BUILDING
A BETTER
LAW
PRACTICE

Become a Better Lawyer in Five Minutes a Day

JEREMY W. RICHTER
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PREFACE

In the same way good pastors exhort not only their congregations but also themselves, I am writing this book for both you and me. I aspire to be a better lawyer tomorrow than I am today. I want to work with good lawyers, but not entirely for altruistic reasons. I do believe our profession is best served when more of us deliberately improve our craft, but selfishly my job is made easier when opposing counsel are good at their job too.

To be a good lawyer, you have to put in the time and energy to continually improve your craft. You might be under the misconception that “good lawyers” encompasses the bulk of practicing attorneys, but that is just not the case. Think about average lawyers—they are not very good, and half are worse than that.

Not much is required of you to rise above the threshold of “average.” You will need some inherent ability, but more importantly, you will need to care. Your willingness to read a book like this is evidence that you’re on the path to being a better-than-average lawyer. My goal is to propel you a little farther down that path. To that end, I have written about four general topics:

- Managing Clients and Creating Collaborative Relationships
- Practical Considerations for Your Practice
- Improving Your Skills and Managing Your Caseload
- Developing Yourself and Your Practice

Knowing how precious lawyers’ time is, I have written this in a “daily reading” format. I recommend that you read one topic per day. Each day’s reading should take about five minutes or so. Over the course of about seven weeks, at the time cost of about 0.1 hours per day, you will have collected dozens of practical strategies for developing an efficient and
building a better law practice

A collaborative practice that will set the foundation for good relationships with your clients.

Not everything that happens in the course of a practice is heady and intense. Sometimes things happen that are just downright amusing. To that end, I want to start you off with a trial story. Try to enjoy it because it may be the only anecdote that isn’t a parable.

On Monday mornings at the outset of trial, the lawyers and judge need to accomplish many things outside the hearing of the jury panel. Much of this happens before the panel is seated in the courtroom, but potential jurors often are stuck with some downtime while the lawyers and court handle procedural issues.

During one such session, in which the lawyers for both sides were conferring with the judge in a rural county in eastern Alabama, a potential juror popped out of his seat and began walking toward the back doors of the courtroom. The judge piped up, “Son, what are you doing?”

The fellow paused and, partially turning, replied, “Judge, I have to pee” and continued his exit. When he had walked out of the courtroom, the surprised judge smirked and announced, “Let the record reflect the gentleman has to pee,” eliciting nervous laughter from the other panel members.

Shortly afterward, we recommenced jury selection and then broke for lunch at noon. Most of the jurors exited the room, but our audacious prospective juror approached the front and laid his “Juror” badge in front of the court reporter. The judge inquired, “Why did you lay that down?”

“I’m not coming back.”

“Excuse me?”

“I don’t have time for this. I got things to do.”

“Did you tell the other judge that when he was excusing jurors?”

“Yeah.”

“Did he excuse you?”

“Nope.”

At this point, I was thoroughly impressed with the judge’s disposition. There are many things a judge will abide, but disrespect is not among them. The four lawyers in the room were just watching the scene unfold, astonished and disbelieving.

“Well, then, you’re not excused, and we’ll see you after lunch.”
The belligerent juror turned to walk out without retrieving his badge. For his benefit, the court addressed him one more time.

“Son, I want to be real clear with you—if we come back from lunch and you’re not back here sitting in the third row, I’m going to send the sheriff to your house to pick you up.”

The potential juror continued his retreat.

When we returned from lunch, the juror badge was no longer on the court reporter’s table, and our potential juror was seated meekly in row number three. Unbeknownst to him, both sides had agreed during lunch to strike him. He wasn’t going to be good for anyone’s cause.
Managing Clients and Creating Collaborative Relationships

Like it or not, clients are the most important part of any business. Without clients, you are just a lawyer without any means or opportunity to practice your craft. Once you have clients, you’re going to find it preferable to meet their needs and expectations so that they remain your clients. This section is designed to identify the needs your clients will have, the importance of collaborating with them while managing their cases, and the value of working within parameters necessary to resolve your clients’ problems without sending them to the poorhouse.
Your Clients Need a Problem Solver, Not a “Trial Lawyer”

I’m a litigator, and I like thinking of myself as such. I participate in written discovery, review and assess thousands of pages of documents, take and defend depositions, and try cases. I’ve learned that every aspect of a case should be conducted in furtherance of preparing the matter for trial. Interrogatory responses, site inspections, party depositions—none of them happen in a vacuum. Everything that happens in a case is (or should be) in anticipation of putting your client in the best position for final resolution.

Tunnel Vision for Litigators

As a trial lawyer, when I catch a scent—the plaintiff has a preexisting injury she didn’t disclose, he went rock climbing after he allegedly tore his rotator cuff in the accident, or she has been in three subsequent accidents and has a different lawyer for each—I can be kind of like a hound dog. Everything else goes dark, and there is only where the scent is leading. I am not alone in this tunnel vision. Frank Ramos of Clarke Silverglate recently commented:

As lawyers, we become so wired to become advocates that we may buy into arguments that a more objective counselor simply wouldn’t make. When analyzing the strength of an argument, ask yourself, “How would I respond if I was on the other side? What if this argument was being made against me?” Sometimes we stretch the facts and law too far to find a winning argument when in fact we’re jeopardizing our credibility by pursuing an argument that we would find laughable if we were on the other side.

Then, in the distance, I hear a fainting, echoing voice. The world around me becomes illuminated again, and the voice is my client, who wants to position the case for settlement, if we can do so reasonably. This is hugely disappointing. I was already envisioning the plaintiff’s expres-
sion as I impeach him in front of the jury and the lawyer’s abject horror as her case falls apart in front of her eyes. It was going to be glorious.

Unless it wasn’t. Trial is expensive and uncertain. The judge can keep out evidence that you believe is due to come in, even that incredible evidence that was going to cause you to be revered with the likes of Williams Jennings Bryan and Thurgood Marshall. And then there are juries, which are . . . well, juries. Juries are an unknowable creature, an entity unto themselves, unlike any other. These are the things that keep clients from sleeping well at night.

**Be the Problem Solver Your Client Needs**

The best way for you to advocate for your clients is to understand their goals and objectives, which may not include trying the case. Clients may need to get a case positioned for reasonable settlement. They may want to salvage a business relationship at the conclusion of the case. Most important, your clients need you to understand there are things to consider other than storing up armaments and making battle plans in preparation for war. Your clients don’t need you to be a trial lawyer. They need you to be a problem solver, which sometimes involves trying cases.
Some time ago I was involved in a Twitter conversation that arose from an article I wrote about corporate clients tracking performance metrics for their lawyers. One of the major points I was espousing was that the day of the bloated bill with redundant time entries and unnecessary expenses is largely a bygone era. Yet some of that culture remains for an older generation of lawyers. A friend of mine prodded me with this statement, “Efficient lawyers starve to death.” I immediately began ruminating on whether the statement had any merit.

Do Efficient Lawyers Starve to Death?

The Billable Hour

Let’s talk about the billable hour for a minute. It is an outdated model that creates an uncomfortable tension between clients and their lawyers. For the relationship to continue to be functional (and this next part is true of every relationship), there has to be a significant measure of trust. The client should be able to trust that the lawyer is only doing work that is reasonable, necessary, and calculated to advance the case. The client must know that the lawyer is only billing for work that actually was performed and in increments of time that reflect the work done. The lawyer must be able to trust that the client is going to pay for the work that is done. If these levels of trust exist, the billable hour can be a manageable tension.

But here’s where things get wonky. Plenty of lawyers submit bills that reflect inordinate amounts of time spent on ordinary tasks, duplicative billing among partners and associates, and seemingly unnecessary expenses. These billing practices slowly grind away at the trust essential to the attorney–client relationship. Likewise, many corporate clients arbitrarily cut lawyers’ bills. Maybe something wasn’t worded just right on the invoice. Maybe work was done by a lawyer that, in the client’s estimation, could have been handled by a paralegal. Maybe the client just has
an arbitrary policy of cutting bills by 10 percent. On the lawyer’s side, that’s where things start to break down and a seed of animosity develops.

Alternative Billing Methods

Without getting too far afield from whether efficient lawyers starve to death, I feel compelled to address the topic of value-based billing structures. Alternative fee structures such as flat rates and budgeted fees with collars (wherein hourly fees are subject to a case budget and collar range; if the fees come in under the collar, there is a bonus, and if the fees are above the collar, the client receives a discount) certainly have a place in some types of practices. There are situations in which these structures work well and others in which one side benefits to the other’s detriment.

Value-based billing structures are worth considering, but if you don’t have a good handle on your business, you are likely to do yourself or your client a disservice with fee proposals. One of the best ways of keep up with your fees is to develop spreadsheets on which you can track costs and expenses. In this way you may be able to prepare alternative billing methods that are beneficial to both you and your clients.

<table>
<thead>
<tr>
<th>Case Name</th>
<th>Hours Billed</th>
<th>Fees Billed</th>
<th>Litigation Costs</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duck v. Mouse</td>
<td>320.3</td>
<td>$42,699.00</td>
<td>$2,346.44</td>
<td>$45,045.44</td>
</tr>
<tr>
<td>Turtles v. Splinter</td>
<td>624.0</td>
<td>$85,911.00</td>
<td>$9,402.46</td>
<td>$95,313.46</td>
</tr>
<tr>
<td>Skywalker v. Vader</td>
<td>350.4</td>
<td>$47,214.00</td>
<td>$4,960.96</td>
<td>$52,174.96</td>
</tr>
<tr>
<td>Starling v. Lecter</td>
<td>444.1</td>
<td>$59,953.50</td>
<td>$4,265.12</td>
<td>$64,218.62</td>
</tr>
<tr>
<td>Jordan v. Johnson</td>
<td>157.4</td>
<td>$21,669.00</td>
<td>$754.60</td>
<td>$22,423.60</td>
</tr>
<tr>
<td>Brady v. Manning</td>
<td>76.2</td>
<td>$10,107.00</td>
<td>$215.67</td>
<td>$10,322.67</td>
</tr>
<tr>
<td>Gates v. Jobs</td>
<td>547.2</td>
<td>$75,141.00</td>
<td>$7,937.83</td>
<td>$83,078.83</td>
</tr>
<tr>
<td>Shakur v. Naz</td>
<td>308.1</td>
<td>$42,384.00</td>
<td>$3,340.48</td>
<td>$45,724.48</td>
</tr>
<tr>
<td>Kent v. Wayne</td>
<td>676.6</td>
<td>$94,063.50</td>
<td>$6,927.86</td>
<td>$100,991.36</td>
</tr>
<tr>
<td>Lennon v. McCartney</td>
<td>769.0</td>
<td>$108,294.00</td>
<td>$5,770.39</td>
<td>$114,064.39</td>
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<tr>
<td>Cobain v. Love</td>
<td>39.8</td>
<td>$5,469.00</td>
<td>$193.89</td>
<td>$5,662.89</td>
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If a client is interested in using a flat fee structure, you could use this table to determine your average billable fees on that type of case. You could then negotiate a fee that would allow you to remain profitable and keep your client from overpaying. Given enough volume, the numbers should work out appropriately, even though in individual cases one of you comes out ahead.

**But Really, Do Efficient Lawyers Starve to Death?**

We might have to revisit this in ten years to see if I’m malnourished, but I’m going to provide my clients with efficient representation for the time being. Before I go into my reasoning on this, let’s revisit the tension: the more time I spend working on cases clients send me, the more money I make. For most lawyers, time is money, quite literally. But if my client has to pay me too much on a particular file, my client may begin to wonder if a substantially similar service and results may be available elsewhere at less cost.

Here are some other truths. It takes more money to develop and bring in new business than it takes to retain existing business. If your practice is a revolving door of clients who leave because their files are being overbilled, then even though you may be making more money on each file in the short term, you are not maximizing your earnings because you’re having to spend too much time and money on client development and putting out the fires of broken relationships.

In addition, your relationships with individuals who are employed by your clients are going to suffer as well. For example, in the insurance industry, which is where most of my clients reside, there is a lot of movement among personnel, both vertically and horizontally. The adjusters with whom I interact on a daily basis move up the corporate ladder or move on to other insurance companies. If we have an effective relationship, there is a greater chance of them taking me with them wherever they go. But if I’m squeezing every last red cent out of a file, they may soon find someone else who will do the same work for less. And make no mistake, there is no shortage of lawyers who are lined up for their business, just waiting for me to give them an opportunity to pounce.
So my answer to the question of whether efficient lawyers starve to death is a resounding NO! Efficient lawyers may not make as much money on each individual case, but they are maximizing the trust relationship with clients and setting themselves up for a more stable and productive practice for the long haul.
Early Case Evaluation and Collaboration Makes for Happy Clients

When a client has hired you to handle a case, he has an expectation that you are going to undertake certain courses of action with or without specific instructions. He is relying on you to handle the case in an efficient and effective manner. You need to have a firm grasp of what actions and information will make both your job and your client’s easier from the outset of the case. Here are eight steps that can help lead to effective and collaborative case management.

Maintain Contact with Your Client

You are the client’s conduit to the legal system. Maintaining contact should be a high priority. Your client is either suing someone or has been sued and likely has fears and questions only you can answer. Your client needs information and assurances you possess and the client does not. Be a resource.

Answer and Immediately Issue Discovery

Rarely is there a good reason for a delay in issuing written discovery requests when you’re in state court. Make it part of your work flow—file an answer . . . (moments later) file written discovery. If you are in a litigation practice in which most of the information types you are seeking from case to case are substantially similar, there’s typically not a great deal of personalization in written discovery. Establish your default set of base questions, add case-specific requests as necessary, and get that discovery out. The sooner it goes out, the sooner it comes back to you (ideally).

Despite the cookie-cutter nature of written discovery in many practice areas, your document requests and interrogatories should be particularized to address the facts of the case. Let’s use a personal auto claim as an illustration. If your client struck a pedestrian, it would not do to be asking questions of the plaintiff about damage to his vehicle. If the
plaintiff is only making property damages claims, the client will become aware of your inattention if your discovery requests seek information regarding plaintiff’s medical expenses and permanent injuries.

Engage in Aggressive Motion Practice, as Needed

When you’ve issued written discovery that has gone unanswered, send a letter (or two) requesting that opposing counsel produce her client’s responses. After that, file a motion to compel. Your client’s interests are not best served by you sitting around doing nothing. Your client needs to know he is a priority, and you need the responses to effectively represent your client and evaluate the situation.

Aggressive motion practice also applies to motions to dismiss, motions to compel, motions for sanctions (whether Rule 37 or 11), motions for summary judgment, and so forth. As much as I advocate that lawyers should play well together and be generally agreeable, you cannot allow cordial relationships with other lawyers to get in the way of prosecuting a case. You have to strike a healthy balance between maintaining good, working relationships with opposing counsel and zealously advocating for your client.

If Possible, Make an Early Evaluation of Liability and Potential Damages

Sometimes, immediately after being assigned a case, you can take one look at the facts of a case and make a definitive and unwavering assessment of liability. In other instances, months of written discovery and depositions will be required. And in still other cases, you aren’t going to know whether liability lies with your client until the jury comes back with its verdict. Regardless, you need to be communicating your liability analysis to the client throughout because he is attempting to evaluate risk and set reserves. The more information you can provide about liability, the more informed his decision making can be.

A significant part of risk evaluation is venue analysis. You likely know the venues in your state better than your client does. Frequently, damages
evaluations and potential verdicts vary wildly from county to county. In addition, you need to know what claims and damages the plaintiff is alleging in your case before you can evaluate potential risk. But you can’t know what the potential damages are if you haven’t gotten the discovery out and back in (and been aggressive in your motion practice, if necessary, to effectuate getting that information).

**Conduct an Early Analysis for Resolution Strategies**

About 95 percent of lawsuits end in a pretrial settlement. Some cases can be settled early in the process, shortly after determining liability and evaluating potential damages, whereas others will only settle on the eve of trial. In the short term, evaluating and positioning cases for early resolution may not positively affect your billable hours, but your client will be happier, and happy clients keep sending work.

To effectively negotiate settlement, you need a strategy. Once you’ve provided the necessary information to your client, you can strategize together about the best approach for resolving the matter. On your end, your knowledge of the venue, presiding judge, parties, and opposing counsel will contribute heavily to your assessment. On your client’s end, a thorough assessment of the facts, liability, and potential damages enables her to get the necessary authority to engage in meaningful settlement discussions.

**Present a Balanced View of the Case’s Strengths and Weaknesses**

Your client’s understanding of the risks inherent in a case will be colored largely by your presentation of the facts and the law. Make sure to present an unbiased view. If there are bad facts that affect your defense of the case, your client needs to be made aware of them early in the process. Sugarcoating your analysis may result in false expectations that lead to doubt and mistrust, which in turn lend themselves to a client finding counsel in whom she has more faith.

Communicate to your client, in writing, both the facts and the law that are favorable and otherwise, explaining the rationale behind your
analysis. Your state may have quirky laws of which your client may be unaware, doesn’t understand, or hasn’t been made to comprehend the practical effects of in this case. For example, Alabama is a contributory negligence state, which means that if a plaintiff is even 1 percent at fault for the harm that has befallen him, the plaintiff is legally barred under the law from recovering for the harm. In reality, however, juries rarely implement contributory negligence and instead apply their own form of comparative negligence when awarding damages to a partially at fault plaintiff.

**Provide a Proposed Budget**

As a part of measuring its risks, your client needs to have a reasonable expectation of the costs of defense. Producing an accurate, case-specific budget aids your client in making sound business decisions. Furthermore, a proposed budget lets the client know whether your billing is in line with that of other lawyers who are handling her work.

**Explain Tactics and Procedural Issues**

Your client needs to know the reasoning behind your proposed actions. If you intend to move to transfer venue, move to dismiss the case, or move for summary judgment, be sure to keep your client in the loop and collaborate with him in the decision making. Inform your client of the risk versus reward of your proposed strategies, the likelihood of success, and costs you expect to incur.

Your client is best served by your providing as much meaningful information and analysis early in the case as is possible. Your relationship with the client should be collaborative because your interests are aligned. The more you work together in developing strategies and expectations, the more efficiently and effectively you can represent your client.
The Importance of Trust and Creating Value in Client Relationships

Over the last couple of years, I’ve frequently used LinkedIn to connect with people in the insurance defense business. Sometimes it has been an effective tool, and other times it has been like sending invites and messages out into the great void. I’m going to share with you one of the ineffective methods I was using and what I learned from Anthony Iannarino’s *The Lost Art of Closing* (Portfolio/Penguin, 2017) about why my method wasn’t working for me.

An Ineffective Method

Using a strategy I have developed to ascertain potential clients, I would send the potential contact an invite on LinkedIn, accompanied with a message very much like this one.

Dear [Potential Client]:

I appreciate you adding me as a contact. I would like an opportunity to discuss with you the possibility of earning [company]’s business in Alabama.

My major areas of practice are [relevant practice areas]. I believe that these practice areas coincide well with the [type of work] that [company] does. It is my priority to handle each case in a manner that meets my client’s objectives and to provide timely reporting and evaluation.

Please feel free to contact me either by phone or email to discuss how I may be able to best meet your needs in Alabama. I look forward to hearing from you.

Jeremy W. Richter
It didn’t take me long to realize that this approach wasn’t meeting with much success. Although I knew what wasn’t working, it wasn’t until I read *The Lost Art of Closing* that I really understood why.

**Lessons from The Lost Art of Closing**

A familiar idiom is applicable to the situation I described for trying to draw in new business: “people do business with people they know, like, and trust.” What I needed help with was learning how to get someone from complete stranger to new client. Iannarino writes that this is done by “building lifetime relationships on trust, creating value, collaborating, and delivering exceptional results” (p. 7). To accomplish this, you have to understand the challenges your would-be client is facing and try to help him solve his problems.

It became clear right away that I was getting the cart before the horse. I was asking my contacts for something before providing any value to them. They didn’t know me and didn’t have any reason to trust me. I was trying to sell them something (maybe even something they were already receiving elsewhere) before creating a “relationship of value.” *The Lost Art of Closing* describes this type of relationship as one in which “you create value for your clients as someone who provides ideas and advice—and who also ensures that the outcomes they sell are delivered” (p. 21). You have to be “others-minded” and engage your empathy.

As you gain experience, meet people, and become involved in the work of bringing in your own clients, bear in mind that you are more likely to have success if you can add something of value for your contacts and potential new clients before requesting any commitment from them. Keep their needs and concerns in mind and provide information and assurances about why you are capable of resolving those issues.
Align Your Tactics with Your Client’s Objectives

Perhaps a bit unconventionally, I would like to start by defining some terms:

- **Objective:** an intended result that is specific and measurable.
- **Goal:** a broad statement identifying a mission.
- **Tactic:** any mode of procedure for gaining advantage or success.
- **Strategy:** a plan, method, or series of maneuvers for obtaining a specific result.

To use an analogy tool from my days as a high school teacher, tactics are to objectives as strategies are to goals. You and your client are in different businesses (unless you do legal malpractice work) and have different business goals. But your client has been sued and is at your doorstep. Now you have some common interests. You need to make sure your objectives are aligned with those of your client so you can employ tactics likely to help you achieve those goals and objectives.

**Formulate and Be Mindful of Your Budget**

Your client wants to win her case, but she doesn’t want to go broke doing so. After you’ve been assigned a case and taken the initial steps to evaluate it, provide your client with a proposed budget. This allows your client to plan and prepare for the expenses she’s going to incur. Budgets help build trust between you and your client because the budget will (or should) have a detailed, itemized list of the costs, which will help strengthen the lines of communication.
You should be comfortable explaining any of the expenses you’ve proposed and how they will help achieve your goals and objectives for the case. Then, and even more important, you have to operate within the constraints of the budget. Otherwise, your failure to adhere to a proposed budget may align you with the rental car agent from *Seinfeld*:

Jerry: I don’t understand. Do you have my reservation?

Agent: We have your reservation, we just ran out of cars.

Jerry: But the reservation keeps the car here. That’s why you have the reservation.
Agent: I think I know why we have reservations.

Jerry: I don’t think you do. You see, you know how to take the reservation, you just don’t know how to hold the reservation. And that’s really the most important part of the reservation: the holding. Anybody can just take them.

Anybody can create a budget; the important part is keeping it. But let’s be realistic, sometimes things happen in litigation that blow budgets out of the water. When that happens—or preferably, when you anticipate it is going to happen—immediately communicate your expectations to your client. Prepare your client up front for the additional expenses she’s about to incur.

Understand Your Client’s Greater Goal

Sure, there are lawyers who, for the sake of winning, are willing to set the world on fire and watch it burn. But this approach can be mentally and emotionally taxing. The scorched-earth mentality may not fit within your greater goals. Your client may want to salvage the relationship with her opponent after resolving the litigation. Burning bridges can be expensive and can take a heavy toll on a reputation. Or maybe the client just likes to play well with others.

I’m not suggesting that a client should necessarily control or meddle in the tactics her lawyer uses to achieve objectives in the case. However, I do believe the client and the lawyer should discuss strategies employed to achieve larger goals, including goals that may extend beyond the borders of the litigation. The lawyer serves himself and his client well by comprehending her greater business interests.

Communication Is Key

You can probably locate the common thread here—communication. Unless you have honest conversations with your client, you won’t know
what her goals are. You will be unable to implement strategies and specific tactics that are geared toward satisfying your client’s needs and desires.

A client who doesn’t believe she’s being heard is an unhappy client, even if the end result is the desired one. An unhappy client doesn’t return to do business with you again in the future, doesn’t give you helpful feedback, and doesn’t recommend you to her friends and associates.
What Metrics Are Clients Using to Measure Your Performance?

