Foreword

The life of the law has not been logic: it has been experience.
—Oliver Wendell Holmes, Jr., The Common Law 1 (1880)

Experience is the name everyone gives to their mistakes.

English vocabulary includes a variety of terms for people who, like Holmes and Wilde, speak unpleasant truths in memorable language. We might call them, with slightly different slants and any number of opportunities for irony, sages, wits, or wiseacres. Curmudgeon properly refers to a different type that may but need not overlap this first: a cantankerous, disagreeable person, usually elderly.

Lexicographers have put forth several speculations about the origins of the word. Samuel Johnson, who might justly have put his own picture beside the entry, suggested that “curmudgeon” derived from the French coeur mechant or “bad heart.” Subsequent scholarship has discredited Johnson’s speculation, and the reputable dictionaries now say simply “origin unknown.” Of the unfalsifiable theories that remain, the one I like best traces the word to the Middle English cur, derived from Germanic verbs meaning “to growl,” and mudgeon, a Scotch word for “grimace.”

Language, like law, evolves, and nowadays “curmudgeon” commonly refers to any gentleman of the world, north of thirty, who delivers some accurate (and impliedly unflattering) assessment of the human condition in a style that’s hard to forget. Which brings us to Mark Herrmann and The Curmudgeon’s Guide to Practicing Law.
Mark is not at all cantankerous or disagreeable, so long as he’s dealing with people in the ninety-ninth percentile who have prepared themselves completely for the project at hand. That’s the reason his law firm trusts him with important cases, and, in turn, the reason clients trust the firm. That’s the reason ambitious young lawyers should read this book.

Am I saying that ambitious young lawyers must commit their entire lives to the profession, billing 3,000 hours a year and spending the remainder of their waking time in therapy and divorce court? No. You don’t need this book to do that. On the contrary, you may need this book to avoid doing that.

The Curmudgeon’s Guide is a book about time: your time, the partner’s time, and the client’s time. You make choices about your time, and those choices can consume—or liberate—the time of partners and clients. Throwing your time at problems mindlessly will produce an impressive figure of billable hours. Will that consume, or free, time for partners and clients? If you have to pause and think about the answer, you need to rethink your use of time.

This book can help you do that. For instance: how much time is it worth to a partner in litigation to be able to trust, absolutely, the legal research of even one associate? If Partner spends ten minutes on the computer verifying every hour of Associate’s work, and A gives P 1,000 hours of work, P will spend more than 160 hours for no better reason than to compensate for the absence of real trust. P will do this because P has learned that most A’s are not absolutely reliable. P will continue to do this with every A until A convinces P to spend that time adding value for the client. Once A has earned that trust, do you think P wants to see A work for anyone else?

How does A earn P’s trust? Read Chapter Two; the Curmudgeon will tell you how. It may surprise you, but the Curmudgeon does not prescribe ever-increasing dosages of drudgery. He suggests, shockingly enough, doing things the right way, the old-fash-
ioned way, the first time and just once. That might even save you
time; at worst it’s a wash on your time, and a big surplus for the
partner.

I was going to open this foreword by attributing the Holmes
quotation to *The Path of the Law*, and I was sure that Wilde’s
stand-in, Cecil Graham, speaks the line about experience I quote
from *Lady Windermere’s Fan*. Following the advice of the Cur-
mudgeon, however, I verified both—or rather falsified both, as I
was wrong in both instances. The Holmes quotation comes from
*The Common Law*, and Dumby, not Cecil, gives the generalized
observation on experience in Act III of *Lady Windermere’s Fan*.
Someone might have fixed that downstream, but only at a cost in
time, including mine. Far worse, no one might have fixed it. The
Curmudgeon turned out to be right. He almost always does.

The Curmudgeon, moreover, offers some very good ideas
about how to meet your responsibilities more efficiently, thereby
saving you time. Many young professionals see themselves as
employees rather than team members. A junior associate can for-
get that the team includes people—assistants, secretaries, or
whatever term a particular outfit uses—whose job includes the
responsibility to increase the efficiency of junior lawyers. Chap-
ter Four, “The Curmudgeonly Secretary,” by itself, might mean
the difference between successful and unsuccessful crisis man-
agement—between a successful and an unsuccessful career.

The humor in the book—and there’s plenty of it—implies a
serious point. The private practice of law, no matter how ration-
ally pursued, places major demands on those who undertake it—
especially on those who undertake it on an elite level. If you don’t
enjoy the pressure of competition, the play of ideas, and the
parade of personalities, you’ll never make a go of it. The Curmud-
geon actually enjoys practicing law in today’s hyper-competitive,
high-tech business environment. If your only interest in practi-
cing law derives from your paycheck, sooner or later (probably
sooner) that will show up in your work.
Does that make the Curmudgeon a one-dimensional obsessive-compulsive? Nothing could be further from the truth. Nobody's life is easy, but by every available measure, the Curmudgeon’s successes are personal as much as professional. He's the devoted father to two great kids, the loving husband to his vivacious wife (*mirabile dictu*, his first!), and a serious fitness fiend with a resting pulse lower than his age. His cultural horizon encompasses baseball at Jacobs Field and Appropriating gently ironic compliments from Eliot and Dante. The Curmudgeon has a life.

*The Curmudgeon’s Guide* is brief because the Curmudgeon practices what he preaches. That makes it easy to accept the extraordinary offer of the Curmudgeon’s experience. In the alternative, you could make your own, quite preventable, mistakes. Put another way, you can read *The Curmudgeon’s Guide* now, in a couple of hours, or you can put it aside and return to it three years from now, after your mentor stops by to talk to you about outplacement.

Professor Donald A. Dripps
University of San Diego School of Law
March 2006