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Three Lessons in Leadership from Ernest Shackleton

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I often get questions about what applications I find most useful to me as a road warrior, so I thought I would take this opportunity to persuade you about a few that I have found helpful. To make things easier, I will focus on mobile applications (apps) rather than computer software. The distinction in play: Mobile apps go on tablets and phones; computer apps/software go on laptop and desktop computers. For most of us, the primary sources for mobile apps (depending on the nature of our phone or tablet) will be the Apple iTunes App Store (for iPhones and iPads, as they use Apple’s iOS: apple.com/ios/app-store) or the Google Play Store (for phones and tablets using the Android operating system: play.google.com/store/apps). You can sometimes still find the odd app that comes another way, but, as a practical matter, you will primarily want to deal with the apps from these two sources. If you have a phone that does not use iOS or the Android operating system, you will need to go to whatever limited supply of apps the vendor makes available to you, but it will not compare to either the Google Play Store or the iTunes App Store. Apps from other sources than these stores generally should stay off your phones. One exception may be an app created by the manufacturer of your phone that you get from the manufacturer.

**Categories of Apps**

Before talking about specific apps, let’s talk about categories of applications and the allocation of memory to apps. The smaller the memory in your phone or tablet, the more careful you need to be about selection of apps and allocation of space to apps as opposed to documents or other media (pictures, music, videos, etc.). As a practical matter, I have generally opted for the largest memory available for my tablets and phones. This gives me the most flexibility, and I have always been able to find enough things that interest me to make use of most, if not all, of the usable memory. The old adage about nature abhorring a vacuum applies, however, and as a result of the extra memory that I have, I have allowed myself the luxury of some media that is not essential and some apps that I would have to acknowledge are marginally useful. Because I frequently test apps to write about them, I also often have apps on my devices so that I can check them out. Those that prove desirable earn a place there; most of the others get deleted.

Classifications of apps that you should consider (depending on your personal needs, preferences, and how you use your equipment) include, in no special order:

1. **Productivity:** apps for note taking, document creation, etc.;
2. **Legal:** legal research apps, time and billing, document signatures, trial preparation, etc.;

Jeffrey Allen (jallenlawtek@aol.com, jallenlawtekblog.com) is the principal in the Graves & Allen law firm in Oakland, California. He is Editor-in-Chief of GPSolo magazine and GPSolo eReport and a member of the Board of Editors of Experience magazine. A frequent speaker and writer on technology topics, he is most recently coauthor (with Ashley Hallene) of Technology Tips for Lawyers and Other Business Professionals. In addition to being licensed as an attorney in California, he has been admitted as a Solicitor of the Supreme Court of England and Wales. He teaches at California State University of the East Bay.
3. **Entertainment**: movies, television, music, books, audiobooks;
4. **Navigation**: maps, GPS, etc.;
5. **Financial**: banking, recordkeeping;
6. **Internet**: browsers, virtual private network (VPN) software;
7. **Security**: encryption, password creation and storage, non-visible file creators, etc.;
8. **Utilities**: scanning, printing, faxing, testing, etc.;
9. **Photography**: apps to enhance the camera capabilities of the device and to clean up and correct the images after taking the pictures;
10. **Travel**: airlines apps, travel guides, consolidators, etc.;
11. **Presentation**: PowerPoint and other apps to facilitate presentations;
12. **PDF and markup**: apps to allow you to read and mark up PDF files;
13. **Reference**: dictionaries, thesauruses, atlases, etc.;
14. **Health**: medical information and sourcing;
15. **Communications**: group meetings, web conferences, Voice over Internet Protocol (VoIP), etc.;
16. Other categories you may want to consider, depending on your personal proclivities, include: **News; Shopping; Sports; Education; and Games.**

As an aside, I will tell you that I have apps in each of these categories on my phones and tablets and that I also have added several other categories that I have found useful for sorting my apps to enable me to easily locate them.

I have found that it works best for me to create a folder for each category and then move all the apps in that category into the folder. I can organize them in whatever order suits me inside the folder, but I usually put the ones I use most near the top of the list. I also keep the apps I use all the time outside of folders and on the first page of apps on my phones and tablets. I like to organize the folders on the page in alphabetical order to make it easier to locate them.

**THE SMALLER THE MEMORY IN YOUR PHONE OR TABLET, THE MORE CAREFUL YOU NEED TO BE ABOUT SELECTION OF APPS.**

**APPS TO CONSIDER**

In discussing the apps that I have added to my devices and found useful, I will not include those that come automatically loaded on the device. Think of them as part of the operating system for all intents and purposes, as you cannot delete them in most cases, even if you wanted to do so.

As I do not have sufficient space available to do even a cursory review of the apps for this column, I will simply list them and, if their function is not obvious from the name, describe them briefly. I am not listing all the apps on my devices—just the ones I find particularly useful for mobile lawyers. A word of caution: While I have Apple iOS devices (iPhone X and iPad Pro) and Android devices (Samsung Galaxy S9+), I prefer iOS and took the list of apps that appear in this column from my iOS devices. Most (but not all) of these apps also exist in the Android world, but, unfortunately, some of the best do not. I have not counted, but I estimate that more than 75 percent of them also exist in the Android world.

1. **Productivity**: Microsoft Word, Microsoft Excel, Timeline, OmniOutliner, OneNote, MindNode (mind mapper), Inspiration Maps (mind mapper), Dragon Anywhere (voice recognition/dictation), Olympus Dictation, Philips Recorder (dictation), FileMaker Go (database), Paperless (list maker), Evernote, SignMyPad, DocuSign, SignPDF Pro;
2. **Legal**: Westlaw, Fastcase, CA Laws (I practice in California, you will want your own state’s laws), US Code, FRCP: Federal Rules of Civil Procedure, Federal Rules of Evidence (FRE), DepoView (iPad only), TranscriptPad (iPad only), DocReview (iPad only), TrialDirector, ExhibitView;
3. **Entertainment**: Kindle, Audible, SiriusXM, iHeartRadio, Pandora, Flixter (movie theaters and schedules), MoviePass, TV Guide;
4. **Navigation**: Google Maps, Waze, Ulmon Pro (mapping), Sygic (mapping); OpenTable (restaurant locator and reservation maker);
5. **Financial**: Bank of America Mobile Banking, Wells Fargo Mobile, Bank of the West, Citi Mobile, Chase Mobile (you will want the...
ROAD WARRIOR {CONTINUED}

... apps for whatever banks you use), Clio (time and billing), Expensify (expense tracking); HP 12c Financial Calculator, Unit Converter (includes foreign currency exchange conversions); 6. Internet: Firefox (browser), VPN Unlimited (virtual private network), McAfee Safe Connect (virtual private network), Dropbox; 7. Security: McAfee Mobile Security (encryption, backup, and secure vaulting of information), 1Password, PhotoVault; 8. Utilities: ScanSnap Connect, Iris Scan to Word, Scan+, Printer Pro, eFax, Tile (locate missing items tagged with Tile communicators), Net Analyzer, SpeedSmart (checks connection speed); I also have various apps for earphones and speakers as well as apps provided by digital camera manufacturers (such as Sony) to work with their cameras; 9. Photography: Photoshop Fix, PS Express (Photoshop light), Filterstorm (photographic filters), Photo Eraser, Camera+ 2, Redacted; 10. Travel: United, Southwest Airlines (include whatever airlines you use here), Flight Update Pro, GateGuru (concourse to most airports), Amtrak, Rail Europe, Avis (or whatever car rental you use), TripIt (trip planner) Expedia, Orbitz, Priceline, Booking.com, Hotels.com, Hotwire, Travelocity (add other consolidators you use), TripAdvisor (guide), Fodor’s City Guides (travel guide), tripwolf (travel guide), Triposo (travel guide), SPG (Starwood Preferred Guest), Marriott, Hilton Honors, Hyatt Hotels (add whatever hotels you normally use), Voice Translator Pro (multiple language translator), Lyft, Uber; 11. Presentation: PowerPoint, Keynote (iOS only), Haiku Deck, Prezi Viewer, SlideShark, AutoPrompter; see also entries above for “Legal”; 12. PDF and markup: PDFpen, PDF Reader Pro, PDFFiller; 13. Reference: Oxford Dictionary of English, Oxford Grammar and Punctuation, Concise Oxford American Thesaurus, Chambers Thesaurus, Webster Roget’s A-Z Thesaurus, Bartlett’s Familiar Quotations, Modern Atlas, Google Earth; 14. Health: Fitbit, Lose It!, Mayo Clinic, Johns Hopkins Guides, Epocrates Medical References, WebMD, Merck Pro, Drug Interactions, Merck Vet Manual; 15. Communications: Skype, Skype WiFi, GoToMeeting, WhatsApp Messenger; there are several other secondary phone apps and conference apps you may wish to add as well; 16. Other categories you may want to use, depending on your personal proclivities, include News, Shopping, Sports, Education, and Games. Some of the apps I have in these categories include: a. News: Flipboard, theSkimm, BBC News, CNN, The New York Times, USA TODAY, The Week Magazine US, Texture; b. Shopping: Amazon, Overstock.com, Gilt, Zappos, Barnes & Noble, Sierra Trading Post, Peet’s Coffee, Starbucks, Alibaba.com, Barcode Scanners, Price Scanner UPC Barcode Scan, QR Code Reader and Scanner; c. Sports: theScore, ESPN, Bleacher Report, NBA, NFL, MLB At Bat; d. Education: The Great Courses, The Great Courses Plus; e. Games: Words with Friends (Scrabble), Boggle With Friends, Word Search Puzzles, Wood Puzzle, ProPinball, Pinball HD, Madden NFL Overdrive Football, MLB 9 Innings, Rail Maze 2, Pro Pool 2018, Blackjack, VIP Poker, Solitaire, iBridgePlus, Chess, Checkers, Backgammon, Trivia, a bunch of old-fashioned arcade “shoot-em-ups,” a few adventure games, and some of the new AR (augmented reality) pieces. Nowhere in your app selection will your personal taste have more impact than in your choice of games, so I have not listed the collection of arcade games that I have. As I am now approaching 70, I have fond memories of some of the original arcade games and enjoy pulling them out and playing them once in a while. That may not prove your thing, but you may want to look at them—some of them are still great.

I do not suggest that these are the only useful apps on my devices or in the Google Play or iTunes App Store. I have simply identified some of the apps that I use and like for various reasons. Sometimes, I will choose an app that has one particular feature that I like and use it when I need that feature, favoring others in the genre when that feature has less significance to what I need. You can get many of these apps free and almost all at relatively nominal cost. Some of them will even give you a trial period to see if you like it before you have to pay. A number of them have upgrade options requiring a subscription, so I encourage you to try them out before you decide to add them to your devices on a more or less permanent basis. Just because I have found that they work well for me does not guarantee that you will like them—but I hope it indicates a high likelihood that you will find them helpful or interesting or both. ■
THE ENDURANCE: THREE LESSONS IN LEADERSHIP FROM ERNEST SHACKLETON

By Melanie Bragg

“Difficulties are just things to overcome.” — Ernest Shackleton

This issue of the GPSolo magazine deals with the art of persuasion. As you enjoy the many articles contained in this issue, I would like for you to begin with a story from the heroic age of Antarctic exploration. A few years back, I read an article about Ernest Shackleton’s 1915 Antarctica expedition, the Endurance (named after his ship on the expedition). The article ignited my curiosity, and I bought several books and went to see the IMAX film about the epic survival story. Since then the stories of Shackleton’s leadership have guided me in times of challenge. He is a wonderful role model. Many of the leadership lessons from Shackleton’s expedition can be analogized to the work we do as lawyers, as well as to the art of persuasion.

As Sir Edmund Hillary points out in his introduction to the 1977 (W.W. Norton) edition of Shackleton’s Boat Journey,

And yet, Shackleton, great explorer though he was, could probably be regarded as unsuccessful on all his major journeys—if success is judged solely by the limited standard of whether a set goal has been achieved. It was as a leader of men and an overcomer of appalling circumstances that Shackleton really excelled. Not for him an easy task and a quick success—he was at his best when the going was toughest. The enormous affection and respect he engendered in his expedition members (often mighty men themselves) shines through in their diaries and writings. . . . Shackleton undoubtedly understood his men—he could be as gentle as a woman and incredibly considerate of his crew’s welfare, or as tough as was required to deal with any problem.

Shackleton began his expedition at the onset of World War I, after offering up his ship to the cause. Shackleton allegedly placed an advertisement in a newspaper that sounds a little like an ad for a new lawyer: “Men wanted for hazardous journey. Small wages, bitter cold, long months of complete darkness, constant danger, safe return doubtful. Honour and recognition in case of success.”

Shackleton’s goal was to attain the crossing of the South Polar continent from sea to sea. But the crossing never took place. On January 18, 1915, the Endurance was entombed by the heavy ice pack in the Weddell Sea, and the 28-man crew never set foot on the Antarctic continent. On November 21, 1915, the Endurance sank, and one of the most remarkable recorded stories of survival began. Shackleton’s new goal and only goal became survival.

For five months, they drifted on a huge ice floe that changed size and nature daily. Shackleton, whose men called him “Boss,” was called on to lift their spirits by leading them courageously. He kept the men occupied by finding creative ways to entertain them during the cold and icy days and nights. (In 1915 there were no cell phones or computers.) Several crew members kept copious diaries of their daily life, and Frank Hurley, the photographer, took magnificent photos all along the way.

“NEED TO PUT FOOTSTEP OF COURAGE INTO STIRRUP OF PATIENCE.”—ERNEST SHACKLETON

Shackleton’s diaries reveal his concern for his men while they reported that his spirit never seemed to waiver. He was cautious and in control of his crew and mission. On April 8, 1916, the ice cracked, and by April 9, they launched the three small boats they had recovered from the ship before it sank. On April 15 they landed on Elephant Island, a bleak and forsaken...
island in Antarctic waters. They were on land again, but it was a lifeless place. The only chance for survival was to take the 26-foot boat out into the stormiest ocean in the world and try somehow to navigate the 800 miles to the mountainous, glacier island of South Georgia. Shackleton, F.A. Worsley (captain of the Endurance), and four others headed out in the most dangerous and dreadful conditions. The story of Worsley’s navigation brings tears to my eyes because I still can’t for the life of me figure out how he made that calculation in those conditions. After some near misses, they found land on the southwest coast of South Georgia.

“A MAN MUST SHAPE HIMSELF TO A NEW MARK DIRECTLY THE OLD ONE GOES TO GROUND.”—ERNEST SHACKLETON

But, as with all survival stories, nothing that happens in this story is easy. The whaling stations they were trying to find were on the other side of the island. It wasn’t just any island, either. It was a mountain range with glaciers and ice the whole way—treacherous for men with holey socks, bare-soled boots, and sparse supplies. Three men crossed the glaciers on foot. (The IMAX movie shows athletes doing the same journey today with top-notch equipment, who report how tough the journey is.) It took Shackleton, Worsley, and Tom Crean 36 hours of herculean effort to get to the whaling station at Stromness. Shackleton did not rest; he immediately began preparations to go back to Elephant Island to get his crew, who were engaged in their own epic survival adventure. His first three attempts failed due to weather and other conditions, but on his fourth try, on August 30, 1916, he arrived at Elephant Island to find all his men alive.

“THROUGH ENDURANCE WE CONQUER”: SHACKLETON’S LESSONS FOR LAWYERS

When I read some of the Facebook posts on the various lawyer sites where I am a member, I know that many of us feel at times that being in the thick of the practice of law is like the voyage of the Endurance. I have felt this way at times. Legal work is challenging, with no promise of absolute success in each case and with no certainty that our work will be rewarded. Balancing a thriving law practice with the demands of home life and public service can be challenging in and of itself. But we keep going because it is something we just “have to do.” I feel in some ways that we lawyers are on what author and
philosopher Joseph Campbell calls the “Hero’s Journey.” And Shackleton is definitely a hero who can teach us many great lessons.

My top three leadership lessons from Shackleton’s expedition that I want to share with you are:

1. Leaders set goals, but when circumstances beyond their control change, they adapt and refocus the mission. Shackleton set out in 1915 with a goal of crossing the South Polar continent from sea to sea. If you judge him by whether he achieved that goal, he would be unsuccessful. But the fact that the 28 men who began the treacherous journey survived—well, that is the achievement. Rigid thinking would not have gotten Shackleton anywhere. It took courage, grit, determination, and tenacity that few men have ever experienced to survive.

   “Superhuman effort isn’t worth a damn unless it achieves results.”—Ernest Shackleton

2. Be strong and decisive as a leader and, when inevitable conflicts occur, promote reconciliation in order to achieve the overall mission. The second big lesson I learned by reading about Shackleton’s epic journey is that when you put groups of people together, conflict is inevitable. There is no way to please everyone all the time, and if you try to do that as a leader, you can run yourself ragged very quickly. A leader’s ability to utilize even those in opposition to achieve the group’s goals sets him apart from other leaders. Shackleton had to contend with disobedience on the ship, and once the ship was gone, one man, W. McNeish, thought he did not have to follow the rules anymore. Like a lawyer, Shackleton pulled out the employment paperwork the men signed when they came on board and read the clause that made it clear they were still under his authority until they got home safely. He not only read it to McNeish, he gathered all the men and read it to them. He never held a grudge and was able to charm even the most rebellious man with his patient and kind-hearted treatment. His reputation as a leader was shown by the quality of the men he was able to gather around him.

   “Loneliness is the penalty of leadership, but the man who has to make the decisions is assisted greatly if he feels that there is no uncertainty in the minds of those who follow him, and that his orders will be carried out confidently and in expectation of success.”—Ernest Shackleton

3. Never give up on the mission, no matter how difficult or impossible it may seem. Shackleton’s diary entries for that final 36-hour trip across the glaciers at South Georgia grow ever more descriptive about how the effort had the help of what felt like a supernatural power—that thing that you feel when something happens that turns everything around and you know it was more than just your effort.

   Shackleton recognized, as did some of the others, that there was a spiritual side to the whole process. The three men, who were at the end of their ropes, gathered the gumption and strength to do the last leg of the journey, and when it was over they all reported that they felt the presence of another person during the journey. This is remarkable. Leaders rely on that supernatural part of leadership when they are in tune. Leaders plan, work, and then let the rest happen.

   In his account of these events, South: The Story of Shackleton’s Last Expedition, 1914–1917 (1919), Shackleton reports:

   When I look back at those days I have no doubt that Providence guided us, not only across those snowfields, but across the storm-white sea that separated Elephant Island from our landing-place on South Georgia. I know that during that long and racking march of thirty-six hours over the unnamed mountains and glaciers of South Georgia it seemed to me often that we were four, not three. I said nothing to my companions on the point, but afterwards Worsley said to me, “Boss, I had a curious feeling on the march that there was another person with us.” Crean confessed to the same idea. One feels “the dearth of human words, the roughness of mortal speech” in trying to describe things intangible, but a record of our journeys would be incomplete without a reference to a subject very near to our hearts.

Ernest Shackleton’s family motto was “Through Endurance we conquer.” He unfortunately did not receive the recognition he deserved during his life, and it was much later that the world caught up to his genius. His life is a portrayal of his family motto and all it entails and can serve as an example to us to keep going even when circumstances might not be as hopeful as we would like. So, let’s go out there and be like Shackleton every day in our own lives as we walk the Hero’s Journey!

For more information on the epic journey, see Endurance: Shackleton’s Incredible Voyage by Alfred Lansing, 1959; Shackleton’s Boat Journey by F.A. Worsley, Captain of HMS Endurance, 1933; The Endurance: Shackleton’s Legendary Antarctic Expedition by Caroline Alexander, 1998; and the IMAX film Shackleton’s Antarctic Adventure, 2001. The quotes from Ernest Shackleton in this article are taken from Goodreads (tinyurl.com/y8mc3wge).
RENEW YOUR MEMBERSHIP,
SPREAD THE WORD ABOUT GPSOLO

In case you did not know, the ABA’s Bar Year runs from September 1 to August 31. Thus, your membership may have expired without your even knowing it. Please be sure that your membership to the Solo, Small Firm and General Practice Division (GPSolo) is renewed so you don’t miss out on the many benefits of membership, including this award-winning magazine. For more, visit americanbar.org/groups/gpsolo/membership.

GPSolo is unique in offering access to 32 substantive committees that deal with concerns pertaining to essential areas of law and professional issues such as practice specialty and practice setting. You can join as many committees as you wish with your membership. Be sure to join one or more today. For more, see americanbar.org/groups/gpsolo/committees.

Also, the best recruitment campaign is your personal story regarding your membership experience. Give the gift of GPSolo membership by sharing your experiences in the ABA and GPSolo with your colleagues. We need you to be the cheerleader for the profession that you live and breathe every day. Let’s spread the word about the ABA and GPSolo today!

GPSOLO MAGAZINE NAMED “TOP 25 BEST SINGLE ISSUE” IN TABBIE AWARDS

GPSolo magazine’s January/February 2017 issue, which focused on “LGBT Law after Obergefell,” was named a “Top 25 Best Single Issue” in the Tabbie Awards, overseen by Trade, Association and Business Publications International. Congratulations to Editor-in-Chief Jeffrey Allen; Issue Editors James Schwartz (convening issue editor), Alan E. DeWoskin, Angela Morrison, Rinky S. Parwani, and Thomas P. Tully; the entire GPSolo magazine Editorial Board; Managing Editor Robert Salkin; former Senior Art Director Tamara Kowalski; and everyone who helped make this issue such a success.

CALL FOR NOMINATIONS FOR 2019–2020 SECRETARY AND COUNCIL MEMBERS-AT-LARGE

The following members have been appointed to serve as the Nominating Committee for the 2018–2019 Bar Year: Jennifer A. Rymell (chair), Benes Z. Aldana, Henry Hamilton III, Thomas P. Tully, and Melody Wilkinson.

The Nominating Committee will meet during the 2018 YLD & GPSolo Fall Conference: Tradition Meets Innovation to nominate individuals for the positions of Secretary and Members-at-Large of the Council. In accordance with §4.4 of the Division Bylaws, the committee will nominate five Council Members-at-Large to serve four-year terms. Minority applicants are encouraged. The duties, terms of office, and eligibility requirements for each of the positions to be filled are outlined in the Division Bylaws (tinyurl.com/y95h8ec3). To be considered, please complete the online nominating questionnaire (tinyurl.com/yb9mk2gr) no later than October 11, 2018. If you have any questions, please contact Steve Wildi at steve.wildi@americanbar.org.

INTRODUCING A NEW PARTNERSHIP WITH ZEAMO

Zeamo is the simplest way to find and access nearby gyms that meet your workout preferences without a membership or subscription. Simply choose your gym, download a pass, walk in, and work out. With locations across 50 major U.S. cities and international travel destinations, Zeamo makes it easy to exercise wherever you are in the world. For more information, go to tinyurl.com/y88ehqjer. (You will need to use Firefox, Chrome, or any other browser besides Internet Explorer to view it from your desktop.)