Corporate clients are increasingly savvy about performance metrics—often more so than the lawyers whose work product is being measured. Many lawyers are unaware of the categories and parameters clients are using to evaluate them. And unless you have a particularly candid relationship with your client, you are likely in the dark about how your firm compares to counsel your client may retain in other jurisdictions.

Here are common performance metrics categories many corporate clients use to analyze attorney efficiency and effectiveness—and ways you can self-audit. By knowing these categories and internally tracking data, you can self-audit for areas of improvement.

How Long Are Your Files Open?

The length of time a file is open is called a cycle time, which can be an indicator of how efficiently lawyers are managing their caseloads. In many states, the time it takes to get a case from filing to trial varies significantly from county to county. Cycle times are likewise variable when considering practice area and the complexity of individual cases. But over the course of time, the amount of time your cases are open should be an indicator of your case management efficiency.

By using a spreadsheet, you can track opening and closing dates for your cases, which you can use to find the average number of months your cases are open. I recommend separating cases by practice area due to the varying lengths of time different types of cases take to litigate.
### Are Your Billables and Expenses Reasonable and within Budget?

Some cases are going to cost more than others—multiple party or fact witness depositions; biomechanical and accident reconstruction experts; site inspections; thousands of pages of document review—it’s understandable and often completely necessary in order to properly evaluate and prosecute a case. But are you communicating that to your client? Are the time and expenses you are incurring on a file truly necessary, or can they be interpreted as bill padding and driving up the costs of litigation? Although the specifics may vary from case to case, the trend should be that you are proposing accurate and reasonable budgets.

Using a spreadsheet, you can track the budget you propose to your client and compare it to the actual costs, including billing fees and expenses. Over time you should be able to more effectively propose budgets that reflect actual costs.

<table>
<thead>
<tr>
<th>Case Name</th>
<th>Opening Date</th>
<th>Closing Date</th>
<th>Months Open</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duck v. Mouse</td>
<td>5/1/2016</td>
<td>3/1/2017</td>
<td>10</td>
</tr>
<tr>
<td>Turtles v. Splinter</td>
<td>5/1/2014</td>
<td>10/1/2017</td>
<td>41</td>
</tr>
<tr>
<td>Skywalker v. Vader</td>
<td>5/1/2015</td>
<td>1/1/2018</td>
<td>32</td>
</tr>
<tr>
<td>Starling v. Lecter</td>
<td>7/1/2014</td>
<td>5/1/2018</td>
<td>46</td>
</tr>
<tr>
<td>Jordan v. Johnson</td>
<td>9/1/2017</td>
<td>5/1/2018</td>
<td>8</td>
</tr>
<tr>
<td>Brady v. Manning</td>
<td>9/1/2017</td>
<td>4/1/2018</td>
<td>7</td>
</tr>
<tr>
<td>Gates v. Jobs</td>
<td>9/1/2015</td>
<td>9/1/2017</td>
<td>24</td>
</tr>
<tr>
<td>Shakur v. Naz</td>
<td>10/1/2016</td>
<td>11/1/2017</td>
<td>13</td>
</tr>
<tr>
<td>Kent v. Wayne</td>
<td>12/1/2015</td>
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<td>25</td>
</tr>
<tr>
<td>Lennon v. McCartney</td>
<td>11/1/2015</td>
<td>10/1/2017</td>
<td>23</td>
</tr>
<tr>
<td>Cobain v. Love</td>
<td>1/1/2017</td>
<td>9/1/2017</td>
<td>8</td>
</tr>
</tbody>
</table>

### Are Your Settlement and Verdict Evaluations Accurate?

An injury that’s worth $40,000 in one venue could be worth $400,000 in another. Your client probably isn’t as familiar with the venues in your state as you are. He relies on you to provide accurate case valuations so he can manage the risk and budget for upcoming litigation costs. If you
provide inaccurate evaluations, you inhibit your client’s ability to manage risk and operate a profitable business.

Track your settlement and verdict recommendations in a spreadsheet so you can then compare them with actual results. Doing so enables you to quickly determine what percentage of cases try or settle within your evaluation range. Armed with this information, you can work toward improving your valuations by observing trends.

<table>
<thead>
<tr>
<th>Case Name</th>
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<th>Settlement Evaluation</th>
<th>Verdict Evaluation</th>
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<td>Duck v. Mouse</td>
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<td>$5,000.00–$10,000.00</td>
<td>$20,000.00–$30,000.00</td>
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<tr>
<td>Cobain v. Love</td>
<td>$35,000.00</td>
<td>$35,000.00–$50,000.00</td>
<td>$50,000–$100,000.00</td>
</tr>
</tbody>
</table>

**How Compliant Are You with Reporting Deadlines?**

Few things will put you in the bad graces of a client faster than consistently failing to communicate or provide timely information. What may seem like arbitrary deadlines typically are not. A lawyer’s failure to report
has a chain reaction. The person you report to is then unable to provide necessary information to her superiors, which has ramifications all the way up the corporate ladder. On the other hand, timely and thorough reporting ingratiates you with your client—and everyone looks good.

This metric is the easiest to monitor and track. Even basic calendar apps allow you to schedule reminders for reporting deadlines so that you are prompted when due dates approach.

**Are You Communicating Developments in the Case?**

Even when no formal reports are due, are you communicating regularly with your client about the status of his case? If your client’s inbox is going months at a time without any correspondence from you, that is not ideal. If your client is regularly the one to call or email you asking what’s going on in a case, you can be sure that you are not communicating with him as regularly as he would like.

**Do You Have Expertise in the Subject Matter?**

Have you established a relationship with a new client by pitching yourself as a workers’ compensation lawyer when you’ve only ever handled personal auto cases? Your lack of knowledge in a subject area will quickly become evident to the client who is immersed in the lines of business you have intimated that you handle. Similarly, if your client begins handling a new type of business and you represent to him that you can handle those matters, you had better be competent in the new practice area. It will quickly become evident if you are not, and that will erode the trust and rapport between you and your client.

Your corporate clients are auditing your performance based on the criteria that are important to them. Do you know what those criteria are? Are you auditing internally? If not, shouldn't you be? It may be important to know about yourself what others already know about you. Self-awareness of strengths and weaknesses in critical case management metrics gives you the opportunity to either maintain your current course or make adjustments.
Three Commonalities between Potty Training and Client Management

By the time our toddler was almost three, my wife and I had been discussing potty training for a while. Finally, we settled on a week when we had four consecutive days that could be devoted to the endeavor—my wife would be home for the first two days (clearly she drew the short straw), and I would manage the second two days. We both read a helpful book called *Potty Training in 3 Days*, and we were ready-ish.

I certainly learned some interesting lessons along the way. Because I am incapable of turning off certain portions of my brain, I couldn't help but make correlations between potty training my toddler and managing my clients.

*Establish Who Is in Charge*

Your client, like your toddler, knows what he wants. He doesn’t like not getting what he wants. But what he wants is not always what is in his best interest. In fact, what he wants in this particular instance is to continue making a mess all over himself. But you happen to be an expert in this area. You’ve been handling these kinds of situations for years. You know something he doesn’t—you know what is in his best interest. There’s going to be a fight to get him to see your point of view, but you know that once he becomes receptive to the idea, he will immediately and irreversibly understand why your solution is better than the position in which he has entrenched himself.

The only way to get your client interested in understanding that not only do you know what you are talking about but also that he needs to follow your instructions is to establish yourself as the authority figure in the situation. There can be no wavering. There can be no concessions. There can be no alternatives. Your being the person in charge is essential to the success of the operation. In the same way that a house divided against itself cannot stand, you cannot effectively manage your cases or your clients if it is unclear who is in charge.

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Set Expectations

One of the best ways to establish yourself as the authority figure is to set expectations early. With potty training our toddler, we began talking days in advance about the changes we were going to implement. We all went to the store together to let him pick out his “big boy underwear.” Once we had established what changes were going to occur, we empowered him by allowing him to make choices within set parameters. He didn’t get to choose whether he was going to wear big boy underwear; instead, he got to choose what kind he wanted. We wanted him to understand that he and his decisions were an intrinsic part of the process so that he would be invested in the outcome. But it also was necessary to bracket his power. For that to be effective, we had to educate him on the process.

Our toddler is inquisitive. He is directly affected by the outcome of the changes we are implementing. So it is in our best interest (and his) to educate him on the process and set his expectations. He is going to be far more compliant and trusting if he understands not only the process but also the ultimate goal.

Clients, too, need to understand what is happening. They are directly involved in and affected by litigation in a way that you are not. It is their company, their livelihood, their reputation that is at stake. To gain the trust and cooperation of your clients, they need to be educated on the process and involved in the decision making.

Be Consistent

There is no better way to affirm the expectations you have set than by being consistent after implementing a plan of action. If you change directions at every hiccups along the way, your audience is going to be confused. You will undo all the work you have put into establishing yourself as the authority figure.

There are going to be crossroads, moments when you find your face firmly resting in the palms of your hands, and to be frank, there are going to be times when things are really crappy. But you must be consistent. You have a plan. You know the end goal. Detours may be unavoidable, but not wholesale deviations from the plan. You are in charge. You know
what’s best because you do these things all the time. You know how to get
yourself and your client/toddler from the situation in which he currently
finds himself to the destination.

You’ve established yourself as the authority figure. You’ve set his
expectations. Now take the necessary measures to consistently implement
your plan so that you can each celebrate both the small wins along the
way and the ultimate victory of achieving your goals.
How to Obtain Client Case Evaluation Feedback

Every industry needs feedback from its end users. The legal industry is no exception. You need to know whether your clients are satisfied with your services. The only way to obtain that information is by asking, whether by a survey or some other form of case evaluation feedback.

At the conclusion of a case, I like to communicate with my clients to make sure I’ve met their needs and expectations. More than that, I want to have exceeded them. But that sort of case evaluation feedback doesn’t usually come about passively. I have to solicit it. I have to ask particular questions that yield specific answers to understand what my clients found helpful and what has left them wanting. Specifically, I want to ask questions that will inform me as to whether my performance measures up to the metrics against which I am being measured.

Sample of Case Evaluation Feedback Request

Here is a sample letter requesting feedback from a client at the end of a case. Client feedback helps me improve my practice.

As we prepare to close out this file, I want to thank you for the assignment. My goal is to handle cases in a manner that is consistent with your goals and objectives, and to provide you with the best possible service. To that end, I would appreciate your feedback in areas that I have identified as being of importance. Please rate my performance and handling of this matter on a scale of 1 to 10 (with 1 being terrible and 10 being great):

- Billing and cost compliance
- Outcome of the case
- Expertise in the subject matter of the case
- Communication
- Evaluation of the case
- Reporting compliance
- Cycle time (from Assignment to Closing)
I would, of course, welcome any verbal feedback you may wish to provide as well, whether it is on these topics or other aspects of case handling that are important to you. I look forward to your response and to continuing to work with you.

Responding to the Response

Once I receive the feedback from the client, I review it and begin to analyze my systems and processes. If the case evaluation feedback is positive, I need to assess what I can do to maintain the positive results. If the survey returns negative results, then I’ll know something went awry and I need to dig in to sort it out. Truthfully, I usually have a pretty good idea of what the results should be before I ever hear back from the client.

Are you doing self-analysis? Do you have open lines of communication with your clients that encourage feedback and improvement? If not, you ought to consider in what manner you can obtain feedback that will enable you to better serve both this client and other clients in the future.
The Value of Aggressively Pursuing Information

Lawyers provide a valuable service to their clients when they aggressively obtain information that enables them to evaluate claims for early resolution. This aggressive pursuit of information may result in higher up-front case expenses, but it frequently enables the client to close out his file more quickly. For a client to give a lawyer free rein to delve as deeply as needed into a matter is an exercise in trust. The lawyer can justify the trust by tempering his aggression and pursuing only that information likely to yield material results.

Not every client will be on board with this approach, so before blazing trails into an opponent’s prior medical and employment history, you need to make sure you and your client are on the same page. To make my point, I’m going to tell you the tale of two cases.

The Client Who Was Interested in Aggressively Pursuing Information

I represented a truck driver who had a drug problem. Well, to be fair, it wasn’t a problem for him—he consumed as much as he wanted, whenever he wanted. It only became a problem once he got in a wreck. Then it was his problem, and the plaintiff’s problem, and the trucking company’s problem, and, eventually, my problem. The liability for the accident was always questionable, and to this day I couldn’t tell you who was at fault. Fortunately, despite her claims, the plaintiff wasn’t really hurt either. Even her doctor would eventually testify that the treatment she received once a month after the accident wasn’t any different than she would have been receiving had the accident never occurred. Were it not for the giant albatross around our collective necks, in the form of a postaccident drug screen that was positive for methamphetamines, we would have had a pretty defensible case.

We were working for a client who was willing to front the costs for finding the skeletons in the plaintiff’s closet. It turns out, it was a veritable graveyard. Prior to the wreck, the plaintiff had bounced from one doctor to another, then from one pain management clinic to the next. She had
numerous warnings in her medical files about getting her medications filled at multiple pharmacies or making alterations to the number of pills she was supposed to receive. Then we found our golden ticket—five weeks before our accident she had been kicked out of pain management for selling her medications. Of course, in her deposition, she denied having done any of these things, but that was hardly the point.

We eventually settled the case for pennies on the dollar. Neither lawyer wanted his or her client to get in front of a jury. But imagine if my client had been stingy and refused to allow us to dig into the past. The additional costs we incurred for subpoenas and medical records reviewed paid huge dividends by balancing the scales for a reasonable settlement.

The Client Who Didn’t Want to Incur Litigation Costs

Not every client sees things through quite the same lens. In another case, I was defending a client in a car wreck case. Just your standard fare. Nothing particularly exciting. We filed an answer and issued discovery requests right away. In his responses, the plaintiff stated that at the time of the accident he had been a recreational drug user. Well, that was kind of exciting. But I was working for a client who would not pay for lawyers to review medical records. I had a dilemma.

Either I could go look at the ER records for free, knowing that this particular hospital usually performed drug screens on people involved in accidents, or I could wait for my paralegal to review the records and get back to me with a summary, at which point I’d still be left hoping she had overturned all the same rocks I intended to look under. I’m sworn to zealously advocate for my client (even when my client doesn’t want to pay me for the work), so I grabbed the ER records and began rummaging through them. No drug screen. That’s too bad.

But tucked away in the stack of records was a priceless one-line nurse’s note: “The patient states that he abuses pain pills and nerve pills.” Whoa! Guess what piece of information gave the plaintiff fits at his deposition. That case ended up settling more cheaply than it otherwise would have as well. But imagine a scenario in which I hadn’t discovered that single line. My client would have overpaid in settlement or at trial due to his refusal to pay the small price of whatever time it took me to review some records.
The Value Is in the Bigger Perspective

The attorney–client relationship is complex and requires a measure of trust. It is a fragile thing. The client receives an itemized monthly bill from the lawyer but doesn’t always see the work product to know whether the reward justifies the costs. Plenty of lawyers have been poor stewards and have caused their clients, and other people’s clients, to give pause when asked for some leeway to undertake some costs. But if a lawyer can work responsibly and efficiently, she can reward her client by developing important information material to the case that might otherwise have gone unfound. Aggressively pursuing information pays dividends (even though it might result in increased up-front expenses) because it enables the lawyer to arrive at stronger evaluations and achieve better settlements or verdicts.
Evaluating Cases from a Personal Injury Lawyer’s Perspective

In recent years, David Graves has been one of the most prolific trial lawyers in Alabama. I’ve been involved in two or three trials with Graves and have observed him employing his natural charisma and down-home affect to relate and connect with a jury. I’ve seen him have to wrangle clients and combat difficult situations. So I wanted to interview Graves about managing clients, evaluating cases, and deciding which matters to take to trial in his personal injury cases.

**JWR:** What do you consider when determining the value of a case?

**DG:** I determine the value of a case based on the damage to the vehicles, the injuries to the client, the venue, who the defendant is, whether it’s an individual or insurance company, and the coverages involved with the insurance companies. Quite frankly, it depends on who the insurance company is as to what the settlement value for the case is versus what I think it’s worth at trial.

**JWR:** How do you set a client’s expectations as to the value of a case?

**DG:** It’s very important to manage clients’ expectations from the beginning. They need to understand the value of a soft tissue case versus the value of a surgical case or a case with a broken bone. They need to understand the value of an uninsured motorist case versus a case against a third-party defendant. They also need to understand the impact that venue is going to have on a case. So it’s very important from the outset to have that discussion with new clients so that they understand what they’re dealing with, so their expectations match the likely outcome of the case, and so they’ve had an opportunity to kind of wrap their head around all of those issues from the beginning.
JWR: How do you manage a client who thinks he wants his “day in court”?

DG: We occasionally get a client who just wants her day in court and that’s okay—the client has a right to the court system just like Allstate Insurance. I found a lot of times that clients may think they want their day in court, but once the reality of what that means becomes apparent, they change their mind. I usually have about one client every two years who just won’t listen, won’t heed my best legal advice on the case, and who insists on going to trial. That being said, there are a lot of clients that I take to trial because I think we can have a better result than what the insurance company has offered. Regardless, when a client wants to try his case, that’s what we do. It’s an important part of being a trial lawyer, and it’s a pleasure to represent those folks and see what the jury is going to do.

JWR: What helps you determine that a case might be right for trial rather than settlement?

DG: What helps me determine whether a case is better tried than settled really kind of depends on the offer on the case and how the case is situated before the court. An okay or an average offer on a case that is against an underinsured/uninsured motorist carrier is always much easier to try because in a case like that, when the jury knows that it’s against the insurance company, I’m the good guy. The defense lawyer defending the big, evil insurance company [Note: That’s me.] is the bad guy, and the jury’s giving him dirty looks in that kind of case. That’s a case that’s a lot easier to try and a lot easier to be in court on. Anything with egregious conduct like a DUI, hit-and-run, texting-and-driving, anything like that will get a jury fired up and is preferable to be in trial rather than to just settle. Obviously, if the settlement offer is high, then that’s something you have to consider, but those are the kind of cases that are better situated for court.
JWR: How do you communicate to your clients the risk versus reward of taking a case to trial?

DG: When I talk to clients about the risk-reward of going to trial, I try to explain to them the question mark that is the jury panel. That you just don’t know what kind of jury panel you’re going to get to pick from. In Birmingham, for example, I’ve had great juries and I’ve also had horrible juries, so you just don’t know what you’re going to get until you get down there and you do it. I’ve had clients often ask me what do I think the jury is going to do, and even though I’ve tried a bunch of cases, I’ve given up a long time ago trying to figure out what a jury will do. In my experience, I just don’t know what they’re thinking, how they’re feeling, or what they’re going to do with a verdict. I try to explain all of that to a client as we discuss going to trial and trying the case. I tell them about some of the cases I thought I was going to win that I lost, and I tell them about some of the cases that I thought we were likely to lose and we pulled out a victory. I do that to illustrate the unknown factor that is court so that they have an appreciation and an understanding of what we’re getting ready to do and there’s not a surprise if it doesn’t turn out the way we hoped it would.

JWR: What’s your favorite part of trial?

DG: My favorite part at trial is jury selection. I really like interacting with the jurors and engaging with them. I like getting them to talk with me about their feelings and their concerns, the type of case that we’re working on. I feel like I am able to build rapport with them during jury selection and that I’m able to do a lot to further my client’s case and their interest during that part of trial. I feel like a lot of times I get an advantage over the defense at the very beginning during jury selection and that’s probably my favorite part of the case.

After that my second-favorite part has got to be closing argument. That’s always fun and everybody likes that, but I think that takes
a backseat to the importance of jury selection. The intellectual aspect of jury selection in terms of who are you going to keep and who are you going to strike and are you asking questions to get strikes for cause and can you get those folks off of the jury or get them to strike themselves. I just really enjoy the mental chess behind jury selection.

**Disparate Perspectives Converge**

Because my work is almost entirely defense oriented, I have found Graves’s perspective really insightful. He and I are on different sides of personal injury litigation, and we are experiencing client management issues from disparate points of view. Most of my clients are corporations whose employees are only interested in interacting with me from 8:00 a.m. to 5:00 p.m. That may not be the experience of a lawyer whose clients are individuals.

I know a personal injury lawyer (not Graves) whose client called on her cell phone about 8:30 p.m. on Christmas Eve declaring she had an emergency. Against her better judgment, the lawyer took the call and asked her client what was so pressing. The client asked, “What’s going on with my case?” That’s it. No emergency. She just wanted to know what was going on. Her lawyer responded, “If you need a lawyer who can answer that question on Christmas Eve, I’m not your girl. You can find someone else.” Every type of practice is going to have its struggles. Knowing how to manage your clients and evaluate their cases for them is half the battle.
When I set about writing this book, I wanted it to be practical and for the contents to be easily applicable to your practice, above all other things. Of all the advice and tips out there for lawyers, there is a dearth of content that you can implement right after reading about it that will improve your practice immediately. I wrote this section particularly with practicality in mind.
Apply Lessons from a Chainsaw to Your Law Practice

A while back a friend of mine wrote an article about broadly applicable lessons he learned from chopping down a tree with an ax. I will not deny that that is a very impressive thing to do. But when I had two dogwood trees that needed to be cut down, I didn’t reach for an ax. I called my brother-in-law, who came over with his chainsaw, and we made relatively quick work of it. My reason for using a chainsaw in this situation was efficiency. Well, that’s not entirely true—efficiency and fewer blisters. I have an ax. I could have invoked my inner Paul Bunyan. But that was not the most efficient method of resolving my problem. Here are some lessons from a chainsaw that you can apply to your law practice.

**Know What You’re Getting Yourself Into**

Organization is a key to success, whatever the task. You’ve got to be in the right frame of mind and focused on the task at hand. You have to have the correct tools and know how to use them. That said, my experience is that there’s a large percentage of time in litigation in which you can only be moderately prepared for what’s going to happen, and the rest is just thinking on your feet and responding.

One way to organize and prepare for what’s coming down the pike is to have a case management checklist. Most of my cases start off the same way with little variation, and I’d venture to guess that’s true of most practice areas. So it’s easy to know what needs to happen in any one case, but when you are handling several dozen such cases in varying stages of litigation, managing all that information can get a little unwieldy. It’s important to be organized. I’m nerdy and I like spreadsheets, so I create them at every opportunity.
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<th>Ack Ltr to Client</th>
<th>Ack Ltr to Insurer</th>
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<td>Due 11/10/17</td>
<td>Due 11/10/17</td>
<td>Filed 10/10/17</td>
</tr>
</tbody>
</table>

My spreadsheets enable me to handle a large volume of cases without getting lost in the quagmire . . . most of the time. The hard part isn’t creating the spreadsheet and doing all the nifty color-coding, it’s keeping the thing updated. But when a partner or client comes calling and wants to know the status of the case, what has been done, and what needs to be done next, I want to be in a position to provide answers.

In addition, my case management checklist keeps me oriented and focused on the tasks ahead of me. Humans will invariably disregard a more important task for a more immediate one. If you don’t have some method of keeping track of necessary tasks, you are going to be constantly prodded and disrupted by what is seemingly urgent rather than accomplishing what is most important. Having a checklist allows me to identify the most important tasks I need to accomplish.

Checklists help me keep from having cases that get lost in the shuffle and sit untouched for months on end. I want to eliminate those poor, little orphaned cases that go forgotten until someone accidentally trips over the accordion folder and realizes that we exchanged written discovery four months ago and no one has so much as inquired about dates for party depositions. Even if spreadsheets aren’t your thing, have a system, be organized, and manage your cases effectively.

