The Basics

I always wanted to be a world-class athlete, able to throw the Mariano fastball, do a so-very-quick crossover dribble leaving my opponent looking like a chump, knock down a tailback with a shrug of my broad shoulder. Instead, I was born a hottie. Yeah, those are my daughters laughing in the background; but what do they know, they think George Clooney and Bradley Cooper are cute. If you’re reading this, you’re probably somewhat like me—ordinary for the most part, gifted not really, proficient if we’re being kind.

I’m a trial lawyer. Even though my photograph has yet to adorn the cover of *Vanity Fair*, I’m pretty good at what I do. And what I do is work—mundane, often tedious work. A lot of it—weekends, nights, and rushing down the gum-stained, slick subway steps, briefcase in hand, silently cursing the old geezer in front who clutches the worn-smooth handrail and moves fearfully. Hurrying because I’m late or because I want to be early. Just hurrying because that’s what I do. What most of us do. And we do it all day long.

It’s hard and laborious; and as I age—er, become more experienced—I realize it’s the ordinary work that makes you good, makes you win, makes you successful. Not always fun but, heck, what job is fun anyway? I guess if you’re Julia Roberts or Tom Brady, life’s not so bad. You’re better looking than everyone else and your headache is to sign a few autographs.
It’s the same with trial work: not movie-star glamorous but easier than running into a flaming tenement with 50 pounds of gear and a hose heavy with water. It’s mostly just monotonous. Yet there are moments—yes, they exist—when you connect with the jurors and see them unconsciously nodding as they lean forward during your closing, knowing that your wonderful words have convinced, have soared through the fog to the endless clear sky. The unshaven mailman is focused, listening, agreeing. He’s with you in this place, and your simple but beautiful language has transformed this pedestrian dispute into the American ideal of justice. You yearn to preserve this moment—the captivated faces, your voice that glides through the drab courtroom, the failed nonchalance of your adversary. The court clerk has stopped reading the box scores, and the tired, jaded judge has stopped doodling and peers over her weathered reading glasses. Sadly, there is no James Boswell or Ansel Adams to preserve the moment. But you will always remember and strive to replicate this scene.

And you did it alone. You were the one who persuaded. The shy seventh grader who spoke so quietly and quickly in class is now so eloquent with her deep, dark eyes and poised, determined voice. These same words, once so nervously murmured, have become a force, psalm-like, and the jurors are believers, ready to sing Amen, to vote for your client.

Yes, there are such moments, whether before a jury or a skeptical judge, whether with a bet-the-company case or a needless discovery motion. The substance is unimportant. It is the feeling, the exhilaration. You have to seize such moments, savor them when the radio alarm blasts at five a.m., and you’re too tired to stumble to the shower for another day of pressure-filled, mind-wearying work. These slices of triumph exist and, even though the world does not watch, they are worth the effort and pain. These are the reasons you became a lawyer, a trial lawyer. But how do you get there?

My CYO basketball coach used to whine, “You can’t teach height,” as he stared at our team of shrimps. Yao Ming was in the NBA because, after all, he’s just a bit taller than everyone else. Others are born with beauty, intelligence, or artistic inspiration—Mozart, Raphael, Beyoncé. Law, of course, is more pedestrian. Sure, there’s
talent involved, and the greats were (and are) gifted as orators, writers, analyzers. But most of the stuff we do can be learned. It’s not that hard.

You can learn to write, to research, to speak. Read books, take a course, attend bar association lectures, listen to the old-timer who shuffles down the hall, The Wall Street Journal in his trembling hand, recounting the strategies and successes of cases big and small yet all long forgotten. Pretend law is golf, and practice, practice, practice. Hear your piano teacher’s sarcastic voice as she orders you to do it again and again until you get it right. Even Edward Bennett Williams used to rehearse his anecdotes. With hard work you can be better. You can grow, you can improve, you can be good.