GPSOLO PODCASTS: A FREE MEMBER BENEFIT

GPSolo’s Brown Bag and Hot Off the Press podcasts are recorded as live teleconference calls and available as podcast recordings for GPSolo members at no additional cost. The Brown Bag Series (tinyurl.com/y95h8ec3) features presentations on timely legal topics and is recorded on the second Wednesday of every month. The Hot Off the Press Series (tinyurl.com/yd4o3uwj) features a GPSolo book presented by the author and is recorded the third Wednesday of every other month. Join us for our upcoming live podcasts or check out our podcast libraries: Brown Bag Podcast Library (tinyurl.com/yaapss8u) and Hot Off the Press Podcast Library (tinyurl.com/yd4o3uwj).

Brown Bag Series

Immigration Law and Children: What You Need to Know

Wednesday, October 10, 2018
12:00 PM to 1:00 PM Central
Speaker: Angela Williams, The Law Offices of Angela L. Williams, LLC, Kansas City, Missouri

This session will go over the basics of immigration law, especially as it pertains to children. Angela Williams will discuss the various forms of relief available to children under immigration law, the relationship between immigration law and criminal law and why lawyers practicing criminal law need to be aware of this relationship, and the shifting dynamics of immigration law today. This session is just a sneak peak of some of the content you will receive at the 2018
YLD & GPSolo Fall Conference: Tradition Meets Innovation.

Hot Off the Press Series
Mastering Voir Dire and Jury Selection
Wednesday, November 21, 2018
12:00 pm to 1:00 pm Central
Speaker: Jeffrey T. Frederick, Director, Jury Research Services Division, National Legal Research Group, Charlotteville, Virginia

GPSolo will speak with author Dr. Jeffrey T. Frederick regarding the third edition of Mastering Voir Dire and Jury Selection: Gain an Edge in Questioning and Selecting Your Jury. Get a sneak preview of Dr. Frederick’s session scheduled at the ABA Midyear Meeting. This program is open to everyone, so invite your friends to register for it. The voir dire and jury selection process is one of the most challenging aspects of a jury trial. Lawyers must identify and remove potential jurors who harbor some bias or hold beliefs that would make them less beneficial than others. Success in jury selection requires lawyers to draw on many basic skills. The goal is to promote the skills needed to be successful in voir dire and jury selection. It is through the sharpening of these skills that lawyers take a major step in improving the chances of a favorable verdict at trial.

DISTANCE LEARNING
Advising the Small Business: What You Need to Know
Webinar
Thursday, October 18, 2018
1:00 pm to 2:30 pm Eastern
Credits: 1.5 General CLE Credit Hours
Register: tinyurl.com/ypc2z6kvr
Speaker: Jean L. Batman, Legal Venture Counsel Inc., San Francisco, California

The author and panelist will discuss both how to approach an issue from scratch (e.g., drafting a contract or forming a corporation) and how to clean up an existing situation (e.g., amending agreements and corporate cleanup). This program is designed to guide general practitioners, small firm attorneys, and lawyers engaged in providing legal counsel to small, privately held businesses. Taking this course will assist counsel in:

- Providing more effective legal and strategic services
- Creating relevant documents
- Identifying issues that require further research or a specialist

Looking for GPSolo’s July/August 2018 Issue?
The July/August 2018 GPSolo magazine, which focused on “How to Start and Build a Law Practice,” was an experimental, electronic-only issue. Division members can still read the magazine online on the ABA website (tinyurl.com/y6vctwxt), and they can also download two all-new versions designed especially for use on smartphones, tablets, and laptops (tinyurl.com/y6vctwxt).

Let us know what you think of this experiment in electronic-only publishing. Send your comments to Managing Editor Rob Salkin at robert.salkin@americanbar.org. Later this autumn we also will conduct a formal survey of our members for their feedback and recommendations regarding future electronic offerings.
JURIES ARE ALWAYS LISTENING, EVEN WHEN YOU ARE NOT SPEAKING

BY CEDRIC ASHLEY
May it please the court, counsel, members of the jury. The evidence will show that for more than two years, my client—Christine Competent—was the sole female employee of a seven-member sales team. During that time, she suffered through a vile, pervasive, and hostile work environment simply because she was a woman. Crude jokes, pornographic images, and regular groping were as common as morning coffee. Christine reported this conduct to her supervisor, who responded simply with “boys will be boys.” A point came when Christine’s mind, body, and spirit could no longer handle this abuse. She suffered a nervous breakdown and has not been able to work since that day. Tragically, she has been diagnosed with PTSD, and she is a shell of the person she used to be. That’s why we are here today—because her team’s horrific behavior violated the New Jersey Law Against Discrimination. I’ll talk in detail about that later, but first let me tell you a little bit more about my client, her career, and the company that is responsible for the abuse she suffered.

Well, I hope I have you at the edge of your seat waiting for more. There are many ways to conduct an opening statement, and you should not assume I am saying this is the best way. In fact, I offer this introduction merely to state that the opening statement is not the first time you are communicating with the jury, and the closing argument is not the next time you will communicate with the jury. In fact, because you communicate with the jury at so many microlevels and pivot points, you should be aware that you are on trial as much as the parties are. So, here are six brief pointers for you to keep in mind as you prepare for your next dance in the well of the courtroom.
1. YOU ARE ALWAYS COMMUNICATING
Like it or not, the jury is always watching and listening to you. Yes, the case should be decided on the facts and the law, but how a juror perceives those facts is another issue. This perception can be filtered or influenced by the attorneys in the case. If the jury perceives you as being dismissive to your client, they too may believe less in your case. If the jury perceives you as being apprehensive, you will communicate that you appear disorganized, uncertain, and you do not have control of this, so you can easily avoid this problem. You want to win? You want the close calls to go in your favor? Play the part! Give the nonverbal communication to the jury that you are in control and the jury can rely on you.

So, how do you do this? First, get your case organized prior to trial. Stop using the outdated twentieth-century file folder, expandable folder, and cardboard box. Switch over to a clean, smooth trial notebook. If you are really ready to take a leap forward into the tech age, consider adding a tablet to your trial presentation mode.

Why seek the court’s assistance when you can take the witness down a notch or two? After a couple of these encounters, the witness will not want to relive this experience. The jury will catch on: The witness is dodging your question. And the jury will make the appropriate assessments about the witness’s credibility.

2. COMMUNICATING THROUGH ASSUMED AUTHORITY
When you are addressing the court on legal, evidentiary, or procedural issues, you are also communicating to the jury. They are not the deciders of these issues, but they will make mental notes of who prevails on the mini-battles within the case. So, what does that mean? Although you need to protect the record for a potential appeal, go for the win! Be selective with your objections. Make sure that when you object, you are virtually certain the court will say: “sustained.” With these results you will suck up the oxygen in the courtroom, and the court and the jury will see you as the default expert to be relied on. Conversely, spurious, minor, or loser objections can have a doubly negative impact: you lose credibility and the jury views you as wasting their time.

3. COMMUNICATING THROUGH PRESENCE
It is not just what you do and what you say—it is how you do it and how you say it. Trial work is both art and science. If you appear disorganized, uncertain, and apprehensive, you will communicate that nonverbally to the jury. However, you are in total control of this, so you can easily avoid this problem. You want to win? You want the close calls to go in your favor? Play the part! Give the nonverbal communication to the jury that you are

**Make the court and the jury see you as the default expert to be relied on.**

Be mindful that presence also means mastering adverse witnesses during cross-examination. Never, ever, ever take the weak, powerless approach of asking the court “to instruct the witness to answer the question.” It shows lack of presence and power. It’s like saying, “Your Honor, would you please help me do my job?” No, you politely take it head-on. But first make sure your question (or really your statement) was clear, concise, and direct. And then *bring the pain*:

Q: You heard my question?
A: Yes.
Q: You understood my question?
A: Yes.
Q: As you sit here, you are mentally capable of answering my question?
A: Yes.
Q: But you *chose* not to answer my question?
A: Well . . . um . . . I . . . yammer, yammer, yammer, drone on.
Q: Let’s try my question again. Isn’t it true that Ms. Competent reported these incidents directly to you?
A: Yes. She did.
Q: Thank you. And she did that on two separate occasions?
A: Yes.

Q: Mr. Human Resources, you saw the images sent to Ms. Competent?
A: Yes.
Q: And those images are P-1 thru P-5 in evidence?
A: Yes.
Q: The images were of sexual intercourse, correct?
A: Yes.
Q: You did not take any action against the manager who sent those images?
A: No, I didn’t.
Q: The images just sat in a folder in your desk?
A: Yes.

That’s a great examination, but you can take it a step further by using the exhibits during the course of the

4. COMMUNICATING THROUGH PERFORMANCE
Building on the previous scenario, you also communicate through tone, cadence, emphasis, and other aural mechanisms. For example, in the question: “But you *chose* not to answer my question?” you can emphasize the word “chose” by speaking louder or slower. You can also demonstrate communicating through performance physically. You can point to the air, toward the witness, or toward the lectern when speaking the word “chose.” You can position yourself differently to emphasize the importance of this line of questioning. If you have asked most of your questions from a lectern near the jury box, you might want to shift to the center of the courtroom.

Similarly, you want to communicate through performance when you use physical evidence in your examinations—particularly as you are confronting adverse witnesses. For example:

Q: Thank you. And she did that on two separate occasions?
A: Yes.
questioning—besides the obvious of publishing them to the jury. For example:

Q: You did not take any action against the manager who sent those images?
A: No, I didn’t.
Q: The images just sat in a folder in your desk?
A: Yes.
Q: Just as they are sitting in front of you now?
A: Blah, blah, blah. [TIP: I don’t care about the answer, I care about my statement and the images in front of the witness.]

I also might purposely choose to leave the images on the edge of the witness box throughout my examination of the witness, so they will always be in the line of sight of the jury.

Obviously, in this age of technology, the images should be displayed via some type of projector. But don’t forget that the overhead display image is not the actual image that will be admitted into evidence. There is still value to the tangible—the touch and feel of an item.

Physical evidence can also be a powerful performance tool or “prop” during the trial.

How so? Maybe the company has attempted to say that Ms. Competent’s performance was less than stellar. Yet, her performance evaluations prior to reporting the sexual harassment are excellent. Once again, after documents are admitted into evidence, have as much fun as you want with the overhead display. However, as you build up to that point, consider the following:

Q: Mr. Supervisor, you provided performance evaluations for Ms. Competent? [TIP: You ask that as you hold the evaluations in your hand.]
A: Yes.
Q: You provided those evaluations for five years?
A: Yes.
Q: Those years were 2011, 2012, 2013, 2014, and 2015? [TIP: Yes, this should be five separate questions. For now, the TIP is about physically

using the item as you ask the question—for example, you may move them from one place or hand to another place or the other hand as you reference each year.]

This is a way of communicating with the jury by drawing them into the action to come. You are also communicating to the witness. You are telling the witness to stay in line because you have the documents that will keep him there. The entire series of questions could be done with the evaluations in your hand as you pace about the courtroom, keeping the witness on edge. If he says something incorrect or strays too far from the truth you will be prepared to confront him with his own words contained in the evaluations.

5. COMMUNICATING THROUGH YOUR CASE

You will always communicate with the jury through your case. So, here are a few pointers. First, keep it simple. It really doesn’t matter if you have a complicated patent infringement case or antitrust case. You need to make it uncomplicated for an uncomplicated jury. Most jurors do not have the level of education of lawyers. Avoid legal-speak and industry-speak. Your case must be understandable to the jury as a whole and to each juror individually.

Second, people understand and learn from stories. From childhood education to movies we now watch, life and learning unfold in the form of stories. Why deviate? Tell a story.

Third, have a theme and a theory, otherwise your case won’t make much sense to the jury or to anyone else. The theme is the overall message. The theory is the legal basis of your claim or defense. Stated otherwise, your theme is akin to the lead guitar and keyboards, and your theory is the drum and bass. Stated another way, your theme is the wallpaper or paint coat of a house, and your theory is the frame of the house.

Lastly, as you structure your case, the order of witnesses, and the examination of each witness, consider the concepts of primacy, recency, and frequency. What are the key points of your case that you want to get out first (primacy)? What not-so-helpful facts or bad facts do you want to bury in the middle of your case? What strong points do you want to end on (recency)? What points do you want to repeat (frequency) throughout the entire of the case or a particular witness examination?

6. COMMUNICATING WITH HUMILITY, NOT HUBRIS

Breaking news: Nobody gives a damn about you! Or your case—other than your client. Surely, jurors conscripted to service don’t give a hoot about you. Keep this in mind as you are trying your case. Here are some quick suggestions: Stand as the jury enters and leaves the courtroom. During jury selection, try to pronounce names correctly; don’t manipulate answers of jurors; ask personal or uncomfortable questions outside the presence of other prospective jurors; and thank jurors when you are exercising challenges to excuse them. Be mindful of the jury’s time. Try to streamline the case. Be as prepared as possible. Have witnesses lined up and ready to keep the case moving. Where practical, defer legal or evidentiary arguments to times when the jury is on scheduled breaks.

Finally, always try to maintain credibility, dignity, and professionalism. This extends to outside of the courtroom during trial. You never know when you might run into a juror in or near the courthouse. Whether you like it or not, the jury is always taking in verbal and nonverbal communications from you.

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COMMUNICATING WITH CLIENTS
FIVE CONVERSATIONS YOU MUST GET RIGHT
If your goal is to have an ethics complaint brought against you, poor client communication is by far the fastest and easiest way to get there. Bar associations consistently cite bad communication as the number-one reason for ethics actions. Let you think this is going to be an article all about ethics, let me assure you, it’s not. The ethics rules surrounding client communication are pretty simple to understand. All you need to do is be honest, straightforward, and reliable in communicating with your clients. But why settle for the bare minimum? In this article I share tips and tricks for exceptional client communication that I have developed over thousands of client conversations and countless workshops with attorneys and consultants.

Each section will guide you through a particular type of client conversation. Though each is different, common themes run throughout. You’ll see that I begin every section by identifying the different goals of the client and the attorney in each situation (or at least what should be the attorney’s goal). Most problems of miscommunication begin and end with a misunderstanding of each other’s wants. If you can identify an individual’s goal, effective communication is easy.

THE SELL

Client Goal: Find someone who can solve your problem.
Attorney Goal: Convince the potential client to hire you.

While marketing is certainly part of the sales process, the Sell conversation really begins when a potential client calls you up, and for the most part it ends when the contracts are signed. In between, the lawyer needs to become something most lawyers never want to be: a salesperson. (In many ways the Sell never ends. Throughout the representation process, a good attorney is working to retain clients and convince them to send referrals or return with future work.)

I have never been a fan of the hard sell, and I think in the legal context it’s especially distasteful. If you have to convince people to hire you, then either they don’t need your services or you’ve done a poor job explaining your services. It’s the latter part that attorneys should focus on during the Sell.

To that end, never bury the lead. Before I ask potential clients if they want to hire me, I make them explain their objectives in gross detail, and then I tell them everything I intend to do to accomplish those objectives. I identify key actions that can be delivered in the next week, month, and year. By doing this, I give potential clients an excellent reason to hire me, a clear plan to get what they want. If, after hearing my plan, they don’t want to hire me, then I don’t want them as clients. They would never be satisfied with the services I am willing to provide.

As more and more legal consumers head to the Internet, it’s more important than ever to distinguish yourself from other attorneys. Sure, you have a plan, but why should potential clients hire you instead of one of the other ten attorneys with a similar plan? Your years of experience and record verdicts are not the answer. It’s important to dig deep and think about what makes you and your firm unique.

At the firm where I work, Palace Law, we have identified and loudly proclaimed our mission and our core values. (Mission: to help the injured in every community. Values: creative, innovative, adaptable; trustworthy; do the right thing; team player; relentless, persistent, self-motivated; do what we love; unique, diverse, authentic, real people.) When someone asks why they should hire me instead of someone else, I point to the wall where our core values are displayed and respond that “it really depends on what matters to you.” I then walk them through what those values mean to me and how they affect my approach to cases.

It doesn’t have to be core values that help distinguish you. A lot of great attorneys I know have sought out clients with similar interests and hobbies. There’s the former chef who specializes in food law. Or the attorney/DJ who teaches courses on the laws surrounding music festivals. Clients like to hire attorneys they can identify with as humans. So, if you want to convince potential clients to hire you, set aside the legal nonsense for a bit and let them get to know you.
THE EXPECTATIONS

Client Goal: Make sure that the attorney will be there for anything you need and any questions you have. Ensure that the attorney is going to deliver everything you want.

Attorney Goal: See if the client is a good fit for your work. Ensure that the client clearly understands what services you are willing and able to provide and convince the client to give you the necessary time and leeway to deliver those services.

The Expectations conversation is by far the most important conversation in any client relationship. Managing client expectations should be done at the outset of the relationship, and it should be brought up over and over throughout the life of a matter. In this conversation clarity and repetition are essential.

The “expectations conversation” is by far the most important in any client relationship.

Before you can be good at managing client expectations, you need to think hard about what it is you are willing to offer your clients. What is your preferred method of contact? What are you willing to do for clients who don’t use that method of contact? How quickly will you respond to phone calls? How frequently will you update clients? How long does a typical matter take? If you don’t have answers to these questions (and more), it is impossible to provide clients with clear expectations.

Once you have defined your policies and identified timelines, set aside a good portion of your initial intake process to talk to new clients about what they should expect from you. It will save you a lot of time in the long run. Lawyers often complain that clients demand too much, calling multiple times a day and demanding unreasonable updates. Clients just want consistency and dependability. They are trusting you with something that is a cause of stress and fear in their lives. Consistency and dependability are essential to alleviate that stress and fear.

I tell every client who hires me that I will rarely, if ever, answer the phone when they call. But I promise them that if I am in the office, I will call them back the same day or within 24 hours at most. No client has ever complained about my policy because I explain to them that I do it to increase my own efficiency and better serve them. More importantly, I give them a definite timeline they can depend on and I deliver consistently.

This is also the ideal time to bring up money. If you don’t offer fixed fees (and even if you do), the financial side of hiring a lawyer is extremely stressful. Be clear and direct with clients about what they are paying you and why. Don’t negotiate. (This is not to say that you shouldn’t offer sliding scale fee agreements based on a client’s ability to pay.) One attorney in my office does this extremely well. After one client complained about contingency fees, he decided to be as blunt as possible: “I’m going to take some of your hard-earned money. Money that you deserve and are entitled to.” He’ll repeat it if he has to until a potential client really understands that his services are not free. It’s brash, but it’s wildly effective.

In many areas of practice (such as litigation) it’s impossible to promise clients a definite result. That doesn’t make clarity any less important. When a client asks the inevitable question “what are my chances of winning?” establish trust by explaining exactly what factors affect the odds, what you have control over, and what the unknowns are. If you establish this level of trust early, you’ll find that clients give you more leeway in the future, and the constant phone calls decline rapidly.

THE CONFUSION

Client Goal: Understand what is happening with your matter.

Attorney Goal: Explain the situation as quickly and efficiently as possible.

The most common complaint I hear from the clients of other attorneys is that they don’t understand what is happening with their case. They know they have an attorney, but if they don’t know what is going on, they inevitably think their lawyer isn’t doing anything. So, they call their attorney confused and sometimes more than a little annoyed.

Legal terms are your greatest enemy in the Confusion conversation. It doesn’t help either party achieve their goals. Most clients don’t care about the legal intricacies of their case. The only thing they care about is how their lives are impacted by whatever has just happened. This can be as simple as “it doesn’t” or as complex as “We now need to shift our strategy for X reason. I will be taking Y steps, and I am going to need you to do Z.”

Be proactive. At our office we share all claim-related documents with our clients instantly. For a while this caused me to get a lot of phone calls to the effect of, “hey, I got this e-mail, and I don’t know what this document is.” This was especially true with cases headed to trial where there is a lot of mail confirming telephone calls and hearing dates. Explaining each document took me a long time, and it was rarely something my clients cared about. So, I decided to be more proactive. Whenever a case goes to trial, I contact my client and explain that they are going to be getting a lot of paperwork e-mailed to them. I explain that if there is anything important, I will personally reach out to them to discuss it. The calls dropped off.

Another attorney I know has a slightly more individualized approach. Whenever he sends a document to a client, he includes one sentence (or at most two) explaining what the document is and why it is being sent to the client. If
you can’t explain it in one sentence, then you either need to rethink your explanation or reach out to your client for an in-depth conversation.

All too often the Confusion conversation is initiated by clients. A good attorney should strive for that to never be the case. If there is an update on a matter coming soon, it is the attorney’s job to reach out and update the client in a timely manner. Legal proceedings are often confusing, so the Confusion can’t be avoided. However, these conversations don’t need to be negative. Potentially confusing situations are a golden opportunity for a proactive attorney to demonstrate dependability and build trust.

THE BAD NEWS
Client Goal: Understand what went wrong, why, and the concrete steps that will be taken to fix it.
Attorney Goal: Provide an unpleasant update without diminishing the client’s confidence in your work.

Properly handling this call is probably one of the most impactful skills an attorney can have. No matter what type of legal work you do, this will be a frequent conversation.

Here again, the best advice is to be proactive. Don’t let your client find out bad news from someone else, and don’t be unprepared. Whenever you deliver bad news, I can guarantee that you’ll be asked some version of “what now?” You need to have a good answer at the ready.

Before I deliver bad news, I take a couple of minutes to identify all possible impacts of the news and potential routes that can be taken to resolve the issue. Have a preferred plan of action, but also identify alternatives so that your client is informed and when I do actually answer the phone, I call them ready to address their concerns, almost always on the same day. My clients love that or when I know it is an emergent matter.)

CONCLUSION
I want to leave you with one more piece of advice. It’s a rule I try to live by and have found to significantly improve client communication: Answer all potential client calls immediately, but rarely answer calls from current clients. Answer potential client calls because if you don’t, they will call someone else. Don’t answer current client calls because you will be a much better communicator if you are prepared and communicating on your terms instead of being interrupted.

I tell my clients that I will rarely ever answer their phone calls. (The primary exceptions are when it is more convenient for me to answer than to call them back or when I know it is an emergent matter.) They leave me a message, and then at a time when I am no longer being interrupted, I make sure I am prepared to address their concerns and I call them back (almost always on the same day). My clients love that I call them ready to address their concerns, and when I do actually answer the phone, they are surprised and feel special.

Last but not least, what works for me won’t necessarily work for everyone; it’s important to find your own methods. Just remember to always be dependable, honest, and proactive.

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THE ART OF PERSUASION IN ARBITRATION AND MEDIATION

BY A. LEE PARKS JR. AND DAVID F. WALBERT

There has been a sea change in litigation and dispute resolution during the past 25 years. Far more cases are resolved in alternative dispute resolution (ADR) than by trial, and the relative numbers continue to increase as mediation and arbitration continue to expand. Critical in all dispute resolution—traditional trial, mediation, or arbitration—is the Art of Persuasion. Collectively, the authors have been involved in well over 1,000 civil disputes, either as advocate, mediator, or arbitrator. From this practical experience, they have learned many keys to the Art of Persuasion, both in mediation and arbitration. Unsurprisingly, there is overlap in what the advocate needs to do in these two ADR methods, as well as differences inherent in the different formats of mediation and arbitration.

Regardless of these similarities and differences, it is certain that successful advocacy in ADR requires that counsel hone their Art of Persuasion just as keenly as the best of the trial lawyers from a prior generation. In this article, the authors present some of the keys to persuasion they have learned. We hope that these suggestions will help you on your way to honing your own Art of Persuasion.