**Sink Your Teeth into Your Work**

This one’s easier than you might initially think. All it requires is mindfulness, attention, and caring. A large percentage of lawyers (like people in any number of other professions and jobs) show up to their job every day
just to collect a paycheck. They’re not particularly interested or invested in their work, and as a result, they’re not very good lawyers.

Caring about your work has many facets. They include not only being attentive to your caseload but also putting in the extra work to continue your education and growth. Read about your practice area, read about business leaders, listen to podcasts that challenge your beliefs, and expand your knowledge base. Refuse to accept contentment and stagnation. Doing these things takes effort and dedication, but it’s not difficult, especially once you get into the practice of it. The more you grow as a person, the more you’ll grow as a lawyer and further distance yourself from the average lawyer, who really just isn’t that impressive.

**Make Efficient and Effective Cuts**

Efficiency is a point of emphasis for me. I advertise to clients and potential new clients that I will manage their work efficiently so that I’m not wasting my time or their money. Efficiency is not necessarily standard operating procedure in the legal industry, and clients receive such affirmations warmly. It is then up to me to implement the systems and procedures to follow through with my claims.

One way to efficiently manage your time is to have forms and templates. For much of civil litigation, the pleadings and discovery are fairly similar from case to case. There is no reason to start from scratch in drafting most documents. Once you’ve built up a good repository of templates for motions, pleadings, discovery, and objections to discovery, you’ve put yourself in place to capitalize on your efficiency.

Efficiency isn’t an end unto itself. Instead, it rewards us by providing time for us to focus on and develop those parts of the case that aren’t cookie cutter. Those parts of the case that do require you to be crafty and analytical, that remind you of why you love your work. Those parts of the case that engage you and bring out the best in your work product.

If you are inefficiently whacking away at the giant discovery tree with your ax that’s dull from overuse, you never will have time to do the rewarding work. Instead, get out your chainsaw so you can get to the heart of the work that’s really important.
Postscript

Since originally drafting this text, I went ahead and used an ax to cut down a couple of smallish trees on my property. It only affirmed my belief in what I had written. I was standing awkwardly on a steep incline with the trees above me. Other trees were in close enough proximity that I could not get good long swings in and had to strike from odd angles. I began to wonder if trees are sentient beings and we just haven’t discovered it yet. Then I drank some water because I was concerned that that line of thought might be coming from me being dehydrated. Then I dragged the trees down the hill toward the bottom of the ravine where time and fungus could slowly eat away at them.

By the time I finished, I was breathless and worn out. Here’s my recommendation. If you have trees that need cutting down, just use a chainsaw. Your hands and forearms will owe you a debt of gratitude.
Practical Tips for Getting Paid by Clients

In an interview with author and family law attorney Portia Porter, we discussed her interest in educating other lawyers about the importance of effective practice management and protecting yourself from clients who are out to get legal services without paying for them. It was, of course, her own personal experiences that sent her down this path. Here is Porter’s story: “Once upon a time, many years ago, I read a chat room exchange between two young women, Heather and Julia. Heather needed some advice. Julia responded with advice. Here’s how it went.”

Hire a Ruthless Lawyer and Stiff Him on the Bill

“Heather was happily married. Heather’s husband had a good job and provided for her. Heather did not have to work. There was a child on the way, and Heather’s husband was a proud father-to-be. Indeed, Heather and her husband even made a public announcement that they were expecting. All the grandparents were pleased and proud. Life was good for Heather. But everything changed unexpectedly when Heather’s husband revealed that he had been sleeping with another woman for all that time. Husband wanted a divorce.

“Heather was surprised and angry. Or, in her own words, ‘blindsided’ and ‘not going to sit back and take having my life I thought we had be ripped away from me.’ Heather wanted her comfortable life back. So Heather formulated a plan. She decided to hire (and I quote again) ‘a good attorney who will look out for my best interest in the most ruthless way possible.’ Heather wanted her happy life back, and she expected that a lawyer could do that for her.

“But, of course, remember, Heather was unemployed and had no intention of looking for a job. How could she get a ‘good’ lawyer to fight ‘ruthlessly’ for her, without paying him? That was the dilemma, and that’s where Heather turned to the divorce chat room. She needed advice on how to get a ‘ruthless lawyer.’ In the chat room, there was another girl, Julia. She responded to Heather with advice. The streetwise Julia was suc-
cinct. Here’s what she told Heather. I quote Julia’s advice in its entirety: ‘Drag it out, then stiff your lawyer is my suggestion.’

“That’s it. ‘Stiff your lawyer.’ No instructions for what, how, when, or maybe what to avoid. Just ‘stiff the lawyer.’ When I read this exchange, my first impulse was to jump in and say: ‘Julia, dear streetwise Julia, your heart is clearly in the right place, but that’s not good advice to give our trusting Heather! She’ll get eaten alive!’

“Stiffing a lawyer requires a fine-tuned plan, good knowledge of the legal system, some basic understanding of lawyer psychology. Julia was providing none of that. Just ‘stiff your lawyer!’ I wanted to write to Heather and say: ‘Heather, are you nuts?! You couldn’t even spot the problem in your own house. Your genius husband cheating on you at the same time he was celebrating your pregnancy with all the grandparents—and that moron outsmarted you! What chance do you think you have of fooling a “ruthless” lawyer?!’ I wanted to tell Heather: ‘Look, why don’t you start with a simpler mark. At least, get some kid right out of law school. Maybe you can fool a naïve beginner?’ But, of course, I could not write to Julia or Heather. Who would believe me? I am a lawyer. I must be looking out for number one. Right?”

**Avoiding Getting Stiffed by Clients**

“As a lawyer who has been stiffed many-many times, for many-many hundreds of thousands of dollars, I do know 100 percent more than I wish that I knew about successful stiffing. In all modesty, I am an expert in being stiffed. And now anyone who reads my book, whether an inexperienced attorney or a prospective client, can be too.”

In *Can You Stiff Your Divorce Lawyer?* (Cheetah Press, 2016), Porter advises, “The stark truth about civil litigation is that fighting a crooked defendant is much more expensive than fighting an honest defendant. The law works fairly well against the honest people but collecting from a deadbeat is uncertain and expensive” (Loc. 388, Kindle). I asked Porter whether, after having been stiffed, she had any tips for making collections either more certain or less expensive. Her response: “No. Unless collections is your area of practice, a lawyer should never be doing collections at all. My book provides step-by-step instructions on how to get
paid for every hour you work, but I have no tips on making collections less expensive. I can’t make death less certain either.”

Porter’s law practice management advice, as it pertains to putting yourself in a position to make sure you get paid by a client, or at the very least, decrease the opportunity and ease with which a client can get away with not paying, breaks down to three principles: (1) do not trust anybody; (2) get retainers paid in full immediately; and (3) do not sign an engagement letter until the retainer payment has cleared the bank. A failure to adhere to these principles can result in a lawyer working for free merely because he wanted the work at all. Porter goes on to say, “The problem for lawyers is that these tips sound a lot like ‘buy low, sell high’ for stockbrokers. That principle is stated correctly, but nobody tells lawyers how to apply it.”

Porter tells lawyers how to apply her advice.

It’s great advice in principle. But from the practical business management perspective, it is useless. These law practice management books describe young lawyers like the iconic “reasonable person” in torts. And because the reasonable person behaves reasonably, he mostly avoids the sort of problems that happen to the negligent plaintiff. Here’s the problem, though. In real law practice, stuff happens to you, no matter how much you conscientiously strive to be “reasonable.” Lawyers who are managing their own practice need to know that. They will have all sorts of trouble while managing their practices, no matter how ethical, hard-working, and respectful to the court they turn out to be. Because law practice is a business, and managing a business means ups and downs and getting stiffed and getting baseless grievances filed against you. That all will happen. But that’s okay, because there are wonderful parts to having your own business too. And lawyers who are thinking of opening their own business should be prepared for what a small practice entails and should learn how to actually make a profit. We do not need more books teaching lawyers how to be charitable and ethical. We need more books teaching lawyers how to actually avoid bankrupting their practice and, instead, make a living off their law degree.
Finally, Porter and I discussed what was the most poignant piece of wisdom she would share with lawyers on the topic of making sure they get paid for the work they do: “Lawyers are smart people. But even smart people will make mistakes and get stiffed. As lawyers grow older, they learn from their mistakes, and they get stiffed less often. Of course, that takes a couple of decades.”
Build Touch Points into Your Case Management Processes

You may be a good lawyer, or even a great lawyer. You may regularly achieve favorable results for your clients at mediation and trial. Every party deposition you take may provide impeachment material that will render the plaintiff a disreputable puddle of deceit on the witness stand. But if you aren’t providing meaningful communication and reporting to your client throughout the litigation process, your client is going to be displeased with you. This is why it’s important to building touch points into your case management processes.

In Part 1, I discussed the importance of maintaining contact with your client. This section addresses specific methods of communicating with your client, and the strengths and drawbacks of each.

Different Types of Touch Points

Touch points are influential communication actions you take that work to shape your client’s experience. There are different methods of communication, each of which has its own virtues and drawbacks.

Telephone

I know it’s old-fashioned, but hear me out. Aside from in-person meetings, phone calls are the most personal of common business communication methods. Phone calls enable you to communicate things to your client that you may not be ready to commit to writing. Phone calls allow you to communicate with nuance that may not be feasible through other forms of communication. But phone calls have the disadvantage of requiring two or more people to be available at the same time.

When you have a large amount of information to communicate in one phone call, take the time beforehand to organize your thoughts, make a written list, and be prepared enough to answer any questions.
Email

Email is my communication method of choice. It’s an asynchronous tool, meaning that the sender and recipient do not have to be available concurrently. Each can send, read, and respond at his leisure (within reason). But email has its drawbacks—it can be highly impersonal, and it is impossible to convey nuance.

Several years ago, one of my staff had messed something up. I fired off an email to the effect of “this thing happened. Let’s fix it and not do it again.” For me, that was the end of it. I wasn’t mad, and I had all but moved on. Before putting the matter totally to bed, though, I needed to tell the partner we had a screw up, so I stepped into her office to tell her about it. Before I got more than a sentence in, she responded ominously, “I know.” Apparently, the staff member had been offended by my terse email. I had no idea. As a young associate, I received an important lesson that day that some communications need to be made in person so they’re not misconstrued.

Face-to-Face Meeting

In-person meetings are frequently the most valuable, but they require the most resources—both time and monetary resources. In a business in which your time is your money, time resources are monetary resources. The time you spend traveling to or meeting with one client is time you are unable to spend on other clients. However, face-to-face meetings are particularly important for building relationships and for providing the most insurance against miscommunication. There is no substitute for observing someone’s facial expressions and body language during the course of a conversation.

Instant Messaging

I know that AOL IM has gone the way of the dodo bird, but apps such as Slack and Discord are used by many businesses to enable easier collaboration on projects, particularly when employees are in different locations. Instant messaging tends to be informal and not particularly practical for
sharing large volumes of information, but it can be a very efficient means of engaging in quick-response communications.

**Letters and Written Reports**

If you need to convey large volumes of information, provide evaluations with lengthy explanations, or synopsize recent developments in a case, there’s no better way than to do so in the form of a letter or a report. The whole thing takes time—drafting, proofreading, and revising—but there’s no substitute for the amount and quality of information that you can communicate in this format.

**Building Touch Points into Your Processes**

Knowing which communication methods are available to you is only half the battle. When managing forty or fifty cases at a time, it can be easy to lose sight of how infrequently you are communicating with your clients about their cases. This is why it’s important to build into your practice management systems touch points that help you maintain good, regular communication with your clients. Some clients will assist you with this by providing you with reporting guidelines: forty-five days after a case is assigned, after party depositions, thirty days before mediation, and so forth. I use a spreadsheet to keep track of my more formal communications, and others I know use calendar notices. The prompt you use to make sure you’re engaging with your clients is largely irrelevant. Use the most effective tool for you, but more important, touch base with your clients frequently and with useful information.

One of the things I tell clients early on is that it’s common for there to be gaps of weeks or even months between the various phases of a case. There will likely be times where they don’t hear from me for a while, and that doesn’t mean anything is wrong. Instead, the lack of communication means there’s nothing to report. But I’ve learned that clients would usually rather have an occasional email from me reporting that there’s nothing to report than be subjected to an undisturbed void.
Whatever communications methods you and your clients employ, you must be responsive. This is a principle that was instilled in me even as a baby lawyer. If a client sends an email or leaves a voicemail, it is always my goal to respond within twenty-four hours. You don’t want to be the lawyer who requires constant management and prodding from your clients to communicate and comply with guidelines. Regular communication with your clients may be a soft, unmeasurable metric, but it doesn’t go unnoticed and it does affect your relationship.
I should have known better than to make an unannounced visit to his trailer. Truthfully, though, I did know better, which is why I’d carried a gun. But I left the gun in the car.

We had lost contact with our truck driver over the last few months. He wasn’t responding to phone calls or letters. He wasn’t working anywhere as far as I knew. He certainly wasn’t driving trucks any more, not after failing another drug test, this one a postaccident drug test. The wreck happened on a Wednesday, but my truck driver had done so much crystal meth the previous weekend at the bike rally that his system was still just full of the stuff.

The only way I could think to get in touch with my truck driver was to visit his trailer the next time I was over in his neck of the woods. So I did. As I pulled up into the gravel driveway, I saw a couple of mutts in the yard. They were largely disinterested in me. I got out of the car with a letter in hand that I intended to leave shoved between the door and frame because my client did not appear to be home. A sixty-pound mongrel was hovering around the bottom of the steps of the screened-in porch, but she complied with my efforts to shoo her away.

I popped up the steps and politely knocked on the door. And waited. Then I knocked on the door a bit less politely. And waited. Then I banged on the door—either he was in a drunken stupor from which I couldn’t awaken him, or he wasn’t home. I waited a little longer, then slid the envelope containing my signed letter into the doorjamb.

Only when I turned around did I discover my peril. There was a third dog—part Rottweiler, part demon, and black as sin. I hadn’t seen him before. But now he stood between me and the only exit. The hair on the back of his bullish neck was standing on end, and as I took a single step forward, the growl that had been low and foreboding became a fierce, imminent warning.

Fortunately I had read *Life of Pi*. I needed to slowly back him down without appearing to be an attacker. No problem, right? If a fictional character could do it to a fictional tiger, I shouldn’t have any problem...
managing the same technique with this sable monster. I also knew (because I had thought about these kinds of confrontations a good bit when I used to run, having had sketchy encounters with stray dogs before) that if this came to physical combat I was going for its eyes first. He might end up crushing my throat in his jaws, but at least he’d be blind the rest of his life.

I collected myself and bowed up (inasmuch as any five foot, ten inch, 150 pound guy can make himself appear larger and menacing), took a small step forward, pointed at the canine demon, and yelled at him, “BACK UP!” His demeanor didn’t change, but he backed down one step. We repeated this charade until he had backed all the way off the steps, and continued until I was able to exit the steps. We stepped a half-circle around each other, like a couple of gunslingers. Then it was my turn to back up, toward my car. I changed my command, “STAY!,” and maintained eye contact the whole way.

Once I got into the car the adrenaline pushed one final surge through my bloodstream, and my legs turned to jelly. I sat there for several minutes, and something occurred to me—if I had killed the dog, there would have been no question who’d done it because the letter bearing my signature was stuck in the door. I started my car and backed it down the driveway, leaving the devil dog and his two indifferent companions in my rearview mirror.

A couple days later, I got a phone call from my truck driver, in which he acted innocently as though he hadn’t been evading me for the last few months. But that wasn’t the last of the trouble I had with this client. His deposition went pretty poorly as well, but more about that later.

All this is to say that sometimes you are going to lose contact with clients. Things are bad enough when that happens because it can put you in a tough spot trying to manage your case and stay abreast of deadlines. But you can make your situation a good deal worse by making poor decisions (like visiting your drug-addict client’s trailer unannounced) in an effort to reestablish contact. The negative consequences your client may bring down on his head for his noncompliance aren’t worth imperiling your own well-being.
Never Take a Witness at His Word . . . Ever

Some time ago, I attended some depositions in north Alabama. Just your run-of-the-mill car wreck case. A couple hours after arriving, I turned around and began the return trip to Birmingham.

As a trucking defense lawyer, I have long told people I expect in an ironic twist of fate that I will one day be involved in a wreck with a tractor-trailer. It’s not a prediction and certainly not a wish. More like an odd, unwelcome expectation. This was very nearly that day.

While traveling south on I-65 about fifteen miles north of Cullman, traffic began to slow down in front of me. I applied the brakes and checked my rearview mirror. There was a tanker truck behind me. I could already tell he was closing on me.

Traffic began to slow more abruptly. A river of brake lights was in front of me. But the tanker was still coming hard. I was on the phone, using the Bluetooth. My coworker sitting in her office on the other end of the line began hearing, “O geez! O geez!” (Yes, I really do have the vocabulary of the *Leave It to Beaver* cast.)

“Are you okay?”

Glaring into my rear view and watching the tanker truck grow larger, I replied, “Only if I can avoid this accident.”

“Do you need to go?”

“Yes.”

It became apparent that the tanker was going to smash into the back of me. I steered my vehicle off the shoulder to my left and as far into the grass as the wire barrier would allow. The tanker barreled past me, clipping the SUV I had been following, and careening into the right-hand lane, which was occupied by a tractor-trailer.

Now out of control, the tanker truck plowed into the trailer. There were sound of tires clawing at the asphalt. Metal and fiberglass being mangled. The tanker was pushing the tractor-trailer. A flatbed truck slid into the rear of the tanker. The trio grated their way off the interstate, down a slight incline, and up against an embankment, where they came to rest.

Finally, all was at rest. A cacophony of silence. Debris, tire marks, and fluids decorated the roadway like a Jackson Pollock writ large.
Slowly the participants began emerging from their vehicles. The driver and passenger from the SUV were unscathed but shaken. The driver of the tractor-trailer was limping and rattled. The flatbed operator held his hand to his lower back and shuffled up to the other drivers. Last, with his cab crushed and more parts of the tractor strewn about the grass and road than were still attached to the vehicle, the tanker driver crawled out.

Two hundred thousand pounds of machinery and freight engaged in a brief, frightening skirmish—and everyone walked away.

The Value of Witness Statements

After the accident, I hung around to give a written statement to the state trooper who was investigating the accident. I think I probably gave him the best written statement of his career. For one thing, as I am all the time handling accidents, I knew exactly what I would want to read in a witness statement and the specificity that would be helpful later. For another, with three commercial vehicles involved in the accident, there was a high percentage chance that one of them would be insured by one of my clients.

But here’s the trouble. Anyone else who saw the wreck would have done so from a different angle and would have had a different report of what occurred. Furthermore, witnesses rarely stick around the scene of an incident long enough to give a written statement. If the lawyers are lucky, witnesses will have left their names and contact information so that lawyers who are litigating a case can contact them a couple of years down the road when a suit is filed.

Having witnesses to any incident, whether it stems from a car wreck or an employment dispute, can be a boon to your evaluation of a case. Witness testimony can provide the unbiased account of an incident you need to determine liability. However, without a way to hold a witness to his prior accounting of an incident, you can’t entirely trust him not to change his story. And that can be a problem.
**Trusting a Witness Can Create Problems**

When I was hired to defend a truck wreck that involved four vehicles, I pulled up the accident report to discover several eyewitnesses to the incident. I began to call them to hear what they had to say. It became clear to me that there was a strong possibility my truck driver hadn’t done anything wrong and there was nothing he should have done differently to avoid the accident. One of the most favorable accounts came from another truck driver. I couldn’t believe my luck.

A few months later, I got approval from my client and scheduled the witness’s deposition. He was based out of Kansas, so plaintiff’s counsel and I flew into Wichita to take his deposition. I was certain this was going to make my case. But once I started the questioning, the tenor of his responses changed dramatically. He couldn’t have given a more neutral account of the accident. It wasn’t that he told a different story than what he had told me previously. It’s just that he hedged on everything and refused to commit to a position about what had happened.

This was my fault. Immediately after first speaking with him, I should have had the witness give me a written statement or even sign an affidavit. If he had already committed to a position but attempted to change his tune at his deposition, I could have either forced him back onto the rails or been able to impeach his deposition testimony with his prior statement. Because I had failed to get a written or recorded statement from the witness prior to taking his deposition, the trip turned into a waste of my time and my client’s money. That was an uncomfortable conversation to have, particularly because it was my fault for having trusted that the witness's testimony at his deposition would be consistent with what he had told me over the phone.
Losing Control of a Client During a Deposition

Even though you do everything you could or should have to do to prepare your client for a deposition, there are going to be occasions when the client can’t help himself and makes a mess of it. In many circumstances, if your client had been the kind to have made better life choices, he would not be needing your services. You shouldn’t expect the tiger to change his stripes now.

A couple of years ago I was defending a trucking case in which my truck driver was an awfully rough fellow. He had a pretty significant criminal history, had been in and out of drug rehab (which hadn’t had much effect), and at the time of the accident involving my case had been on a crystal meth bender for a couple days at a motorcycle rally. Our only saving grace was that the plaintiff was every bit his equal. She was a prescription drug addict who had been kicked out of pain management for selling her pills to a friend.

It soon came time for my client to give his deposition. I met with him in advance for longer than normal, and I really put the screws to him in preparation. There was no way all of the things could be true that I understood to have occurred after the accident. Anything from the plaintiff shuffling bottles of alcohol from her car to a fellow going by the name of an exotic bird to the state trooper showing up on the scene with a teenage girl in his car (not his daughter). But my client told the same story every time to anyone who inquired, and there’s something to be said for consistency.

Before any deposition, I tell my clients the same things. Tell the truth. It’s really easy to keep up with your story when it’s true because it doesn’t change. Listen to the question that’s being asked, and answer only that question. If opposing counsel asks a question that calls for a “yes” or “no” answer, that’s all I want you to say. If he wants more information, he will ask for it. Don’t guess at anything. “I don’t know” is a perfectly acceptable answer, if it’s true. If you don’t understand a question, ask opposing counsel to repeat it or rephrase it. This particular client’s deposition instructions weren’t any different, except for the emphasis I placed on everything.
The deposition was a horror show from the start. After about twenty minutes of either snide, sarcastic responses or what can only be described as word vomit (in which he used fifty words where four would have sufficed), I requested that we break for a few minutes. We stepped out. I went over the rules and instructed him to lose the sarcasm. We went back in—and picked up right where we had left off. Another twenty minutes later we stepped out again and had the same conversation. With the same result.

This went on for a bit. The only silver lining was that he told the same implausible story during his deposition that he had been telling everyone else for months. After the deposition ended and he left, I went back in to the plaintiff’s attorney and apologized for my client’s behavior. He responded, “No need to apologize. That’s going to play great for the jury.” I knew he was right.

Coming out of that experience, I felt then and continue to feel now that I had done everything I ought to have done to prepare my client for his deposition. Of equal importance, I had done my diligence to prepare his insurance carrier for every potential outcome. He was just a wild card. He couldn’t get out of his own way. But this wasn’t an aberration. It’s who he was at his core. And I wasn’t going to change that . . . not even for just a couple of hours.
On the Importance of Showing Up to Court

About a year into practice, I was sent to my first solo district court trial. In Alabama, district court trials are bench trials with damages capped at $10,000. There is no discovery permitted. The Rules of Evidence usually get a little loosey-goosey. It’s basically the Wild West.