But first put your ego in your purse. So you passed the bar and graduated from ivy-covered universities with majestic oaks filtering the sun. Maybe your Aunt Diane was impressed, but a jury doesn’t care. You passed the bar by memorizing a bunch of mostly useless garbage. So stop trying to be so cool. You’re a young punk who has to learn the fundamentals. It takes time, nights when all your old college buddies are in some Irish joint on the Upper East Side, having a few, laughing, trying to collect e-mail addresses. And you have to do it on weekends and early mornings and holidays. It’s work, after all. Not fun, but dull, plodding work. And it’s difficult is to admit you’re 27 and know nothing. Get over it.

Do what I did. For an oral argument, create a detailed outline and practice, just like in high school speech class. In front of a mirror and out loud. Continue to practice the next day in the car or on the subway whispering like a derelict crackhead. Confidence is the key. If you aren’t panicking, you can think clearly and respond coherently. Don’t be afraid to check your notes, to read the quote from the controlling case as you argue. You’re not graded on style but on substance.

The day of my first jury trial, I was waiting in the hall for the judge when I looked across at two veteran lawyers trying a nonjury matrimonial case. Because I was so inexperienced that I didn’t even know where to stand when questioning—no lecterns in state court—I popped into the courtroom for a peek. I figured seeing how the
pros did it would give me confidence. It was enlightening. Every other statement from these skilled lawyers was “urn, er, withdrawn Your Honor” or “strike that.” Where’s the eloquence, the rhythm? I could do this, I thought. So can you. Don’t worry; you’re never as good or as bad as you think or fear.

Writing, too, improves with hard work. This is probably the toughest challenge, especially because so many schools prefer the “grammar and spelling don’t count” philosophy. But if Mrs. Lynch can teach me and 50 other third grade knuckleheads penmanship, grammar, and the Baltimore Catechism, you can learn to write simple declarative sentences. Please, please stop the lawreviewese. Drop the hereins, the heretofores, and other legal mumbo jumbo. Just write in short, clear sentences. You don’t have to be Hemingway, but write a draft and then reread and edit it.

Have someone who learned to diagram a sentence, who has heard of a gerund, read your work for syntax and clarity. If a sentence runs on and on, cut it in half. This is hard work, for spelling, punctuation, and grammar are thought of as antiquated in this immediate and informal age of the Internet. Leave your e-mail abbreviations and style on your smart phones. In your legal writing, be concise and coherent. And while you’re at it, read Eats, Shoots and Leaves by Lynne Truss. It’s time you knew how to use an apostrophe.

When I first began practicing, I was amazed that I knew more about the facts and the law of my cases than many of my more senior adversaries did. Lawyers were reading the file as they waited to argue a motion, searching for a summary of the facts, not understanding medical procedures or how products work. Unless you are a junior lawyer in a prosecutor’s office, there’s really no excuse for this. It’s easy to spot, and it shows. Even at depositions, these attorneys are oblivious to the errors of their clients because they had never visited the scene or learned how to read an EKG.

I once tried a medical malpractice case for a client whose physician perforated his heart during a myocardial biopsy. Sounds easy, right? The defense attorney, however, was more than prepared. He put on scrubs and attended such a procedure, spending the day observing, questioning, understanding. He knew as much as the surgeons, and more than me. I won, but he tried a terrific case, showing the jury the instruments, educating them on how thin the
heart wall is, beating up my expert. He was so convincing that the miserable judge reduced the verdict.

That’s what you have to do, too—go to the factory, meet with witnesses, eyeball the experts. Not only must you obtain hands-on knowledge, but you also must use the Internet to gather biographical and other data. Google everyone and everything. Facebook, LinkedIn, Twitter, and other social media reveal details about parties and witnesses. The Net, however, is no substitute for personal meetings and interviews. A photograph cannot replace the knowledge gained from visiting the scene, touching the instruments, understanding the mechanics. A telephone conversation provides sound, not how the person looks or dresses or how he’ll sell at a deposition or trial. So dirty your hands; do it yourself and immediately, before the rain washes away the skidmarks, construction changes the road, the bare branches erupt with green.

Ask questions. Millions of them. Like everyone my age, I’ve forgotten what I didn’t know. So don’t be afraid to ask the dumb question that reveals your ignorance. It takes guts, but you only have to ask once and then think of a comeback when you’re kidded later. My daughter called from college in a panic when she lost her wallet and had no money. My wife’s simple response was to tell her to go to the bank and withdraw some. Because my daughter had only used ATMs, she had no idea that you could actually withdraw money without a bank card. The most obvious is easily overlooked.