ARBITRATION

By David F. Walbert

In the final analysis, the Art of Persuasion in arbitration is winning, measured by how the average lawyer would do before a typical panel of arbitrators. If you do better, that’s a win. If you do worse, that’s a loss.

Simplicity. There are two big keys to winning in arbitration. The first is simplicity. You must explain simply and clearly exactly why your client should win. Your story, your theme, must be told so that it is understood immediately and is compelling. This story needs to be fact based. It is a story, not a legal pronouncement. Law school taught us that the law determined the outcome of cases, but we learn quickly that the facts are more what drive the outcome of cases.

Some people say that “the law follows the facts.” By that, they mean that there is a legal proposition for almost anything, and judges or arbitrators apply the legal rule that justifies the outcome they “feel” is the right one based on the facts. If you can explain your case to your 15-year-old daughter or son in a few minutes and they “get it,” you are on the right track. If you can’t, you need to work on it until you can. This does not mean that the evidence should be artificially truncated. That will depend on the case and what is involved, but you will want your arbitrator to hear a succinct story at the outset. This story will set the arbitrator’s mind to hear your evidence from the point of view you need to win.

A famous trial lawyer once explained that a case was like a diamond with a thousand facets. The advocate’s job is to hold that diamond up to the sun and rotate it until the light shines through in the most resplendent way, and that is what you...
should show the world. It’s a good image to visualize as an advocate. How the facts are presented can give a judge, juror, or arbitrator a completely different perception of what happened and what the outcome should be.

**Who is the arbitrator?** The second key to winning an arbitration should be obvious, but many people give it short shrift. Just as with judges and juries, who your arbitrators are is critical. We are undergoing a massive transformation in litigation and dispute resolution. Arbitration of all kinds of cases is increasing dramatically. Other time-consuming things you do during arbitration. Typically, you’ll have some background information about a potential arbitrator’s prior cases, but this is only a start. Call counsel from prior cases and talk to them about the arbitrator. Was she open-minded? Was he irritable? Or predisposed one way or the other? Beyond past service as an arbitrator, what can you learn about his or her life otherwise? In the Internet age, you can learn a lot. You should do at least this kind of research, and if the case is big enough to warrant the time and effort, do more.

There is also a second track that too few lawyers follow: agreeing to the arbitrators. Even if you have a specific selection mechanism in an arbitration agreement, the parties can agree to modify the selection method any way they want. Too many lawyers say, “The other side will never agree to that.” In fact, the other side often agrees to something that may make sense for both sides. Assuming this can’t happen foregoes an important opportunity to have a better panel.

More and more very complex technical cases are litigated and arbitrated. Too many times very smart judges and arbitrators are overpowered by statistical analyses or science and engineering testimony because they don’t have that kind of background and simply “don’t speak the language.” In these cases, it is essential that arbitrators have sufficient expertise in math and science to (1) understand what you are saying; (2) understand your experts; and (3) be able to discern when the other side’s experts are less than entirely accurate and candid. This does not mean the arbitrator needs to have a Ph.D. in the same field, but he or she does need to have the math and science training and facility to listen, understand, and, maybe most importantly, ask the right questions when necessary to distinguish the truth from the rest. The ideal arbitrator in these cases is an experienced trial lawyer who has a good pre-law education in science or engineering.

Some advocate a rigorous and stratified system of arbitrator selection and certification. This may be too much because having arbitrators who are experts in the exact subject matter may mean that they understand the evidence, but their own pre-conceptions play too great a role in their decision. The right balance is someone with ample litigation experience who is sufficiently grounded in math and science to follow and understand technical testimony and to learn the specifics of the issues from the experts, without bringing too much prior knowledge to the dispute. With the right arbitrator selection, your advocacy skills can do the rest. But without good arbitrator selection, your advocate skill will be lost, along with your client’s case.

**MEDIATION**

By A. Lee Parks Jr.

Lawyers are trained to persuade. They pride themselves on their ability to win a trial, to prevail over the most worthy opponent. But those skills, as formidable as they might be, need an adversarial format to truly shine. They believe they are at their best in a courtroom or a face-to-face negotiating session where both counsel pound the proverbial table hard as they try to force their opponent to capitulate and meet their client’s demands.

Today, the most successful litigators are counselors deft in the art of mediation. Multiyear disputes costing each side hundreds of thousands of dollars in litigation fees and expenses are resolved in a day in a setting that is judge and jury free, where the parties jointly craft their compromise in an atmosphere that is more a conversation than a combat. So, how do you maximize your chances for a successful mediation?

**Choice of mediator.** The Art of Persuasion in mediation starts with something you could never do in litigation, where you are randomly assigned a judge. The participants pick the mediator. It is the most important and impactful decision you will
make in the process. Here is a three-step plan to help you select the right person to act as your mediator.

1. Choose a neutral with a recognized expertise in the substantive area where the dispute lies, a good working knowledge of recent outcomes in similar cases, and familiarity with your forum and judge/mediator. Knowledge is power in mediation.

2. Look for someone the other side will listen to and respect. One big mistake lawyers sometimes make is trying to persuade opposing counsel to go with a mediator they privately believe might “favor” their side of the case. It is unrealistic to expect a quality neutral to have a bias in this regard.

3. Engage your clients in vetting the possible candidates so they become invested in the success of the mediation early on and get a sense of the control the parties have over the resolution process. Client participation in the selection of the mediator also increases the chances the mediator will be able to connect with your client in a way that positively impacts the chances for settlement.

Preparation. The second ingredient in the persuasion recipe is the preparation of counsel, the client, and the mediator. This starts with the submission of a great mediation statement that is not consumed with nuanced arguments on the merits but instead arms the mediator with ideas about creative solutions to the sticking points that might hamper settlement. Educate your mediator about how the dispute ended up in litigation and the major obstacles that have blocked resolution to date. Give your mediator a heads-up if emotions are running high—this is a problem the mediator will want to tackle early on. Lastly, if you need the mediator’s help in managing your client’s expectations, give your mediator a call to discuss the problem and strategize how the mediator can collaborate with counsel to focus the client on all the benefits of settlement counter-offers in the caucuses.

Helpful mediation statements are pragmatic. They focus more on deal points than the legal issues. For example, if insurance is involved, your mediator will want access to the adjuster and coverage counsel if there are issues in that regard. Are there non-monetary settlement terms that impact value independent of the merits of the legal claim, and when is the best time to raise them? A good example of how a non-monetary issue can drive the monetary value of a claim is in sexual harassment cases where defendants’ desire for confidentiality is uppermost in their mind. But the defendant sometimes decides not to push the issue at the outset for fear it will dramatically drive up the price of settlement. Work with your mediator in confidence to develop a strategy that will address hot-button issues early on and not leave them lingering until the end of the day when they could cause an impasse because a critical non-monetary term was not baked into case valuation from the outset.

The Art of Persuasion in mediation also requires you to prepare your client for the negotiation process. Lawyers are generally very good at making their clients feel supremely confident about their case. But don’t wait until the day of the mediation to tell them the positions on value set forth in the initial demand letters and early counter-proposals are often best-case scenarios, not pragmatic settlement valuations. Your clients must understand from the outset they will need to make appropriate concessions as the mediation progresses. All too often, clients come to mediations unaware of the bargaining process, the use of caucuses as a way to progressively bring parties to a closer deal. Clients becomes frustrated by the constant request that they increase or decrease their last settlement proposal. It is important you involve your client in the negotiating strategy so they understand “how the game is played.” Counsel must avoid the urge to revert to a litigation mentality on the eve of the mediation and oversell the plaintiff on the value of the claim, or the defendant on the quality of the defenses. Risk drives settlement.

Finally, the most persuasive counsel at mediation truly understands the transformation in perspective when you go from litigation, which is only about the past, to mediation, which is only about the future. There is irrefutable logic, and thus persuasion, when you invite the parties to assess a proposed settlement in terms of how it will affect their future. It is like asking them to look out their windshield rather than their rearview mirror as they continue their journey through life. Do they want to stay mired in the past, obsessing over past grievances, or focus on all the things they could accomplish once they repurpose the considerable resources and emotional energy being expended in the litigation into building a better future? Remember, settlement can be a life-changing decision for clients. In important ways, they need you to guide them over the bridge to tomorrow, at a comfortable pace, by giving them permission to leave you, and the litigation, behind.

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LAWYERS AS STORYTELLERS
Strategies to Powerful Communications with the Public

By Kate Coscarelli
Lawyers, at their essence, are storytellers. The tools attorneys use every day to perform their work are the very guts of good storytelling: artful and careful use of words and the craft of organizing complicated thoughts and themes into reasoned prose that is backed up with citations and evidence.

Yet, storytelling and effective communication, especially with the world outside the legal community, can sometimes be elusive, lost in a fog of here-tos, whereas, rambling citations, and sentences with too many commas.

I get it—drafting a brief about the nuances of the statutes of limitations or finer points of fee shifting isn’t easy, never mind writing a speech or giving a presentation on the role the legal system plays in our civil society.

I know the challenge firsthand, having spent the better part of my career explaining legal issues and working with lawyers, first as a reporter and now overseeing communication strategy for a state bar association. Here are some collected thoughts to serve as a guide for being an effective writer, speaker, social media presence, communicator—storyteller.

TELL IT STRAIGHT

If there is one key to good communication, it’s this: Tell it straight and simple.

Get to the point of what you want to say right away. Short, declarative sentences are the way to go. Subject first, then verb, with as little else in between as possible. There is an elegance to short sentences. Using this technique won’t diminish complicated ideas but will instead allow you to highlight the key points and issues you need to hit in digestible bites. For instance, if you find yourself using multiple commas, ask instead if the sentence can be broken in two.
GIVING A KILLER PRESENTATION

Giving a speech or presentation in the legal community, at an industry event, or at a local library is a perfect way to brand yourself as a thought leader in your field or become a trusted resource in your community. Here are some additional thoughts on what you can do to make your presentation great:

- Eat.
- Breathe.
- Go to the bathroom before you start.
- Keep your mind quiet.
- Practice, but don’t be practiced. Have a mastery of your main points, but you don’t want to sound like you have everything memorized. When a presentation is memorized, it comes across in the speaker’s tone, and audiences are likely to tune out if they feel they aren’t listening to something genuine.
- Take everything out of your pockets. Remove all temptation to jingle coins or keys. Better yet, don’t even put your hands in your pockets.
- Make eye contact. If that freaks you out too much, pick three points in a room to look at in the plane just above people’s heads. As much as possible, find a way to have a genuine conversation with your audience.
- Know your style and set yourself up for success. For example, a judge noted at a recent New Jersey State Bar Association event that if you speak with your hands, then don’t keep water nearby when you are speaking.
- Don’t read slides. Everyone in the audience can read them already. They should not be part of the narrative or a distraction, but rather a prompt to help guide you to the next part of your message.
- Listen to the questions the audience is asking and respond to them.
- Show, don’t tell. Use anecdotes. They are your friends. War stories bring your audience into the battle with you and illustrate the points you are trying to make.

Start with the best argument or information. You aren’t writing a mystery novel, so there is no reason to leave the big ideas you want to get across to the end.

Don’t use jargon. A reader or audience will tune out when programmers start talking about the intricacies of coding or when educators start using terms and phrases that are unique to the industry—or when a lawyer starts using Latin.

A practical technique to figure out how to focus your message is to pretend you are talking to your grandmother or a stranger at a bar. Think about how the story or issue can be explained to ensure your audience understands it. You don’t need to cut out the nuance or dumb it down, just tell the story in a straightforward way with language and examples everyone understands.

THE SIX-WORD STRATEGY

The six-word strategy can be used in crafting a powerful message for any medium.

I first learned this technique at a Poynter Institute writer’s workshop held in a newsroom where I worked, and it’s one that I continue to use.

The idea is to boil down your central theme to six words. It can help to first have a rough draft of what you want to say or write, or at least a working idea of the big idea you are trying to get across.

People spend more and more time in information silos, so it is critical to determine who you are speaking to and cater your message to that audience.

Then dig in. Be ruthless as you cut away the fat of the prose to capture your central theme.

It can take a couple of tries to get to six words. Try taking the idea down to a paragraph. Then reduce the paragraph to a sentence. Then crystallize the idea of that sentence into ten words, eventually getting down to six.

Once you have the six words that capture the heart of what you are hoping to share, you can keep referring back to that throughout your process to make sure everything you communicate can be traced back to that maxim. Those six words might even do double-duty as your headline or title.

KNOW YOUR AUDIENCE

The way we communicate has undergone a sea change in recent years. Traditional media has morphed. The news cycle never stops. Social media now plays a huge role in all our lives. We live in an age when people spend more and more time in information silos and at a time when everything can be customized.

So it is critical to determine who you are speaking to and cater your message to that audience. Is your audience senior citizens at a library function? Is it CEOs at a business event? Is it school children? A one-size-fits-all approach won’t work. While the theme of what you want to communicate can be fundamentally the same in each instance, the words you use and the approach you take should be very different.

It helps to do a little research to know exactly who your audience is. If it’s an event, ask an organizer to tell you about the demographics of who typically attends. If it’s a panel discussion, find out who the other panelists are and what they will cover. We live in an age of Google. Information is at your fingertips. It behooves all of us to do a little research before getting started.

Knowing the audience is especially critical to social media communication. The tone and type of information used in describing your work achievements on LinkedIn should be different than the caption that accompanies an Instagram story and different still from the banter on Twitter.
WORKING WITH REPORTERS AND JOURNALISTS

We can save a discussion about who is and who is not a journalist for another day. In the meantime, here is some guidance for a successful interaction with a reporter, whether it is someone from a television news station, a newspaper reporter, or a blogger:

- Ask reporters what their deadline is and respect it.
- Keep in mind that journalists are genuinely trying to get the story right.
- Return calls and e-mails, even if you can’t provide comment.
- Don’t be afraid to say, “I don't know.” This builds your credibility. If you don’t know the answer to a question, say so and offer to follow up with additional information or research. This can turn you into a trusted resource for the current story and for future projects.
- Always define what you mean by the terms “off the record,” “background,” and “not for attribution.” There are no universal definitions for these terms, and it is important to come to an agreement with the journalist about what the ground rules are.
- Do not be afraid of silence. Most people hate an awkward silence in a conversation and will rush to fill in the gap with chatter. Don’t do it. Say what you want to say and be quiet. The pregnant pause is a technique that is used in many interviews to see what else people will say.
- Avoid press releases. They are nearly useless in today’s media environment. A statement is better and can be easily posted on a website or shared via social media, either in writing or as an audio or video clip. If you do issue a press release, provide as many details and as much background and context as you can.
- Listen to the question being asked of you and try to answer it. There are few more frustrating and annoying things than trying to interview someone who refuses to answer the question posited. That said, don’t restate the negative in a question; reframe it and bridge quickly back to your primary issue. In school we are taught to restate part of the question to form our answer. If the question you are asked drills in on a negative issue, reframe the issue and answer in a way that doesn’t restate the controversial phrase or words. The classic example of such a question is: When did you stop beating your wife? The question assumes the actions happened. An effective response shouldn’t revisit the question or simply answer yes or no, but rather pivot away so it’s clear it was never an issue.

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A TRAIL OF GOLDEN COINS

There are lots of ways to tell a story. The most traditional is to use an inverted pyramid. Give the biggest news at the start and work down to the granular detail. This works great for delivering big news or information.

The golden coin approach, another technique I learned from writing coaches at Poynter, can be a success for formats that are often selected for working with the public, from a speech to an op-ed to a blog post.

The idea is that you don’t give away all the good stuff right at the start of your story.

You always want to start with something strong, and it can be tempting to dump everything into the beginning. The problem is this leaves you with nothing to say as you get farther along into your message. As a result, your readers aren’t rewarded along the way, they don’t learn new bits or gather anecdotes as they travel with you on the storytelling journey, and many will stop paying attention before you reach the end.

Instead, try to sprinkle interesting, tight stories or key facts and data into what you are writing or saying to keep the audience engaged with you.

And, most importantly, know when it’s time to come to an end.

SIX BONUS STORYTELLING TIPS

No adverbs. They are flabby and lazy. Use adjectives if you must, but only if they add to the meaning and understanding of what you need to get across.

Use action words.

Find an editor you trust and who can be tough. Words are powerful, but they aren’t precious. Turn over your work product to someone—a colleague, mentor, or significant other—you feel comfortable showing something unfinished and who can catch the little things you left out.

Be ruthless. When you complete a project, review it one more time to see if you can trim it further to be more precise and concise.

E-mail communication is one of the primary ways we stay in touch with clients, colleagues, community members, and friends. Don’t “Reply All” unless you really need to share the information with everyone on the chain. And don’t reply to say “thanks”—it’s a time killer for everyone involved.

I share the advice of a former New Jersey Supreme Court justice on footnotes: Don’t do it. If the information is relevant to the argument, then it has a rightful place in the text. If it takes mental gymnastics to tie the main point to the information, then it doesn’t belong in your piece, even as a harmless footnote.
PERSUASION THROUGH BODY LANGUAGE IN (AND OUT OF) THE COURTROOM

BY KATHLEEN BALTHROP HAVENER
As lawyers we need to teach ourselves, by repetition and discipline and exercise of will, to write, to speak, to comport ourselves as officers of the court. We practice openings and closings, oral arguments on motions, appellate arguments, mock trial and boardroom presentations over and over to make sure we’re honing our message and saying precisely what we hope our listeners will hear. But there is a form of persuasion that is far too often neglected. And on this stage, what we don’t know can indeed hurt us.

We communicate with our bodies every minute of every waking hour whether we are intentional about it or not. More importantly, those who watch us are paying attention to our facial expressions, our gestures, our posture, and our movements, even when they don’t realize they are doing it. It behooves us to be conscious of what our faces and bodies convey, and to use that awareness to communicate exactly what we want our audiences to understand with our bodies, as well as with our speech.

Researchers have found that perhaps as much as two-thirds of the content of every message we convey is transmitted nonverbally. Dr. Albert Mehrabian, an MIT-educated engineer who became a doctor of psychology and a professor at UCLA, believes that listeners rely about 7 percent on spoken words, 38 percent on tone of voice, and a whopping 55 percent on body language. While you may quibble with the numbers, no one doubts that our bodies convey, and to use that awareness to communicate exactly what we want our audiences to understand with our bodies, as well as with our speech.

In the courtroom, the boardroom, the conference room, and the office, the messages our bodies convey provide information to our listeners that reinforces or detracts from what we say. If we want to be more persuasive communicators, we must master certain aspects of presence and performance that, although they may seem to have little to do with speech and language, have everything to do with communication. Our physical cues (or miscues) bear serious consideration—in deed, even practice.

I believe that all sighted persons learn visually, at least in part. Who can watch a preverbal infant playing with an older sibling and conclude otherwise? The baby mimics the funny faces and gestures of the older child while both youngsters repeatedly dissolve into helpless laughter for as long as the magic lasts. Who hasn’t babbled back and forth with a baby and known instinctively how carefully the child is watching as well as listening?

Put yourself in this scene: Your co-worker walks into the office. His movements are tight and jerky. He walks quickly down the hall toward you. His head is down. He’s scowling. He throws his briefcase atop his desk, shakes his head, and drops with a thud into his chair. “Is everything okay?” you venture. He tosses his head back and says sharply, “I’m just fine.” How is your colleague truly feeling? Is he “just fine” as he has assured you? Do you believe what you’ve been told? Or do you believe that your colleague is angry and frustrated, as all his physical cues indicate?

No matter how hard they may try to hear and accurately absorb what is said, our listeners cannot help but test what they hear against what they see and feel. If your body language and your words are in conflict, your listeners must choose which to believe, which detracts from whatever you’re trying to communicate. Our glances, our movements, our gestures, our very presence are received as unspoken messages. Thus, we must be conscious of what those unspoken messages are communicating.

Self-control over our common gesticulations is transitory and, to a large extent, spontaneous. Some of us “talk with our hands.” Others are more restrained. Whichever you are, it’s certainly habitual and probably lifelong. But just because our moment-by-moment gestures are habitual and individual to us does not mean that we should not be aware of them and use (or suppress) our tendencies when appropriate.

More important is our openness to learning and practicing new patterns of movement. This practice forms new muscle memory that allows us to use specific gestures that we may ultimately adopt as our own when we incorporate them into our persuasive speaking. The effectiveness of a well-constructed and well-delivered speech can be demolished if the speaker fails to include the correct nonverbal cues to underscore her message. Conversely, gestures, movements, and even postures send positive messages to jurors, judges, and other listeners—messages that aid us in our efforts to persuade.

One aspect of consciousness of our body language is counterintuitive. While we want our audience to hear our authentic voices—to understand exactly what we are trying to communicate—it’s likely that (sometimes at least) we do not want our audience to see how we really feel. That is because we almost certainly cannot entirely dispel our worries, our apprehensions, our own lack of confidence, even mental or physical exhaustion. Worse, we are not reborn when we enter the courtroom or the boardroom. None of us can shrug off at the door a marital spat, a disagreement with a teen about the crisis du jour, natural and very real concerns about our kids, aging parents, pressing financial difficulties. We need to discipline our physical selves—while we are doing our jobs as advocates—not to reveal the daily worries of our lives.

We need delivery mechanisms in our toolbox, practices that we can fall back on that will provide us with a range of appropriate means to aid us in conveying the appropriate message along with our speech. We cannot simply unconsciously wave our hands and arms about, stomp or tiptoe around the courtroom, or slouch in our chairs. Jurors are always watching.
Opponents are always watching. Time for some thoughtful self-direction.

As many speaking coaches have opined, sometimes all you have to do is get out of your own way. It’s not uncommon for a charming, funny, smart person—who happens to be most comfortable interacting with individuals one-on-one or in small groups—to dissolve into a puddle of nonverbal goo when expected to make a toast or give a presentation to a crowded room. There’s hand-wringing, mumbling, a bowed head, arms crossed against the chest . . . all acts that almost scream “don’t notice me, please.” We can’t all be charismatic, but we can intentionally use our bodies to convey what we want our listeners to hear.

Every single word you utter is more powerful if you look powerful while delivering it.

If you remember nothing else from this article, remember this: Every single word you utter is more powerful if you look powerful while delivering it. That means that your body must convey confidence. You need to stand up straight, pull your shoulders back, lift your chin. Look at your listeners, even if you can’t see them. How does Wonder Woman stand? Superman? Both are typically standing with their hands on their hips, their chests expanded, their legs spread shoulder-width apart. They own their environment. Their occupation of space makes them look more powerful.

Women in particular are often socialized into trying to make ourselves look smaller, literally, to take up less space. “Sit up straight,” your mother said, but added, “Cross your ankles, knees together, hands folded in your lap.” These are the poses of an appropriately demure little girl, of modesty, of obedience, of weakness. If you want to be an effective communicator, forget all that nonsense.

Here are some suggestions that anyone can put into practice to speak with power:

**PRE-PERFORMANCE PREP:**
**YOU ARE SUPERMAN**
As stupid as it might sound, stand up. Hands on hips. Just do it. Stand tall, shoulders back, chest out, arms akimbo. Make yourself bigger. Take up more space. And then hold it. Be Winston Churchill at Westminster. Be Rocky Balboa on the steps of the museum in Philadelphia.

