixonlawoffice.com.

Straight Talk from Partners to Young Lawyers

Young attorneys often wonder what steps can be taken in the first few years of practice to increase their chances of achieving long-term success in the legal profession. *TYL* recently had the opportunity to ask two prominent attorneys, Wallace L. Schwartz and Jay Kasner, both partners at Skadden, Arps, Slate, Meager & Flom LLP, for their responses to several questions with the hopes of eliciting advice for young attorneys striving for such success. Mr. Schwartz is the head of Skadden's New York office and Skadden's international Real Estate Group and also serves on the firm's associate development committee. Mr. Kasner specializes in securities, corporate defense, and complex business dispute litigation. Mr. Schwartz's and Mr. Kasner's responses

provide invaluable insight into how young attorneys should approach the practice of law.

TYL: What is the one writing tip or oral advocacy tip every young lawyer should know?

Kasner: It's really hard to single out just one. However, an oral advocate, above all, must listen to the judge. Pay close attention to how your arguments are being received and respond directly and clearly to the questions you are asked. Also, pay attention to what your adversary is saying and consider how to answer those points that seem to be having an impact.

Additionally, young lawyers should always seek constructive criticism and feedback on oral advocacy skills from more seasoned lawyers whom they trust and respect.

Schwartz: You're not in law school anymore, so the purpose of writing is no longer to spot issues and discuss them. Your clients are looking to you for answers. The purpose of your writing now is to advise and assist clients in making decisions and achieving particular goals. Accordingly, your writing and oral advocacy should provide specific conclusions that will help the client to this end.

TYL: What is a predominant characteristic of attorneys whom you admire?

Schwartz: The predominant characteristic of attorneys whom I admire is integrity. It is integrity that makes them give their best on their client's behalf. It is integrity that makes them treat their colleagues with respect. And it is integrity that makes them accomplish all this while maintaining the highest ethical standards.

TYL: What is one piece of advice you wish you had during

your first few years after law school?

Schwartz: Be on the lookout for a mentor. It is difficult to achieve success in any organization, such as a law firm, or in any career, without a senior person to act as your teacher, advisor, and advocate. Mentorship is a two-way street, with the junior person in the relationship providing hard work and diligent assistance to the senior person who is providing the mentoring. It does not necessarily happen immediately out of law school, and it does not necessarily happen with a mentor formally assigned to you by your firm. But it is never too soon to be on the lookout for the person who could be your mentor.

TYL: How should young lawyers approach the practice of law?

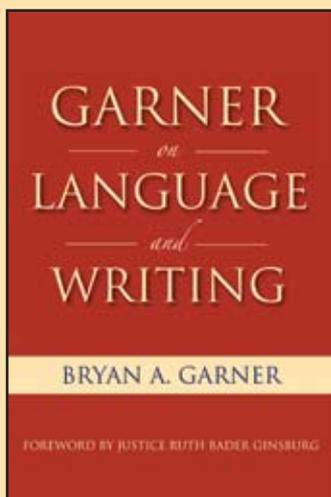
Kasner: Having uncompromised ethical standards will serve you best for the long haul. Strive for excellence in the work

product you produce.

Also, treat your clients, adversaries, peers, and subordinates with the utmost respect—you will find over the course of your career that your reputation usually precedes you.

Schwartz: Approach the practice of law as you would approach anything in which you hope to achieve success. Approach it with dedication and enthusiasm. The practice of law is your career, and it is your responsibility to develop your career. This means taking the time and effort to learn as much as you can about what you've been asked to work on, seeking advice and feedback from those with whom you are working, and communicating with your colleagues to let them know of your goals and aspirations. The practice of law involves working with your colleagues to help your clients. When approached with dedication and enthusiasm, it can be challenging, rewarding, and enjoyable.

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GARNER ON LANGUAGE & WRITING

By Bryan A. Garner

Since the 1987 appearance of *A Dictionary of Modern Legal Usage*, Bryan A. Garner has proven to be a versatile and prolific writer on legal linguistic subjects. This compilation of his essays shows the great breadth of his scholarship, covering subjects as wide-ranging as learning to write, style, persuasion, contractual and legislative drafting, grammar, lexicography, writing in law school, writing in law practice, judicial writing, and all the literature relating to these diverse subjects.

