In a speech given on December 26, 1839, Abraham Lincoln stated that “We know nothing of what will happen in the future, except in the analogy of experience.” Lincoln was not speaking at the time about the practice of law. Nevertheless, and as Kevin Dornan’s excellent collection of not-so-hypotheticals shows, the best way for us to avoid mistakes in the future is to study the mistakes of the past. To borrow the words of Ecclesiastes, “There is nothing new under the sun.”

When (or, I should say, if) we can pause for a moment between the perpetual drumbeats of our truly wired society, this should come as no surprise. As a species, human beings today are hardly different, if at all, than they were in Lincoln’s day or in biblical times. We make mistakes. We often think we know more than we do. We act on impulse. We suffer from hubris. We often act in ways that are not in our own best interests or those of others. We often take an approach that can be fairly described as “ready, fire, aim.” We sin in haste and repent in leisure.

The true stories in Kevin’s book increase our ability to learn more from the mistakes of others so that we need not learn as much from our own mistakes. Moreover, the stories offer clarity and context. It can be very difficult to understand the full set of implications of even the most simply stated of principles. This is true whether we are talking about the duty of undivided loyalty and its reciprocal, the duty to address or avoid conflicts of interest; or about the duty of confidentiality and its apparently increasing number of discretionary and mandatory exceptions. It is much easier to think and profit from information about what happened to a particular lawyer in a particular situation.

Working lawyers are very busy people, and the degree of expertise and specialization that the modern world demands literally makes it impossible for us mistake-making human beings to know it all. And to make matters worse, both the rules of professional conduct—in effect, the list of things for which lawyers can get disciplined—and the rest of the law of lawyering—which includes all of the things for which lawyers can be sued—are themselves increasingly complex fields of study. The lawyer who is or wants to be an expert in a substantive field of law such as taxation, litigation, or trusts and estates has every bit as much need for advice from a lawyer whose field of study is keeping lawyers out of trouble as a lawyer in that field has of assistance in dealing with the Internal Revenue Code, suing someone, or preparing an estate plan.

Kevin has described a broad range of key problems that plague twenty-first-century lawyers in the United States. As a lawyer with thirty years of experience
helping lawyers get and stay out of trouble, I can state that the accounts that Kevin brings us are true and truthful. If I had written my own set, some of the specific details and analysis would be different, but the core concerns would generally be the same. Moreover, some form of most, if not all, of these problems exists in firms of all sizes. Proper risk management is no less a continuing struggle for the solo practitioner than it is for the megafirm. Or, to return to Ecclesiastes for a moment, time and chance ultimately overtake us all.

Individual lawyers can learn a great deal by reading, and then rereading, this book on their own. The best use of this book, however, may be in group discussions—whether of lawyers within the same firm or practice group or of lawyers from different firms who simply want to pool their intelligence and their resources. Most lawyers, like most human beings, want to do the right thing. Unfortunately, there are times when it is too easy to do the wrong thing. The best defense against those kinds of situations lies in the development of practices and habits of mind that will kick in when danger appears on the horizon, whether we fully recognize it at the time or not. I can’t personally think of a better way to develop those practices and habits of mind than to read and discuss Kevin’s wonderful collection of Lessons Learned.

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