Visualize a cobra, a peacock, a gorilla, a frilled lizard. Each communicates power by making itself larger. So do we. You actually feel more powerful if you strike a powerful pose. There’s a hormonal response that makes this so, I promise. Shut yourself in a self-protective hug, looks outright defensive. It’s closed off. It’s unwelcoming. You look like you have nothing to share. And it looks weak.

(There are exceptions to every rule. If you’re a natural-born public speaker, you may lean against the empty witness box with your arms crossed comfortably across your chest, looking like your uncle in front of the fireplace telling you a tall tale about his latest fishing trip. If that’s so, you needn’t have read this far. You’ve got this.)

In general, keep your posture open and your arms wide. If you can remove obstacles between yourself and your listeners, do it. (Courtroom rules differ, so know what they are.) Move around—the stage is yours. Own it. Fill it. I’m not talking frenetic pacing or any quick movements. That makes you appear nervous. But calm, measured steps are fine and may help you relax. No matter what, remain open to your audience. Don’t turn your back and don’t cover your mouth with your hands. You’re giving your listeners a gift. Try to look like it.

**Hands.**

Most people are mystified about what to do with their hands when they speak to an audience. Why? Do you worry about what to do with your hands when you’re talking to a couple of friends? Of course you don’t. You use your hands naturally to emphasize. You *always* use your hands when you’re trying to convey size. You usually use your hands or fingers to count off points or when talking about numbers.

Read this passage while using your hands to demonstrate. Some generalizations, but go with me: Open fingers with palms up conveys openness, comfort, warmth, welcome (picture the Pope.) Open fingers with palms down conveys authority (imagine a professor quieting a room). Finger pointing is more authoritative and mostly inadvisable except when you want your listeners to feel they are compelled to do a certain thing (like find for your client, for example). You typically use your hands to describe differing positions—on the one hand, blue, on the other, green. The same gesture means different things depending on whether your palms are up (defining a choice—blue or green?) or your palms are down (indicating a division or a separation—blue versus green).
green). You convey signals—like describing that a traffic light was red—with your hands. (You don’t realize that you know this, but the red light is always at the top when you’re driving a car; it’s the opposite if you’re the engineer on a train.) Avoid that chopping motion with your hand. It’s distracting and looks like you’re conducting an orchestra.

It’s really so simple. Use your hands like you ordinarily do, to help you describe and demonstrate, to emphasize, to empathize. If it’s flowing like an ordinary conversation, you’ll stop noticing. And it should flow—for it is a conversation. And it’s not about you.

Watch.

I’m not talking about eye contact (that’s coming). I mean, attend to your listeners. Pay attention to the audience. Is there a lot of shuffling? Are they shifting in their seats? If they are not looking at you, you should do something to pull them back in. Try silence. Try emphasizing with a semi-loud sound (clap your hands or try a slap to the podium). As in everyday conversation, there are cues that you already know and intuitively understand that inform you about how to adapt your communication to better satisfy, energize, and engage your listeners. Think of it this way: You aren’t up there for your health. You’re not interested in the sound of your own voice. This isn’t about you. It’s about persuading somebody else. Incidentally, understanding and adopting this attitude will certainly ease your nerves. It’s not about you. It’s about them. Focus on them and your presentation will improve. Because it’s not about you.

Eye Contact.

On this issue, there is conflicting research. A lot of research supports the persuasive power of looking into someone’s eyes when making a request for compliance. But you’re not making a marriage proposal here. While making subtle arguments, especially if they take a while, too much eye contact can give rise to an adversarial feeling that makes people want to resist you. One researcher noted that a politician or parent would be well-advised to remember that maintaining eye contact may backfire if you’re trying to convince someone whose belief system is different from your own.

So, what to do? Some suggestions are easy. No staring contests. No familiarity. Look around the room, pick five or six people at different places, and make eye contact with them for no more than two or three second at a time. How they look back at you will give you some idea of how they’re feeling. If eye contact feels unnatural or uncomfortable, there’s an easy trick (I use it) to give the same effect. Choose your audience members, but then don’t look them directly in the eyes. Focus on their eyebrows, their eyelashes, the set of their mouths. They get the same effect—that you’re paying attention to them—but how they’re looking at you can’t make you feel self-conscious because you don’t focus on their eyes.

Loosen Up.

Nothing is as uncomfortable as watching someone speak in public who hates to do it. Except speaking in public. Jerry Seinfeld tells a joke about people’s fear of public speaking. Most of us fear it more than death. Which means, as Mr. Seinfeld points out, that at a funeral we’d rather be in the coffin than delivering the eulogy. You cannot speak powerfully and effectively to an audience if you’re not relaxed. I’m told (I wouldn’t know because I’m a failure at golf) that to play golf well, you need to loosen your grip. Men might not understand this, but mothers will: It is absolutely impossible to give birth to a child unless you allow some of your muscles simply to get out of the way of the ones that are doing all the work. The same is true of your body when you’re speaking. You need to be relaxed to do a good job.

Remember that “power stance” thing you did when you were preparing? Add these to the prep list: While you’re super-manning yourself, open your mouth as wide as you can and then relax your jaw. Stretch your neck and loosen up your shoulders. Take four or five deep, cleansing breaths. And don’t forget to bring a glass of water with you to wherever you’ll be speaking (or make sure one is there).

Lean In.

You want to close the deal. You want the jury to rule your way. You want the judge to grant your motion. You want the audience to understand your position. You’ve got to lean in to it. If your intention is to bring someone closer to you, or to your way of thinking, then reach out to them. Just use your whole body.

It’s virtually human nature to lean toward your audience—or your target—when it’s time to close the deal. When you’ve solved a problem in a group, you lean forward to explain. When proposing a collaboration, you lean toward your intended partner. Leaning toward another is a universal way of demonstrating that you’re listening and focusing on the same goal. But when you’re the speaker, you lean in to show you’ve got the answer. So when it’s time for your primary message, pause, lean forward—just a little bit is perfect—and give your audience the gift you have for them.

OH WELL—that’s all I’ve got. It’s about the other folks in the room. Never, never, never forget. It’s not about you.

Focus on your audience and your presentation will improve. It’s not about you.

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GETTING THEM IN THE DOOR
CRAFT YOUR BEST SECOND IMPRESSION TO PERSUADE POTENTIAL CLIENTS

BY KELLY STREET
You’ve heard the saying, “You don’t get a second chance to make a first impression.” When it comes to the Art of Persuasion, this is most certainly true—but it’s also not conclusive.

By the time you graduate from law school, you’ve spent many hours crafting arguments and learning to become persuasive. The problem of applying these practices to the real world is that you learn to craft arguments based on logic, but in the real world, emotions run the show.

When you walk into an interview or pick up the phone to speak with potential clients, they aren’t thinking about your capacity to create a logical presentation of your skills. They are thinking about how you look like this girl they went to high school with or how you sound like Gilbert Gottfried when you laugh. Based on those things, they are making a judgment about you as a first impression. Luckily, there are many ways for you to make a second impression that allow you to craft a persuasive argument in your favor.

WHO ARE YOU TRYING TO PERSUADE?
The most important consideration for persuasion is the who. Who are you trying to persuade? A potential client to retain your services? A colleague to consider you for referrals? A potential employer to hire you? Your boss to consider you for a promotion or give you a raise? When it comes to persuasion, the most influential argument will be what does that person get out of it? You must identify your audience’s needs or desires. Figure this out, and you’ll have a much more compelling case, no matter the audience.

PRESENTING ONLINE
Blogs, website, Twitter, Facebook, LinkedIn—anywhere people can find you, they are going to. Privacy filters can create a false sense of security on Facebook profiles, and if you are posting things that would make your grandmother clutch her pearls, I would advise you to change them immediately. In the digital age, once you hit publish, what you say could haunt you for a very long time, and you want to be sure that potential employers or colleagues won’t be embarrassed to associate with you if they read what you put online.

When it comes to your online presentation, you also need to consider where your viewers are. Are your potential clients more likely to be on a particular social media platform? Do some research based on the average age of your clients and popularity of social media with those age groups. Also take a look at your Google Analytics and see if you are getting more traffic from any particular platform more than others.

PRESENTING IN PERSON
Lawyers generally know how to dress to look professional, so we don’t need to spend much time on those elements, but it goes without saying that you should dress in a way that will inspire trust from your clients. This may not be a suit, but you get to decide that, unless your firm has strict guidelines.

Networking is the real area of concern when making a case for yourself in person. Begin by crafting a quick introduction that you can memorize and adjust based on your audience. I’ve learned that lawyers can find it challenging to introduce themselves without doing one of two things: (1) giving a monologue that starts in law school and ends with what they did today; or (2) responding with, “I’m a lawyer.” Neither option is the one you should choose. The first is more than anyone needs to know upon meeting you, and the second makes you seem aloof and above the people you are speaking to, as if they couldn’t possibly understand the complexities of different areas of law. Frankly, they may not be able to, but it’s not up to you to decide that for them. Coming out with a monologue can have the same effect. At a recent legal conference, I asked a fellow digital marketer what he does at his agency (before introducing myself), and he proceeded to explain in painstaking detail the daily duties of his job. I stopped him fairly quickly to let him know that, as a fellow digital marketing person, I do indeed understand what SEO is and just asked for his title. It made an awkward introduction for both of us.

So, how do you talk about yourself?
Jayson Gaignard, a master networker and owner of Mastermind Talks, gives this formula for proper networking introductions: “I help [who/client] achieve [what result].” As a corporate tax attorney, you could respond with, “I work at Firm XYZ, and I help large corporations avoid tax mistakes.” This formula allows you to say what you do and how you do it without posturing or using jargon.

Beyond the introduction, when you attend a networking event, the priority, the focus, should be on making connections and not scoring clients or a job offer. If the bulk of your time is spent asking other people questions, you are doing it right. This can both help you find common ground with someone else and make people like you more.

**PRESENTING WITH WORDS**
Showcasing your personality can be difficult with words alone. Most professionals tend to write as though they are back in college, working through those multi-page essays, trying to get to the minimum word count. What matters much more is defining your voice and providing information that will care to read.

Defining your voice is a process and can take time. I challenge you to take any article or blog post you’ve written recently and read it aloud. Maybe even record yourself reading it. Listen back and ask yourself, “does this sound like me?” It’s taken a few years, but I have developed my own “voice” when I write—it includes a healthy dose of sarcasm and sayings generally employed by grandmothers.

Back to the previous section and my comment about using jargon: Absolutely do not use jargon in your client-focused communications or marketing. The fastest way to create a divide between yourself and potential clients is to make them feel stupid by using every 25-cent word you know when a 5-cent word will suffice. Leave the jargon in your legal briefs and communications with other lawyers. One of the best things you can do for content is check the grade level of your writing. I use the Hemingway App for this, but Microsoft Word has this feature as well. The average American reads at a fifth- to eighth-grade level, which is far below the typical lawyer’s personal reading level. Your potential clients could be above or below this average, but create the content to match that level.

**IF YOU BUILD IT, THEY WILL BE PERSUADED**
Building your profile. If you were to survey the general population, very few people actually want to follow their lawyer on social media. Very few people are still engaging with brands online in general, but the brands that are succeeding are providing entertainment value, useful information, and engaging content. As a practicing attorney, the majority of your online profiles should be giving information that matters to potential clients and informing people of your activities, such as charity work or non-identifying case information. I’ve seen a great Instagram account from a criminal defense attorney who posts short videos with practical tips on what to do in response to specific issues that his potential clients would care about. Providing this type of information, instead of calls for consultations and sales pitches, will make it more likely that people will actually want to follow your law firm on social media.

Beyond your social media profiles, the bio page on your website is the place where you can shine. You may ask if clients actually care about your bio? Yes, but not if it’s boring and self-serving. One of the best examples of a lawyer bio comes from Minneapolis nonprofit attorney Jess Birken (birkenlaw.com/who-is-jess-birken). What does she do differently? She talks about who she is in first person, as though she is speaking directly to the reader. Then she lists education and credentials, followed by a more exhaustive bio for people who care to read more.

Here is my recommendation for the order of your bio page:

1. **Personal introduction:** “I am ___ and I work to help ___ to/with ___. “ Then talk a little bit about your personality and what it would be like to work with you.
2. **Bullet points for education, boards, notable verdicts, and publications.** Keep this list under ten items, but closer to five. As Jess did, create a link to your LinkedIn page if readers want to see more.
3. A formal and robust biography written in either first or third person (you choose). If you didn’t
include details about family or interests in the intro paragraph, add that information here.
4. Links to social media profiles and online articles.
5. If you are in a multi-person firm, include testimonials specific to you here. Two or three reviews are enough—or one video of a client testimonial. (<check with the rules in your jurisdiction concerning reviews and testimonials.>)

Building your brand. Branding is one of the more difficult areas to develop, especially for lawyers who fall into the logic-over-emotion category. Branding can seem “squishy” and intangible, but it doesn’t have to be. If you simply can’t wrap your head around branding exercises, hire an expert. It will be an investment, but there are graphic designers who specialize in branding and can walk you through the process and get you the end result of logos, colors, and a website.

If you are a new lawyer or an established lawyer looking to rebrand or identify your brand (basically everyone), read Brand: It Ain’t the Logo® (“It’s What People Think of You”) by Ted Matthew. This book walks you through the process of identifying your mission and values to identify who your company is and not what you want it to be. Logos should reflect the brand and not the brand identity. Once you’ve established your firm mission and values, use a graphic designer you trust or find someone on a site such as 99Designs whose work you like and identify with.

Work with your website designer to craft a site that reflects the values-based branding with imagery and colors. Don’t feel encumbered by traditional lawyer colors of blue and gray, unless that matches your firm’s aesthetic. We encourage our clients to use authentic photos of the firm, the office, and clients whenever possible.

Building your credibility. Most lawyers think that credibility comes in the form of verdicts, the law school you attended, or the firm you work for. These things will matter to some potential clients or employers, but what matters more is you.

Your social proof will lend far more credibility than a bio that states you went to Harvard Law and helped all the puppies in the world. What is social proof? It ranges from testimonials, reviews, and social media profile to your website itself. If you have negative online reviews or post inflammatory things on social media, your social proof shows that you are not a trustworthy professional. Alternatively, every positive review and proven testimonial add to your social proof and create trust with potential clients or employers.

Additionally, if you don’t exist online because you falsely believe the Internet doesn’t matter or want to be “off the grid,” you simply don’t exist for many people in real life, either. I’ve heard other lawyers say that they simply won’t make referrals for a lawyer without a website, let alone a bad website. These fellow lawyers understand that the first step a person makes after receiving a lawyer referral is to Google that person. If you can’t be found online, there is no information to judge whether you can be trusted.

Building credibility in-person will call on your EQ, or emotional intelligence. This will matter just as much when you interact with potential or current clients as potential employers. Potential clients want to know that you care about their issue, whereas potential employers want to know that you will be an asset to the team.

When it comes to clients, ask about more than their case. Ask about how they are doing, if they have resources and support or need recommendations for professional assistance.

If you tend to get clients through referrals or are looking to build a larger referral network, resist the urge to fire off angry e-mails to fellow attorneys. This is more likely to lead to a reputation as difficult to work with or shunning fellow professionals, and it is generally a bad practice to have.

PERSUASION IN THE 140-CHARACTER AGE

There is so much concern over shortening attention spans of Millennials, and the Internet will tell you they have a shorter attention span than goldfish, but this idea has been proven false. (<in related news, it turns out that we don’t actually know how long a goldfish’s attention span is: tinyurl.com/y8ore4am.>) What is really happening can be attributed to the oversaturation of available content. Potential clients now have access to so much information that they are more informed and aware than previous generations. Use this trend to your advantage. Create content that educates and empowers your followers—whether they are potential clients, employers, or other lawyers. If you are making things of value, you will eventually get noticed.

This change also gives people the opportunity to make content in the format they most enjoy. It’s no longer the world of blogs. You can record videos, podcasts, or Instagram to the best of your ability. Growing an audience can mean followers instead of subscribers, so don’t be afraid to focus your energy on one area that you prefer. I have seen some great legal content on almost every possible platform: Twitter, Instagram, YouTube, and the list goes on.

ARE YOU PERSUADED?

No matter who is looking to hire you, for whatever reason, people are constantly looking for reasons to be persuaded that you are the wrong choice. Hopefully, with this article, you now feel as though you have the tools to prove that you are the right choice.

Kelly Street is the marketing director at AttorneySync (attorneysync.com), a digital marketing agency that helps lawyers get clients from the Internet using SEO, PPC, and a few other acronyms. Kelly feels passionate about creating content that matters and makes sense. She also co-hosts both the Clienting and the Lunch Hour Legal Marketing podcasts, both of which can be found on Apple Podcasts, Google Play, and any number of other podcast apps. E-mail her with questions at kelly@attorneysync.com. She’s always happy to help!
GAIN A WINNING EDGE WITH VISUAL TRIAL PRESENTATIONS

BY THOMAS P. TULLY
It is a common understanding among a large body of educators that visual displays communicate information in a much more powerful and lasting way than all other methods. People want to be shown pictures when trying to learn new information, as a single picture can convey an idea that would take several sentences to describe in words alone. The old saying, “a picture is worth a thousand words,” is actually not too far from the truth. Besides, an image tends to make sense to most people despite cultural, geographical, ethnic, or language differences.

Of the three primary learning styles—visual, auditory, and tactile—most people are primarily visual learners. Research found that when groups were presented with oral information, they retained 70 percent after 3 hours, but only 10 percent after 72 hours. Groups presented with visual information retained 72 percent after 3 hours, but only 20 percent after 72 hours. Groups presented with both oral and visual information retained 85 percent after 3 hours and a whopping 65 percent after 72 hours. The combination of seeing and hearing information is the most effective way to present it if it’s critical that the information remains memorable for the longest possible duration.

While the legal profession is known for the traditions of oral and written advocacy, it has very little tradition of providing visual advocacy. It is usually not hard for lawyers to speak for long periods of time about facts and details, but even the most attentive listeners will quickly lose interest without some other stimulation and generally will abandon their attention altogether after 15 or so minutes.

Unfortunately, visual advocacy is not found in law school curriculums, and it is rarely found in existing practice. Lawyers have failed to identify and thus have neglected the most influential form of communication they can use with juries. The competent presentation of visual subjects will engage jurors, improve their understanding of the material, and increase their ability to recall the important content of the case during deliberations. One study of juror memory retention found that information retention increased 650 percent when oral communication is combined with visual reinforcement. This statistic alone should cause all trial attorneys to take this information seriously and to immediately incorporate these skills into their practice.

Using a visual medium is a surefire way to elicit a response and stimulate emotions among your audience in trial or in mediation. An image has a much higher probability of invoking an emotional response than the written or spoken word. We have all seen the ads on television for abused pets or starving children, where the effective use of images commands an intense emotional response, which leads to a reaction . . . hopefully to act and donate money to affect what was just viewed.

Visual communication aids your ability to effectively communicate because words alone are subject to misinterpretation. Words can have different meanings, connotations, or significance depending on the individual, and just because we say something that we feel sure about does not guarantee it is received in the manner in which it was intended. We have all sent e-mails or text messages that were misunderstood. Visuals can ensure that the message you are intending to communicate is not ambiguous and that your words will not be misinterpreted. It is impossible to be effective at persuading your audience if your audience doesn’t understand what you are saying, or they misconstrue your words.

Obviously, the use of technology is evolving at an exponential rate, and attention spans are growing ever shorter. People require, actually demand, constant stimulation. Statistics gathered by Statistic Brain show the average attention span today is 8.25 seconds. This means you have only a few seconds to make a point before you start to lose your jurors’ attention. People don’t take much time to stop and read. Heck, we seem to elect our political leaders based on sound bites rather than objective personal research. Almost all our contemporary movies are under two hours long because people cannot sit still for longer periods. Nevertheless, we expect jurors to watch complex trials for days or weeks on end, and they are expected to be attentive for the entire duration.

In addition, people rely more each day on their computers, tablets, or smartphones to receive the bulk of their information—from news, to stock quotes, to bank accounts, to entertainment. As the general population becomes less literate, less attentive, and increasingly dependent on constant interactive media occupying their attention, trials have become more technical, more document oriented, more tedious and boring. We are now confronted with our jurors being accustomed to receiving their information both visually and verbally. Therefore, it is our obligation to entertain jurors in the manner they have become accustomed to in their daily lives.

Using visual presentations in trial is a relatively new aspect of litigation that has developed over the past ten years. Litigators once considered themselves fortunate if their courtroom had a VCR; these days, many courtrooms come equipped with a full suite of equipment. And as juries are more tech savvy, many having grown up watching legal television shows such as CSJ and Law & Order, juries will expect that the evidence presented during a trial will be a multimedia experience as soon as they sit down in the jury box. Adding a strong audio/visual element to your trial not only emphasizes key points in your case but also helps ensure the jury will remember what you want them to.

The wonderful thing about incorporating visual communication into your practice is that it allows you as a lawyer to be the complete storyteller that you are. Personally, I often find myself thinking more like a film director when I consider how I want to tell my story to the jury. I ponder what will communicate my story in the most informative, persuasive, and believable manner.

DEMONSTRATIVE VISUAL AIDS
In determining your visual communications in the courtroom, remember that you need not limit yourself to admitted exhibits; your visuals could and

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should include demonstrative visual aids as well. Admitted trial exhibits or actual evidence involve actual things in the case, such as a DNA sample, a photograph of damages to an automobile, medical records, or an X-ray, MRI, or CT scan. Demonstrative evidence is not actual evidence from a specific case but can be used to assist the jury in understanding an issue or actual evidence in the case. Trial courts, of course, have wide latitude to control the presentation of evidence at trial. Visual aids that help to illustrate the testimony of witnesses or to present a party’s version of events be admitted as long as the evidence is relevant and the probative value of the evidence outweighs the prejudicial value of the evidence.

Demonstrative evidence may be used to assist the trier of fact in a case but may not be admissible. A foundation must be laid by a witness that the evidence is a fair and accurate representation of what is being depicted. When coming up with ideas, think about using demonstrative aids that will engage one or more of the jurors’ senses and use them as often as you can to maintain your audience. For example, in the movie My Cousin Vinny, Joe Pesci’s character examines a witness on the stand and asks her how far away the defendants were when she positively identified them; her answer is “100 feet,” at which point Pesci hands the witness the end of a large tape measure and walks to the back of the courtroom, which is half of the distance the witness stated. Pesci then asks, “How many fingers am I holding up?” and the witness cannot answer correctly—proving his point that she probably was mistaken.

Keep in mind that demonstratives may be used during opening statements, subject to the discretion of the trial judge, of course. Their use in openings extends both to exhibits that the parties intend to introduce at trial and to those that will not be exhibits used subsequently in the trial. In the same vein, visual communication is very effective to use in closing arguments. It allows you to remind the jury of the facts in evidence that strengthen your case and/or undermine the opponent’s case.