I was excited about my first district court trial. It was a small truck wreck case, and the plaintiff alleged that our tractor-trailer backed into his parked vehicle at a truck stop. The driver of the tractor-trailer had a different account of events. He was going to testify that he was backing up when the plaintiff’s vehicle darted behind him and got hit.

While doing a little background checking on the plaintiff, I discovered he had recently made a workers’ compensation claim alleging the exact same injuries he was claiming resulted from our accident. He had a different lawyer for each of his claims. In attempting to settle our case, I mentioned this fact to his lawyer in the truck-wreck case. A couple of days later, that lawyer withdrew. So I was headed to trial against a pro se plaintiff in a case with questionable liability and questionable injuries. What more could a defense lawyer ask for?!

I’ll tell you what more—a client who’s on the same page as the defense lawyer. The day before trial, I discovered we weren’t on the same page. I’m not sure we were in the same library. I got a phone call that went something like this:

**Client:** I want you to call the plaintiff and offer him $10,000.

**Me:** I’m sorry. What?

**Client:** Yeah. I want you to make him a settlement offer of $10,000.

**Me:** Let’s talk about this. On our worst day, if everything goes against us, the most we can lose is $10,000.

**Client:** Right.
Me: There’s no reason to offer him that much money.

Client: I understand.

Me: We could very well get a defense verdict on this one.

Client: I know.

Me: But you still want me to offer him the $10,000?

Client: Yeah.


It did my heart good when I couldn’t reach the plaintiff by phone over the next few hours. The next day, I headed up to the courthouse with my truck driver and company owner in tow. It wasn’t necessary for them to be there because I was just going to hand over $10,000 to the plaintiff, but it had been prearranged and I hadn’t called to tell them otherwise. We got to the courtroom and waited with thirty other people for our respective cases to be called. I didn’t know what the plaintiff looked like, so any number of folks waiting there could have been him.

The judge called our case, John Doe v. Trucking Company and Driver X. I approached the bench, and a small miracle happened. No one else came forward. The plaintiff hadn’t showed up to court. The plaintiff, who was going to be $10,000 richer merely by being bothered to appear for his trial date, wasn’t there. The judge instructed me to go sit back down and said he’d call our case again after he’d gone through his docket.

Thirty minutes later we went through the same sequence, with the same result. The judge told me he wanted to ask my driver some questions about the accident, then he’d make his ruling. I called the driver up to me and said very quietly, “The judge is going to ask you some questions. I want you to listen very carefully and use all your common sense when answering. He’s trying to help you out.”

Me: Alright, Your Honor. We’re ready.
Judge: [Swears driver in] Driver, were you in an accident on X date?

Driver: Yes.

Judge: Was it your fault?

Driver: No.

Judge: Alright, I’ve heard enough. I find in favor of the defendants.

And that’s how I won my first trial. And the next one. And the one after that. But there’s more.

A couple of weeks later, the plaintiff called me to ask about his case. I told him that he’d missed the trial and the court had ruled in my clients’ favor. The case was over. I never told him he’d missed out on $10,000 by not showing up to court that day. It seemed mean-spirited and cruel. I wouldn’t want to know a thing like that. And although I’m a black-hat-wearing insurance defense lawyer, even I’m not that cold.

There are a couple of quick takeaways from this anecdote. First, sometimes you have to be prepared to do what your client wants, even if you don’t agree. Second, it is really, really important to show up to court.
Know When to Stop Arguing Your Point

We were recently interviewing a pool of candidates for an associate position at our firm. After all the interviews, we discussed the various potential additions. For one of them, one of the first concerns was this, “I’m not sure he’d know when to stop arguing in front of the judge.” And you know what, that can be a real problem!

**When to Stop Arguing Your Point**

At oral arguments, you need to communicate to the court both your position and the factual and legal context that support it. Sometimes that takes a good deal of explanation, and sometimes it doesn’t. It is hoped that the judge has already read the parties’ briefs before the hearing and has a fair grasp of everyone’s contentions. During these hearings, the judge will frequently exhibit body language that gives cues to the speaker. Here’s an important one: when the judge begins regularly nodding his head in agreement with your points, it’s time to wrap things up and get out.

I have seen too many lawyers either miss or disregard the cue and continue to barrel through their unnecessarily lengthy argument. And on more than one occasion, I have seen a lawyer talk himself right out of the court’s good graces and right out of winning his motion. Some folks just can’t help but say every word they came to court intending to utter. It’s a bad habit, and it can be a costly one. Watch for cues and know when to stop arguing your point.

**Asking One Question Too Many**

Similarly, lawyers have this insatiable desire for a “Matlock Moment,” that moment when you have the witness on the ropes and move in for the knockout despite the fact that you’ve already made your point. But (and this never happened to Matlock) what happens when you’ve underestimated your opponent and your intended kill shot instead gets you knocked out? Because you wanted your Matlock Moment, after which
you could have glanced over to the jury with a wry smirk, you’ve gotten an answer that’s detrimental to your case.

A lawyer needs to know when he’s made his point, then move along. There are times when it’s best to leave the last question unasked. Maybe you’ve already gotten enough information and your point has been made. Perhaps you don’t know what the answer to the unasked question is going to be. Or there’s a possibility you’re up against someone who’s even more wily or clever than you. Regardless, a lawyer needs to recognize when it’s time to sit down without having asked one question too many. The jury saw where the road was leading, and you can always remind them during closing arguments.

Both of these issues, arguing your points and questioning witnesses, come down to restraint and situational awareness. Being obtuse and oblivious can cost you dearly.
When Is It Wise to Argue with a Judge?

Some time ago, at a pretrial conference, I heard a lawyer correct a judge over a trivial matter. It did not go well for him. Our hearing lasted several hours as we worked through motions in limine and some discovery/evidentiary issues. The lawsuit arose from a motor vehicle collision, which the judge colloquially referred to as an “accident.” Before the judge had even finished her sentence, opposing counsel piped up, “Your Honor, it’s a wreck, not an accident.” A discussion was had. Opposing counsel boldly tread out onto the cracking ice, asserting this incident could be appropriately called a collision or a wreck but not an accident. The court did not agree. Opposing counsel concluded his end of the argument with, “Well, we’ll just have to agree to disagree.”

More than two hours later, during the middle of ruling on other issues, the judge stopped midsentence, “Let me tell you what I don’t appreciate, Mr. Opposing Counsel.” She hadn’t let the issue go. It was eating her up that he had argued with her in that manner and over such a trivial matter. He had used poor judgment in picking a fight over a nonissue at the outset of what was going to be a contentious trial that would require many rulings from the court. I can’t say the matter affected any decisions the judge made, but she didn’t immediately forget about the incident either.

This brings us to a few pertinent questions. The first has an easy answer. When should you fight with the judge over a nonissue? Never. But there may be times when you have to argue with the judge about a pressing issue. When is that appropriate?

When Is It Appropriate to Argue with the Judge?

I asked several lawyers, “When does something matter enough to argue with the judge about it?” There responses were interesting:

Canadian Civil Lawyer: “When the judge invites your arguments. Beyond that, it’s like arguing with a cop by the side of the road.”
Ohio Civil Lawyer: “Generally, you aren’t going to change the judge’s mind. So unless the client needs a show, preserve the record and move on.”

Indiana Criminal Defense Lawyer: “A big part of litigation is making the record. If it’s not in writing and/or not said, you might be hosed. So even if the judge is clearly not going your way, you request time to make a record for appeal. Most judges have no problem with that. But I don’t hesitate to argue with a judge frequently. My client is paying me to advocate for them so I do it. They rarely take it personally. Luckily, I rarely have to do it because judges like my personable demeanor. I think those subtle nuances that comprise someone’s charisma can take you surprisingly far. But if I know a client’s about to get hosed, like on a suppression issue, I’ll argue a point to preserve the issue. Only time you back off is if (a) the judge has a fragile ego or is otherwise easily set off, and (b) your client has something immediately at stake at that moment. This way you can always assert strategy if the client is ever trying to make an Ineffective Assistance of Counsel claim against you.”

Indiana In-House Counsel: “I would imagine in a civil context it’s never worth it to ‘argue’ in person. Respectfully disagree and present a counterpoint, yes, but not become argumentative. There’s almost always an opportunity to express your disagreement in a later motion.”

Canadian Government Lawyer: “It’s almost never worth arguing directly with a judge. If they think the fact or rule of law is X, you’re never going to do particularly well just saying that it’s not X. That said, some judges leap quite quickly to their conclusions without spending a lot of time thinking about how they got there. Arguing respectfully and somewhat indirectly with them can be helpful. In one of my first appearances at a trial, I had a judge make a ridiculous math error right near the beginning of my submissions; he yelled at me about how my math was wrong.”
I got on with my submissions on the other uncontroversial points, and at the end (once he’d had time to cool down, because he was famously hot-tempered), went back to the math. I took him through the calculation (which was really just a sum of four items, but yeah, I was yelled at for daring to disagree with him), and tried to treat it as a way of helping him get to the right reasons. That time, it worked. Other times in front of that judge haven’t always been so successful, but respectfully disagreeing with a judge’s conclusion and explaining why is the only sort of arguing with a judge that I’ve ever seen succeed.”

Is It Worth Your License or Your Life?

Whether it is appropriate or wise to argue with a judge is going to depend heavily on what is at stake for your client. I’ve worked with lawyers who were within seconds of being put in jail for contempt as a result of arguing with the court. Sometimes an issue may be just that important. But even in those situations, it’s important to maintain the proper decorum. It’s going to be much more difficult for a judge to sanction you when you address the court with the proper respect, as opposed to how a North Carolina lawyer expressed her dissatisfaction, by asking the judge, “What the hell is going on around here?” Dissatisfied with the response she received from the court and ignoring any warnings, the lawyer then iterated multiple times, “What the f*** is going on around here?!” She’s suspended now and unable to help any would-be clients.

In the 1980s, in Birmingham, there was a notorious judge named Jack Montgomery. He was unpredictable, could be intolerable, and was known to carry a gun under his robe. During a hearing one day, a prominent criminal defense lawyer stood his ground on an issue. He and Judge Montgomery already had a strained relationship, and the judge instructed the defense lawyer to drop the issue. The lawyer refused to concede. Judge Montgomery pulled out his gun and threatened to shoot the defense lawyer if he didn’t shut up and leave the courtroom. Chaos ensued. Bailiffs escorted out both the judge and the lawyer, separately.
Another judge was appointed to the case, and the new judge granted the lawyer’s motion.

** Appropriately Contending with the Court**

A friend of mine was at odds with a judge’s ruling, and it directly affected her client. She had a decision to make. How could she advocate for her client without upsetting the judge?

She had filed a motion for summary judgment several months prior to the trial setting. As the trial date approached, she called the judge’s office about a hearing date and was told the judge would set it for hearing after she’d read it.

The trial date arrived and the summary judgment motion was never heard. My friend expected that she would argue her motion on the morning of trial, but instead the judicial assistant handed an order entered that morning denying her motion. My friend was at a crossroads; it was important to her that the court hear oral arguments on the matter. She decided to insist that the judge hear oral arguments before trial despite the risk of making her angry by calling her procedure and ruling into question. She knew that even if the judge granted her request to be heard, it was unlikely that the judge would change her ruling in order to save face.

Having some experience under her belt, my friend knew she had to soft-pedal her request for a hearing and temper it with humility, not wanting to put the judge on the defensive right off the bat. When the judge took the bench and asked if there was anything we needed to take up before calling the first witness, my friend told her that although she had received the order denying summary judgment she would like to be heard. She had some new information the court should consider that was not in her motion and in order to properly represent her client, she would need to make a record.

With the respectful manner in which she posed her request and by bringing proper representation of her client into play, the judge would be hard-pressed to deny such a request. Sure enough, the judge granted the request, heard the argument, but did not change her ruling. Regardless of
the outcome, the court appreciated the noncombative manner in which my friend questioned the prior ruling.

Judges demand respect, even when (or perhaps particularly when) we know they are wrong about something. If you approach the situation with humility, you’re more likely to achieve a favorable outcome, or, at the very least, not be jailed for contempt. For most of us, it’s unlikely that we’ll face a scene from the Wild West when taking issue with a judge’s ruling or position on a matter. But determining the propriety of drawing the court’s ire by standing your ground may turn on the issue at hand. To the extent possible, before getting into such a situation, you need to consider what your response is going to be if a judge rules against you. You can be assured of this, though, it doesn’t ever do to call a judge out on her terminology usage when it’s a nonissue that has no actual bearing on anything of consequence.
So Your Client Accused the Judge of Being a Thief

I waited in the courtroom along with fifty other lawyers for the judge to call my case. I heard him say “Plaintiff v. Big Box Store” and made my way to the bench. The plaintiff’s lawyer wasn’t there, so I informed the court I represented Big Box Store. Then the wheels came off.

**Judge:** Mr. Richter, let me tell you [I began to sweat because his tone and demeanor were not friendly and he clearly intended to make a scene] what happened to me the last time I was in Big Box Store.

**JWR:** Yes, sir? [As if I had any alternative but to invite him to make me a spectacle.]

**Judge:** I was returning a pair of pants, and I didn’t have a receipt. And they accused me of shoplifting. They were going to arrest me.

**JWR:** Well . . . judge . . . I’m . . . Judge, I’m just here for the work comp case.

**Judge:** I’m a judge! They thought I was a thief!

**JWR:** Yes, sir. [I elected not to take this opportunity to bring to the court’s attention that there are many a judge and elected public official who are, in fact, thieves.]

**Judge:** Well, I plan to give you hell about this every time you’re in my courtroom.

**JWR:** Yes, sir.

**Judge:** Now, about this workers’ compensation case. . .
[Several minutes passed as we amicably discussed the case. This part is not interesting.]

**Judge:** Alright, we’ll set this out a few months and see where we’re at.

**JWR:** Okay. See you then. . . . And, Judge?

**Judge:** Yes?

**JWR:** Maybe take your receipt next time you go to return something?

**Judge:** That’s not funny, Mr. Richter.

But it was funny.

**So What’s the Lesson Here?**

It has been my experience that there are some really good judges who sit on the bench. There are also some judges out there who act like tyrants over their tiny fiefdoms. They antagonize, bully, and rule with impunity, knowing “what are you going to do about it?” Here’s the short answer. You are not really going to do anything about it at all . . . except maybe pray a great deal that they are voted out in the next election cycle.

You just have to go about your business like normal. With these types of judges, if you’re even more prepared than normal, thus giving them fewer opportunities to find a weakness to exploit, I’ve found you’re going to be better off.

What should you do when your client does something outside of the courtroom (such as accuse the judge of shoplifting, for example) that puts you in a jamb with the judge? I wish you the best of luck. I walked away mostly unscathed, but that may not be your good fortune.
Use Mediation to Let Clients Have Their “Day in Court”

Sometimes you’re going to have a client who wants his day in court. That client may be a plaintiff who says he is interested in justice, not money. But unless your client is Taylor Swift, who sued someone for $1 for sexual misconduct, it is unlikely that the client is truly not interested in a monetary award. Or that client may be a defendant who wants to be proven not liable for the allegations brought against him. Even for those clients, mediation may provide an opportunity for your client to have his day in court without having to endure the risks associated with trial.

To parse this further, I interviewed experienced mediator Bill Ratliff, who practices at Wallace, Jordan, Ratliff & Brandt, LLC, and runs a mediation blog at mediationinsights.com. Here are some of Bill’s thoughts on preparing your client for a successful mediation experience.

**Giving Your Client His Day in Court via Successful Mediation**

**JWR:** What are the best things a lawyer can do to get his client ready for mediation?

**BR:** I encourage lawyers to approach a mediation similar to a trial. Particularly because roughly 80 percent of the cases that mediate settle. Preparation is the key. Lawyers should develop a strategy for the mediation. This will include opening demands/offers, who will speak, and what will be said. I advise lawyers to prepare their clients for mediation as they would for trial. Explain the process to them, involve them in strategic decisions, and let them know what will be expected of them during the mediation and what they should expect from the process. Most plaintiffs have never been involved in a mediation, but many defendants are familiar with the process and know what to expect.
Explain to the clients that mediation is a process. For it to work, it usually must run its course. As parties invest time and energy in the process and assess the risk-reward for not settling, the money gap is hopefully narrowed and the parties are able to make a good decision at the end of the process.

**JWR:** How can lawyers help the mediator best prepare for mediation?

**BR:** Information is power. Educate the mediator. Do not assume the mediator knows anything other than what you have told him or her. As a mediator, I find that I am best able to help the parties that have best educated me. Lawyers should decide whether it would be helpful to meet or talk with the mediator by telephone or in person prior to the mediation. This can be done with or without the client present. Position statements or briefs filed in the case are excellent ways to educate the mediator.

**JWR:** How do you deal with parties who are not interested in participating in mediation?

**BR:** This is a common problem. Often one or more parties is not excited about being at the mediation. This can occur for any number of reasons. I have found that if the court has ordered the mediation, this often serves as an attitude adjustment for unexcited parties. At the start of mediation, I always remind parties that this is their best chance to settle the case.

Unfortunately, some cases are mediated before they are ready. In these cases, we work hard to reach a resolution, but I tell the parties that if we are unsuccessful, I will keep working the case after the mediation until the parties tell me to stop.

**JWR:** For parties who want their “day in court,” what strategies do you use to help them see mediation as an opportunity?
BR: Mediation is an excellent substitute for a “day in court.” During the mediation, I try to get the parties to participate and share in the process by having them express themselves. I have seen lawyers have their clients speak during opening statements and during caucuses. I think this is an excellent way for clients to vent and hopefully feel that they have been heard. As the mediator, I try to be a good listener and ask questions of the parties to identify emotions of anger, frustration, hurt, or loss so that we can discuss those emotions during the process.

I also encourage lawyers to make opening statements in the mediation. This gives the mediation the feel of a court proceeding. It also allows the client to see the lawyer advocate for his or her position.

JWR: What can a lawyer do to help you in the process of getting disinterested clients to engage in mediation?

BR: I find that clients often take their cue from their lawyer. If the lawyer embraces the mediation process, is engaged in it, and expresses confidence in the process, the client will usually buy into the process as well. Clients need to understand that there is risk in litigation. There are also costs in litigation. These costs may be monetary, emotional, and time. The cost, risk-reward analysis is largely what makes mediation work. Parties should be reminded that mediation is a voluntary process from which they can walk away at any time. However, it is also a proven process that works. When it works, mediation results in an agreement the parties have reached rather than a decision forced on them such as a verdict of the jury or a decision of the judge or arbitrator.

As you get ready for your next mediation, keep these things in mind. Prepare yourself, your client, and your mediator in ways that lead to the greatest likelihood of success. Even clients who want their day in court may find a well-orchestrated mediation satisfying.
PART 3

Improving Your Skills and Managing Your Caseload

Becoming better at your craft requires paying careful attention to your skills. Some of the skills I focus on in this section are writing, time management, and communication. You will be a better lawyer for having developed these skills. Being a better lawyer allows you to better serve your clients and set yourself up for a successful practice.
Building a Better Law Practice

Play to Your Strengths, Improve Your Weaknesses

You can break litigation practice down into two components: written and oral. In my experience, most lawyers are good at one or the other. Those who excel at both writing and speaking are as rare as unicorns. I can count the lawyers I know who are good speakers and writers on one hand—and I secretly hate them. The rest of us have to put our strengths to work for us.

I am not encouraging you to sit back on your laurels for those things you consider strengths. To the contrary, you need to continue to hone those skills to best employ them to your clients’ advantage. But you cannot just resign yourself to being bad at some aspects of practicing and write them off as losses.

By this point in the book, I hope you’ll assume that I am a more compelling writer than speaker. Every time I put something in writing to the court, I want it to be completely dialed in because whatever I am submitting is going to be more effectively communicated on paper than in oral arguments.

Playing to My Strengths

I recently argued a motion to enforce a settlement agreement. First, I filed a motion, of course, then the court set the matter for hearing. The day of the hearing arrived without the plaintiff having ever filed a written response. So I prepared my arguments and worked through all the counterarguments I expected the plaintiff to make. At the hearing, I was up first. I concisely made my points and sat down. The plaintiff meandered through his points, read some case law, and verbally recited to the court his case cites. He made all the arguments I expected of him and had prepared for, but I still didn’t feel good about my rebuttal argument, which I could have boiled down to: “What he’s arguing doesn’t apply. I’m right and he’s wrong. And if you want to be right too, you’ll rule in my favor.” But, of course, I didn’t say that. Then I fretted over the oral arguments until the court ruled in my favor the next day.
I have no doubt that I won that motion not just because the law and facts were on my side (because that doesn’t always ensure victory) but because of my written motion. It also helped that the plaintiff, despite being much more at ease and having the potential to be a more effective speaker, fouled up his end of things by being disorganized and unprepared. That always increases the likelihood of your opponent’s success.

Improving My Weaknesses

Knowing that I am a better writer than speaker doesn’t let me off the hook. I am actively working to improve my speaking. I seek out opportunities to speak at continuing legal education (CLE) events, have agreed to be interviewed for podcasts, and have created opportunities by volunteering to speak at law schools. It is uncomfortable (maybe even for the audience too) but essential.

I was a high school teacher for six years before going to law school and was always comfortable in front of a classroom full of teenagers. But I have found the courtroom to be a somewhat difference experience. The judge and jury are a more limited audience, and the stakes are higher. Some part of my client’s fate lies in their hands. My job is not only to communicate effectively but convincingly.

If you don’t feel that you are naturally inclined to write, know this—most everybody writes crappy first drafts. Anyone who doesn’t write regularly isn’t going to be good at it. Improved writing requires intentionality—and reading, lots of reading.

Don’t allow others to take the lead on components of practice that make you uncomfortable. There is no better way to promote growth than to put yourself in the precarious position of possibly failing. Similarly, the component you consider a strength needs continual attention too, or it will stagnate and begin to lag.
Choose Your Next Words Carefully

There may be no other group of people more acutely sensitive to language usage than lawyers, and for good reason. Words are slippery creatures full of connotations and pitfalls. Choosing the correct verbiage can be the difference between convincing and offending, between a point made or missed. Mark Twain once commented on the significance of word choices: “The difference between the almost right word and the right word is really a large matter. ’Tis the difference between the lightning bug and the lightning.” I read that statement about fifteen years ago, and the truth of it has never left me.

Using the Right Words Matters

This is not just a philosophical exercise. Using the right words makes a difference in whether a judge takes your point or whether your demand letter is understood. Consider this statement made by Michael Barnett, a felony prosecutor in Kentucky, about the time you have to make an impression on judges:

The practice of state criminal law is very seat-of-your-pants. Unlike in law school or fancy appellate courts, state trial judges don’t have the time or inclination to read a million cases and suss out the specific differences in each one and try to divine the perfect rule to apply to the case at bar. They kind of wing it in a single hour-long hearing. . . . So the tiny nuances of how different states have applied a particular exception to a constitutional doctrine differently over the decades don’t come into play.

By and large, the same judges who are hearing criminal matters or also hearing civil cases, and the same rule applies. When you are writing a motion, keep your audience in mind. Here’s a joke (also relayed to me by Michael Barnett) that further illustrates the point:
A Supreme Court justice, an appellate judge, and a district court judge are duck hunting together. They’re each squatted in the blind when a bird takes flight.

The Supreme Court justice, being the senior member of the troupe, raises his shotgun. He thinks, “Is this a duck? By comparison to other birds I’ve dealt with before, it certainly could be a duck. But before I take the rash step of pulling the trigger, I should carefully consider the social and environmental policy considerations . . .”

The duck is long gone.