Know more than the experts or the judge. It’s the only way. In one aviation trial where my client, Mrs. D, survived a plane crash but was severely injured, the defense attorney slyly asked his medical expert on redirect, “Didn’t Dr. A write in his records that Mrs. D was too emotional about illness.” Answer: “Yes.” “No further questions, your Honor.” Because I had nearly memorized all my client’s medical records, I was able on recross to show that this comment came in a medical note eight years before the crash and was referring to her mother’s illness not her own. Without these facts at my fingertips, the jury may have assumed that my client was a nut case who exaggerated her injuries. There’s plenty of downtime during most trials, so spend it working and rereading depositions and medical records, not talking loudly in the hall.
Law is not all fun and games. Many hate it. When my son started law school, a good friend, a lawyer, seriously asked, “Why would you let him go to law school?” Like I was some child abuser. Recently, three young lawyers I know left the profession—didn’t like it. No other prospects, just “See ya later.” Too much work, too boring, no time for anything else. It’s tough to say goodbye to a three-year-old with a fever and run off to argue a motion on the number of subsections in the interrogatories.

One young associate asked me whether, after practicing for more than 25 years, I was happy. My candid response was, “I don’t know, I never thought about it.” Yeah, it’s a frightening response; I’m sure I would be Exhibit A at some clinical psychologists’ convention. So don’t wait 25 years before you ask yourself this question. (By the way, my answer now is “Yes, relatively.”)

Litigation is a sacrifice, and to succeed, you must devote time and effort. I taught high school English for five years at John Jay, a tough Brooklyn high school. Not easy with disrespectful, illiterate kids and chaotic halls, but it was 180 days a year, six hours and 20 minutes a day; we had summers off. Of course, the older teachers who knew more Joyce or Faulkner than any of my college professors pushed me into law. They always believed I made the correct choice—but I’m not so sure come July when I’m sandwiched on the 4 train between two guys whose last showers were taken during the Bush administration.

Don’t be like the callous co-op board at 927 Fifth Avenue who destroyed the nest of Pale Male, the red-tailed hawk, and his mate, Lola. They were evicted after 11 years and 23 offspring because the pompous rich folks didn’t want the minor inconvenience of these lovely birds. Even after the nest was rebuilt, the lesson was apparent—money can’t buy class.

Periodically, I’m forwarded an e-mail that records some obnoxious behavior by a cursing, ill-mannered attorney. Most of these blowhards are frauds. The toughest guys in my neighborhood were the quiet ones who would just smack you silly and never say a word. Screaming expletives does not mean toughness, although I’ve been known to give in to that temptation. Courtesy and civility are ideal responses even in the face of rudeness and ignorance. I recently read where an attorney barked at a deposition. It’s tempting
to want to put a leash around his neck, but much more effective to be professional and win in the courtroom, rather than in the conference room.

Or use humor, as one Dallas lawyer did when his adversary moved for document production returnable on Christmas Eve although the lawyer had written the court advising that he would be going away that day with his family for Christmas. His response to the Grinch was with a Seuss-like poem. That his adversary would move to strike his vacation letter and request such a hearing on Christmas Eve is why our profession provides material for stand-up comedians. It’s time we stopped the pettiness, the infantile behavior. Richardson Lynn, dean of John Marshall Law School, reminded me that the late Frank Rothman advised, “Never file a motion when you can write a letter. Never write a letter when you can make a phone call.”

In your heart and your head, you must care. If you do, you’ll be kind and considerate. And if you don’t know or remember how, attend one of the training sessions at the large firms, which teaches etiquette so their attorneys, young and old, will realize that lateness is wrong, checking a smart phone during a meeting is rude, and saying please and thank you is appreciated.

Clarence taught George in It’s a Wonderful Life that life is precious even though you don’t always realize it. So it is with law: It’s rewarding if done properly. You will learn that life is short, so make it a satisfying, enjoyable one not only for yourself but for others. After all, you’re a lawyer in America. “God shed His grace on thee,” as Ray Charles, Kate Smith, and so many others sang and knew.