There are several points to keep in mind when using visual communication. If a visual communication is not properly laid out and presented, it can lead to a breakdown in communication. For example, if a visual is overly crowded or wordy, it can be confusing as to the message you are trying to convey. Also, if a visual aid has the wrong information or contradicts what you are attempting to communicate, it will cause a distraction and detract from your credibility and affect your message.

PRESENTATION SOFTWARE
There are many presentation software programs available that have been around for many years as well as a whole host of newcomers to the presentation market. The more modern apps give users the ability to create, edit, format, and present stunning slide shows capable of really impressing an audience, complete with animations and embedded video.

Microsoft PowerPoint (microsoft.com) is the most well known presentation software; of course, it has been around for quite a while, and it might not be all that exciting for today’s demanding juries. Although you will do just fine with PowerPoint, there are plenty of other great new options on the market. PowerPoint is ideal for a rehearsed, linear presentation such as in opening statements or closing arguments. I tend to prefer PowerPoint because it is a linear presentation method, and I find that being linear it will keep me on my previously well-thought-out
message and reduce many tangent thought processes. Because PowerPoint has been so popular for such a long period of time, there are numerous templates and self-help videos that allow users to rather easily create a linear presentation. The shortcomings with PowerPoint tend to be in the difficulty of examining or modifying slides during the presentation. For example, if you have a slide that has a document on it and unless you had preplanned to blow up the image to read text or highlight it, it will soon become somewhat cumbersome and disruptive to your presentation if you are trying to speak and manage the visual simultaneously. Another shortcoming is PowerPoint’s lack of compatibility with other more popular platforms such as iPads and smartphones. Despite these issues, PowerPoint remains a very popular visual communication tool.

Prezi (prezi.com) is one of the more unique presentation tools available. Unlike PowerPoint, which presents graphics and text in a slide-to-slide format, Prezi allows you to create highly visual and interactive presentations with the goal of emphasizing the relationship between the ideas. Presentations can be tailored to allow the skipping ahead or veering off into a side topic without having to advance through all the slides to get to a particular visual. This flexibility can be very useful as it will allow the seamless access to all data that has been added to a specific presentation while also allowing for on-the-fly manipulation. In addition to these new and flexible features, Prezi allows for easy transitions across many platforms with full functionality. Prezi presentations can be used on any computer, and it also can operate just as effectively on tablets such as an iPad and even on most smartphones. This can be particularly useful for any solo attorney in trial who does not have the benefit of technology staff to run the visuals. The fact that Prezi provides a new structure and operation of visual presentation makes it automatically stand out from other, older presentation resources.

SlideDog (slidedog.com), another popular app, which by the way is free, lets you combine almost any type of media to create a rich presentation, avoiding the cookie-cutter look that makes presentations seem dull. SlideDog is a web-based multimedia presentation tool giving you the ability to combine PowerPoint presentations, graphics, PDF files, Prezi presentations, web pages, pictures, videos, and movie clips. Also, you are able to remotely control your presentations and playlists from your smartphone, the web, or a secondary computer. Like Prezi, SlideDog is new and unique, so it automatically stands out, but it has an added benefit over PowerPoint and Prezi: It allows the user to share the presentation slide in real time with the audience. With SlideDog’s Live Sharing of presentation content, your audience can follow your slides on their own devices through a SlideDog-generated link. One click and they can see currently and previously seen slides, ask questions, answer polls, and give feedback. SlideDog supports multiple formats such as web-based content from YouTube, videos from web pages, and almost all other presentation programs to provide instant switching between different formats, thus giving your viewers a very professional and connected experience.

GET VISUAL
In an increasingly technological world, lawyers must rise to the demands and expectations of today’s jurors by learning how to use technology to increase their effectiveness in communication. Visual aids can help accomplish this goal. Many courtrooms are installing interactive whiteboards, advanced “Elmo” and HD projectors, and individual computer monitors for jurors to have at their disposal.

A good way to get started with visual communication technology is to try it out first on a small case. Most attorneys, once they have worked with it, understand the benefits. They see how easy it can be to craft a seamless presentation and enhance the jury’s comprehension of their message.

If an attorney is uncomfortable using this technology him- or herself during trial, there are a plethora of trial technicians in almost every area. Trial technicians can also work with the court to ensure the right equipment is available and in working order. If the right equipment is not available in your jurisdiction, the technology firm can often provide what you need. In the courtroom, if something goes wrong with the technology, your trial technician will be very familiar with the equipment and can troubleshoot any issues that might arise.

Just like every other profession in our world, the law must evolve or risk obsolesce. The use of visual presentations in the legal arena is no longer an option—it is a necessity!
Telling the Story and the Importance of Rhetorical Devices and Techniques

By Russ M. Herman
Sundays were the best times at our home. My younger brother Maury, my sister Shelley, and my brother Fred would climb into my mother and father’s bed on a Sunday morning. Dad would read us the funnies. *Prince Valiant* was my favorite. Sometimes I think I became a trial lawyer because of *Prince Valiant*. Prince Valiant was a hero fighting the right fight, trailing off in pursuit of justice with Sir Gawain: two good guys on war horses, the protectors.

But of all the stories that I learned as a kid, the best stories were the stories my dad made up about my brothers, sister, and me. My brother’s name is Maury, my name is Russ. My dad made up a story about a caveman who had a son named Mauruss and his sister ShelFred (named for siblings Shelley and Fred) who went out and slew the saber-toothed tiger.

What wonderful stories we tell or read to our children. Even nonsense stories read and speak well. What a great storyteller Dr. Seuss was. The stories may have been nonsense, but we remember “Sam-I-Am” from *Green Eggs and Ham*.

Storytelling is the function of the trial lawyer in the conduct of a trial. The trial itself is the telling of a story from several points of vantage. Think of a trial as the telling of a story that ensnares and then persuades six or 12 strangers to reach a conclusion and act in a particular way.

There are many rhetorical techniques and psychological concepts involved in persuasive storytelling. A number of the techniques and principles are discussed here. In the sidebar at the end, 70 have been listed alphabetically.

**STORYBOARDING**

Storyboarding is the essential first step in preparing the storyteller to tell the story. A storyboard is an outline of the story of the case. It is the basic skeleton on which we will flesh out the three-dimensional presentation that the jury is invited to see, hear, and touch. The storyboard is the glue that binds the trial lawyer’s mastery of the facts and the principles of storytelling. Master the facts! Master the facts! Master the facts! Get out of the office and lock yourself up with the facts. Read and reread and re-outline the facts from interviews, correspondence, investigative reports, and discovery—all sources.

Draw a list of the most important facts. Place the facts in a chronological outline form. Reduce the case to two or three sentences—a kernel, a telegram, a synopsis—the case in a nutshell. This reduction will serve as a starting point and sometimes is sufficient for the case theme. In an exploding ammonia pipeline case, the condensed story line might be:

Pennsylvania manufacturer ships defective pipeline to Louisiana—defective welds on the pipe fail—ammonia suddenly explodes and engulfs Cowboy Baham in a cloud of fire.

Put the two- or three-line synopsis of the case in bold caps at the top of your paper. Then list again all the facts, every fact in chronological order. Then eliminate non-relevant facts and facts that do not move your story forward. At this point, you will have succeeded in composing a written storyboard that will serve as the basic support structure for the case. Then you can begin to add case themes, poignant evidence, rhetorical techniques, and demonstrative exhibits to the storyboard.

**STRUCTURE**

Every story that we tell has a structure to it. Sometimes we structure our stories on what happened yesterday, what happens today, or what will happen tomorrow. When we try cases, it is important for us to structure a story and then retell that story in voir dire, to capsulize it. Tell that story in opening. Tell that story again through the witnesses, in direct and cross, and again in closing. Each time it is told, the story has nuances added to it, information added to it, but the basic story is the same.

One of the most compelling ways to tell a story is in the present tense because we actually carry the listener with us. Instead of saying, “he walked up the stairs,” we say, “he walks up the stairs, each step brings him closer and closer.”

Another structure is introduction, body, and conclusion. Every story has a beginning, a middle, and a conclusion. As we begin the story, we try to capture attention in the first three minutes and then we
tell the story itself and then we conclude with a punch.

We can use five Ws to structure the story. Who was there? When did it happen? Where did it happen? What happened? Why did it happen?

**PRIMACY**
What people hear first, they tend to believe longer, which is why it is important to capsulize the story—to get the case reduced to two or three sentences. The *kernel* of the case, its *bare bones*, can be expressed in the form of a *telegram*. For example: “Foreign company ships un inspected defective pipe to plant. Welds on pipe break, no safety valves, pipe splits open. Ammonia escapes. Burns John to death.” The story is the first story heard by the jury on voir dire and in opening. The plaintiff is given the advantage of primacy.

**RECNENCY**
What people hear last they remember better. The structure of the case may begin and end with the same capsule of the story—repetition and consistency are then added to the device of recency. Again, the plaintiff has the advantage where the plaintiff argues last in rebuttal or final argument.

**SEQUENCING**
One variation of primacy is the notion that if three words or ideas are placed in sequence, the first word has the most impact in determining the listener’s frame of understanding. For example, if you say, “John is hotheaded, bright and mild mannered,” most listeners will think of John as “hotheaded.”

In any presentation the weakness of the case should be explored and disclosed by you first. You have the opportunity to put the weakness in the best light, to disclose and take the sting away, and to use a weakness as a strength. I often look on disclosure in a strong-weak-strong structure, S-W-S. Give a strength, disclose a weakness, and end with a strength. Witnesses follow the same order on direct; the strongest witnesses go first and last. It is better for you to deal with the weakness in the case than to have your opposition surprise the jury with it when it is too late for you to handle.

**REPETITION**
Repetition should be the exciting reconstruction and redundancy of ideas. We are helped to remember by repetition. We do not necessarily repeat the same words over and over, though we can. But we repeat the same ideas in the same sequence. Repetition also gives structure.

Use the language of the people. Do not talk down. Do not be condescending.

**CLUSTERING**
Theme development is important. Cluster one theme on top of another: “good and bad,” “right and wrong,” themes that are universal, themes to which we all relate.

Clustering is also the use of more than one rhetorical technique at the same time. The clustering effect can greatly enhance the persuasive power of storytelling. For example, if you combine a memory device (the first letter of each word of your theme) with the Rule of Three (using only three concepts or three words to express a theme or argument), then you have “clustered” two devices. In the O.J. Simpson trial, the defense team developed a chart that attacked the physical evidence as “3D: Discrepancies, Distortions, and Deceptions.”

**ANALOGIES**
An analogy is a similarity between the features of two things on which a comparison may be based. An analogy is a technique of inference for it conveys the notion that if things agree in some respects, they probably agree in others. For example, if “X” is like “Y,” then “X” may behave like “Y.” An effective analogy for a lawyer is one that uses a universal, commonsense, cultural example that has a common meaning. We might analogize to a baseball game, particularly if we have a juror who likes baseball. We might want to say in a medical negligence case: This defendant doctor is like a professional baseball player who dropped a pop fly. No matter how much we pay experts, no matter how important they are, no matter how good they are at their profession, they can and do drop pop flies. We have seen the best players in baseball do that. The doctor here is a professional, too, one who dropped a pop fly.

Another useful analogy is to portray the doctor or nurse as having failed to pay attention to a yellow caution light or crossing on a red light.

**UNIVERSALS**
In constructing analogies and allusions, it is helpful to identify universals that fit the collective frames of reference of the jurors. For example, in a whistle-blower case your client is compared to David and the defendant to Goliath.

**RULE OF THREE**
“I came, I saw, I conquered.” We remember that. It grabs our attention because there are three items said rhythmically. Our culture typically groups things, hears, and remembers things in threes. Arrange your arguments to address three issues. Structure sentences to indicate three-of-a-kind concepts. Modify nouns or verbs with three adjectives or adverbs.

**MNEMONICS**
Memory devices that help us to learn and remember are also employed to assist the listener’s memory. Acronyms can be particularly helpful. Using “the theory of three” reduces the case, or a part of it, to three words, and uses the first letter of each word to form a memory device. For example, in a medical negligence case of failure to diagnose and warn of cancer, you might say that the tumor was OSA—Obvious, Suspicious, and Abnormal. The OSA is used as a framework for opening and closing and in constructing the outlines of expert witness examination: “Was it obvious? Why?” “Was it suspicious? How?” “Was the tumor on this X-ray abnormal? Why?”
COMMON LANGUAGE
Try to use the language of the people. Do not talk down. Do not be condescending. There is no reason to use words like “subsequent” and “precedent” and “proximate” when you can say “after” or “before” or “close to.” Picture yourself at a social event with two or three of your friends and describe what happened at the office during the day. The language you use is “common.” Richard Lederer contends in The Miracle of Language that 11 words account for 25 percent of spoken English, and the 50 most commonly spoken words are one syllable.

POWER LANGUAGE
Generally, words that sound like what they mean are powerful. Words that are one syllable are more powerful than multisyllabic words. Words that are commonly understood and are identified with a conscious or unconscious positive are powerful. For example, for the plaintiff who claims injuries from a traffic accident, the power words “car crash” provide a stronger expression than the word “collision”; which is stronger than the expression “auto accident”; which is more powerful than the least powerful expression “fender bender.”

ACTIVE VOICE
Active voice is direct and simple, and the verb is active: “Caesar crossed the Rubicon.”

CONCLUSION
Persuasive, convincing stories rely in their telling on numerous techniques and take advantage of many empirical concepts, psychological underpinnings, and human nature.

It is, after all, the telling of the story and the story itself that ultimately determine the outcome.

The novelist Louis L’Amour said about himself, “I think of myself in the oral tradition — as a troubadour, a village taleteller, the man in the shadows of the campfire. That’s the way I’d like to be remembered — as a storyteller. A good storyteller.”

Me too, Louis. Me too!

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MAY IT PLEASE THE COURT
BEST PRACTICES FOR COMMUNICATING WITH THE JUDGE

BY JAMES ALEXANDER LEWIS V, WITH CONTRIBUTIONS BY JUDGE MICHAEL A. SHIPP
Law schools routinely tell students to “think like a lawyer.” In the practice of law, however, it is critically important for attorneys not only to think as lawyers, but also to communicate their clients’ positions in the manner most likely to achieve the best result. Lawyers must advocate their clients’ positions effectively, efficiently, and when appropriate—emphatically. This article discusses how to communicate with the Court in a manner that will be well-received and, most importantly, persuasive. Before contacting the Court, ask yourself the following questions:

WHAT ARE YOU ASKING?
As an initial matter, you will need to discern in an emotionally intelligent, self-aware, and professional fashion what it is that you are asking of the Court. Imagine you are the judge receiving a five-page, single-spaced correspondence. Midway through the second full page of text, you still do not understand the nature of the request. It is not only frustrating to the Court but also a disservice to your client. Avoid being the author of such correspondence by crystalizing the actual request in your mind—then ask. A simple and routine adjournment or extension request should not take the tone and length of a Shakespearean tragedy. Time is a valuable commodity. Do not waste your time, and never waste the Court’s time. Once you have identified your precise request, avoid two common but dangerous pitfalls by following the advice below.

Avoid emotional pleas. In the course of litigation, you will necessarily have differences of opinion with your adversary. Occasionally, you will have to involve the Court to bridge this gap. Do not let your emotions become a distraction. Always remember that the Court’s decision will never turn upon who sends the angrier letter. After a heated conversation with your adversary, resist the urge to send a scathing letter about a potentially inconsequential issue. Emotional, “venting,” and name-calling correspondence will often do more to damage your rapport with the judge than to advance your client’s position.

Do not ask for more than you need. If you require a one-week adjournment of a hearing or need an additional week to file a pleading and have a reasonable justification, do not request a one-month extension or adjournment. Alternatively, perhaps a recent appellate ruling may be interpreted to be unfavorable to your client’s position. The facts of your case, however, are readily distinguishable from that appellate decision. Your adversary insists that you are taking an extremist position and seeking to over-rule established precedent. Do not take the bait. Rather, take the narrow position that the appellate decision does not apply to the current facts. There is no benefit in taking a broad stance on an issue that may ultimately be denied, when a narrower (more defensible) position that gets the result you are seeking for your client is available.

Once you have clarified what it is you’re asking, you must assess. . . .

IS IT WORTH ASKING?
Gone are the days of the old adage “There is no such thing as a silly question.” It is incumbent on you as a professional to be aware that judges have extremely busy dockets that require significant concentrated attention. As a result, you should consider whether your question is truly appropriate. In the modern world of technology, it has become increasingly simple and perhaps even tempting to fire off correspondence to the Court or place a call to chambers without fully thinking through whether the request is necessary.

For example, you are appearing before a judge for the first time and you want to impress the judge with your skill and professionalism. You have conducted copious research and have become an expert in the relevant area of law while skillfully crafting your brief. Alas, your brief is complete and you are anxious for the judge to read it and be amazed. You realize, however, that you are unsure whether the Court wants a courtesy copy of your stellar brief. You contact chambers, and an unenthusiastic and perhaps moderately annoyed law clerk responds, “Have you consulted the local rules and the judge’s preferences?” The lesson here is never to ask anything of the Court (or the Court staff) that is readily available by examining a rule or the judge’s preferences. In addition to wasting the Court’s time, asking for information that you should already know may make an attorney look unprepared or, even worse, lazy. An action that impugns your credibility, even if unintentionally, is always a mistake.

Similarly, prior to raising requests with the Court, first discuss any potential issues with your adversary. If you are seeking leave for supplemental briefing or to file a brief of greater length than permitted by the rules, speak with your adversary and request consent. The Court may be more inclined to grant a request when it is submitted with consent of the parties. To put a request before the Court without first gauging your adversary’s position may be premature. Moreover, the rules in certain jurisdictions prohibit filing discovery motions without first communicating with your adversary.

Now that you have identified your question and that the relief you are seeking is worth requesting, the next inquiry is . . .

CAN THE COURT GRANT YOUR REQUEST?
There are a number of reasons why the Court may be unable to grant certain relief. As an advocate, you must carefully and strategically assess whether the Court is even able to reach the merits of your client’s claims. Below is a non-exhaustive list of potential roadblocks that may prevent the Court from granting the relief you are seeking.

- Have you explored any jurisdictional impediments to your request?
- Are you before the appropriate Court?
- Have you exhausted administrative remedies where required?
- Does your client have standing to request the sought-after relief?
- Have you evaluated any res judicata and collateral estoppel issues?
Is your motion timely?
Is the sought-after relief barred by a statute of limitations?
Is there a threshold for damages in order to assert certain claims?
Has service been properly effectuated?

Assuming the Court can give you the relief you are seeking, it is your responsibility as an advocate to communicate to the Court why it should grant the relief.

WHY SHOULD THE COURT GRANT YOUR REQUEST?
The Court and your client reasonably expect that you know every facet of your case. You have had the benefit of in-depth and continuous communications with your client about the controversy. You have culled through all the applicable authority and are prepared to advance your client's interests.

Now it is time to decide how to raise your request. This may be, in itself, challenging. So, let's discuss some tips to make sure that you raise requests in the best way possible.

Be punctual. Comply with deadlines, abide by motion calendars, and respect Court calendars. A failure to timely file certain motions or responses can result in a waiver of what may have otherwise been a sound defense. Similarly, when it comes to appearances before the Court, “if you are early, you are on time, if you are on time, you are late”—and if you are late, you are doing a disservice to the Court and to your client. The moments before a court appearance can be critical. Arriving early for an appearance is an additional opportunity for you to prepare the client for what to expect. Furthermore, when you are punctual and prepared for a Court appearance, the optics signal to your adversary that you are serious about advancing the litigation to successful completion. An early arrival also allows you to get to know the “battleground.”

Be prepared. Adequate preparation can take many forms. At a minimum, however, you must know the facts and your adversary’s iteration of those facts. Additionally, proper preparation means knowing not only your legal position, but also your adversary’s. Often, by the time you enter the courtroom to argue a motion, you are firmly wedded to your client’s perspective of the case. The Court, however, is dispassionate and objective. Accordingly, it is imperative that you resist the urge to take an inflexible position that does not serve your client’s best interests.

Be mindful that advocacy begins long before you stand to your feet for oral argument. For example, quibbling over immaterial facts and failing to make otherwise unavoidable concessions may work an injustice on the ultimate outcome of your motion.

Be personable. It is likely that in every courthouse across the country, there is an attorney who judges uniformly appreciate arguing before them. This attorney is typically not only knowledgeable but also personable. Be mindful that advocacy begins long before you stand to your feet for oral argument. Your every action is a communication on behalf of your client. A disheveled appearance or the rolling of your eyes in response to an inquiry from the court clerk can very well undermine the impression you make with the Court.

Be passionate. Many attorneys view the practice of law as a calling. A truly gifted practitioner is able to confidently and effectively captivate his or her audience. Generally, the most persuasive attorneys are visibly and audibly wholly invested in their cause.

A FINAL NOTE ON COMMUNICATION WITH THE COURT
In addition to the pointers and recommendations above, there is one final, critically important reminder: Many attorneys make the misstep of treating communications with the Court as consisting only of written and oral presentations to the judge. This is an error. Communications with the judge’s law clerks, secretaries, court reporters, court officers, and other court staff should be conducted with the same level of professionalism, courtesy, and respect as communications made directly with the judge. The judge’s staff is integral to the Court’s administration of justice and should be treated accordingly. Pertinent communication with Court staff can be a component in the effective representation of your client. Your ethical responsibility is to communicate with the integrity and candor that are manifest in this noble profession.

James Alexander Lewis V is a partner at the Pennington Law Group. His practice is focused on counseling, training, and civil litigation in the following areas: gender discrimination, disability discrimination, racial discrimination, sexual misconduct, civil rights, law enforcement liability, and government and corporate liability. Prior to entering private practice, he began his career as a law clerk in the Superior Court of New Jersey, and subsequently he served as a federal law clerk to the Hon. Michael A. Shipp, U.S. District of New Jersey. He can be contacted at jlewis@theplglaw.com.

Judge Michael A. Shipp was appointed as a U.S. District Court Judge for the District of New Jersey in July 2012. Prior to his elevation to the District Court, he served as a U.S. Magistrate Judge. He began his legal career with a clerkship for the Hon. James H. Coleman Jr., Supreme Court of New Jersey. His legal experience includes eight years with Skadden, Arps, Slate, Meagher & Flom LLP. He also served with the New Jersey Department of Law and Public Safety and as Counsel to the New Jersey Attorney General. Judge Shipp is an adjunct professor at Seton Hall University School of Law.
NEW! THE EARLY-CAREER GUIDE FOR ATTORNEYS: STARTING AND BUILDING A SUCCESSFUL CAREER IN LAW

BY KERRY M. LAVELLE

The Early-Career Guide for Attorneys: Starting and Building a Successful Career in Law is an objective guide for the third-year law student and the new associate to help achieve success. By knowing in advance the challenges that you will face heading into your first year of practice, you can ease the transition from law school to the practice of law.

Whether you will work in a small rural community, a medium-sized firm, or a big-city/big-law firm, the principles and disciplines contained in this book will help you avoid the mistakes that partners see being made by new associates in a variety of law firm environments.

The Early-Career Guide for Attorneys is a compilation of reminders that decision makers in law offices need to give to new associates every day. These are the behaviors, habits, best practices, cultural rules, and values of the office that the decision makers know are needed to make law offices successful.