Another bird takes flight. The appellate judge raises his shotgun and begins taking aim. He thinks, “Is this a duck? I can apply a multifactor balancing test to make the determination. Obviously, several factors weigh in favor of its being a duck, including its wings, bill, and coloration. But I haven’t heard it quack, and I’m not sure of its diet. And if it’s not a duck, I don’t want to set a precedent that . . .”

The duck is long gone.

A third bird takes flight. This time, the district court judge raises his shotgun, and **BLAM!**, blows it out of the air. As it’s falling, he thinks, “I sure hope that was a duck.”

The trial judge has a limited amount of time and attention she’s willing or able to devote to your motion. Conduct yourself accordingly, and to borrow from John Mayer, “Say what you need to say.”

**Using Direct, Unambiguous Language**

Your writing should be easily consumable and as direct as possible. One of the worst things you can do is douse your writing in legalese or unnecessarily complicated language. For example, if you are objecting to the broad nature of a discovery request, you might rightly respond, “Defen-
dant objects to this request because it is not properly limited in time and scope.” Everyone knows exactly what you are saying. It doesn’t do to object to “the request’s failure to subject itself to temporal limitation.” The reader will eventually get to what you are saying, but nobody has time for that.

As for ambiguity, consider the language in a demand letter I received some time ago: “My clients will agree to settle both claims for $20,000.00, independently.” Once we got into the case and took the party depositions, I evaluated the case and made a recommendation to my client. Once I got authority, I attempted to accept the plaintiffs’ global settlement demand of $20,000.00. I was immediately rebuffed and informed the demand was not a global demand, but rather each plaintiff was demanding $20,000.00. This, of course, stalled settlement discussions. The wording in the demand letter did not clearly state what was being demanded, which created unnecessary confusion.

Ambiguity isn’t just a matter of words but also sentence structure. The Maryland Court of Appeals made the following statement in *Att’y Grievance Comm’n v. Gilbert*: “At the threshold, we acknowledge the obvious, that an attorney’s use, and conviction of possession of, cocaine and, indeed, of any controlled dangerous substance, because, as we have held, it undermines the administration of justice, is extremely serious and cannot be condoned.” Commenting on the opinion, attorney Bryan Cox out of Washington, D.C., stated with not a little irony:

I read that as nonsensical because it’s a sentence, which speaks of many things, and contains many commas, and it is very long, because it has many words, indeed, it appears to have very very many words indeed, and that is bad, because when you have that many words, and that many commas, and that many antecedents and *ands*, and clauses, and so on, it becomes confusing, this is why you should try to speak like Trump, who speaks like a third grader, so that people can understand you, and so that you can eschew obfuscation wherever and whenever and whatever possible.

Wordiness happens. Bad sentence structure happens. Poor word choices happen. But you can minimize these things by proofreading your
work and realizing that everyone writes crappy first drafts. Good writing doesn’t happen by accident. It requires intentionality. But the result is a product that is more effective and decidedly more likely to positively affect the intended audience.
How to Write Like Stephen King, and Why You Should

As lawyers, compelling writing is frequently the gateway to reaching favorable outcomes for our clients. Good writing is difficult and comes only with a great deal of practice. Although I consider writing one of my strengths, in part because it is a part of my daily practice, I constantly seek to improve my writing. Part of that includes reading about writing. Stephen King wrote a book called *On Writing* (Scribner, Anniversary ed., 2010) that is part memoir and part writing guide. I found five lessons in *On Writing* that lawyers can incorporate to improve their writing.

**Distrust Pronouns**

“I hate and mistrust pronouns, every one of them as slippery as a fly-by-night personal-injury lawyer” (p. 214).

The reason pronouns are treacherous is that by the time you are halfway through a paragraph, making your argument to the court or mediator, the reader has completely lost the trail of which person, place, or thing to which “he” or “that” or “those” belongs. Particularly, the things to avoid with pronouns are unclear antecedents (the noun to which the pronoun is referring) and the omission of necessary clarifying phrases.

Sometimes writing with continuous or consecutive uses of proper names feels clunky, but better clunky than unclear. When using pronouns, go back and reread your writing to make sure it is clear to the reader what or to whom the pronoun refers.

**Weed Out Adverbs**

“The adverb is not your friend” (p. 124).

Before you read further, you should understand that King holds strong opinions about adverbs:

The road to hell is paved with adverbs, and I will shout it from the rooftops. To put it another way, they’re like dandelions. If
you have one on your lawn, it looks pretty and unique. If you fail to root it out, however, you find five the next day . . . fifty the day after that . . . and then, my brothers and sisters, your lawn is totally, completely, and profligately covered with dandelions. By then you see them for the weeds they really are, but by then, it’s—gasp!!—too late. (p. 125)

King’s larger point is that adverbs should be largely unnecessary because whatever sentiment you were going to express with your flowery adverb should be inferable from the context of your writing. Too many adverbs cause your writing to be bloated and puffy. As for me, I like a good adverb, but now I’m conscientious about them.

**Avoid Passive Voice**

“You should avoid the passive tense” (p. 122).

Verbs come in two types, active and passive. With an active verb, the subject of the sentence is doing something. With a passive verb, something is being done to the subject of the sentence. The subject is just letting it happen. . . .

The passive voice is safe. . . . I think unsure writers also feel the passive voice somehow lends their work authority, perhaps even a quality of majesty. If you find instruction manuals and lawyers’ torts majestic, I guess it does.

Two pages of the passive voice—just about any business document ever written, in other words, not to mention reams of bad fiction—make me want to scream. It’s weak, it’s circuitous, and it’s frequently tortuous, as well. (pp. 122–123)

King was more right than he likely knew. Legal writing is plagued with passive voice sentences. I find myself doing it. In some ways it is easier. Passive voice is less aggressive, less assertive, less accusatory. And for those reasons it is less compelling and effective. It is more comfortable
to say “the fire was caused by the wheel bearing failure” than to say “the defendant manufactured a faulty wheel bearing that failed and caused the fire.” But the latter sentence is a straighter route to making the intended point.

**Implement the Right Word**

Remember that the basic rule of vocabulary is *use the first word that comes to your mind, if it is appropriate and colorful*. If you hesitate and cogitate, you will come up with another word—of course you will, there’s always another word—but it probably won’t be as good as your first one, or as close to what you really mean. (p. 118)

Using the right word is important. To that end, I keep a thesaurus close at hand when writing, not to drop in obscure words that make me seem smarter but to help me choose the word that most specifically connotes exactly what I want to communicate.

**Conserve Words**

“Omit needless words” (p. 132).

In the spirit of being concise, I will not belabor the point—don’t use two words where one will do.

Being a good writer requires much of you. It necessitates being an avid reader. Good writing requires intentional practice. But good writing is not an end unto itself. It enables you to be a better lawyer by being a more compelling advocate for your client.
Intentionally Improve Your Legal Writing

I’m not a fiction writer. For about a decade I was, and in some ways I still aspire to be. But for now I write on topics related to my industry and sometimes histories. I write what I believe to be truth. But in many ways, so does the fiction writer. And that is the intersection at which Anne Lamott’s book *Bird by Bird* (Anchor Books, 1995) applies to you and me. *Bird by Bird* isn’t a book for lawyers or about lawyers or, as far as I can tell, one that even contemplates lawyers. But there are some writing truths in there that can help us improve our legal writing and advocacy. For example, Lamott asserts:

> We write to expose the unexposed. If there is one door in the castle you have been told not to go through, you must. Otherwise, you’ll just be rearranging furniture in rooms you’ve already been in. Most human beings are dedicated to keeping that one door shut. But the writer’s job is to see what’s behind it, to see the bleak unspeakable stuff, and to turn the unspeakable into words. (p. 198)

Put yourself there in place of the writer. On our best, most altruistic day, isn’t that what we aspire to do? Not only to expose the monster in the closet but, by so doing, to right a wrong.

**The Terrible Task of Beginning**

Sometimes, when I have a brief to write, I put it off for days or weeks. And it is not just a matter of wanting large chunks of time to work on it; it’s the fact that it can be daunting. Perhaps it involves an aspect of law with which I’m largely unfamiliar. Maybe the reticence to start arises from an awareness this is my singular opportunity to impress upon the court the validity of my position.

Lamott proposes an interesting technique for dealing with the overwhelming task. The gist is to focus on short assignments:
I finally notice the one-inch picture frame that I put on my desk to remind me of short assignments. It reminds me that all I have to do is to write down as much as I can see through a one-inch picture frame. This is all I have to bite off for the time being. (p. 17)

You don’t have to write your whole brief at once. Just one issue at a time, taken element by element.

**The First Draft Doesn’t Have to Be All That Good**

The terrible task of beginning your work is made easier by knowing the first draft doesn’t have to be all that good. In fact, it can be pretty terrible because no one is going to see it but you. To that end, Lamott writes:

The only way I can get anything written at all is to write really, really shitty first drafts. The first draft is the child’s draft, where you let it all pour out and then let it romp all over the place, knowing that no one is going to see it and that you can shape it later. (p. 22)

Having some experience under your belt will give you the confidence to know that really good concepts are contained in those “shitty” first drafts. It is those concepts and ideas that are the gems. You can knead that messy pile of words into valuable and compelling arguments over the next couple of drafts.

Proofreading and editing your drafts is an unavoidable and essential process. To be totally transparent, I hate proofreading. Whether it’s an email, a pleading, or a journal article. Proofing is tedious and tiresome, and I have no patience for it. I understand the necessity of it and firmly believe that good writing is in the editing and rewriting. Nevertheless, I find no joy in it. It takes occasional embarrassing reminders to force me out of my laziness, as when I was reviewing the brief I’d submitted to the court in preparation for a hearing and found that I had informed the judge that “the burden then shits to the plaintiff.”
The Only Way to Write Compelling Material

As I have mentioned, your motion (whether seeking summary judgment, discovery sanctions, or dismissal of a case) is your opportunity to convince the court that your client deserves whatever relief you are requesting. But if you’re seeking an extraordinary measure, you are going to have to be compelling. The only way to be compelling is to believe in what you are pitching, as Lamott clearly states:

You have to believe in your position, or nothing will be driving your work. If you don’t believe in what you are saying, there is no point in your saying it. You might as well call it a day and go bowling. (p. 106)

Here’s my only caveat to Lamott’s contention: if you are a defense lawyer, you probably shouldn’t just call it a day. You are basically an hourly worker. I recommend you just turn to some document review or some other menial-but-necessary billable task.

The next time you sit down for a daunting writing project, remember these things. Starting your brief is tough, but you don’t have to do it all at once. Lamott includes a statement in Bird by Bird that was made by E. L. Doctorow: “Writing a novel [or in our case, a brief] is like driving a car at night. You can see only as far as your headlights, but you can make the whole trip that way” (p. 18). It’s important to remember, too, that the trip is only worth taking if you believe in it enough to convince others of its validity.
Cognitive Space Is Precious—Recycle Rather Than Reinvent

“Cognitive space is precious.” When I heard someone use that line the other day, I almost burst out laughing. (Note: Random bursts of laughter almost always draw suspicion in a law firm.) Nevertheless, it struck me as funny, mostly because it is true. There is only so much critical thinking you can really do in a day. You need to save that precious cognitive space for the times you really need it.

Derek Thompson’s article for *The Atlantic*, “A Formula for Perfect Productivity” (Sep. 17, 2014), states that people can focus on tasks for about fifty minutes at a time before needing a fifteen-minute break to allow their brains to reset. These breaks are most effective when taken away from electronic stimuli, including avoiding looking at phones. Engaging in conversations and going for brief walks are some of the most effective ways of resting one’s brain and boosting productivity.

Knowing that our brain limits the amount of time in a day that it can be put to work on critical tasks should motivate us to identify our critical work so we can focus on it. We can then create shortcuts for the noncritical work to make it more efficient.

*Fill Your Cognitive Space Appropriately*

Plenty of legal work requires critical thinking, but there is more that does not. Perhaps a better way to say that is that plenty of legal work only requires critical thinking once. After that initial investment of time, the work product can be recycled and reapplied in other cases with a minimum of effort.

For example, the first time I had to draft a motion for summary judgment on the issues of wantonness and negligent entrustment, it took me hours to research and draft my legal arguments. That is to say nothing of scouring all the discovery and deposition transcripts for undisputed facts and then applying the facts to the law. But there is no reason to duplicate and reinvent the work of drafting those legal arguments every single time I’ve got a car wreck case where I believe summary judgment is due on
either of those issues. Unless the law has changed, my legal argument and analysis isn’t going to change much from case to case. I can copy the bulk of that language from one document and drop it into another.

This is true not only for motions but also for discovery, objections to discovery, complaints, and answers. To this end, I keep a folder where I store (or try to remember to store) a copy of every type of motion, pleading, or written discovery that I run across or draft myself. There is no sense in putting in the effort or expending the cognitive space to recreate these things time and again.

Reduce, Reuse, Recycle

As with all things legal, this comes with a caveat. The recyclability of your work may depend on the person for whom you are working. Over the past couple of years, I have done work primarily for two partners. One of them is very particular about phrasing and sentence structure. If he has me draft a motion, he wants it to read as though he drafted it. This proved troublesome at first because we have very different writing styles. We’ve had countless conversations about wording and phraseology, many of which involved statements like this: “Nothing that you’ve written is wrong. It’s just not how I would have said it.” With that, I had to rewrite it. In an effort to hit peak efficiency, I began saving templates in distinct folders for the partners to whom they applied.

I would caution young lawyers to set aside the need to make your mark by drafting everything from scratch. When you start at a firm, there is likely tucked away on some server or dwelling auspiciously in the cloud a cache of documents that are intended to make your days easier. Young lawyers are often tempted to prove their intellect every time the pads of their fingers hit a keyboard, but that’s not what your employer needs. The lawyers you are working for need effective work performed efficiently. Frequently, the best way to achieve that is to use the resources already at your disposal. Your firm hired you because you are competent (or have the potential to become so), and proving your value is often a matter of being resourceful rather than inventive.

The life of a lawyer can be difficult enough without shouldering unnecessary tasks such as undertaking hours of research and writing
when it has already been done before (maybe even by you). The next time you draft a document, act with intentionality and save it to a place where you can recycle it later. Your cognitive space is precious. You need to save it so you can unleash your critical thinking for occasions when it is truly necessary.
Should Lawyers Use Google for Legal Research?

Westlaw, Lexis, FastCase—in many legal circles these are the only acceptable avenues of legal research. Anything else is not only pedestrian but sometimes even vilified.

There are plenty of good lawyers who secretly (for risk of being shamed) start many legal research projects with a simple Google search. There are several good reasons for it too. Google searches are free. It is usually the most practical place to start for complex topics or subjects with which the attorney has only limited familiarity. You can use broader search terms in nonlegal search engines and still pull up useful information because the algorithms are smarter and Google has access to a greater breadth of information.

Search results from Google often yield the keywords, case law, or statutes that enable a lawyer to more effectively embark on the more in-depth research available by traditional legal search techniques. Frequently, Google or even Wikipedia is a more efficient and practical starting point. There are an abundance of nontraditional resources, websites, and blogs with valuable legal insight. Search engines can be used for finding briefs, white papers, and treatises that summarize dense or complex topics. This enables the researcher to more easily home in on what is important and begin issue-spotting.

Regardless, there are lawyers who turn up their noses at the use of nontraditional sources on the interwebs. Here are two anecdotes from other attorneys who have encountered the same resistance.

A former insurance defense associate used Google Scholar to locate and print off cases that supported her position in a case. The partner griped about the use of Google because the firm “paid good money” for LexisNexis. The cases being used were the same ones she would have printed from Lexis. Essentially, the lesson was—you should do it like I do despite our achieving the same result.

At a different firm, an associate was talking with an older partner at his firm and mentioned that Google was frequently his starting point for research when tasked with answering a question for a partner. This partner was so relieved to hear someone else was using Google. She thought she was the only one and must be doing something wrong.
I don’t mind saying that I have a vested interest in lawyers using search engines and nontraditional information sources to aid their research. Otherwise, a large percentage of the content on my law blog would be an enormous waste of time. One of the reasons I started my blog in the first place was that I found a hole in the market that I could fill with valuable information and interpretations. But that is only successful to the extent lawyers use nontraditional legal research methods to educate themselves.

I’m not advocating the use of Google or other nonlegal search engines as a *replacement* for traditional legal research. But no one should be shamed or discouraged from supplementing their use of Westlaw or Lexis with other search methods, particularly if other methods are more efficient and equally effective. What is more efficient for the lawyer can result in savings for the client with no loss in the quality of the work product.
Why Storytelling Is Essential for Trial Lawyers

Throughout most of human existence, storytellers were the gatekeepers of history. As the written word has evolved, the art of oral storytelling has become less practiced and less emphasized. But, when done well, storytelling is no less effective. In certain settings it has not lost its importance. Being in front of a jury is one of them.

For years Steve Heninger has been widely recognized as one of the preeminent trial lawyers in the South. Part of what helps him stand out is his method of weaving storytelling into the fabric of his cases. Here are some of Steve’s thoughts on this important but often overlooked aspect of advocating for clients—storytelling.

The Importance of Storytelling

**JWR:** What is the importance of storytelling?

**SDH:** This is like asking what is the importance of communication. Storytelling is a key component of the way we communicate with others. Most of us don’t think in terms of naked, unconnected data; we think in terms of narratives. Stories are a way to get some benefit or knowledge from someone else’s experience without having to go through the experience itself. Stories also can be used to confirm or refute issues by reference to our own actual experience. It is a dynamic process.

**JWR:** What role does storytelling have in jury trials?

**SDH:** The trial is a story. It is (like all good stories) operating on two levels. The “particulars” of the people, time, and place of this story and the “universals.” The “universals” are the foundation of our human condition. These universals transcend the specific story’s temporal and geographical setting. Every good story should have some underlying themes that connect with these universals.
such as fairness, integrity, safety, and how to survive in this world. The story must seek some common ground with the jury so they pay attention and see a connection that answers the question, “Why should I care about this?” Stories that are crafted well provide a meaning that will resonate with the jury on both a logical and an emotional basis. Trial stories have a surface (particulars) and an essence (universals) and meaning has to be provided that connects the two.

Trial lawyers are only the tellers of the story. Stories (like art) are not to show juries who I am—they are meant to show them who they are! Who we all are!

JWR: Why is storytelling so effective?

SDH: If told well, they entertain and instruct at the same time. When they are focused on universal values and emotions that establish/prick a common ground feeling or value, they transcend the particular parties and facts. We all think in narratives about the reasons behind/within events. This process is not inherent in raw facts or data. We are in the lighting and heating business as storytellers. The light illuminates what really happened and instructs on particulars. The heat invokes an emotional response to what happened (or can happen again) so that the audience actually becomes a stakeholder in the narrative. I have often heard businessmen say “you get what you want by giving others what they want.” Businesses either create a desire/need or they satisfy an existing desire/need. We do the same thing by looking for a common ground that will connect with the jury and give them what they want—the tools and insight to do the right thing for the right reason. This is our target. When the shooter misses the target, it isn’t the target’s fault. We don’t just compete for attention. We have to use the story to achieve connection.

JWR: How do you determine the most effective method of telling the story?
SDH: This is the great question. Stories have their own lives. We have to unlock them—not create them. Stories live by being retold. I always look for something that is contagious/likely to spread. A good story should strike a nerve with jurors that make them want to retell it. It has to have sticking power that drives the hearer to retell it in her own way, filtered through her own values, and what has struck her as important. We have to find elements that are contagious and intersect with a common ground that we feel is reasonably probable with this specific jury. It’s a tough assignment, but this is the crucial point in my way of thinking. We can’t successfully force feed facts and opinions. We have to find a way to connect with the universals we think are present within this jury. Not all audiences are the same. Some may have been so inoculated that the contagion is unlikely. Look for some connecting point that even these people likely have that can frame the narrative in their terms.

JWR: How do you decide when it is an appropriate time to tell the story?

SDH: The telling starts as soon as the jury walks in. It is not completely laid out but comes in chapters and an introduction. We have to get to know our audience before we tell the story. This gives us insight into the target and how our framing needs to be formulated. Storytelling is taking place at every stage of the trial. Questions can be phrased in ways that spotlight themes and universals. Stories don’t need to be chronological. In fact, I personally don’t like that approach. We can start anywhere: at the end or at the beginning or even in the middle. Of course, closing argument brings it all together.

JWR: What are the marks of an effective storyteller?

SDH: Someone who is not simply an interesting person but an interested person. Someone who does not tell others what to think
but holds their hands to look out the window and think together. We are not the stars of a story. We are the tellers of the story.

**JWR:** How can a person improve his storytelling to be more effective?

**SDH:** Be a good listener and observer of the stories that surround us everywhere. Watch others who tell stories and see what methods seem successful and fit your own style. Practice it every day in every conversation. Long, boring stories hit each of us every day. What excites or grabs us personally? Study human nature and follow your gut as it gets more awareness of people. Remember, meaning matters—details don’t. Details support meaning, but we are looking toward connecting our meaning of a story with our audience.

As you prepare for your next trial, look for ways to connect with your audience, not only on an intellectual level but on an emotional level. Give them a reason to empathize with your client, and provide the avenue to get to that point through effective storytelling.
Goals and Tactics When You Voir Dire a Jury

Voir dire is the process of talking to a panel of prospective jurors to determine which are most fit to hear and decide your case. In my litigation practice, I have seen that voir dire appears to be the most uncertain and widely variable aspect of a trial. When it is good, an engaging lawyer sets herself up for a good rapport with the jury. But when it is bad, the jury is bored, the judge is bored, and opposing counsel is smirking wickedly while champing at the bit to make a more favorable impression on the panel.

I have interviewed several lawyers, asking them the same eight questions about their theories and methods in approaching the most effective ways to voir dire a jury panel. L1 has a civil defense practice in Alabama; L2 is a criminal prosecutor in Oregon; L3 is an insurance defense lawyer in California; and L4 practices in commercial litigation and debt collection in Virginia.

Questions on Goals, Tactics, and Effectiveness

What do you try to accomplish with voir dire?

L1: First and foremost, I want the jury to begin connecting with me. I want them to see some personality and relax so they’ll feel free to respond to my questions. I’m seeking who would be a good fit for the case and give my client a fair shake, so getting to how they are predisposed or how they feel about certain things is key.

L2: I try and get my jury thinking about stuff from my perspective and find people that I don’t want.

L3: Apart from smoking out who can be challenged for cause, I look for thought processes and people who work in fields that require critical thinking.
L4: The purpose of voir dire is to create a jury that will be receptive to your story and the outcome that you are trying to obtain.

What methods or tactics do you use in voir dire to attempt to connect with or relate to the jury panel?

L1: I usually start off with something funny or cute to loosen them up, make them laugh, break the ice. If the court allows, I walk around a little and into their “space” a little so they’ll relate to me and not see me as so formal. I might tell a quick story about an experience that they can relate to such as “I’ve been on a jury, I know how you feel” kind of thing.

L2: I try and laugh and make a joke or two with them and connect that way. Also stand in the well.

L3: My awkwardness; I don’t mind showing that I’m a little nervous and I think it makes me more relatable. If I can make a joke at my own expense, I will.

L4: It is important to gauge the prospective juror’s positions on issues related to your cause. Dealing with debt? Ask questions about loan forgiveness.

On a scale of 1 to 10 how effective are you at voir dire?

L1: I strive to be a 10 but probably a 7 or 8.

L2: No clue. Juries do what they want.

L3: Uhh 4? Did well with one jury and poorly with the next.
L4: I would give myself a 6 right now.

What could you do to improve?