There are moving tributes to Professor Charles Alan Wright, Judge Thomas Gibbs Gee, and Sir Robert Megarry (whose last book Garner finished). There are piquant book reviews that damn the work of some famous writers, such as Lynne Truss (*Eats, Shoots & Leaves*) and the linguist Stephen Pinker, as well as enthusiastic recommendations of books that Garner finds meritorious. In her preface, Justice Ruth Bader Ginsburg declares the book to be a "must read" primer for her law clerks. Anyone with a lively interest in language, writing, and law will find this book hard to lay aside.

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Expert Advice on Improving Your OPENING STATEMENTS AND DIRECT EXAMINATION

Don't be a lawyer! Be a teacher, a helper, a friend—those are the figures we are conditioned to trust.

Such was the advice of experienced trial lawyers David Deehl of Coral Gables, Florida, and David Goodwin and Kim Selmore of Miami, who shared tips on effective opening statements and direct examinations during the ABA Young Lawyers Division's *Anatomy of a Trial Series*.

Deehl and Goodwin pointed out that opening statements start well before the trial, with a "complete command of the case." Deehl suggested that the initial sentence of an opening statement be rooted in ten key words or phrases. For example, the following key words could be used in the initial sentence

of an opening statement in a wrongful death action: negligent, speeding, driver, cell phone, killed, wonderful man, justice, demands, full compensation.

However, even before the initial statement, Goodwin and Deehl emphasized, "Start by saying nothing." Both recommended making eye contact and connecting with each juror and that only after this has been completed should the attorney unfold the story of the case.

Cautioning that litigation is "not formulaic," Goodwin said, "The best strategy is to have themes that resonate with the jury, give them psychological anchors. Those are the phrases that turn into themes that the jurors remember above all others, that bring together all

the details under one umbrella to reach the verdict that you want."

Both Deehl and Goodwin cited "Carpe Diem: The Rule for Powerful Opening Argument," an article by John Buckley of Chicago, a past chair of the ABA YLD's Trial Techniques Committee, as sound guidance for opening statements.

In discussing direct examinations, Selmore explained that preparation for the examination should begin with writing the closing argument. According to Selmore, this helps define what needs to be established in the direct examination. She also stressed the importance of spending time with witnesses before trial and showing respect for them from the first meeting. This involves explaining the case and the importance of their role and the lawyer's role in the direct examination and the case as a whole.

Selmore encouraged young attorneys to take time with a witness to identify quirks that could harm the witness's cred-

ibility and facts or issues in the case that make him or her uncomfortable, as these may be minefields at trial.

Further trial tips from the experts included:

- Prepare a case like a gourmet meal; don't "run it through a blender." Presentation makes it appetizing, even if the nutrition is the same.
- Practice with pillows: Seat a witness before a sofa, stand up each pillow, and label each as a juror. Train the witness to make "eye contact" with each pillow.
- Get out of the office—meet your witnesses where they live or work. It shows respect, and you learn more about them.
- Don't oversell—jurors are skeptics.
- Tell the other side's story but in an unfavorable light.
- Justice is hard to explain—but everybody understands injustice.
- To persuade, appeal to interests, rather than intellect.

Did You Know?

Involvement in the ABA YLD, and its predecessors, has led to many successful opportunities in the larger ABA. Since the Junior Bar Conference was founded in 1934, thirteen former YLD Council Members have gone on to serve as President of the ABA, including the current ABA President H. Thomas Wells Jr. Eight former YLD Council Members have served as Chair of the ABA House of Delegates, seven as ABA Secretary, and three as ABA Treasurer. In addition, two former YLD Chairs have served as ABA Executive Director and six former Council Members have received the ABA Medal. Since 1966, 20 percent of the members to the ABA Board of Governors have previously served on the YLD Council.