Visit ShopABA.org, facebook.com/ABAPublishing, and linkedin.com/company/ABAPublishing for news and release updates.
Do You Know What’s Going On?
Analytics in Your Firm

By Jeff Stouse
Regardless of the size of a law practice, every person who manages a firm uses some form of reporting based on the data the firm generates. This is what “analytics” provides. Analytics, a popular buzzword, is a method of using data and computer programs to find the answers you need to make important decisions.

Of the three types of analytics, the most common (and something you’ve been doing for a long time) is called descriptive analytics—the summary of data points that you have collected. Descriptive analytics can tell you how many new cases you have this month or how many inquiries your firm had the past 60 days.

The two other types of analytics are predictive and prescriptive. Predictive analytics is becoming very popular; it can help you predict how your clients will react to your advertising or your billing rates. Prescriptive analytics is often used when “big” data (massive amounts of information) are available, and it answers the question of what to do when many future scenarios have been examined.

So, how do you access the analytics you need to steer decisions about your law firm? Through the reporting functions in your practice management and billing/accounting software.

WHAT REPORTS DO YOU NEED?
You must answer this question first! Don’t skip down to read the rest of this article unless you can quickly jot down the top ten or 20 sets of data you (or other users in your firm) need. Possibilities include current work in progress (WIP), receivables, new matters opened, upcoming depositions, upcoming trials, etc.

If you don’t have a sample of what each of these reports would look like, take a blank sheet of paper and create a mock-up: title at the top, date printed at the bottom, list of the data fields that should appear and in what order, any subtotals and totals, etc. Ask yourself the following questions: On what fields should the report be based? How should the data be sorted? What criteria should be used to pull the data? Only accounts that are in arrears? Only clients that have bills in arrears? Only clients that have cases in arrears? Only clients that have bills and cases in arrears? Only clients that have cases over a certain dollar amount? How should the report be based? Only clients that have cases over a certain dollar amount?

Mocking up a report is necessary for you to compare what you need to what your software program (or consultant) may be able to generate. Not having a mock-up is like calling a custom house builder and saying, “build me a 3,000-square-foot house”—but not giving them a floor plan. If you can’t identify what data should appear in the report or be used to pull data into the report, then you won’t be able to build the report (and neither will someone you might hire to do the job).

HOW IS DATA REPORTED?
There are multiple methods to see what is going on in a law firm.

Lists. The simplest report format is the list, typically a list of data coming from one type of data (for example, an event, a to-do, or a contact or matter). Typically, lists only display the data that could be found in any of the fields on the forms associated with the specific data type. A list of contacts or matters are two of the most common lists found in every practice management program. A list of clients who owe money (outstanding balances) or a list of trust account balances are two common accounting program lists.

Lists are a basic feature, and they allow users to name them, apply filters, and share them with other users. Remember that most practice management programs use named filtered lists as the basic form of data management/reporting in their programs. Be sure to ask what features your program allows. Note that this is “passive reporting,” as a user must look at the list to see what is going on—the program does not warn the user in advance of what data is on each list.

Depending on your information needs, the lists you need may vary. For some users the answers will come as a list of new cases opened in the last week. For others, it will come in the form of a list of users and their current WIP. For yet other users, a list of upcoming depositions will fulfill the need.

Reports. A second format is a report. Accounting or practice management programs generally ship with a list of predefined reports. These reports are often the most commonly requested reports by users of that product. And, just as often, the information in the report is a combination of multiple data types—matters and their upcoming events, for example. (Reports can contain a single type of data, but generally lists accomplish this.)

One feature to look for in software is report flexibility. Often, pre-defined reports come with a set of criteria that you can easily change by entering a value or choosing a different value from a drop-down list. If your program is flexible, most reports will provide the option to change the date range, key filter points, or the responsible staff.

One of the most confusing parts of reporting is to know what is easy to build into a report and what is difficult. If you customize a program by adding fields that were not built into the program when it ships, and then you want to report on them, that can be more difficult, as, obviously, the program did not know about those fields when it was shipped. If you want to pull custom fields from more than one data type (e.g., types of law you specialize in and the amount of money for which a case was settled), then it becomes more complicated and, in some cases, impossible to do within the product.

The most flexible option for reporting is, in addition to the pre-defined reports, the ability to create custom reports, either by using a built-in reporting tool or by using a third-party reporting tool (such as Power BI, powerbi.microsoft.com/en-us; BIRT, eclipse.org/birt; Tableau, tableau.com; or Domo, domo.com). The key to custom reporting is the flexibility and access of the reporting tool.

Dashboards. A third method of displaying accounting or practice management data is the dashboard. Dashboards are visual displays (usually charts, but they can be a combination of lists/reports and charts) that are immediately visible to users when they launch the program. One of the most appealing features of dashboards is the ability to “drill down” to see what data is used to create the parts of the charts you are reviewing. For instance, if you click on a section of a pie chart, the program will display the actual data that was used to create that part of the chart. Dashboards are often customizable by the user, but
do you know if you have this type of access? Ask. If you get a qualified yes, then be sure you understand what is required of you to create your own lists, reports, or dashboards.

**Custom (real-time) reporting: Data access and skill.** If there is a reporting program involved—built into the program—that can only be used to create your custom reports, then the big question is: Can someone in your office use this program, or will you need to hire someone (a consultant, most likely) to build the custom reports you need? If no built-in reporting solution exists and you must use an external program, further questions quickly follow: What are the costs for acquiring/using the reporting tool? What is the realistic expectation that you can train (or hire) someone in your office to use this reporting tool? If you cannot train someone in your office, are there options for hiring consultants who can use this tool?

**User-controlled vs. vendor-controlled**

It is very important for small firms (especially firms without an in-house expert) to consider who can create the data output. Some of the lists, reports, and dashboards you need will be included in the products upon purchase—ideally, most of them! Others require customization (user-based.) Still others must be created by the company that creates/sells the software (the vendor), as they are the only ones that have access to the live data.

Hopefully, if the product allows users to create custom lists, reports, and/or dashboards, then the only requirement is to train someone in your office on how to use the software. Creating lists in the various programs often can be accomplished by following a simple set of steps that most users can master with minimal effort.

The steps needed to create dashboards are usually familiar to users who have ever created charts based on data in programs such as Excel, and the resulting dashboards usually can be shared among users in the firm. A typical approach is to have a “home” screen that each user can define, allowing them to display the charts that they need to view.

You should be prepared to know how you will be able to see the data you store in your accounting/billing/practice management programs. Can you create custom lists, reports, and dashboards within the program, without the vendor’s involvement? Can you create custom reports (that provide subtotals and totals) and include various grouping and sorting options? Can you use a third-party reporting tool to access your data in real time and generate custom reports?

Be sure you are able to answer these questions before you decide on future software—getting your data into the software is important, but having the necessary reports readily available will make your firm more responsive to trends you identify and more proactive in meeting your clients’ needs.

**Having access to these reports will make your firm more proactive in meeting your clients’ needs.**

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**Jeff Stouse** ([jstouse@affinityconsulting.com](mailto:jstouse@affinityconsulting.com)) is a legal practice management and business reporting consultant with experience using several third-party tools, such as SQL Server Reporting Services, BIRT (open-source reporting tool), Power BI, and products such as Crystal Reports and other desktop database reporting tools. He has been certified on more than five different practice management programs and works with firms of all sizes. He is a senior consultant with the practice management team at Affinity Consulting Group ([affinityconsulting.com](http://affinityconsulting.com)).
### COMPARISON OF LEGAL SOFTWARE PROGRAMS AND THEIR ANALYTICS FEATURES

<table>
<thead>
<tr>
<th>Program</th>
<th>Direct Access</th>
<th>Custom Lists</th>
<th>Custom Reports</th>
<th>Custom Dashboards</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>ActionStep (All) (SaaS)</td>
<td>No (see comment)</td>
<td>Yes (U)</td>
<td>Yes (U)</td>
<td>Yes (U)</td>
<td>Daily download available</td>
</tr>
<tr>
<td>CASEpeer** (SaaS)</td>
<td>N/A</td>
<td>Yes (U)</td>
<td>N/A</td>
<td>Dashboards by user role</td>
<td>No custom fields</td>
</tr>
<tr>
<td>Centerbase (All) (SaaS)</td>
<td>Yes</td>
<td>Yes (U)</td>
<td>Yes (U) (in product, see comment)</td>
<td>Yes (U)</td>
<td>Real-time access via third-party reporting product being added</td>
</tr>
<tr>
<td>Clio (All) (SaaS)</td>
<td>No (must be exported first, to CSV only)¹</td>
<td>Yes (U)</td>
<td>No (see comment)²</td>
<td>No (pre-defined dashboards available)</td>
<td>1. CSV format is not a usable format for third-party reporting 2. Would have to use the API to gain access for real-time reporting</td>
</tr>
<tr>
<td>CosmoLex (All) (SaaS)</td>
<td>Data mining on each section and then export data</td>
<td>Yes, but cannot save setup at this time</td>
<td>No (use data mining and then export data)</td>
<td>Yes (U) (firm and user-level, drill-down supported)</td>
<td>SQL database</td>
</tr>
<tr>
<td>Rocket Matter* (SaaS)</td>
<td>No (custom reports are done by Rocket Matter)</td>
<td>Yes, but fields set by Rocket Matter</td>
<td>No (vendor reports included, but no option to create custom reports by user)</td>
<td>No</td>
<td>SQL database</td>
</tr>
<tr>
<td>SmartAdvocate (P) (SaaS)**</td>
<td>Yes (SmartAdvocate server only)</td>
<td>Yes, case-browse (U)</td>
<td>Yes (U) (query feature)</td>
<td>Yes (pre-defined filters)</td>
<td>SSRS-based, custom fields on case-based forms, not tasks or appointments</td>
</tr>
<tr>
<td>Tabs3/PracticeMaster (P)</td>
<td>Yes (Platinum Access only)</td>
<td>Yes (U)</td>
<td>Yes (U) (limited to one module)</td>
<td>No (third-party products such as BigFish can currently provide)</td>
<td>FairCom SQL, direct access</td>
</tr>
<tr>
<td>Time Matters (PM) (P)</td>
<td>Yes (see comment)</td>
<td>Yes (U)</td>
<td>Yes (U)</td>
<td>No (N/A)</td>
<td>Access via SQL server or third-party reporting tool</td>
</tr>
</tbody>
</table>

All: all programs (accounting/billing/practice management), N/A: not available, P: on-premise only, PM: practice management only, SaaS: software as a service (cloud-based), U: user-controlled.

*Advanced analytics reports are an add-on feature.

**Originally designed for personal injury/mass tort.

All the SaaS products above come with a pre-defined set of “custom” reports. The ability to add to that list depends on the content of the proposed new custom report. If the vendor deems that the new custom report would benefit enough of their customers, they will discuss doing it for free (on their timetable) with the client proposing it. Other reports would have to be created for a fee and at a scheduled time by the vendor and/or by a consultant. Contact your vendor for details on each report.
The King is dead. Long live the King!

The quote above refers to the tradition of announcing the death of a monarch while recognizing the accession of the new monarch and assuring the public of the continuity of the monarchy. Today, this concept is alive and well as we discuss the past and predict (with extraordinary accuracy) the last gasp of traditional desktop computers.

HISTORICAL PERSPECTIVE
The term “personal computer” was first used in 1975 with the description of the Altair 8800. Don’t worry if you have never heard of this contraption because it did not come with a keyboard, a monitor, a printer, or any input device! The only "output" from the first Altair came in the form of flashing lights on the front of the computer, so one can only imagine what it would be like to read e-mail if it existed in 1975!

In 1977 Apple released the Apple II, and then in 1981 IBM released the IBM Personal Computer (PC). The argument as to which platform was better continues today, but these releases began the true age of desktop computing with the introduction of input devices such as keyboards and mice. More importantly, the introduction of mass-storage devices such as hard drives and removable “floppy” disks gave us the ability to store documents and other data for faster retrieval.

Hard drives allowed us to save data, and floppy disks gave us the ability to share information, but not very easily. Some may remember the days when sharing files with a co-worker meant copying the files to a floppy disk and then walking it down the hall to your associate to copy from the floppy to their PC. Floppy disks presented multiple opportunities to introduce computer viruses that hitched rides on other data, hard drives failed, and backups were limited to swapping out floppy disks for hours at a time, but the King was alive and well and getting stronger.
Then came the brilliant idea to use wires to connect multiple computers together as work groups, and the PC network was born. We could install bloated operating systems and applications onto our PCs and then store information on centralized servers that everybody shared. The shared data could be centrally backed up, secured, and controlled, but some major problems continued, primarily due to viruses and expenses related to network security and system maintenance.

A single virus now could bring down the entire system by easily propagating across the network, so better solutions had to be developed. Firms were forced to buy firewalls and anti-virus software, restrict users from certain applications, track and monitor software updates as more and more vulnerabilities were discovered, and, finally, pay technicians to keep it all running properly.

The kingdom built its army to keep the invaders at bay and then expanded its kingdom by building castles in other parts of the world. The data issues became a very complex problem as we attempted to share our treasures with our other offices. Could we work in the Atlanta office and share our work with our New York office?

SOLUTIONS

Many options were presented, but all of them fell short as a functional solution. Terminal server and remote desktop services such as Citrix (citrix.com), GotoMyPC (gotomypc.com), and LogMeIn (logmein.com) are just a few examples of how we found it difficult to have the same data appear in two different offices at the same time or to remote into other castles in our kingdoms. Remote access is expensive, security is always an issue, and response times were rarely what an end user desired.

These solutions can be expensive because remote access solutions such as GotoMyPC and LogMeIn require us to have a PC active at the office and a different PC to access the office PC with all our applications and data. These solutions also require a monthly fee for the services and grant the possibility of infecting the office network with viruses or malware from outside of the control of the network administrator.

Other options involved cloud-based applications such as Dropbox (dropbox.com), Microsoft’s OneDrive (onedrive.live.com), and Google Drive (google.com/drive), which allow users to synchronize their desktop data with a repository hosted by another server controlled by third parties. These solutions are very popular today, but their systems have seen security issues ranging from accidental complete access to every single account (no password required!) to 5 million hacked accounts being dumped on a Russian server.

The King has lost control, and there are spies everywhere.

SECURITY

Granting remote access to data has obviously presented some security challenges. Each castle must be protected by one or more moats (firewalls) that need to be professionally maintained and modernized as more modern technology designed to breach the walls becomes available. In addition, confidential documents need to remain confidential even when sent to other castles. Vaults (servers) constantly need to be fortified, upgraded, and monitored by the best guards available.

It certainly can be argued that the security professionals working with Microsoft and Google are more experienced than the typical network administrator working for the average law firm, and therein lies the rub. If they are better at implementing security, then how are they being hacked?

The answer is quite simple: There is little evidence that any of these name-brand services have been hacked in any significant way. Each of the examples above generally resulted from human error or users failing to secure their passwords. The absolute fact is that the average desktop and network is far more vulnerable to being hacked than these cloud-based services.

THE CLOUD

We hear the term “the cloud” used in too many different ways, so let’s examine the perception and the reality of what this concept means to us in real terms. Many people consider the use of a hosted server, one that is outside of your control but available for you to access via any of the remote technology solutions
mentioned above, as a cloud-based solution. In truth, this is nothing more than outsourcing the cost of the server management to an outside vendor, but the idea is a start to what the cloud really means.

In a truly cloud-based solution, you will have no other requirement to access your applications than an Internet browser and possibly some small apps or plug-ins that might provide specialized behavior for the particular application’s needs. Netflix is a very good example of a cloud service because no significant data is stored or necessary on your PC, only a web browser and an Internet connection. Think about that last sentence for a moment because it is only half-true.

You do not even need a PC to stream a movie from Netflix—all you need is a browser! This is why you can stream movies from many different sources to your PC, your tablet, or your phone. It is entirely platform independent.

As much as the King enjoys the entertainment provided by his fool, there is a lot of work to be done in the kingdom, and Kings and Queens want to work from any castle and use the scribe of their choosing. Unfortunately, as much as our King wants and demands this flexibility, most Kings are unable to enjoy this freedom and have grown old waiting for this promise to be fulfilled.

The King is about to be usurped.

THE NEW KING

While the PC is not going anywhere soon, sales generally have been declining, and Kings have opted for the mobility of laptops out of necessity for most existing remote solutions. Yes, you can access your remote systems using tools already mentioned, from a tablet or even a phone, but have you ever actually tried to work in any desktop application this way? With very few exceptions, this is not a feasible solution.

The new King is quickly moving to advanced cloud solutions for castle and treasure management, document creation and storage, security, and systems independence. Practice management solutions such as Actionstep (actionstep.com), Clio (clio.com), and Centerbase (centerbase.com) are demonstrating that it is not only possible to move your firm to the cloud, it is empowering to do so.

Microsoft’s strong push to their Office 365 platform (office.com) is clearly making it much easier to move toward subscription licensing, and that model is resonating with the legal community.

Today, it is not easy to find a legal application on the market that does not charge for some sort of subscription or annual maintenance plan (tribute to the King), so this is clearly where the software industry is headed. Even though Microsoft Office 365 does require a Windows operating system and does install software on your PC, most of the application is streamed to the user as it is needed. This leads to much simpler management, easier and painless upgrades, and on-demand services.

Google’s G Suite (gsuite.google.com) has always been cloud-based and has led the way to device and product independence. Many large companies and smaller law firms are using this product line, while the larger firms have been slower to test the waters.

CLOUD SECURITY

More than 50 percent of adults in the United States use online banking to manage their accounts, and that number is growing. These are cloud-based solutions that incorporate advanced security measures to protect against the virtual bank robbers, but a username and a password open up your account to anybody with a browser. It could be argued that online banking has helped lead the way to a feeling of security in a cloud-based solution, so has that translated to a more relaxed attitude among the legal community to store data outside of our networks?

Yes, but the King is not telling everybody that it is okay to leave their doors unlocked at night and to trust their neighbors. The fact is that most compromised computer systems today are hacked through social phishing and guessing common passwords, so security starts with the user, and it is arguably easier to hack into the typical legal network than it is to hack into one of the cloud-based systems.

INTEGRATIONS

Many cloud-based applications make it very easy to integrate with other cloud-based applications because they all speak the same language. For example, Actionstep, Clio, and Centerbase all integrate with NetDocuments (netdocuments.com) document management solution, which allows you to store documents in the cloud in a very secure manner. Each of these applications also integrates with Microsoft Office 365. Because you have the ability to integrate with other tools, each vendor can focus on its core technologies while giving customers options to choose the best tools for the job. You also get the choice to access all your data from just about any device in a consistent and reliable way.

This new King has given the people choice while maintaining full control of the kingdom.

FREEDOM

Cloud is the new King. The people have spoken, and the vendors have provided very compelling solutions to allow law firms to control their environments, avoid downtime, and increase productivity. The struggle to synchronize data, purchase new and improved equipment every few years, and upgrade software on hundreds of desktops while supporting remote users is over. Local servers are becoming a thing of the past, and at least one solution provider mentioned in this article does not even have a file server in any of its offices!

The PC will remain in our lives for a few more years but will very quickly devolve into nice keyboards with multiple large monitors displaying nothing but an Internet browser of your choosing.

The King is dying.
MODERNIZE YOUR LAW FIRM AND INCREASE ACCESS TO JUSTICE

BY CHAD BURTON
Solo and small firms are poised for a significant opportunity to help more consumers get access to legal services by changing how these services are delivered. The solo and small firm demographic of lawyers is entrepreneurial and is typically nimble and quick to try new ways to better serve clients. I know some folks will disagree with this concept. So, let’s dive in.

The narrative that lawyers are “slow to evolve” is getting stale. It seems as if those who still use it are scared of change or are pushing a product or otherwise want lawyers to buy into something by using fear as a tactic. I believe most lawyers are evolving. Of course, some are moving faster than others, but most are moving in the right direction. Even self-labeled “mature” lawyers who have established practices are moving the needle.

If we are being real, we must admit that lawyers who complain how technology is too difficult to deal with are just whining. There are so many practice management resources out there, legal professionals need to take the time to learn or adopt a new model. In other words, running a small business (the average law firm) is hard—but doable. Still, if you don’t put in the effort, you won’t succeed.

With that, the following encapsulates how we need to push for change to solve the access-to-legal-services gap, as well as how solo and small firm lawyers can and should play a role in this process—and, quite frankly, how they would benefit from a business perspective. I will hit on two solutions and then some practical ways these lawyers can make a practical impact on advancing the law firm business model to get more consumers access to legal services.

THE BIG VISION
Prediction: If we (the royal “we”—not just lawyers) fix the law firm business model, then we also solve the access-to-justice gap. Okay, maybe not the entire gap, but a large chunk of it.

This is a big statement, I know. Let’s back up a minute and tie this to the solo and small firm world.
Think about recent articles/tweets/ rants you have read about the business of law: Robots are taking lawyers’ jobs, artificial intelligence is coming for us, lawyers should learn to code, lawyers should know how to use Excel better, LinkedIn is cool (even if it is not), lawyers should know about blockchain, etc., etc.

Now, think about recent access- to-justice stuff you have read: Legal Services Corporation (LSC) needs more money (it does), the access gap is growing, we need more pro bono from lawyers, we should use tech to connect consumers to services, etc., etc.

None of these things is bad, but none is good enough on its own. We need to fundamentally change how lawyers operate a law firm and deliver legal services.

How do we get there? There are two options.

MODERNIZE THE RULES

My opinion (which is shared by many others who care about the future): The rules governing the legal profession need to evolve if we are going to allow lawyers to provide consumers with more meaningful access to legal services. Of course, every time we raise the concept of altering the ethics rules related to lawyer cannot pay a marketing fee for that case (even though that same lawyer may be paying through the nose for Google AdWords for a similar result).

In other words, there are consumers who want to be connected with lawyers, there are companies that can help connect those consumers to lawyers, there are lawyers who want that work and are willing to pay a reasonable marketing fee to get that work, but states are prohibiting these results.

Quite frankly, I am surprised that there has not been a solo/small firm insurrection in the various states blocking these efforts because, if nothing else, lawyers are losing opportunities for revenue. Paging the William Wallace of the solo/small firm world . . .

ABA Model Rule of Professional Conduct 5.4 needs to evolve. As the Report indicates, we need to gather data to inform states on these forward-looking business models so that they will be permitted. This is not an easy task, but it needs to be done. Otherwise, law firms will be stuck in their existing ways until a radical shift can occur, changing the way lawyers interact with consumers of legal services.

IN THE ALTERNATIVE:
A STANDARDIZED APPROACH

While rule changes are being discussed and debated, we need action in the interim. It is possible to work within the rules to create new models of law firms that are more focused on client service. This really applies to the solo/small firm world (the vast majority of active lawyers). One way to do this is to standardize the model of what it means to be a solo or small law firm—including characteristic technology offerings, processes, and procedures—and how law firms can get work in the door (i.e., find better ways for consumers to get access to more traditional legal services).

The firms that have positioned themselves to standardize and run lean, consumer-focused practices will also be better positioned once the rules discussed above evolve and firms have fewer barriers to capital and clients.