L1: Hmmmm. Get in front of a jury more often.

L2: Lots of things . . . but different each time I think.

L3: Improving my memory! Some lawyers are able to put names to faces immediately and it makes the back and forth much smoother. I aspire to that.

L4: Practice will make perfect. I need more trials.

Questions on Mistakes, Methods, and Advice

Identify a common mistake you see in voir dire.

L1: Not listening to the responses. Too many attorneys get tied down to their questions and don’t listen to the responses they receive and miss some good follow-up opportunities.

L2: Acting like a robot.

L3: I’m making the mistakes, not seeing them.

L4: Exercising all your challenges early in the process could leave you with a nightmare of a juror.
What makes for an ineffective voir dire?

**L1:** Failing to connect and just going down your list of questions.

**L2:** Acting like a robot.

**L3:** Being too aggressive with preconditioning; getting argumentative right out of the gate makes them dislike you, and I’ve seen it hurt clients.

**L4:** Ineffective voir dire fails to uncover the prejudices of your potential jury. Not asking questions related to your issues.

What methods do you use to clue the jurors in on your theme or theory of your case during voir dire?

**L1:** I’ll ask questions that relate to my theme. If it’s a car wreck and you have some questionable eyewitnesses, something like, “How many of you have ever thought you saw something but when you got closer to it, you were mistaken?” Or if you client is accused of doing something wrong, “How many of you were every blamed as a child for taking a cookie out of the cookie jar, but you didn’t do it?”

**L2:** I just sort of ask them questions about the area. Like what does a drunk person look like? How do you know?

**L3:** Depends on the judge; some are very strict about staying within the boundaries. I try to present a statement of the case that is objective on its face but frames the issue in our theme/client’s favor. It’s not easy, and I don’t always succeed.
L4: Repetition is the most important aspect of establishing a theme. Focusing on key issues related to the case at hand. For example, in a personal injury case, focusing on issues related to uninsured motorists or something.

What is the single best piece of advice you have to offer about voir diring a jury panel?

L1: Think outside of the box with your questions and listen to their responses.

L2: Ask some easy, relatable questions to get them going.

L3: Learn from the pros, watch as many of them as you can and take every opportunity to do voir dire that you can.

L4: Best advice I can offer is to be flexible, thorough, and don’t waste your challenges early.

Voir dire is your first opportunity for the jury to get to know you. It is your first chance to impress upon your jury panel what the case is about. It is your only opportunity to ferret out those in the venire who may not respond well to you or your client, or equally important, who may respond favorably to your opponent. Go into voir dire with a plan and with some personality.
Get What You Want Out of Closing Arguments

Since early childhood, I have been an Atlanta Braves fan. The last few years have been a pretty tough go, which has helped to weed out the bandwagon fans who rallied behind the team during their run of fourteen consecutive NL East division titles (1991–2005). Despite the glory having run out, the Braves still have had some really good players come through the club in the last dozen years. Possibly none better than Craig Kimbrel, who got called up in 2010 and was the Braves’ closer from 2011 to 2014 (when he was traded). During those four years, Kimbrel was automatic. When he came into the game in the ninth inning, it was over. He was nearly untouchable. He averaged 45+ saves per year, had an ERA of less than 1.50, and a WHIP that hovered around 0.90. He was everything a team wanted in a closing pitcher.

Being the closing pitcher in a baseball game is hard. More than the physical skills, it takes mental acuity, emotional steadfastness, and supreme confidence (and awesome, fear-inducing walkout music). Being good at delivering closing arguments at trial requires many of the same qualities.

What Do You Want Out of Closing Arguments?

You may not know what you want out of closing arguments in each individual case until the close of the evidence. I was in a trucking case a couple of years ago in which the testimony about liability changed significantly during the course of the trial from what our expectations had been going in, so we had to pivot and approach our closing from an entirely different perspective than anticipated. But as an overall strategy, you will likely have the same base goals.

What you want out of closing arguments is to communicate your case in a persuasive and informative fashion that continues to tell the story that you’ve been constructing for the jury since voir dire. I interviewed five lawyers about what they want to get out of closing arguments, and here’s what they say.
Family Lawyer: I want to put my client in the best light possible.

Canadian Government Lawyer: I want to fairly explain the statutory and case law to get the judge to zero in on the exact issue and ensure the judge and the (generally unrepresented) other side understand the Crown’s case and why it should be successful.

General Practitioner: To summarize the case in the strongest way to the judge using the evidence at trial. Making it clear why my client is the one in the right with specific examples.

Self-Professed “Black Hat PI Lawyer”: $$$.

Criminal Prosecutor: Persuade them that my version of events makes the most sense (and that means the defendant is guilty).

How Do You Get What You Want in Closing Arguments?

Knowing what you want and knowing how to get it can be two very different things. Your closing argument is your time to convince the jury that you are right. Use whatever is at your disposal. There’s an idiom among lawyers: “When the law is in your favor, pound the law. When the facts are in your favor, pound the facts. When you don’t have either the law or the facts, just pound the table.” It’s not far removed from the truth. Here are those same lawyers’ thoughts about how to get what you want in closing arguments.

Family Lawyer: Get that by emphasizing the law and relevant facts.

Canadian Government Lawyer: Draft my closing arguments first to focus my other preparation, revise it to accord with the evidence (often by labeling the uncertain parts of the evidence), and be as organized as possible throughout trial so that I can tell the story properly when it comes time to argue.
General Practitioner: Good organization throughout trial allowing me to cherry pick the best examples from the evidence.

Self-Professed “Black Hat PI Lawyer”: Emotional manipulation.

Criminal Prosecutor: Use the jury instructions, try not to get hung up in the details, common sense, tie together testimony of my witnesses, pull quotes from the defendant that support my point.

How Do You Know If Your Closing Argument Has Been Successful?

It would be too simplistic to point to the jury’s verdict or damages award and suggest it tells you whether or not your closing argument registered with the jury. For example, we were involved in a week-long, contentious jury trial. One of the partners delivered a very effective closing argument. Then plaintiff’s counsel got up for his rebuttal and asked the jury for a seven-digit jury award. We knew it was coming, but it was still hard to hear, knowing there is always a possibility the jury could agree with their evaluation of the plaintiff’s claimed injuries and damages.

When the jury came back, they entered an award barely into six figures. That’s still a lot of money, but we were pleased, considering the clear liability against our client and the claimed damages. But here’s the real kicker—the following week, the plaintiff’s lawyer called my partner and bitterly griped, “Your closing cost me $250,000.” So that’s one way to know your closing argument was effective.
Three Ways to Be a Good Second Chair at Trial

Trials are stressful. They can be made less stressful by having someone at your side who is going to make it easier for you. A good second chair is an invaluable asset. Being second chair at trial is like being a relief pitcher. You’re not going to get credit for the win or the loss, but you can absolutely affect the outcome. Here are some ways that you, in your role as second chair, can best serve your trial partner and ease her burden.

Be Supportive

Second chair is a support role. It is important to anticipate the needs of your trial partner by being attentive to what’s going on. Are there documents that might be necessary to support a motion in limine? Are there photographs she requires during the examination of a witness? Mark deposition transcripts with tabs so that if she has to impeach a witness with his prior testimony, you and your partner aren’t having to thumb through pages or scour the index. Instead, as your partner comes back to the table, be ready to hand over the documents already open to the appropriate page.

Your second chair support role does not end with tangible things. You are also tasked with mental and emotional support. People handle trial stress in different ways. Some better than others. I have tried cases with several different lawyers, each of whom needed a different kind of support. Some of your trial partners will get really keyed up, and you will have to talk them off a ledge. Some will begin to doubt strategies and tactics, and you will need to convince them to stay the course. Others could use some encouragement and reassurances. Then there are those who will start to get brash about what they want to do and have to be reined in. Being a good second chair requires you to be mindful of your partner and attentive to her needs.
Be Adaptable

Things can change on a dime at trial. There is no better example of this than the O. J. Simpson murder trial. At the outset of trial, Marcia Clark and Bill Hodgman were set to first and second chair the prosecution team. Then Hodgman collapsed . . . during trial. Clark pulled up Chris Darden to replace Hodgman during one of the most high-profile cases in American history. Darden was malleable and adaptable and ready to fulfill his new role.

To a much less notable degree, these types of things happen all the time at trial. Witness testimony frequently is different than expected. The judge rules on the admissibility of evidence in an unanticipated way. I have been in trials in which I have had responsibilities added and others in which I’ve been relieved of them. In none of those instances were the changes a result of something I had done. There was no time to either gloat or pout. Only time to adapt and prepare for the next phase.

Be Low Maintenance

Most important, you cannot be a good second chair if you require lots of attention. Trial is not the time for you to ask your partner all the questions your inquisitive, hungry mind contrives. When I was a clerk at the St. Clair District Attorney’s office, the district attorney was trying a capital murder/sexual torture case. During one of the breaks, I approached him and asked if he could answer a question. He said, “No” and turned his back to focus on something else. At first, I was mildly offended. Later I understood that he wasn’t being rude; he genuinely wasn’t in a place to answer my questions about why it was so important to the defense to bring out that the defendant had been drinking the night of the murder. The DA was focused and in his trial zone, no different than any athlete during a game.

Trial is not the time to pepper your partner with impertinent questions, ask insecurely whether you’re doing a good job, or sulk that other associates are getting more responsibilities (or alternatively, have lighter workloads) than you. Trial is the time for you to be on top of your game and be prepared to meet your trial partner’s needs in anticipation of them
arising. It is the time for you to execute your own responsibilities without giving your partner any cause for concern.

Being a good second chair is an exercise in servant-leadership. It’s a time to put into practice the lessons you’ve been learning. But most important, it is a time for you to be an asset and a resource for the person occupying the first chair.
Don’t Handle Your Case Like the Writers of *Lost*

*Lost* went off air in 2010, so this may not be the most culturally relevant of comparisons. But I can’t think of any other show or movie that fumbled on the goal line quite so remarkably. I binge-watched the show after it had gone off air, so I had a truncated viewing experience. The first few seasons were quite good. Seasons 4 and 5 got a little wonky. And by the conclusion of the finale in Season 6, I was like, “I’m sorry, wut?!!?”

As the title suggests, if you handle your case in the same manner, it is going to be a disaster. And the ultimate result will be that there won’t be many more cases coming down the pike. Unlike with other career options, there isn’t anywhere for a lawyer to hide. The buck stops with you!

**Mastering the Start**

Mastering the start is easy. Anybody can start a case off on the right foot (which isn’t to say everybody does). Identify your actionable claims and the defendant(s) against whom you’re making claims, including any fictitious parties. Draft and file your Complaint prior to the tolling of the statute of limitations. Or, if you’re on the flip side, timely file your Answer and plead your affirmative defenses.

In either case, generally, you should immediately file discovery requests upon the opposing party. It puts pressure on your opponent to take active steps to participate in litigation and prevents the case from being filed then going dormant. If discovery requests are issued to your client, respond on time, especially to Requests for Admission.

*Lost* started with a plane crash, but the crash was just the beginning. Then a flurry of other activity commenced. Your cases shouldn’t be any different. The lawsuit is your crash. Now it is time to start triaging the situation and plotting the appropriate courses of action!
Muddling the Middle

In the middle seasons of *Lost*, the plot headed in about a dozen different directions. The writers didn’t seem to know where they were headed or what the end goal was for characters or the show. The trouble with that is you don’t know where you’re going unless you know where you’re going. The same is true in handling cases—you have to handle your daily operations with your end goals in mind.

Stress, adversity, and uncertainty will creep in following your initial course of action. If you know where your case is headed, you are more likely to keep from losing your way when things get murky.

Filing suit or answering one. Issuing discovery requests. Those are easy tasks. There’s very little uncertainty. But then it gets tricky. You consult with your client to answer discovery. Gather and sort through documents for production. You schedule your opponent’s deposition and put your client up for his.

When preparing your client for his deposition, you review all the facts and deposition rules with him, but it could still go sideways. Documents produced during discovery may suggest that liability lies with your client, or that your client’s knowledge of the situation is different from what he expressed to you.

It is how you handle your case when the middle gets muddled that will determine whether you muck up the end. The middle is bound to get murky. There’s a lot of debris flying around in the form of information, documents and records, and expert opinions. Stay your course and don’t lose your bearings.

Mucking Up the End

A surefire way to muck up the end of the case is to fail to communicate with your client. When you first got into the case, you may have provided an initial evaluation. But it’s not uncommon for an evaluation of a case to change during that messy middle. That change often leads to an uncomfortable conversation you need to have with your client.

If you decide not to have that uncomfortable conversation, you’re doing a disservice to both yourself and your client. He may still have the
sunny expectations you instilled at the outset of the case. Now you know that the skies have gotten gloomy. You aren’t going to be able to hide it for long, nor should you try. The case will move forward regardless of how you prepare your client (or don’t). In most instances, a case is going to end one of two ways, with a verdict or a settlement. If you haven’t communicated with your client and haven’t prepared him for what’s to come, not only have you done him a disservice, but you’ve already mucked up the end.

We typically enjoy a twist or a surprise ending in a TV show or movie (although those kinds of endings can certainly be poorly executed, e.g., *Lost*), but your client does not want any surprises at the conclusion of his case. At the end of the case, if your client turns to you and says, “I’m sorry, wut?!” you’ve handled your case like the writers of *Lost* and mucked it up.
Implement After Action Reviews in Your Processes

Failure and losing are really unpleasant experiences—is that enough of an understatement? In my mind, there are only a few things worse than the failure itself, one of which is dwelling on it and mulling it over. But perhaps even more regrettable than either of those is walking away from the failure without having learned anything from the experience and without taking the time to assess what went wrong. Implementing After Action Reviews into your case management processes is an effective way to figure out what happened and what might be done differently going forward.

What Are After Action Reviews?

After Actions Reviews (AARs) are a tool originally used by the military and later adopted by the private sector to assess completed projects and missions to find strengths, weaknesses, and areas of improvement. Borrowing from the *Harvard Business Review* article “Learning in the Thick of It,” AARs should not be “postmortems of past failure” but instead are “aids for future success.” In the context of law practice management, you can deploy After Action Reviews following the conclusion of a case. In using this method of debriefing, there are four questions to consider:

- What did we expect to happen?
- What actually happened?
- What went well and why?
- How can we improve?

AARs are not intended to be a time for condemning anyone’s actions or reprimanding poor performance. Rather, they are a time to foster open dialogue among everyone involved in the process. Everyone should be empowered to participate and express their perspective. The focus of the exercise should be on the result(s) of the case, whether it’s facilitating how to sustain good results or developing recommendations for diverging from poor results.
Implementing After Action Reviews

To apply this to a litigation practice context, a partner of mine is fond of saying, “There’s the trial you thought you were going to have, the trial you actually had, and the trial you wish you had.”

When you win a trial, it’s tempting to be self-congratulatory, revel in your victory, share stories with the office the next day, and move on to the next thing. When you lose, however, the temptation is to skulk into your office and bury yourself in work, hoping no one asks how the trial went. Neither response provides you with any real benefit or opportunity to learn and grow from your experience.

No matter how illuminating the success or apocalyptic the failure, there is always something to learn. Although we cannot promise to replicate our results, we can refine our processes.

After a recent trial in which we obtained an unexpectedly good result in a tough venue representing an insurance company directly, my trial partner and I spent a couple of hours working through our two-day trial.

- **What had we expected to happen versus what did happen?** What we expected was more or less exactly what did happen, except for one thing. We had developed some evidence during the trial that we hadn’t anticipated that enabled us to impeach the plaintiff. This was certainly a positive development, but it is impossible to say what effect it really had on the jury.

- **What went well and why?** In the moment, nothing had felt like it was going well. The jury seemed attentive but disinterested. Most of the court’s rulings that were coin tosses went against us. We made some stipulations to help streamline the trial but were never totally convinced that it was a favorable trade-off. In the end, the jury did what it thought was fair irrespective of what any of the lawyers suggested, which, in this instance, yielded a positive result for our client.

- **How can we improve?** Well, I can’t rightly tell you that because I’d sure hate to reveal my weaknesses to any of my contemporaries who may read this. But don’t doubt that we talked about it and made plans to implement some new procedures in upcoming trials.
When After Actions Reviews become a regular part of your practice, and your team can have an open dialogue about what went right or wrong, whether expectations were realized or not, and what can be done to improve your processes and results, you can expect to see consistent improvement and effectiveness.
You have to take the initiative to improve yourself, and thereby your practice. Charlie Tremendous Jones once said, “You will be the same person in five years as you are today, except for the people you meet and books you read.” Certainly, that is an oversimplification, but there is some merit to the sentiment. If you want to be a better version of yourself, it takes some intentionality. This final section of the book is geared toward giving you tools to improve yourself, both personally and professionally.
Three Steps to Becoming a Better Lawyer

What steps can you take to become a better lawyer for yourself and the partners you work for and with? I write this not as a “guru” who has got it all figured out. I am not saying “This is what I did, and it’ll work for you,” because I’m still here, trying to become a better lawyer. My purpose here is to pass along some acquired experience, and I hope some wisdom, in an effort to assist you who are entering or at least early in this uncertain and anxiety-ridden tenure as a lawyer.

Immerse Yourself in Your Practice Area

During law school, I clerked with a district attorney’s office, for a municipal judge, for a couple of civil solo practitioners, and for a real estate attorney. But what I didn’t do is have any experience in the area in which I would spend more than 75 percent of my time in my first four years of practice—trucking defense litigation. I had limited knowledge of the insurance industry, no real knowledge of the trucking industry, and certainly no familiarity with the Federal Motor Carrier Safety Regulations. And I had no expectation that over the course of four years I would peruse hundreds of thousands of pages of medical records.

That is to say, you’re likely going to enter a field with which you’re largely unfamiliar. That’s to be expected. But those you’re working with (and against) have years, if not decades, of experience. I had to be a quick study. What were the rules under which the truck drivers and motor carriers I was representing were operating? What sorts of injuries could reasonably be expected to be associated with what types of collisions?

Depending on the firm that hires you, your billable hour requirements are likely to be hefty. But you must acquire some knowledge that you are not going to be able to bill to obtain. It requires perseverance and dedication to develop the base of knowledge necessary to be proficient in your practice area.

And yet there still may be occasions when a partner approaches you about participating in a corporate bankruptcy trial that is six weeks away.
And not only do you know nothing about corporate bankruptcy, you are not even admitted to practice in bankruptcy court. So you just dig in.

**Work Proactively within Your Parameters**

You may work with one partner or half a dozen. Each of them has expectations for the scope of work you are to undertake. One may be comfortable with you taking a case from the initial pleadings and working it more-or-less autonomously to its resolution. Another may expect you to work from a task-based assignment system. Know your role with each partner and operate within those parameters.

Over the last five years, I have consistently worked with several partners at my firm. I’ll identify them by their practice areas to keep the self-incrimination to a minimum.

In my first three years, I worked primarily for a Trucking Lawyer. We had regular meetings, sketched out our strategies for each case, and I operated with significant freedom within each case.

When it came to the Personal Auto Lawyer, for the first four years, most of my work was task-based and closely supervised. As needed, I wrote reports to clients, attended hearings and depositions, and drafted pleadings. Once I completed an assignment, there was nothing more to be done for the Personal Auto Lawyer until the next task was assigned. A few months into my fourth year, the Personal Auto Lawyer’s needs changed, as did her willingness to trust me due to the work I had performed over the first few years. Now, I have a set of tasks to undertake with every new case that comes in, and together we plan for how to approach the case.

I only semi-regularly receive case assignments from the General Business Liability Lawyer, but when I do, he expects me to operate largely autonomously. I keep him in the loop and ask for guidance when I encounter unfamiliar circumstances. But by and large, the cases are mine to run with.

Whenever I get a call from the Insurance Coverage Lawyer, I know that whatever the case or legal question at hand, it’s going to be something bizarre that I’ve not dealt with before. This lawyer’s approach is
different from everyone else’s. He tells me what outcome he needs to achieve for his client, and it becomes my job to get us there.

With each of these partners, I have different roles and expectations. Once you have identified your role, anticipate the needs of your partner and take the steps necessary to meet them in advance of deadlines or expectations.

Be proactive, not reactionary. If there’s an expert deposition approaching, know how early your partner likes to begin preparing, and have all the documents, reports, or resume information ready that she may need to punch holes in the expert’s opinions or credibility. If you have a dispositive motion hearing approaching, be ready with the motion and exhibits, any opposition responses, and printouts of whatever case law may be needed to convince the judge of your position. When you go into a planning meeting, know the case better than your partner. Familiarize yourself not only with the status of how the case is currently positioned but also with what the next course of events needs to be. To use a sports analogy, play on the balls of your feet, not sitting back on your heels.

**Understand the Time-Value of Money**

Above all else, an associate’s job is to make money for the partners. This point can be summarized fairly concisely: bill your time—all of it! Your ability to bring in money is directly tied to your future.

Some days it’s going to be easier than others to make money. When you spend the entire day in a deposition, your time is pretty simple to keep up with (unless you’ve received and responded to dozens of emails during that time, because you can rest assured that the days you’re away from the office are the times your in-box will be barraged). The days that it’s trickier are when you field a dozen phone calls, work on reports for multiple cases, and draft discovery responses. If you wait until the end of that day to write down your time entries, you’re either going to over- or underestimate the amount of time tasks took.

I’ve had conversations with people who told me they were a couple days behind in writing down their time. My mind was blown! That’s just no way to operate. I keep a notebook with me at all times in which I jot down my time for every task—the time I start and when I finish. Every
single time. In fact, I still have every notebook going back to my first day of practice.

A significant subpoint is knowing how work needs to be worded in order to be paid by the client. Some clients are very particular about verbiage in their bills, or the amounts of time they will pay for certain tasks, regardless of what the reality is for the amount of time it takes to actually perform the task. I was once advised that we should “give our clients the privilege of paying us for the work we do for them.” But that privilege should only extend to the amount of time something actually took, not more and not less.

It is your responsibility to make sure you become a good and valuable lawyer. These are some of the steps you can take to help get yourself there. It’s going to require continuous time and energy to perpetuate your growth. But in the end, your development is worth the effort it requires of you.
Be Prepared for an Unexpected Opportunity

In the summer of 2004, two friends and I backpacked Europe for ten weeks on a shoestring budget. Knowing this opportunity wouldn’t come again, I carried my camera with me everywhere. I burned through dozens of rolls of film. In fact, I only remember going out once without a camera. But I remember it well. It haunts me. We were staying at a cottage near Chamonix, France. Late one afternoon, as the light was beginning to falter, I began walking from the cottage to a pay phone a mile or so up the road. As I looked up at the mountains, a rainbow was reaching from one peak to another through the backlit, dusky mountains. It’s the greatest photograph I didn’t take. I was entirely unprepared to take advantage of my unexpected opportunity.

Spotting an Unexpected Opportunity

More recently, a client sent me a new case. I discovered the company I was representing had excess insurance coverage, so I called the excess carrier to put them on notice of the claim, even though it was a small claim that I didn’t expect to get anywhere near the liability policy limits. I left a message for the claims department, and the next day got a call from the VP of Claims. We talked through the facts and potential liability, and at what I expected to be the end of the conversation, he asked, “Do you have time to talk about something else?” “Sure.” He responded, “We just started writing coverage in Alabama, and we are looking for additional panel counsel. Are you interested?” I was driving back from Talladega to Birmingham and nearly drove off the roadway. Once I recovered, I affirmed my interest. We had a long and interesting conversation, not only about the types of businesses they write coverage for but also (and more important) about our case management philosophies, the importance of working efficiently and effectively, and the value of attorney–client collaboration.