Although the evidence is anecdotal, I have not talked to a single lawyer in the

If we can modernize the way lawyers function, then more consumers will get help.

All these discussions are important and needed. But most of the time the discussions about the business of law and access to justice tend to exist in their own vacuums. I would like to see the conversation shift so that the overlap between the two is constant.

What if we could perfect the law firm business model so that lawyers truly focus on practicing law and less on the nuts and bolts of getting clients in the door and operating the firm? What if perfecting that model allowed lawyers to do as much of the public good work as they want to do and not have to worry about billing enough time to keep the lights on? Or at least be able to take on more work where the client cannot pay what is currently considered market rate?

Sounds Pollyanna-ish, huh? It is not. We just have to try harder. To achieve this, it is not good enough for lawyers to “use the cloud,” adopt Kanban, get a chatbot, track time more easily, or get more involved in bar association(s) to serve as a baseline for a modern practice.

The firms that have positioned themselves to standardize and run lean, consumer-focused practices will also be better positioned once the rules discussed above evolve and firms have fewer barriers to capital and clients.

Although the evidence is anecdotal, I have not talked to a single lawyer in the
United States who indicated that they would be averse to splitting profits with an outside non-lawyer-owned company if that company could provide capital to run their firm both operationally and to grow their client base. Lawyers know that there are roadblocks in place, but they are open to change. They want to be able to focus on practicing law and not worry about the business aspects as much as they do now.

We can solve these problems. It is a big conversation well beyond the space allocated for this article, and it needs to continue.

If we can modernize the way lawyers function, then more consumers get help. Let’s make sure that any conversation related to how lawyers practice is married with getting consumers access to legal services. That’s where the magic will happen to meaningfully address the access gap.

GOOD STUFF, HUH?
LET’S DO SOMETHING!

Now, some of you are all fired up ready to shake things up. Others are probably thinking: I get it, but what can I do to move these issues along or play a role, regardless of the size of my contribution?

Here are some ways to roll up your sleeves to modernize the business of law:

1. I repeat, read the Report on the Future of Legal Services in the United States. Really, all of you. Again, it can be accessed at abafuturesreport.com. Not hard to remember. Why should you read it? It is the road map to the future of the profession as it comes to getting more Americans access to legal services. It calls for modernizing law firm models, advancing legal tech, and focusing on gathering data to explore issues such as outside ownership of law firms and the regulation of non-lawyer-owned legal service providers.

2. Speaking of data . . . you need to focus on data in your practice. Choose key performance indicators (KPIs) that you religiously monitor to make sure you are running a profitable, healthy practice. Every firm will put different weight on different KPIs. Examples include hours billed/collected per month/year, number of new clients per month, conversion rate for new clients, average spend per client, etc. You get the point. You can measure all kinds of KPIs to track the progress of your firm. This is important because once you have a grasp on the performance of your firm, you can experiment more. Also, when regulations evolve and you can consider things such as taking outside investment capital to fund your firm, you already will have your head around your business model to understand what resources you need to grow.

3. How do you get the data? Adopt more technology and/or use it better. You probably have some tech in your firm beyond e-mail and Microsoft Word (at least I hope so). Adopting practice management, customer relationship management, and accounting software will give you a treasure trove of data if you use it to its full potential. All of us have implemented some software in our business and then used 10 percent of its potential. This is not ideal. Get to know the software or find someone who can help you. Uniform and complete use of software is critical to measures KPIs.

4. Raise some hell. I am serious. It is troublesome that regulators are blocking the ability of consumers to hire solo and small firm lawyers through private referral services that charge a marketing fee (a la Avvo’s old model). Above, I mentioned that small firms need a William Wallace. That is a little dramatic, but only a little. Change is going to happen. If we don’t do it, other governing bodies will force it—courts, legislatures, robots that are taking over the world through AI. Look at the ruling in North Carolina State Board of Dental Examiners v. Federal Trade Commission, 574 U.S. ___ (2015), and hold your breath. Often when futures committees or ethics groups raise the idea of modernizing rules to allow outside (non-lawyer) ownership, we go into self-preservation mode. If people want to change the rules (or vice versa), ask for data on how it will affect your clients. Ask, will it harm them? If not, why not try new rule structures? If data shows that more people can get help, why not go for it? What are we frightened of?

5. If nothing else, intentionally focus on running a strong law practice. There are so many changes you can make to help you play even the smallest role in the ideas described above. Attend ABA TECHSHOW to learn about and implement the latest and greatest in legal tech. Use ABA Blueprint (abablueprint.com) to find solutions to run a more efficient firm. The point is: act. Complacency will get you left behind.

Do some or all of this, and you will be contributing to modernizing the delivery model. The more intentional we are about pushing for regulatory or practical evolution for delivering legal services, the quicker we will see it happen. Be a part of that evolution.

Chad Burton (cburton@curolegal.com) is the CEO of CuroLegal and CuroStudio and founder of Modern Law Practice, innovation firms focused on developing technology to reduce the access-to-justice gap and modernize the delivery of legal services. Chad is a former litigator who developed one of the nation’s first “new model” law firms, leveraging cloud-based technology and modern business practices to develop a lean virtual law firm. Parts of this article are based on the author’s “The Business of Law and Its Role in Solving the Access to Justice Gap,” Law Practice Today, June 14, 2018.
What Lawyers Can Learn from Ratings and Reviews
Are online ratings and reviews really necessary for attorneys? Imagine this scenario: A woman needs a divorce attorney. After asking her friends for recommendations, she pulls out her tablet and does an Internet search for two of the attorney names she received. The first attorney has a professional website for the firm, but the review sites that appear in the search don’t show anything. The second attorney has a website, plus several Google reviews and a page with reviews on Avvo. The reviews are mostly positive, but there are a few critical comments sprinkled throughout by past clients.

Which attorney do you think the woman is more likely to choose? Research suggests most people would choose the second attorney. In fact, 63 percent of people are more likely to use a service or make a purchase if there are user reviews (tinyurl.com/y9hyz8pt). And 95 percent of legal consumers say that reviews matter when deciding which attorney to hire (tinyurl.com/y9q6gk6o).

All this means that online ratings and reviews are no longer optional for attorneys who want to grow their business—they’re required because consumers expect them. If you don’t have reviews, consumers may question the legitimacy of your business.

Recently, ARAG® (for which I am general counsel) added ratings and reviews to our Network Attorney profiles. This feature allows our legal insurance plan members to read about other members’ experiences and see at a glance how the attorneys in their area rate compared to one another. Before we launched this, we did extensive surveying and research to gain insights into how attorneys feel about ratings and reviews, including what their biggest concerns were.

Nearly 75 percent of the attorneys ARAG surveyed were supportive of making ratings and reviews available for potential clients to see. In fact, one in four attorneys said they already encourage clients to post online reviews.

The attorneys who embrace ratings and reviews understand that all reviews are helpful—the positive ones help bring in new business and the negative ones...
highlight opportunities to improve customer service.

**WHAT CLIENTS VALUE WHEN WORKING WITH ATTORNEYS**

ARAG surveys all our members after they’ve worked with a Network Attorney, asking them to rate attorneys on things such as expertise, interactions, and communication.

Our results reveal that no matter the overall satisfaction score (high or low), attorneys consistently scored the lowest in areas related to communication—interaction or recommendations. I maybe spent 10–15 minutes with him in total. I already knew what he meant by ‘important information.’ He just put it in the will. He did not ask for clarity or explain anything. I thought he would at least review the will with me.

Even though the client said the attorney did an excellent job, he ended up giving the attorney a five out of ten rating because of the lack of interaction and communication.

Another review illustrates the weight clients place on communication:

The attorney did not volunteer important info, but instead had to be asked specific questions about the process, what to expect in terms of timeline, court fees, etc.

**THE GIFT OF CONSTRUCTIVE FEEDBACK**

No one wants to receive negative reviews, but in the long run these can be better for your business. How? Because they point out areas for improvement you might not have realized without the reviews. (Not to mention that they make your business seem more credible and authentic to potential clients reading your reviews.)

Negative reviews have a way of forcing perspective—as mentioned before, attorneys tend to focus more on the actual work, while clients are looking at the bigger customer service experience. From the moment a client calls your office, you and your staff are being judged. A less-than-positive review could highlight intake problems you weren’t aware of. And if you read a “negative” review closely, you can often uncover solutions and suggestions for how you can improve the experience for your clients.

For example, in the review mentioned above that criticizes the attorney for not offering important information, the client lists several things he had to ask the attorney about. If the attorney were open to the feedback, she would read that review and think, “Perhaps when I meet with clients in the future, I should make sure to include in the conversation information about what to expect for a timeline, court fees, and the various steps in the process.”

When you acknowledge and appreciate the feedback, clients will notice this. It goes a long way if you respond to the review or reach out to recognize how you or your team fell short of meeting your client’s expectations and let your client know you’re taking steps to address the issue. When responding to public reviews, you’ll of course want to take time to respond thoughtfully and never respond with any confidential information.

**TIPS FOR IMPROVING YOUR CLIENT EXPERIENCE**

You can start making changes today to improve your customer service and live up to your clients’ expectations. Based on the most common issues ARAG plan members bring up in their attorney reviews, we’ve compiled these tips:

*Get to know your client and his/her situation.* You’ve heard people talk about doctors’ bedside manner? As attorneys, we need to develop a good bedside manner. In short, this means making a human connection. Some of your clients may be coming to you at a time of great stress. Ask questions to learn the information you need about the case while also showing that you’re empathetic to their situation. When you humanize the interaction, you’re more likely to create stronger relationships that will lead to loyal clients who will return if they need your services again, not to mention recommend your services to others.

*Set expectations.* The fewer surprises for your clients, the better for your working relationship. Obviously, there are...
situations where you won’t know what is going to happen, but try to draw as clear a road map as possible for them, pointing out what usually happens. Be sure to point out what you'll need and expect from them throughout the process, and what they can expect from you. If you’re in a situation where you might not have an update for them in several weeks, be clear about that up front. Talk to them about how often they can expect to hear from you. Outline the many external factors outside your control that could cause issues. Being transparent and realistic with them should alleviate problems down the road.

**Make sure they understand what you’re saying.** Most clients won’t have a legal background. And some may be too embarrassed to tell you they don’t understand something. Assume they need everything explained. After you talk through parts of the process or documents, check in to see whether they understood or if they need anything explained again. The clearer you can be, the more clients will appreciate your guidance.

**When in doubt, overcommunicate.** We have yet to see a review where a client complains about an attorney calling or e-mailing too much. We do, however, see many reviews about attorneys who don’t respond in a timely manner or go weeks/months without offering their clients an update. Remember that many of your clients are dealing with stressful situations where the assumption is not necessarily “no news is good news.” If you’ve set the expectation that you’ll check in weekly, stick to that even when you don’t have an update. If a client e-mails you and you don’t have any new information to share, respond and tell them that, instead of ignoring the e-mail.

Most of these tips come down to your client intake and that very first meeting or conversation. You might be tempted to speed through it because of all the cases you’re juggling, but remind yourself that by taking a little extra time up front to explain things thoroughly and manage expectations, you may save yourself (and your client) time, stress, and frustration in the long run.

If you want additional help identifying areas of your intake process that could be improved, consider taking a page from the retail playbook and using a “mystery shopper” (client)—someone who can help you test the first impressions your staff makes with clients, including responsiveness and professionalism. ARAG does this for attorneys on our network by request, and attorneys have found it beneficial and often eye-opening.

To illustrate that all this focus on communication isn’t overkill, compare the critical reviews we shared earlier to the following:

He went through all my options and helped me understand how to proceed in a way I appreciate so much. He was kind and listened and answered any question I had, big or small, no matter what.

She is the master of her craft. It feels very comfortable discussing the case with her because she shows up to you like a concerned neighbor yet very professional. Her demeanor and communication skills will assure you she is really very good. She will always be on top of my list whenever I recommend a legal expert on the matter of family law.

**HOW TO GET STARTED ON RATINGS AND REVIEWS**

Are you convinced ratings and reviews are important but still not sure how to implement them into your practice? Here are a few tips on how to get started:

**Familiarize yourself with rules related to client reviews.** You’re responsible for ensuring the use of ratings and information provided in client feedback is compliant with the ethics rules effective in your state. These rules can be complex and vary from state to state. Reach out to your local bar association to learn the most recent ethics and advertising rules related to usage of client feedback and ratings.

**Don’t be afraid to request feedback.** You can do this personally and include language in your closing paperwork or e-mail signatures. Invite clients to leave feedback and tell them where to do it—on your website, on your Facebook page, and on other sites such as Google Reviews or Avvo.com. Talk about how you value the feedback because it helps you improve the service you provide, and be sure to mention that your business is built mostly by word-of-mouth recommendations, which is why their reviews are vital.

**Think through how you’ll handle negative feedback.** The more prepared you are, the less likely you’ll be to respond defensively, which only escalates the situation. Think about how you’ll want to respond from a customer-service perspective. Is the issue raised in the review something that could be improved or changed? If so, make the change and let the reviewers know their feedback is appreciated and you have worked to fix the issue. If not, respond to them with a sincere apology. Many times, customers will reply in a positive manner or even alter their initial comments. Depending on where the review is posted (your own site versus elsewhere), you’ll also want to determine whether it’s better to reply publicly to the review or reach out privately to the client.

The bottom line when it comes to reviews and ratings is: Positive or negative, see each one as an opportunity to get a glimpse into the minds of your clients. Appreciate the feedback they share and consider how you can act on that feedback to keep your existing business and gain new clients.

As general counsel for ARAG® (araglegal.com), Ann Cosimano (ann.cosimano@araglegal.com) directs the company's legal, regulatory, compliance, and attorney relations departments. Having started her career as an attorney for nonprofit organizations, Ann understands the critical need to improve access to justice in America and how the justice gap impacts individuals, businesses, and communities. Ann has a deep passion for helping people experiencing legal issues. She genuinely cares about improving the lives of others and aligns those values with her role as an executive leader. Follow her on Twitter @ACosimano.
READY RESOURCES IN THE ART OF PERSUASION

Searing for additional resources in the art of persuasion? Take a look at the ABA publications below and check out the helpful links to website resources hosted by the GPSolo Division and the ABA. To order any of the products listed below, call the ABA Service Center at 800/285-2221 or visit our website at shopaba.org.

ADVOCACY WORDS: A THESAURUS, EXPANDED THIRD EDITION
By William Drennan (ABA Solo, Small Firm and General Practice Division; 2013; 5150460; $29.95; GPSolo member price $22.95)

For the attorney arguing a case or preparing a brief, for the jurist writing an opinion, and even for the law student, words are the ammunition needed to make the point. This book should be every lawyer’s companion for painting the right verbal picture.

FROM THE TRENCHES: STRATEGIES AND TIPS FROM 21 OF THE NATION’S TOP TRIAL LAWYERS
By John S. Worden (ABA Solo, Small Firm and General Practice Division; 2015; 5150477; $109.95; ABA member price $94.95; GPSolo member price $87.95)

Bringing together legal strategy, psychology, and persuasion theory, this book offers a fresh approach to trial preparation, one that focuses on how jurors learn, think, and deliberate.

HOW TO CAPTURE AND KEEP CLIENTS: MARKETING STRATEGIES FOR LAWYERS, SECOND EDITION
Edited by Jennifer J. Rose (ABA Solo, Small Firm and General Practice Division; 2015; 5150482; $79.95; GPSolo member price $67.95)

In this new second edition, the best and most innovative solos and small firm lawyers offer their secrets, approaches, and strategies to that age-old puzzle of growing your law firm.

IMAGES WITH IMPACT: DESIGN AND USE OF WINNING TRIAL VISUALS
By Kerri L. Ruttenberg (ABA Solo, Small Firm and General Practice Division; 2017; 5150494; $129.95; GPSolo member price $103.95)

Packed with hundreds of full-color images from prominent graphic designers, this book will help you turn key themes into visual images the viewer will understand, believe, and remember.

LAY WORDS FOR LAWYERS, EXPANDED SECOND EDITION
By William Drennan (ABA Solo, Small Firm and General Practice Division; 2014; 5150475; $34.95; ABA member price $29.95; GPSolo member price $27.95)

A must-have for lawyers as well as wordsmiths, this book provides verbal “ammunition” for the legal practitioner. This is your resource for analogies and key words to advance your case and communicate with clients.

LETTERS FOR LAWYERS: ESSENTIAL COMMUNICATIONS FOR CLIENTS, PROSPECTS, AND OTHERS, SECOND EDITION
By Thomas E. Kane (ABA Solo, Small Firm and General Practice Division; 2004; 5150290; $40; GPSolo member price $32.50)

Quality letters to effectively communicate with your clients can be found in this book. Save valuable time and maintain solid client relationships with modifiable forms available on the companion CD.

MASTERING THE ART OF DEPOSITIONS
By Sawnie A. McEntire (ABA Solo, Small Firm and General Practice Division; 2016; 5150489; $64.95; GPSolo member price $51.95)

This book provides practical advice on how to take and use depositions for maximum advantage, including techniques that can be used by lawyers on both sides of the bar when deposing hostile or adverse witnesses, expert witnesses, and lay witnesses.

MASTERING VOIR DIRE AND JURY SELECTION: GAIN AN EDGE IN QUESTIONING AND SELECTING YOUR JURY, FOURTH EDITION
By Jeffrey T. Frederick (ABA Solo, Small Firm and General Practice Division; 2018; 5150501; $159.95; GPSolo member price $127.95)

This is a valuable guide to help understand effective voir dire and jury selection strategies, and then to adapt these strategies to the unique circumstances faced in trial jurisdictions.

SMART MARKETING FOR THE SMALL FIRM LAWYER
By Kenneth Vercammen (ABA Solo, Small Firm and General Practice Division; 2014; 5150468; $59.95; ABA member price $53.95; GPSolo member price $45.95)

This book thoroughly explores today’s marketing landscape and outlines its many facets for you in concise and easy-to-understand terms.

TECHNOLOGY TIPS FOR LAWYERS AND OTHER BUSINESS PROFESSIONALS
By Jeffrey Allen and Ashley Hallene (ABA Solo, Small Firm and General Practice Division; 2016; 5150487; $59.95; ABA member price $53.95; GPSolo member price $47.95)
This book provides short tips on a wide range of tech issues. The tips emanate from GPSolo programs and are designed to help both the seasoned tech person as well as the novice.

**BEING HEARD: PRESENTATION SKILLS FOR ATTORNEYS**  
By Faith Pincus (ABA Book Publishing; 2018; 1620763; $39.95; ABA member price $31.95)  
A quick and easy read, this book provides you with basic and advanced techniques and insider knowledge that you need to improve your presentations, whether in or out of court. It consolidates the most helpful and effective tips of the trade so you and your staff can become better public speakers.

**CREATING WINNING TRIAL STRATEGIES AND GRAPHICS, SECOND EDITION**  
By G. Christopher Ritter (ABA Tort Trial and Insurance Practice Section; 2015; 5190522; $199.95)  
This easy-to-read guide takes you step-by-step through the graphics process, with insights on how to simplify your case by filtering out what is distracting or unimportant.

**DEMONSTRATIVES: DEFINITIVE TREATISE ON VISUAL PERSUASION**  
By Daniel J. Bender, R. Jason Fowler, and Pierre E. Kressmann (ABA Section of Litigation; 2017; 5310458; $89.95; ABA member price $71.95)  
Written by experienced litigators, trial consultants, and graphic designers, this book guides lawyers and consultants through the process of creating and using persuasive visuals, and it includes more than 300 color images as examples.

**LAWYERS, LIARS, AND THE ART OF STORYTELLING**  
By Jonathan Shapiro (ABA Book Publishing; 2016; 1620633PAP; $19.99; ABA member price $15.99)  
This book demonstrates how to convey legal information in a cogent, persuasive way to the client who needs the help, to opposing counsel, and to the decision maker who has to make the final call. In doing so, it utilizes portions of famous real-life court transcripts and television scripts.

**PATENTLY PERSUASIVE: STRATEGIES FOR INFLUENCING JUDGE AND JURY**  
By Karen Lisko and Kevin Boully (ABA Section of Intellectual Property Law; 2013; 5370206; $129.95)  
This book focuses on methods to improve outcomes through effective persuasion and provides strategies based on extensive mock trials and data, plus practice tips and sample questions.

**PERSUASION: THE LITIGATOR’S ART**  
By Michael E. Tigar (ABA Section of Litigation; 1999; 5310269; $110)  
This guide conveys the author’s 30-plus years of experience as a litigator by taking the reader through the process of building a case and refining the presentation—including critical keys to persuading jurors and judges.

**REINVENTING WITNESS PREPARATION: UNLOCKING THE SECRETS TO TESTIMONIAL SUCCESS**  
By Kenneth R. Berman (ABA Section of Litigation; 2018; 5310461; $64.95; ABA member price $51.96)  
This book introduces a new and enlightened approach to witness preparation: that witnesses need to give answers that actually help their cases, and the best time to give the best answer is when the question is first asked.

**THE SCIENCE OF PERSUASION: A LITIGATOR’S GUIDE TO JUROR DECISION-MAKING, SECOND EDITION**  
By Brad Bradshaw (ABA Book Publishing; 2014; 1620612; $99.95; ABA member price $84.95)  
This book is for law students, experienced litigators, and everyone in between who needs to understand the most effective ways to convince a jury; it includes extensive sample voir dire questions, opening and closing statements, and fact patterns.

**THE 12 SECRETS OF PERSUASIVE ARGUMENT**  
By Ronald Waicukauski, Paul Mark Sandler, and JoAnne Epps (ABA Book Publishing; 2009; 1620408; $49.95; ABA member price $42.95)  
Make the most persuasive argument possible and maximize success before a judge or jury, in mediation or arbitration, and anywhere else. These 12 secrets can be the key to successful argument.
PREPARING TO FACE THE OPPOSING EXPERT

By Michael D. Dean

Cross-examining the opposing party’s expert is a difficult part of litigation. Before doing so, the attorney must have an opportunity to speak with the expert at length. Below is a checklist for preparing and executing the interview of the opposing expert witness.

Complete discovery and research prior to the interview. Interviewing or deposing the opposing party’s expert should be the final step in your trial preparation. Before doing so, the attorney must have a complete understanding of the facts of the case, the law, and what issues are actually being contested. All reports should be collected and examined; all fact witnesses should be identified and interviewed; and all third-party discovery should be complete.

Have a concrete theory with the expected issues refined as narrowly as possible. Experts can be impressive. Do not let the expert’s general impressiveness falsely aggrandize his or her mastery of the specific subject matter at stake. The opposing expert may focus the majority of his or her time on studying a niche of the discipline that has a limited nexus with the science disputed in the case. The point is, almost every field is going to have specialties. The narrower the scientific issue, the more specialized and the greater the chance the attorney will have in criticizing the opposing party’s expertise with what is really at stake.

Research the expert. Many experts are “hired guns” — they testify professionally for a living. They build reputations in certain communities of attorneys who recommend them to their colleagues. On the one hand, this translates to experience and comfort in the courtroom. On the other hand, an expert’s prior experience creates a liability that translates into a zero-sum gain for the attorney. The more times an expert has testified, the more opportunity there is for the expert to have unwittingly contradicted him- or herself. It is also fair to bring into question the expert’s financial arrangement with opposing counsel. Finally, the attorney should obtain any publications authored by the expert and request materials for any professional conferences at which the expert has presented.