I was prepared to meet this unexpected opportunity head on. I had thought and written about these topics at length. When it came to practical aspects of Alabama law and answering questions he had about
coverage and liability, I was prepared there too. I had made myself knowledgeable about recent developments in Alabama tort issues by doing the extra, nonbillable reading necessary to keeping abreast of my practice areas.

**Be Prepared, But Know Your Limitations**

A significant part of being prepared for an opportunity is knowing your limitations. Limitations in knowledge, in experience, in authority. It is easy to deceive yourself into believing those around us have all the answers. But they don’t, and they don’t reasonably expect you too either.

You’re going to get phone calls from clients that go something like this: “My son’s girlfriend borrowed his car without his knowledge or permission. She wrapped the car around a tree after being out at a bar all night. She’s dead and her friend, who was a passenger, is hurt pretty badly. Will our insurance cover this?”

You may or may not know the answer to this right off hand. If not, don’t hazard a guess. There’s nothing wrong with responding, “Let me do a little research and get back to you.” What’s important is that you know where and how to find the answers, then get back to your client with the correct answers.

In this business, you never know when an unexpected opportunity might arise to meet someone’s need or form a new relationship. You’ve got to put in the time and effort to be prepared when those chances arrive at your doorstep.
Go Ahead, Let Someone Else Own Your Web Presence

It wouldn’t be a stretch for me to claim that a disproportionate percentage of lawyers are technologically illiterate. But what’s worse is that most of those lawyers are oblivious or indifferent to it. While the world around us evolves with increasing rapidity, lawyers and law firms are still making fire with flint and dry straw. The importance of lawyers owning their Web presence, of interacting on social media, and of increasing their visibility to clients and potential new clients hasn’t even crossed their minds. They’re too busy carving the firm name into the cave wall. And it is going to take a while to change the culture because there are a dozen named partners.

In the meantime, owning your Web presence is becoming not only important but essential. Here are three things for lawyers to avoid when it comes to your digital footprint.

Do Not Rely on Your Firm to Market You

You are completely expendable if you don’t have your own book of business. Unless you are very lucky, you aren’t going to land your own book of business by relying on someone else to market you and get your name out to potential clients. Depending on who your audience is, there are innumerable ways to make yourself more visible to potential clients. Joining a local bar association gives you opportunities to network with other lawyers and obtain referral business. You may find clients in regional or national organizations where you can attend events, write, or speak. You could start a blog, a YouTube channel, a podcast, or write articles on LinkedIn or in trade journals.

In this era of easy access to multimedia, there is no excuse for lawyers failing to establish their own platforms and making themselves visible. In fact, that was the catalyst for starting my law blog. I’d been writing a couple of articles per year for various industry periodicals, and I wanted to do more writing. I recognized that I don’t possess one of those magnetic personalities that attracts people and causes me to be long remembered.
I don’t come from a connected family and didn’t have any of my own connections. So I needed to do something to distinguish myself from my peers and enable potential clients to find me. It has been one of the most rewarding and worthwhile career decisions I’ve made since starting my practice.

**Do Not Let Someone Else Own Your Web Presence**

Here are a few priceless examples of how failing to own one’s Web presence can be costly:

- **Governor Jeb Bush:** In 2016 Governor Jeb Bush was in a heated contest against Donald Trump and others for the Republican nomination. Bush’s team was running its campaign website through jeb2016.com. But somebody on Bush’s team failed to purchase jebbush.com. Instead, the owner of jebbush.com caused that site to redirect viewers to the campaign website of fellow Republican presidential candidate Donald Trump.

- **Papa John’s Pizza:** Sometimes owning the domain that carries your business name just isn’t enough, especially if you’re in a high-profile business with wily competitors. Just ask Papa John’s Pizza. For a while there, if you errantly left out a letter and instead typed in Papjohns.com, you could be redirected to websites for Domino’s Pizza or TurboTax or any number of other websites not owned by Papa John’s.

- **Associate’s Mind:** Now for something that strikes a little closer to home. About two years ago, attorney Keith Lee of Associate’s Mind got entangled with Patrick Zarrelli, a character of mild Internet infamy for having harassed multiple well-known lawyers. Zarrelli threatened to and then did purchase a URL bearing Keith’s name and put some less-than-flattering content on the site. But fortunately for Keith, he had a large enough Web presence that Zarrelli’s content isn’t even a blip on the radar.

Imagine a situation in which a lawyer has very little presence on the Web and a malcontent client or competitor posted malicious things about
the lawyer on a website. That negative content could be the first thing anyone comes across who does searches for that lawyer by name. A firm or a lawyer who hasn’t taken possession of his Web presence is doing himself a disservice. And this isn’t limited to having your own personal website. There are half a dozen other places on the Web where a lawyer can claim his profile and increase his visibility, include Justia, Avvo, and LinkedIn. Most of these don’t take a great deal of time, but they do provide more opportunity to find you for those interested in doing business with you.

Do Not Embarrass Yourself with Ill-Considered Content

In a world in which people increasingly spray their unfiltered thoughts across multiple platforms on the Internet, it has become more difficult to refrain from posting ill-considered or embarrassing content. Some time ago my firm was getting ready to hire a new associate. Among the candidates, one had a picture on Facebook that was questionable. It wasn’t even bad, more like something that allowed us to infer questionable judgment. That single photo nearly kept the person from even getting an interview.

The things you post online matter. They can affect your reputation and your firm’s. Clients and potential clients are going to conduct Google searches and look at your social media feeds. Jurors (even though they’re not supposed to) are going to look you up. Other lawyers are going to form opinions about you based on what they find online—and we lawyers are a judgmental lot anyway, so it doesn’t take much to solidify an unsavory reputation.

Now that you know the reasons you should claim and establish your Web presence, you’ve got no excuse for doing otherwise. I’ll leave you with this: the things that go up on the Internet never truly come back down. Do yourself one more favor and don’t put up any embarrassing content . . . anywhere . . . ever.
(Why) Should a Lawyer Have a Blog?

Like many other professionals, there are plenty of lawyers who wonder if they should start a blog. And if so, to what end? I took the leap in June of 2016. I enjoy writing and had some ideas for topics to write about where there appeared to be a gap in the market. But to answer broader questions about blogging in the legal sphere and whether one should (or should not) consider it, I consulted with someone who’s been at it a great deal longer than I.

Keith Lee is a lawyer practicing in Birmingham, Alabama. He is the founder of LawyerSmack, which has been described as an online cocktail party for lawyers, and Associate’s Mind, a law blog dedicated to helping lawyers make the transition from amateur to professional. I asked Keith questions about blogging, establishing a platform, and some of the benefits and pitfalls in doing so.

JWR: It’s my understanding you started Associate’s Mind early on in your practice. Was that your first experience with blogging?

KL: I actually started Associate’s Mind during my final year of law school, which may not have been the best idea. My first time blogging was actually way back in 2001, before most people even knew what a blog was. Thankfully, it’s not online anymore.

JWR: Why was it important to you to start a law blog?

KL: It was a means to differentiate myself from other graduates. I graduated in 2010 when the legal industry was in the midst of huge upheaval. Plus I enjoyed writing, and this was a way to force myself to do it in public.

JWR: What were your goals when you started Associate’s Mind?

KL: Goals make it sound like I knew what I was doing when I started the thing. I was completely winging it as I went along. Mostly I just wanted to talk about the process of becoming a new
lawyer. How could I be a good associate? What was going on in the legal industry that new lawyers should pay attention to?

**JWR:** What are some of your goals for Associate’s Mind now that it’s been around for six years and is an established brand?

**KL:** My goals at the moment are for it to continue to grow. I want the community aspect (LawyerSmack) to continue to expand as well, but not so much that it becomes overwhelming. I’m also in the process of building out an educational/professional development training system that should be available later this year.

**JWR:** How has your law blog affected your practice?

**KL:** It’s certainly raised my profile in a way that would not have been possible without it. And as a lawyer raises his profile, he raises the firm’s profile. It’s led to speaking engagements, board positions, clients, and more.

**JWR:** What opportunities, unrelated to your law practice, have come to you as a result of blogging?

**KL:** The biggest opportunity has been the ability to cultivate relationships with lawyers around the country and the world. I’ve been fortunate to develop relationships with lawyers through blogging. After interacting online for years, it’s been great to meet with lawyers at conferences and other events around the country. Dinners, coffee, drinks, etc.

More recently I’ve been pleased with the development of LawyerSmack. There are around 250 lawyers in there, all sharing and talking about practice, news, politics, etc. I’ve been very fortunate to have created a place where lawyers want to come spend time and exchange information.
JWR: What advice would you give to someone who is considering starting a law blog?

KL: Just do it. Lawyers often fall into a paralysis by analysis when doing something new or outside of the box. The thing is when you start a new blog, no one is going to read it. It’s going to languish in obscurity for a while. It’s also likely going to be awful. It takes time to develop your “blog voice.” So the sooner you get to doing it, the better.

That being said, unless you are a writer, you should probably skip blogging. You have to want to get up and write on a regular basis. If that doesn’t sound fun to you, then avoid blogging.

JWR: How would you respond to lawyers who are skeptical about or opposed to blogging?

KL: Some of their skepticism is probably warranted. Lawyers need to keep their clients in mind when addressing topics. Blogs can generate negative attention if you’re not careful. That being said, I’ve found the benefits to far outweigh the negatives I’ve encountered.

JWR: What is one piece of practical advice that law bloggers should consider?

KL: Develop thick skin. Be prepared for people to try and tear your ideas down. Others will make fun of what you’re doing. You’ll likely experience ad hominem remarks on social media with some regularity. Conflict of ideas is part of being online. If that’s not something you’re ready to face, then you might want to reconsider.

Are you interested in starting a law blog, podcast, YouTube channel, or some other space where clients or potential clients can find you? You are likely experiencing a reasonable amount of anxiety about your con-
sidered course. But don’t let that dissuade you. I started this blog last year, and doing so has given me the confidence and platform to pursue opportunities that would not have been available to me.

Take a measured approach, plan your steps, and jump in. The water’s fine. But most important—produce good content, and keep producing good content. You are not likely to experience overnight success, but this thing is a marathon, not a sprint.
Marketing for Introverts

For an introvert, the prospect of marketing and networking used to give me the cold sweats. I have literally had nightmares about it. Small talk and innocuous chatter—I shudder at the thought. There’s the added pressure of knowing that to some degree my livelihood hangs in the balance on my ability to market myself to clients and potential clients.

Many a day I have contemplated whether I would have been better suited to continuing my pursuit of being a historian because my version of heaven is filled with libraries and the smell of antiquated books. Nevertheless, I am a lawyer. And if you’re reading this, you’re likely a lawyer too. If you are a lawyer who is an introvert, you have to set aside your social inhibitions and get out there.

There’s Nothing Wrong with Being an Introvert

There is a bit of a stigma attached to the word introvert. Upon hearing the word, people sometimes envision homely hermits who would just as soon never see or interact with another human. That’s rather a misconception. As with most things, there are degrees of introversion and extroversion. In fact you may be wondering now where you fit.

Here’s a question that may help shed some light on the matter: When you’ve been around a large group of people for an evening, how do you feel afterward? If your batteries are fully charged and you’d like nothing more than to talk with someone and share your experience, you are likely an extrovert. If toward the end of the evening, all you can think about is curling into your favorite chair and reading a book because you are feeling a bit drained with all the interaction and stimulation, you are likely an introvert.

I am squarely in the latter camp. I’m not particularly shy, and I don’t mind group events (although I wouldn’t go so far as to say I look forward to them), but afterward I am wiped out. When I am looking at an upcoming conference, speaking engagement, or client dinner, I have to mentally prepare myself. But most important, I try to make sure that the day or two after the event requires little socialization. My batteries need
recharging. The best way for me to do that is to disengage from social interaction.

*Marketing for Introverts Isn’t Particularly Different*

If you are an introvert hoping I will tell you there is a way to market yourself to potential new clients that doesn’t require you to get out of your quiet comfort zone, you are going to be disappointed. If people are going to trust you enough to send you work to handle for them, you are going to have to get in front of them and build up some trust equity.

However, there are some things you can do to make things easier on yourself. If you aren’t very good at small talk, read tips for having good conversations before going to a networking event. For example, people really enjoy talking about themselves. You can have a conversation with a stranger in which you start by asking him what he does for a living and stay engaged in the conversation by asking natural, follow-up questions. When you two part ways, he’s going to think you just had the greatest interaction, and you are going to realize you only had to speak a couple dozen words and he did all the work.

There are plenty of other things you can do to improve your marketing without increasing your interaction. This was part of my motivation for starting a law blog in June of 2016. The blog enabled me to provide information and valuable content to clients and potential new clients in a way that would develop trust equity. They would learn about me and what I could do to help them without me having to sell them on it.

*Marketing Yourself Is a Skill*

When I was in law school, I was not good at networking. I didn’t really make an effort to meet people. This was not a good approach. The fact that I landed a good job after passing the bar is a testament to divine providence and my working hard during a clerkship.

In my third year, I worked for a couple of solo practitioners who shared an office space. They didn’t have the workload to take me on after law school. I graduated without a job and with a mediocre resume and
GPA. I studied for and took the bar without a job. During all that time, I sent out dozens of resumes and cover letters, most of which drew no response. After taking the bar, I sat at home every day while my wife went to work, and I sent out dozens more resumes. Nothing.

Then I got a call. One of the folks I clerked for was on the line: “I know of a firm that’s looking to hire an associate in Birmingham. What do you know about insurance defense?”

My response, “Ummm, not much.”

“Fine. What do you know about trucking.”

“Even less.”

“Alright. Are you interested in the job?”

[Frantically trying to let him finish his question so I didn’t cut him off midsentence in zealous anticipation] “Yes!”

A few weeks later there was an impromptu phone interview, which came through while I was driving through a tropical storm on my way to Texas. Three interviews later, they offered me the job.

Six years into my legal career, I don’t enjoy networking or marketing any more now than when I started law school. But it is a necessary skill. I have made a priority of marketing myself to clients and putting myself in interactive situations in which I am not totally comfortable. I put in the time and effort to improve, and it has begun to pay dividends.

In Getting Clients (Attorneys at Work, 2016), Merrilyn Tarlton writes, “Effective business development, the kind that sets you up for a successful career that you enjoy and profit from, is a long-term proposition. There is no switch you can just flip, no pill you can just pop that will make the clients beat a pathway to your office door” (p. 112). If you’re going to develop relationships with people who you’d like to have as clients, you will have to put in the effort to develop the appropriate social skills. Of equal importance is that you put in the work to become the expert in your practice area and that you project yourself as being that expert.
“... The Job Can Absolutely Destroy You”

During a recent discussion with several other attorneys about lawyering, power imbalances, and the ability to shrug off being slighted, someone made a statement that really resonated with me. I immediately recognized its truth and have long shared the sentiment: “If you can’t let the bullshit go, the job can absolutely destroy you.” Being a lawyer can bring with it a lot of baggage. In the same way that ducks’ feathers are impervious to water, you need to let critical remarks roll off your back.

**Being Like a Duck**

A couple of years ago, I was defending a truck accident. I called one of the witnesses listed on the accident report. When he answered the phone, I identified myself and told him what I was calling about. He immediately told me he couldn’t talk to me and I needed to talk to his boss. I called his boss. She told me she couldn’t talk to me and I needed to talk to her boss. I called her boss and left a voicemail. The next call I got was from a partner at another firm, who lit into me about making sneaky phone calls to his clients. I didn’t have any idea what he was talking about.

As it turned out, this lawyer represented the company that employed the people I had been speaking to. When I explained that I had been unaware they were represented by counsel and that I’d identified myself when speaking to them, he accused me of lying because that’s not what his client had told him. This part of the conversation wasn’t too dissimilar from any number of confrontations I’d had when I taught high school from parents whose children I had sent to detention. It involved the disillusioned claims of “My child [insert client] would never lie to me,” and the like.

Once I got off the phone, I fumed about it for days and held a grudge against him for ... a long time. Then, over time, I just decided to let it go. I can be almost certain that that lawyer doesn’t remember me and has long forgotten that conversation. He has a reputation for not treating people well, so I was just one in a long line of berated opponents. It wasn’t doing me any good to hold on to it.
Rooting Out Bitterness

If I had let those hard feelings grow from resentment into bitterness, it wouldn’t have stayed contained to my just being embittered against one person. That’s not how those feelings work. They are corrupters.

Bitterness is a root that wends its way deep into you. In his book God’s Outrageous Claims, Lee Strobel had this to say about bitterness: “Acrid bitterness inevitably seeps into the lives of people who harbor grudges and suppress anger, bitterness is always a poison. It keeps your pain alive instead of letting you deal with it and get beyond it. Bitterness sentences you to relive the hurt over and over” (p. 9).

We can’t afford to hold onto grudges. They aren’t worth the consequences. Throughout the course of your practice, you are likely to be slighted dozens of times . . . per month, both unintentionally and purposefully. People are going to make disparaging comments about your abilities, your work product, your integrity, or just about you generally. But you ought not harbor resentment that arises from those experiences. We’ve all known people who have become embittered and are unbearable company.

Whether or not you become consumed with comments and criticisms that have assailed you is a matter of choice. Those embittered folks weren’t willing to release their feelings of resentment, and it absolutely destroyed them. So you just have to, you know, be more like Elsa from Disney’s Frozen and . . . let it go.
Cultivate an Atmosphere for Success

We have a purple plant sitting beside a west-facing window in our house. It only gets a couple hours of late-afternoon sunlight per day, and otherwise it just receives the ambient lighting available in the room. It has been with us for a few months now. The plant is doing okay. We mostly remember to water it, and it is surviving. That’s about it. Surviving. There aren’t any new blooms. It isn’t growing significantly. The plant is just subsisting. We haven’t put it in an environment where we can expect it to do more than that. We haven’t put it in a place where it can thrive, where it can reach its full potential.

People Aren’t So Different

Like the purple plant in my house, people have needs that must be met in order for them to thrive rather than just survive. In 1943, A. H. Maslow set forth his theory of people’s “hierarchy of needs,” and others have since put it into a business context. Here, I want to discuss it in the context of putting the lawyers in your firm in the best environment to succeed.

Physiological Needs

Physiological needs are our most basic, instinctive needs and all our other needs become secondary until these are met. Maslow described the four bottom layers of the pyramid as deficiency needs—we feel nothing if the need is being met but become anxious if it is not. In a business context, our physiological needs largely relate to our financial well-being.
The financial stress on lawyers coming out of law school is tremendous. According to a 2015 article on *Above the Law*, the average law school graduate in 2012 had student loan debt of $140,616. Although the job market has recovered somewhat from the lowest ebb earlier this decade, it is still a grim place for new graduates. According to American Bar Association data found in its *2017 Employment Summary*, as of April 2016, only 59.2 percent of 2015 law school graduates had obtained a full-time job as a lawyer within ten months after graduation.

For many of those fortunate enough to have obtained a job, the majority were likely disappointed upon hearing the salary offer. They knew that the median starting salary for new associates was $115,000 annually, but no one had bothered to explain the bimodal salary distribution curve. Most new graduates have no idea they are far more likely to start near $50,000 per year than $125,000.

And with that, you can see how that base layer, the foundation of our well-being, is already disrupted. But for those of us who have obtained jobs as lawyers, we figure out the right student loan plan. We adjust our expectations. And we begin to build toward our future.

**Safety Needs**

Safety needs can be ascribed to things such as a safe job environment, available benefits, and job security. What is the work environment like at your firm? Are staff and associates on edge, thinking they might be fired at any moment? This is not a recipe for thriving or for producing good work product. Some employers think that keeping everyone uncomfortable is the most effective means of getting the best out of everyone. They couldn’t be more wrong. This kind of environment paralyzes people. It inhibits risk-taking and growth. Rather than prodding people toward their best, an insecure environment cripples motivation and stifles innovation.

When lawyers feel secure in their jobs, they are more inclined to be emotionally invested in their work and loyal toward their employers. A secure lawyer will be comfortable shouldering more responsibility and taking measured risks. She will know that a mistake won’t necessarily result in a job loss but instead in an opportunity to grow. She will be
in an environment where she can grow intellectually and professionally. By fulfilling her safety and security needs, this lawyer will continue her journey toward thriving and what Maslow called self-actualization.

**Social Needs**

As a born introvert, I feel a bit out of my depth writing about social needs because mine differ from the majority in a profession that is teeming with boisterous extroverts. But here are some things I do know. To meet people’s social needs, an office doesn’t have to be a place where everyone gets to work with their best friends. But it does need to be a place where there are people with amicable and supportive relationships.

You should be actively cultivating a collection of people who are willing to go out of their way to help one another out. This is done in part by hiring people for qualities over skills. More important, you can cultivate a supportive culture by those in leadership positions exhibiting a spirit of cooperation and collaboration, not only to those who are on a lateral plane but also to their subordinates.

A hostile work atmosphere in which everyone is only seeking his own best interests can quickly become toxic. Certainly, there’s a middle ground between hostility and friendship, but being ambivalent toward those with whom you spend half your waking hours does not breed the sort of environment that enables a firm or its lawyers to thrive.

The next time you run the coffee maker and leave the reservoir empty—fill it up! If there’s a fax on the machine (yep, people inexplicably still use these), take a few extra steps to drop it by the intended recipient’s office. If someone needs a couple of minutes to bounce around an idea or work out a problem, give them your time. Small gestures are the stepping stones that can put you on the path to a culture of amicable collaboration.

**Esteem Needs**

You’re likely thinking that based solely on the bravado and entitlement you’ve seen other lawyers display, there’s no way the “esteem” need (which
includes job title, prestige, and status) requires much curation. But you’d be wrong.

When new associates enter a firm, they often hear, “Fake it ’til you make it.” Unwittingly, they have entered a world for which law school has only minimally prepared them. Some will land at supportive firms, where a partner or another associate is able and willing to guide them. Others will be left to flounder.

To thrive, young lawyers need structure and support and a mentor who has a vested interest in their development and success. They need feedback on the work they are performing: instruction, reinforcement, and criticism. This level of development aids in laying the foundation for a successful professional career. The early years of practice will effectively mold the lawyer into the practitioner she will be for the next forty years. A proper support structure will enable the lawyer to launch into self-actualization.

**Self-Actualization**

*Psychology Today* describes self-actualization as “a state in which people are at their very best.” Maslow believed the self-actualized person is one who is fully realized: “I think of the self-actualizing man not as an ordinary man with something added, but rather as the ordinary man with nothing taken away. The average man is a full human being with dampened and inhibited powers and capacities” (*Maslow, Motivation and Personality*, 1954, p. 151).

What our profession doesn’t need is more “average” lawyers with diminished abilities. The average lawyer isn’t very good, and half are worse than that. We need lawyers who have been put in positions to thrive. Others have put in the time, energy, and devotion to stretch their intellectual limits, critique them to higher performance levels, and generally prod them to caring and achieving more than the “average” lawyer. We need lawyers who are at their very best.

For a lawyer to be more likely to advance and achieve, she needs to have her survival needs fulfilled. That takes consistency and intentionality. She requires those around her to commit to creating an environment in which she can not merely survive but thrive.
Treating Your Staff Poorly Can Have Disastrous Results

In many firms, there is a sharp line drawn between lawyers and staff (i.e., everyone else). There are rules about comingling. Significant differences in pay structures. Disparate expectations for hours worked. And there are often good reasons for some of these distinctions. But not uncommonly there is also an unacceptable distinction between the way lawyers communicate with each other and how they treat their staff.

Too many young lawyers begin practicing without ever before having held a real job. Their visions of importance and self-aggrandizement have been allowed to percolate unfettered for seven years of undergrad and law school. They place themselves and those of their ilk on a pedestal, and anyone who is not similarly situated is subservient. They do not act respectfully or mindfully toward those who work for them. And these young lawyers grow up to be intolerable, ill-mannered, older lawyers.

Here is a scenario I’ve seen play out numerous times: A client comes into the office. The lawyer wants to impress the client, so he steers him around to the offices of all the other lawyers in his practice group. Everyone puts his best foot forward, greets the client cheerfully, and has wonderful things to say about the host lawyer. Each time the host lawyer walks into and out of a lawyer’s office, he walks past an assistant without introducing her or even recognizing her existence. This is terribly uncomfortable for the client who recognizes the slight but isn’t really in a position to remedy it. The client then gives the assistant an apologetic look and is swept off to meet the next lawyer.

Lawyers who behave in this way are not ingratiating themselves to their staff and are failing to set themselves up for the best possible success. A loyal, supportive, and proactive staff is the difference between an optimal and a dysfunctional practice.

From the Staff Themselves

Rather than me continuing to discuss the subject, here are some responses from #paralegaltwitter that I recently received when I sent them this
query: “I’m writing about how lawyers do themselves a disservice by treating staff poorly. Penny for your thoughts?” Every lawyer should heed these responses and experiences and proceed accordingly.

From @ParalegalRant

“I don’t presume to speak on behalf of legal staff everywhere. Also, I don’t want to pigeonhole lawyers. So here’s my disclaimer: these comments are based on my broad observations. Further, 98% of the lawyers I’ve met treat their staff well.

“Your staff can make or break your practice, whether you like to admit it or not. First person a potential client talks to. 1st person on the phone with the bar when membership dues get lost in the mail. 1st person calling the clerk after the botched filing.

“Staff who feel respected and valued will go to hell and back for you. Legal staff are helpers, office moms, protectors [generalization]. That’s simply the type of person attracted to this kind of work. It’s a servient position. And we are loyal as f***.

“I cannot tell you how many times I’ve heard, ‘I hate this firm and my salary but I just can’t leave my lawyer.’ Hell, I’ve said it. But this puts us in a precarious position—it really opens us up to hurt and betrayal if you mistreat us. And those breed bitterness. Please don’t throw us under the bus to a client if things go south. We’re already berating ourselves even if it wasn’t our fault.

“Please don’t yell. We work WITH you. Talk WITH us, don’t yell AT us. It’s a surprisingly important distinction. If you have an issue, bring it to our attention. We can’t fix it if we don’t know about it. If you go straight to HR, it can affect our raises, future opportunities, even employment status. It kills confidence and morale, and our trust in our relationship.

“It 100% comes to respect. If you treat staff with disrespect, you’ll get disrespect back. Which finally gets me back to the question. Unhappy staff stop caring. They don’t do extra research. They don’t stay late. They don’t placate clients. They don’t cover your ass. They get bitter. ‘Not my job.’ Start arguing with each other. And then your office becomes dysfunctional, and you may not even notice until it’s too damned late
and you’re having a ‘staff cycle’ and 1/3 of your staff are out interviewing because they’re miserable.

“Insert conclusion here? Respect is key.”

@RogueParalegal

“How support staff are treated is part of what creates the culture of an office or organization. It takes a long time to build up a culture of mutual trust & respect. On the flip side, a positive culture will VERY quickly deteriorate. A poisonous work environment takes an immediate toll, but also has long-term psychological effects (I can’t overstate this).

“My confidence & self-esteem were decimated working for an abusive boss. I left that industry because I was so demoralized. Staff who are respected and well-treated will go the extra mile, happily work extra hours. And they have your back. In my experience, a great boss is one who encourages me to expand my capacities and to grow.

“Specific to paralegaling, my lawyer gave me free rein to work in areas I was unfamiliar with, gave me feedback, helped me succeed. He’s THE reason I’m in school now & working toward getting licensed. He cultivated my confidence and passion to work in law.

“Never underestimate the impact your actions and attitude can have. You’ll always make a difference for someone. Will it be good or bad? How we treat others MATTERS. Being kind to one another is a powerful kind of karma, maybe the only kind that truly counts.”

@AspieGrrrl

“When it comes to staff, you get what you pay for. We are adult humans with lives outside the office and we are not expendable. Also, please take some management courses. I’ve known so many great attorneys who were completely incompetent managers. NEVER say, ‘So hard to find good help these days,’ to potential employees (especially during interviews). It’s insulting and doesn’t look good on you.”
“Late nights happen. Do not expect every night to be a late night for them just because it is for you. Repeated rush projects and miracle completions stress the staff. They should be rare occurrences and not the normal course of business. Value & respect the experience your staff has. Combined they probably have more than you. Listen to them, they may be trying to save you. If your court runner tells you 4:10 is latest to get to court to file, do not come in at 4:20 and ask if she can make it. She does not fly.”

Respect Goes a Long Way

As with most relationships, respect goes a long way toward keeping everyone happy. Often the simple rules we learn as children, such as “Treat others as you would like to be treated,” should continue to guide us throughout adulthood. But apparently, we lawyers don’t always set a very high bar for how to treat folks, as told by two lawyers who responded to my Twitter question:

@mishkia13

“I was always staff’s fave atty, which is sad because all I ever did was treat people like humans. My stuff always got done first.”

@GaryVickJr

“Poorly treated staff will bury you and you won’t even know it. Plus you get more work done quicker by treating them well. You come first.”

Treating your staff badly can have disastrous results both for your practice and in the office environment generally. Some of the responses to my query have highlighted exactly what form that can take. So to quote @ParalegalRant: “Insert conclusion here? Respect is key.”
Feedback and Words of Encouragement Really Do Matter

Recently, I listened to Donald Miller’s interview with astronaut Lerry Linenger, who spent five months with two cosmonauts on Russia’s Mir Space Station. Throughout that period, the communications system in the space station was broken, and except for staticky correspondence with Moscow every ninety minutes, Linenger was confined to communicating only with his two Russian comrades. He said there were many days where an exercise in willpower was what got him up and working on the 120 experiments it was their mission to complete.

Every once in a while, they would receive feedback on the work they were doing from Moscow, such as “The physicist in the Czech Republic was excited about your findings in yesterday’s experiment.” Statements like this, reflecting the real-world effects of the work, acted as a catalyst for Linenger, who was encouraged to reengage in his work. In his interview with Miller, Linenger emphasized, “Words of encouragement really do matter.”

Lawyers Aren’t Very Good about Giving Feedback

Based on innumerable conversations I’ve had with other lawyers over the years, it is pretty safe to assert that we, as a profession, do a pretty poor job of providing feedback to those in subordinate roles. We are not very forthcoming with compliments and frequently wait until things come to a head before providing any critical feedback.

Here’s an exchange an associate shared with me. At his year-end review with the managing partner, the associate expressed his gratitude for the feedback he’d received from the lawyers he was working for over the previous few months. The managing partner responded, “That’s interesting, because back when I was a new associate, the only way you ever knew if you did good work was if you got more work.” That response pretty closely aligns with my own experience.

This past fall, I tried a case with a partner who gave me the responsibility of doing the opening statement and cross-examining the plaintiff. I
hadn’t previously had an active role at trial with her. Once we were back at the office later in the week, another associate asked, “Have you asked her how you did?”

**Me:** No.

**Other Associate:** Are you going to?

**Me:** No.

**Other Associate:** You’re not?! Why?!

**Me:** We’ve got another trial coming up. If she let’s me handle more stuff, then I’ll know it went fine. If not, then I guess I’ll have my answer either way.

**Giving Effective Feedback**

Even though that’s how the legal profession has gone about providing feedback from time immemorial, it doesn’t mean it is the best way. Usually, if there is to be any feedback, it’s a meeting at the end of the year that’s either a glorified “atta’ boy,” or something along the lines of “this isn’t really working for us. We’re not going to fire you (yet), but maybe you should find somewhere else you’d like to work.” This kind of feedback is only marginally helpful. The most effective kind of feedback is timely and specific. Consider these statements from the U.S. Office of Personnel Management website:

- **Timeliness:** “Employees should receive information about how they’re doing as timely as possible. If improvement needs to be made in their performance, the sooner they find out about it the sooner they can correct the problem. If employees have reached or exceeded a goal, the sooner they receive positive feedback, the more rewarding it is to them.”
• **Specificity:** “Telling employees that they are doing well because they exceeded their goal by 10% is more effective than simply saying ‘you’re doing a good job.’"

For Associates

Maybe you’re in a situation where the partners you’re working for don’t realize that feedback is desired or an important part of your development. The folks I’ve worked for may not be naturally inclined toward encouraging words, but I’ve been fortunate that their doors have always been open so we can talk through things, whether it’s case-specific issues or daily operations and case management. If you find that your superiors aren’t providing the sort of commentary on your performance you’d like, maybe you can initiate those conversations.

For Partners

Your associates need to know how they’re measuring up. They need to hear from you whether they are meeting expectations and what they can do to improve. If you want to put them in the best position to succeed, your associates need specific, measurable goals that will create the opportunity for you to give performance feedback. Some will have the vision and assertiveness to set goals for themselves for purposes of self-evaluation and development. More will not.
Four Ways Your Law Practice Should Be Like Chick-Fil-A

Chick-Fil-A has built itself into a giant in the fast-food industry. It didn’t happen overnight, and it didn’t transpire without adhering to certain core principles. I use Chick-Fil-A fully recognizing that some in our legal community have sizable bones to pick with the company for their social positions. But if you can set aside those differences for just a couple of minutes and consider the business model and how we can apply it to our practices, I think there are some valuable lessons to learn.

Here are four ways you can model your law practice after Chick-Fil-A and position yourself for greater success.

Commodity: Something of Use, Advantage, or Value

Here’s the thing about commodities. People either want or need them. There is usually a great deal of competition for things people want or need. To reach your intended client, you have to distinguish yourself from others in the marketplace. Maybe you can do that with clever marketing—with talking cows that don’t spell very well. Maybe you can make a splash with the pricing of your services or implementing a different billing structure.

Regardless of how you get your intended client’s attention, you will have to deliver an effective product. If you fail to deliver on your promises, that client you’ve landed with clever ploys is going to walk out the door into the arms of a competitor. Chick-Fil-A delivers on its promise. In fact, maybe it overdelivers. Even people like Aziz Ansari, who takes umbrage with S. Truett Cathy’s social views, have found themselves in a quandary: “I’m very pro-gay marriage, but I’m also very pro-delicious chicken sandwich.”

Courtesy: Excellence of Manners or Social Conduct

If you’ve ever eaten at Chick-Fil-A, you know that thanking a Chick-Fil-A employee will result in you hearing the words, “My pleasure.” Courtesy
shouldn’t be a novel concept, but it has managed to become so. “People do business with people they know, like, and trust.” That statement didn’t originate with me, but I’ve heard it so frequently and from so many different sources that I’m not sure to whom I should give attribution.

Return phone calls. Reply to emails. Speak to other live human beings rather than being distracted by your cell phone. Civility and in-person interaction are becoming lost art forms. And I’m not talking about your dealings with opposing counsel here. I’m talking about your clients. Those people you rely on to keep your business afloat. The number of lawyers who ignore correspondence from clients and treat them as mere inconveniences is appalling.

You should likewise extend courtesy to your staff, the lawyers you work with, those who work for you, and even opposing counsel. You’re likely going to work with many of the same folks over the course of the next thirty or forty years (most of us are going to work until the day grim Death meets us at our desk). You can choose to have a lifetime of contentious relationships, or you can exhibit good manners and a little bit of civility.

**Candor: Being Frank, Outspoken, Open, and Sincere**

The owners of Chick-Fil-A don’t shy away from their worldview. They are closed on Sunday. When asked, they speak with candor about social issues, often to their financial detriment. But being candid, even when it is not in your short-term best interest, is a matter of integrity, for them and for you.

There are going to be times you have to communicate hard truths to those you work for, against, and with. And the thing about hard truths is that they can be difficult to communicate. If your case is pending in a bad venue with bad facts, your client needs to know well in advance that he may need to be ready to offer up a real settlement number. If a partner or associate you work with is headed toward a misstep, you’ve got to have the gumption to warn her of it.

Everyone in your circle of contacts (clients, coworkers, opposing counsel) should recognize you as a person of principle who is frank and
forthright. But be mindful that being honest and candid is not an excuse for doing so without tact or courtesy.

**Corner: To Gain Control of**

“We didn’t invent the chicken, just the chicken sandwich.” I don’t know whether Chick-Fil-A’s slogan is historically accurate, but for all practical intents, it might as well be. They have cornered the market on the chicken sandwich. The vast majority of fast-food places now offer a Southern-style chicken sandwich as a result. But you know what the difference is? Most of those other places also sell the chicken sandwich in addition to their burgers or myriad other offerings. You know what Chick-Fil-A sells? Chicken. They aren’t trying to be all things to all people. And neither should you.

You need to find what you do well, build on it, hone it, and promote it to others. I started in trucking defense litigation, and I’ve grown to love it. At this point, I’ve spent thousands upon thousands of hours practicing trucking work. Not only on my caseload but also on the peripheral stuff I need to know—the things I need to know and do to be better and more informed than my opponent. When it comes to trucking defense litigation, I want to be a monolith. When people need someone to defend their trucking company in Alabama, I want them to think of my firm and me. I know it is going to take time, and I’m in it for the long haul.

Find your niche. Develop it. Introduce yourself to people who are in need of what you do. Give them reason to believe you are the best person to handle their legal matters.

In the legal marketplace people have choices, usually lots of choices. Find a way to make yourself and your service visible, and once you’ve got your intended client’s attention, deliver on the services you have promised. Exhibit courtesy and civility in interacting with your clients, and . . . well . . . everyone else for that matter. Operate with candor. Be forthright and trustworthy in your dealings with others. Don’t hide from your principles, especially when you hit a rough patch. Those are the times when your principles and character are revealed. Finally, create a niche and make yourself a cornerstone within that practice area.
“There Are No Days Off . . . Only Days You Aren’t Billing”

I can’t recall now who to ascribe this statement to, but I read it on Twitter a while ago. It immediately rang true. The hours are often long for lawyers. But the real trouble is that even when you’re not working it can be hard to turn things off. That’s a hard mind-set to escape. An equally difficult and potentially destructive mind-set is this: When you’re not working, shouldn’t you be?!

It’s the reason partners send out emails on holidays saying, “I know the staff has the day off, but where are all the lawyers?” If the email had been typed out by a younger generation of lawyer, it might have ended with “Kidding, not kidding.” Instead, the notion can be inferred.

For my first three years of practice, I didn’t do any extracurricular writing. I wanted to do it. I’ve always enjoyed researching and writing. I had topics in mind I wanted to write about. In fact, I first started researching my eventual article “Alabama’s Anti-Miscegenation Statutes” in 2012. I didn’t finish writing it and have it published until 2015. The reason for the extended hiatus from writing? I had a hard time justifying doing the work of thinking and writing when it wasn’t being billed to clients. But I wasn’t considering the cost.

The Cost of Not Taking Days Off

The costs of not taking time off from work are high. According to a Business Insider article from 2015, 42 percent of Americans reported not taking a single paid day off work. On average this results in people doing about $750 worth of “free” labor for their employer because of the paid time-off benefits that are available. But even more than the personal consequences, there are huge effects on the economy as a result of unused paid time off. Oxford Economics found, following its 2014 study, that if Americans used all of their paid time-off benefits, the result would be an additional $67 billion in travel spending, which indirectly translates into an additional 1.2 million U.S. jobs and the creation of an additional $52 billion in income earned.
Studies have also shown that Americans are taking fewer vacation days now than at any time in the last forty years. Not taking time off results in decreased productivity. In interviews performed by the U.S. Travel Association, people responded that they were afraid to take time off because they may be marked as a slacker or uncommitted to work and may be more likely to be laid off.

Those studies are all from “normal” workplace environments, which I dare say a law firm is not. I conducted informal polls on Twitter and LawyerSmack that looked like this: Does your firm have a set number of vacation days attorneys are allowed?

- 14%—Attorneys are discouraged from taking days off
- 52%—Attorneys do not have a set number of days off
- 17%—7–14 days/yr
- 17%—14–28 days/yr

Please don’t miss this: 14 percent of responding lawyers said they worked at places that discouraged them from taking time off. Consider this response emphasizing that mind-set: “My boss takes a ton of vacation but is not a fan of us taking any really. He lets us but also grumbles. When I got back from my honeymoon, he told me, ‘You’re going to be so busy over the next few days catching up, you’ll realize the vacation wasn’t worth it,’ which of course wasn’t even remotely true.”

Personally, I’ve heard partners say to associates: “I don’t understand y’all taking an entire week off work. That’s not the way I was brought up.” Of course, the direct (and intended) result of this is associates taking fewer days off work and feeling guilty about the limited time they do take off work. And mind you, most of us are able to work remotely, so time away from the office and on vacation rarely means that we are entirely disconnected from work anyway.

The costs in productivity aren’t attributable only to the time away from work (or not) but also to the number of hours spent at work. After a certain point, the amount of time spent at work has an inverse relationship to productivity. When people work fifty hours per week or more—not uncommon for many lawyers—in its December 2014 article, “Proof that you should get a life,” the Economist has reported that productivity
output rises at a decreasing rate and output per hour begins to fall off. In the same study, the hours worked beyond fifty-six hours per week are almost entirely unproductive, resulting in a great deal of waste. Unfortunately, this study does not consider the service sector, which includes us.

But the natural corollary is this: if you are billing clients for seventy hours per week, then you are billing them for about fourteen hours of unproductive waste. We are glorified hourly workers, so there is little motivation to work less when there is work to be done, regardless of the efficiency rate at which the work is performed.

**The Benefits of Taking Time Off from Work**

According to a CNN article by Chuck Thompson, “American taking fewest vacation days in four decades,” researchers found that workers were 80 percent more productive after returning from vacation and had reaction times that were increased by 40 percent. Workers who use vacation days were statistically more likely to get raises and bonuses. In interviewing people for *How to Succeed in Business without Working So Damn Hard* (Business Plus, 2003), Robert Kriegel discovered the best ideas most people had came to them when they were away from work. I could go on for a while listing the benefits of taking days off. There is lots of data on the subject, but instead I’ll end on an anecdote.

Over Thanksgiving, I did something I’d not done in more than five years of practice. The previous six months had been the busiest of my career. The week before Thanksgiving we had been preparing a case for trial that promised to be contentious. It was set to start Monday after the Thanksgiving holiday, but thankfully it settled right before we broke for the holiday. So for four days afterward, I didn’t bill any time. Not a single 0.1. I finished some projects around the house. I wrote several blog entries. I put effort into some other projects. But I didn’t log in to work at all or even read a single work email. It was incredibly gratifying, and I returned to work with a refreshed mind-set. If you haven’t taken any time off work lately, consider it.
The Importance of Having a Reputation for Integrity

John Rizzo was an attorney for the CIA for more than thirty years. Rizzo’s career spanned the covert war in Afghanistan, helping the Mujahideen fight the Soviets in Afghanistan, to post-9/11 scandals about CIA enhanced interrogation techniques. In his memoir *Company Man* (Scribner, 2014), Rizzo shares unique insight into his role of giving legal advice when there was very little precedent or guidance available.

One particular anecdote in the book struck me as being widely applicable in a business context. Rizzo asked the director of the CIA about his relationship with the directorate of operations. He received a response very much like this: “They didn’t like me, and I knew they never would, but they were forthright with me.” What a great reputation that is for the people he was speaking of. They didn’t like the CIA director. Apparently, they didn’t hide that from him. But they didn’t allow that dysfunction to get in the way of their integrity. They were honest and forthright in spite of an otherwise broken relationship.

*Integrity in the Face of a Fractured Relationship*

Most of us operate in relatively small legal communities. We are going to be working with, against, and alongside the same lawyers for decades. Odds are fairly good you aren’t going to like a good many of those people. Yet you are going to rely on each other to get your work done. Discovery matters, settlement discussions, and even trial preparation are more easily accomplished when their is mutual trust and respect.

Your personal feelings of affection or animosity should have no bearing on whether you comport yourself with integrity. President Eisenhower said of integrity: “The supreme quality for leadership is unquestionably integrity. Without it, no real success is possible.” A reputation for integrity takes the entirety of your practice to build and maintain, but you can lose it with a single indiscretion.

Unfortunately, your reputation for integrity and being forthright is affected not only by your own actions but by the reputations of others
in your firm. I have had opposing counsel who doesn’t know me tell me, “I’ve known Partner X a long time. He’s one of my favorite people. If there’s anything you need in this case let me know, and we will sort it out.” I’ve also had opposing counsel tell me they assume I’m a lying, dirty dog because I work for Partner Y. I didn’t do anything to warrant either response. But on the one hand, I did my best to maintain that trust, and on the other, I did what I could to distinguish myself from the mistrusted partner and endeavored to repair the fissure of distrust.

Regardless of the status of your relationships with co-counsel or opposing counsel, you would be well served if, when they walk away from a case you have worked together, they can tell others, “They were forthright with me.”
Why Fly Fishing Will Make You a Better Lawyer

About ten minutes from my office, there lies a winding road that leads to an abandoned bridge with rotting wooden planks. The bridge spans a large creek that babbles and gurgles through riffles as it runs toward the Cahaba River. It is a green and quiet place with only the occasional canoe passing through. Once in a while at lunch I’ll go there to do some fly fishing. There aren’t many fish there, but being there isn’t really about the fishing anyway.

It is much more about being among the trees and boulders and water and taking a brief reprieve from the day’s work and billable hours. It has actually been a long time since I’ve been there. I’m writing this in part as an admonishment to myself to remember to occasionally take time away from things for myself, and to encourage you to do the same.

In a September 2017 article, “Lawyers’ well-being falls short,” Jan Pudlow of the Florida Bar wrote about a study that reflected some really disturbing statistics about lawyers:

• The suicide rate among lawyers is double that of the general populace.
• Eighteen percent of lawyers are alcoholics, which again doubles the national average.
• One-third of lawyers have been or will be diagnosed with mental disorders.
• Lawyers are 3.6 times more likely to suffer from severe depression.
• And seven out of ten lawyers would change careers.

Being a lawyer often results in doing important work that directly affects the lives and businesses of clients. Being diligent in our work is important so that we can tend to the needs of our families and our other obligations. That work can be pressure-filled and stressful. But our entire identity shouldn’t be wrapped up in being a lawyer. There are (or should be) more important things than the work we do.

I’ve worked with a lawyer who regularly bragged, “When I get up in the morning, I’m a lawyer first.” Those of us who were supposed to feel indicted by that statement received it in a different vein than it was
intended. That’s not a healthy perspective. Now don’t get me wrong, I enjoy what I do and I work plenty of hours, but being a lawyer isn’t the largest part of who I am. When I get up in the morning, I am a husband and a dad first. Even if I weren’t those things, I’d be a guy with other obligations and interests than just what work awaited me when I booted up my computer.

As important as your work is, as are meeting expectations and accomplishing all those things that have to get done, your well-being is more important. Don’t refrain from making time for yourself. All that pressure and stress builds up, and you’ve got to have a constructive way to bleed it off. If you choose not to, you’ll be more likely to turn to one of those destructive vices that have become so prevalent among lawyers.

Go for a run. Go to the range and drive some golf balls. Or go fly fishing at a nearby peaceful river. Whatever it is that recharges your batteries, take the time to do it. A refreshed you is a more effective you.
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