Prepare an outline for the interview. When proceeding to interview an expert, the general format will be: (1) qualifications; (2) bias and interest; (3) factual basis for opinions; (4) scientific methods or principles applied; and (5) opinions and conclusions reached.

Qualifications. The first part of the interview should be spent understanding the expert’s credentials and fund of knowledge on the specific scientific discipline being applied. This should include any degrees, certifications, board admissions, licenses, and the like. Make sure to obtain the date each credential was earned and the organization that granted the credential.

Ask the expert about his or her current employment and the associated duties. Then have the expert go back to his or her first position following formal education and move chronologically toward the present. For each position, ask the expert about the dates of employment, the duties of the position, the name of his or her superior, and the reason for leaving. Ask the expert about continuing education. Make sure to obtain a list of any publications or speaking engagements by the expert.

Have the expert tell you about prior litigation in which he or she was involved in an expert capacity. Ask about the basic facts of the case and the central issues being contested.

Bias and interest. There are certain facts that suggest bias, which, in most cases, are unavoidable. Experts who routinely testify are used to dealing with the questions that draw them out, and answering the questions is simply a matter of going through the motions.

While most jurors will not expect experts to work for free, it is still a valid point that the expert is being paid to deliver opinions that help the opposing counsel’s case. Make sure to ask the expert what his or her financial arrangement is with opposing counsel. Some experts are full-time professional witnesses. Many of these experts also tend to be well-established “defense” or “plaintiff” witnesses. Such experts are subject to being...

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called out for always rendering an opinion that favors one side of a case.

_Factual basis for opinions._ An opinion is only as reliable as the data upon which it stands. The attorney should ask the expert for a complete set of factual sources relied on in rendering an opinion. Then itemize each factual source, if any, that is available in the case and not mentioned by the expert, having him or her verify directly that the source was not considered. Ask the expert if having the benefit of the missing sources would have been helpful. Be sure to double-check the expert’s characterization of key facts any time he or she has quoted or paraphrased factual sources.

_Scientific methods or principles applied._ “Junk” science is not permitted in the courtroom, and an expert’s ad hoc methods invented for the case are not permitted. However, sometimes there is discourse within the scientific community. Thus, the principles or methods provide the attorney with another choke point for attack.

When questioning the opposing expert, first ask what scientific methods were applied to the known facts to arrive at a conclusion. If the method is generally accepted by the scientific community, then it is almost certainly described in a number of authoritative sources. The attorney should ask the expert to identify sources that the expert believes are authoritative and reliable that describe the methods or principles applied.

In addition, the attorney should determine if there are other sources that were not considered but that the expert would recognize as authoritative in his or her field. The attorney should obtain any authority recognized as reliable by the opposing expert in advance of trial. The expert’s reports or statements concerning the methods followed when generating an opinion should be closely scrutinized by cross-referencing them with the recognized sources. Next, the attorney should inquire as to whether there exist other, alternative recognized principles or methods to reach the opinion and conclusions rendered.

The attorney should have the expert walk through his or her work and the environment in which it was performed. The point here is that the expert may be well-qualified, have had complete facts, and applied universally accepted methods, but may not have the most reliable business practices or could have suffered from a lack of professional focus.

_Opinions and conclusions reached._ The final phase of interviewing the expert focuses on any opinions or conclusions the expert reached as a result of applying the known facts to the scientific methods followed. The opinion alone tells us very little. What is more important is the certainty of that opinion.

In some sciences, an expert may be able to give statistical analysis to tangibly quantify his or her opinions, complete with rates of confidence and standard deviations. However, for many sciences, opinions are more generally stated. The expert may testify that he or she reached the opinion “within a reasonable degree of scientific certainty.” It is important to press the expert to describe the certainty of his or her opinions as objectively as possible. Once the expert acknowledges something less than absolute certainty, have the expert articulate his or her reasons for what doubt exists.

Finally, make sure that you have the expert on the record confirming that he or she will not be offering any other opinions or conclusions at trial other than those discussed before ending the meeting. Have the expert give assurance that you will be notified immediately if this changes.

By Wayne Brazil

At the close of a mediation in a business case not long ago, one of the lawyers told me that my approach was new to him. He said other mediators he had worked with tended to remain “black boxes”—meaning that what they were thinking remained largely a mystery. He had been surprised by how freely I disclosed and discussed what I thought was happening in the negotiating process and how various behaviors or moves the parties were considering might affect the health of the mediation process.

This got me thinking about the pluses and minuses of degrees of openness by mediators. When you mediate, are you a “black box” in the eyes of the parties? Or, at the other end of the metaphoric spectrum, are you a “transparent box”? Or does the way you handle your role fall somewhere along the continuum between these extremes, so the parties see you as a “gray box” or a “refractive box”? Do you try to adjust the degree of your transparency from case to case, depending on the personalities and conduct of the parties? In some mediations, do you become different boxes at different junctures—and, if so, why and to what effect?

Black-box mediators. Black-box mediators keep their cards close to their vests. Apparently, many sophisticated lawyers and clients are comfortable with the black-box approach. They want their mediator to remain in control of the process because they believe that it is by capitalizing on the mediator’s experience that they have the best chance of striking a deal.

They want a mediator who has developed good instincts about what is going on beneath the verbiage and about how much play there might be in the position-al joints. They want mediators who can “read” carefully between the lines, who can spot and accurately interpret subtle, oblique signals, who will “hear” everything parties tell them in caucus with a skeptical, filtering ear, and who simply will not believe what parties say their bottom lines are. Parties who are accustomed to the black-box approach don’t expect their mediator to explain what she is thinking or what informs her approach at any given juncture.

Black-box techniques can be more threatening when negotiators believe that some or all of the parties and their lawyers will be trying to “game” the mediator. Gaming can include actively misleading the mediator about anything that might be a factor in the negotiation dynamics.

Transparent-box mediators. “Transparent-box” mediators would, in theory, freely disclose and discuss what they are thinking, what they see happening in the negotiating process, and how various behaviors or moves the parties consider might affect the health of the mediation process.

Adherents to even the purest forms of transformative/facilitate mediation, however, are likely to find it very difficult to be completely transparent. In mediations that include any caucusing, the mandate of confidentiality can be one challenge. As mediators move between caucuses, parties may ask them to keep certain information confidential. Fear of being misunderstood or of having to take too much time off the mediation clock to make sure that the motive behind or the implications of their messages are not misunderstood also can push back a mediator’s pursuit of transparency.

The transparent ideal can be further compromised by the advocate’s conduct. Parties often assume that the people in the other caucus are not telling the mediator everything relevant to their case valuation or to their settlement decisions, or that they are telling the mediator things that they don’t really believe or that are based only on unsupported hope. In these senses, each side may believe that the other side is trying to manipulate the mediator to gain leverage in the negotiations. Each side assumes that the other side will remain, in some measure, a black box to the mediator. So, even if the mediator’s promises of confidentiality did not limit the light that flows through her from one side of the dispute to the other, each party might well believe that the managed and manipulated “flow” of inputs to the mediator makes the promise of transparency a mirage—and a potentially dangerous one, at that.

Counter-productive transparency. I aspire to be a transparent mediator, but I realize that some means I use to try to...
illuminate the negotiation process might push its reality deeper in darkness, at least when the parties are self-consciously examining the negotiation process and looking for ways to find leverage in it. In pursuit of transparency, I often try to explain to the people in one caucus things that have happened, sentiments that have been expressed, or moods that have prevailed in the other room.

Being more open about the situation in the other room than a black-box mediator would be, however, could have the perverse effect of making each group I caucus with less open with me. So, savvy and cautious negotiators who watch me talk more openly than other mediators do about the situation in the other room might well react by trying to disguise their actual thinking or true feelings.

The “refractive-box” mediator: Ubiquitous and valued but not transparent. Regardless of where on the spectrum between black boxes and transparent boxes they might place themselves, most mediators are likely to act as refractors. “Refraction” is a term that attaches with uncanny exactitude to roles mediators often play: redirecting, reframing, and reducing the velocity of some emanations from one party to another. The refraction function is perceived as essential and invaluable by many participants in mediations in litigated cases. The assumption (by the parties) that their mediator is performing her refraction function can further cloud a transparent box. Even parties who have no experience with, or who would have no affinity for, the black-box approach often expect and want their mediator to refract. They expect their mediator to have a better feel than they do for the personalities and dynamics in the other room, and therefore, to be in the best position to determine which kinds of messages would be most productively received at which points.

When black-box negotiators meet transparent mediators. How are lawyers and clients who have been acculturated to black-box approaches likely to react when they encounter a mediator who plays his or her role with greater transparency? Some negotiators probably are most comfortable with a black-box approach by their mediator because they know they—and the other side—also will be black boxes. Such parties might even fear a mediator’s analytical meddling. A mediator who offers substantive feedback to the parties that is based on intentionally incomplete or misleading inputs from both sides might end up unintentionally skewing the negotiations in a direction for which no one is prepared, thus upsetting the artificial balance necessary to make parties feel comfortable enough with final offers and demands to make a deal.

There is also a distinct possibility that parties who have been “acculturated” to the black-box approach will infer that a mediator who adopts an open style doesn’t understand how negotiations among sophisticated parties in big cases really work.

Lawyers who think of themselves as sophisticated negotiators and have had considerable experience negotiating in similar kinds of cases with similar kinds of adverse parties might feel that their ability to capitalize on their skills and instincts would be compromised by an intellectually open and energetically engaged mediator.

Cynical negotiators might fear that a mediator who is purporting to use a transparent style is actually just using different techniques to game them. They might fear that the mediator’s transparency is a device for gaining access to their most sensitive and pivotal information and concerns, a verbal smoke screen intended to hide what is in fact a form of black-boxism. Parties who fear this kind of subtlety are likely to be even more secretive about their real views and positions. ■
HOW NOT TO REGRET YOUR DIRECT: EXPLORING THE HUMAN STORY

By Benjamin K. Riley

To avoid regret after direct examination, listen to the witness, get to know the witness, and weave your examination around his or her human story—the interesting and unique aspects of the witness that best highlight and teach about the issues in the case.

Direct examination, at its best, is mentoring. If you listen to and get to know your witness, break down some of the witness’s insecurities and concerns, offer pointed and sometimes tough suggestions and criticisms, and become a teacher in an unfamiliar area, your witness will testify confidently and persuasively on the subject matter. When you say “No more questions,” you can take pride in your witness’s testimony and performance and be confident that the witness will hold up on cross-examination.

The importance of listening. The most important lesson for a great direct examination is to listen during the preparation sessions. In the beginning, resist the temptation to lecture too much or tell the person what he or she needs to say. Before a trial examination, take the time to listen to the witness’s entire story, including the parts you didn’t have the time to learn before the deposition. More often than not, the witness will have important testimony you’ve never heard that reinforces other themes in the case.

Once you have listened to and learned the witness’s story, start integrating the information into your outline. Reiterate that you want only the truth from the witness, and your questioning will focus squarely on those areas for which the witness has solid personal knowledge. I call these areas the home bases, where the witness can always come home safely and feel comfortable. Clearly define the home bases with each witness for each case before deposition and trial. Make sure the witness understands that you will try to avoid any areas that make him or her uncomfortable. Your witness needs to trust you. By the end of the process, the witness should be comfortable and confident.

Next, review with the witnesses the key exhibits that will form the backbone of the examination. Identify those documents and areas of testimony on which the witness has important additional information and avoid repetition. If an area is important to the case but not central to the witness’s story, save it for someone else. Exposing a witness to an area not within his or her home bases provides fodder for needless cross-examination. Make your points only with the appropriate witnesses. Don’t later regret leading a witness into unfamiliar territory.

Once you’re satisfied that you know the witness’s story, areas of expertise, and expected testimony, it’s time to start working on nuance and style. Multiple sessions and repeated rounds of practice questions are a must. Your witness must be sufficiently prepared and confident that you can simply introduce subjects and then ask when, what, and why.

Don’t write out your questions. If you do so, you’ll be reading instead of listening. Outline the key topics and expected areas of testimony, grouped chronologically or by major topic. A good outline reflects a synopsis of the expected testimony, not the questions. On direct, aim for simple, open-ended questions to elicit the witness’s account. The outline should allow you to see if the witness answered as expected or if you need to follow up. It should allow you to introduce the topic and then ask open-ended “when, what, and why” questions to obtain the expected testimony. Depending on the witness’s answer, you might ask one, two, or even three questions to fully elicit each expected point.

Cross-examination. In many cases, the witness will have been deposed and you’ll have a good idea of the areas vulnerable to cross-examination. Again, the most important messages to the witness are to tell the truth and stick to the home bases where he or she truly has personal knowledge. An honest answer that a particular topic is outside someone’s personal knowledge is always better.
than trying to stretch recollection in an attempt to be helpful. Role-play cross-examination extensively—be tough and aggressive—working on key areas multiple times. Especially where the other side will stress previous deposition testimony or statements in documents, reviewing the potential cross-examination multiple times will make the witness comfortable with the testimony and his or her word choice so that the testimony will not appear defensive or troubling.

Look for opportunities to plant what I call “ticking time bombs.” Often a key fact will come out in deposition or a document—and the other side loves it. You know they can’t resist asking about it. But at times, something will occur after the deposition that changes the otherwise troublesome meaning of the earlier statement or better explains it. Normally, you’ll want to include the potentially harmful facts in your direct and thereby present them in the best light. But if you have a fact that is no longer damaging, and you have confidence that the other side can’t resist asking about it, think about skipping it on direct and letting your witness spring the real facts on opposing counsel during the cross.

Once you’ve fully prepared your witness, make sure the witness sees the courtroom in advance and, if possible, sits in the witness chair prior to giving testimony. Point out where the judge and court reporter are, where you’ll be, and, most important, the jurors’ seats, especially the potential leaders of the jury.

Calling your witness. When it’s time to call your witness, announce your witness’s name confidently and give your witness a welcome smile as he or she walks to the witness stand. If the court permits, stand right next to the far end of the jury box when you ask questions.

That way, while looking at you, the witness is also looking in the direction of the jury. Start out with personal facts about the witness: education, residence, and expertise so that the witness is comfortable from the outset presenting his or her human story. Then move to substantive areas with a topic heading that tells the witness (and the jury) where you’re going. For example, “Let’s now turn to the termination of the contract. What was your involvement with that process?” There will be no need to ask leading questions because the witness will be fully prepared and comfortable with the questions you’re posing. If the witness needs a little orientation for a particular area or question, ask a follow-up “why” question. For example, “I’m wondering why you thought the plaintiff understood the termination clause? Can you tell us about that?”

Pay attention to the jurors during the examination to see if they’re following the witness’s testimony. When you notice a juror looking quizzical and so perhaps missing an important point, reconfirm or follow up. When the witness makes a particularly important point, ask a question to reinforce it (looking at the jury when you ask the question, thereby prompting the witness to direct the answer to them). Use your outline to orient you and to confirm that the major points are covered, but focus your attention on the witness and the jury.

When you’re done, thank the witness for his or her testimony and have a seat. As cross-examination proceeds, you can remain relaxed, knowing your witness is fully prepared and should do fine. If necessary, follow up with redirect, but keep it short to reinforce the comfort and confidence you have in the witness. Cases are never won on redirect!

When the examination is done, confirm that the witness may be excused (and not be recalled to testify) and walk the witness to the door with a big thank-you as you call the next witness.
By Liani Reeves

Representing a government entity presents unique challenges when it comes to high-profile litigation. Open records and meetings laws expose the actions of a government office to public scrutiny before, during, and after an action is taken. This article will provide an overview of issues and responses to those issues you should consider before, during, and after a major lawsuit hits your agency.

Expect the expected. Help your client minimize risk by taking steps to avoid being sued altogether.

It’s your job to know your client by developing a thorough understanding of day-to-day activities and projects. What is your agency working on that may cause heightened interest? Constantly assess the work of your agency, its risk, and its potential liabilities. Act proactively and creatively to avoid litigation.

Expect the unexpected. Steps that you should take to prepare your agency for major litigation or crisis include the following:

Build relationships with reporters, legislators, and other constituents so that when a crisis develops, the relationship is not automatically adversarial or distrustful. Also, think ahead and have contracts in place with outside vendors that you may need in a crisis.

Develop an internal crisis communications plan so that the right people are notified immediately. This can be done through an agreed-on calling tree in which each person has one or two others that he or she is responsible for notifying. Or you can choose one person who has responsibility for notifying everyone on the list. The key is to have already compiled a list of crucial players who must be notified.

Establishing and training a team of the key players who will provide an immediate and coordinated response to a crisis is vital. The team will vary depending on the agency, but, generally, it should include the chief executive responsible for managing the policy and day-to-day operations; in-house counsel and perhaps outside counsel, depending on the situation; a risk manager or insurer; the human resources director; the director of communications/media relations; and possibly the legislative director or constituent affairs director. The goal is to have representation from all the key components of the agency.

You’ve been sued. Now what? After your agency has been sued, you should follow a set protocol: Convene the team, prepare the team for litigation, develop an action plan, develop a routine for ongoing coordination, and manage employment issues.

Convene the team. The key purpose of the initial crisis management team meeting is to understand why and how the litigation occurred and identify short- and long-term goals. The team must have a common understanding of the background surrounding the litigation.

Understanding the individual goals of different aspects of the agency’s management is vital. Everyone on the team will not have the same goals. In fact, some of the goals may appear to conflict with other goals within the agency. The executive’s goal will be tied to policy and keeping the work of the agency moving forward. The insurer’s goals will likely be to find the easiest and most efficient path to resolution. The communications/public relations person’s goals will be focused on managing the message. And, as the lawyer, you have responsibility over all these areas, as well as the overall goal of assessing and mitigating litigation risk.

Ensuring that everyone understands each other’s goals and concerns is critical so that inadvertent actions that may undermine another’s goals are avoided.

Prepare the team for litigation. Immediately discuss with the team issues that are crucial to managing litigation. Especially when dealing with high-profile litigation, it is essential that your clients understand the scope of the attorney-client privilege and the ways that privilege can be inadvertently waived. They should also be advised about discussing with others matters pertaining to the litigation and what it means to have a discoverable conversation. At the initial meeting, carefully explain the client’s responsibilities to preserve potentially relevant documents and the possible sanctions for loss of documents.

Develop an action plan. At the end of the initial meeting of the crisis
management team, it is critical that each person leave with an understanding of his or her respective action items. Crisis easily drives people to indecision and inaction. The more specific and focused tasks can be, the easier it will be to keep the agency moving forward.

_Del_**e**_velop a routine for ongoing coordination. The team should schedule regular coordination meetings to check on progress and goals. One person should have overall responsibility for coordinating the team. The agency’s top lawyer is an ideal candidate to take on this role because his or her portfolio covers all aspects of the agency’s work and the coordination can be protected by work-product and attorney-client privileges.

Coordination of actions is especially critical. For example, ensure that the office doesn’t inadvertently hold a press conference announcing a high-priority policy project on the same day that a significant brief is filed or a hearing is held that will attract media attention. As a general matter, the communications team should be alerted any time there is some action in the litigation that may spark interest so that it is prepared to respond effectively.

_M_**a**_nage employment issues. Agency employees dealing with a lawsuit may find it intimidating and draining, either because employees’ actions are at issue or because they are participants in the litigation process. The following is an overview of issues related to individually named defendants and employee witnesses that you and your human resources department should consider.

Determine whether an individually named defendant was acting within the course and scope of employment. This will inform questions of whether the agency will defend and indemnify the employee or whether independent counsel should be hired for the employee.

To help manage employee morale and unrest, issue proactive guidance to employees about what they should do if they are contacted by an attorney, investigator, or reporter about the litigation. Be mindful that any written guidance to employees may be leaked outside of the agency. Therefore, make sure that it is objective and practical advice and issued from the human resources department, not from general counsel, so that there are no arguments around waiver of privilege.

When meeting with any employee, be very specific in establishing the scope of the attorney-client relationship at the outset. Clearly state that you represent the agency and that you are not the employee’s lawyer. Tell employees whether their communications with you are privileged—and, if so, the importance of maintaining privilege and how privilege can be waived.

Employees who are not named as defendants but who may be fact witnesses can pose a challenge in terms of representing and attorney-client privilege. While management employees are often considered “the client” for purposes of asserting an attorney-client relationship, nonmanagement employees may not be considered “the client.” Therefore, opposing counsel may be able to talk to them directly without presence of counsel, and conversations with nonmanagement employees may not be protected by an attorney-client privilege.

**The aftermath: Debrief.** When litigation concludes, the natural reaction is to physically and emotionally box it up and move on to the next project or crisis. Instead, convene your team to debrief about the underlying event that caused the lawsuit and review the litigation process. Ongoing issues—such as repairing harm to the agency or managing staff morale or personnel issues—may need to be addressed long after a judgment is entered. Assess whether additional actions are necessary and continue to coordinate any follow-up as needed. ■

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A DICHOTOMY OF FIDUCIARY DUTIES FOR THE TRUSTEE-MANAGER

By Timothy M. Ferges

Where a fiduciary serves as trustee and simultaneously manages a business entity owned by the trust, the fiduciary serves in dual fiduciary capacities. This “trustee-manager” owes fiduciary obligations to the trust beneficiaries both in his capacity as trustee and in his capacity as business manager. This dual fiduciary status raises a question—what law governs the trustee-manager’s conduct? Is the trustee-manager’s conduct governed by the law of trust and estate administration, the law of business management, or some combination of the two?

Among the trustee’s many fiduciary obligations are the proverbial triad of primary duties—the duties of good faith, loyalty, and due care. Directors, officers, and managers of business entities likewise owe fiduciary duties to the entities’ owners. Those directors, officers, and managers, however, might claim their actions should be subject to a lower level of scrutiny. They may cite concepts such as the “business judgment rule” as the standard governing their actions. The difference in these two fiduciary standards creates a quandary for courts, which must evaluate the conduct of an individual who serves in both capacities—as trustee and as director or officer of the entity owned by the trust she administers.

Where a fiduciary acts in the dual role as trustee and manager, the Uniform Trust Code may be interpreted to promote the imposition of the higher trust-level fiduciary duties to govern the conduct of trustee-managers. For example, § 802(g) provides that “[i]n voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries.” The Restatement (Second) of Trusts likewise can be viewed as promoting higher trust-level duties. For example, it provides the duty of a trustee in voting shares of stock is “to use proper care to promote the interest of the beneficiary.”

While the Uniform Trust Code and the Restatement might be interpreted to impose higher trust-level fiduciary obligations on a trustee who exercises his voting power over an entity owned by the trust, different courts in different states have taken varied approaches when evaluating the trustee-manager’s conduct.

Courts that have applied the heightened trust-level fiduciary standards. The New York Court of Appeals seems to have determined that the higher trustee-level fiduciary duty prevails. In re Hubbell’s Will, 302 N.Y. 246, 254–55 (1951), it held that “where a trustee holds a working control of the stock in an estate [owned] corporation he is accountable in the probate court for the administration of the corporate affairs.” The duty of trustees and personal representatives of estates to maintain a “punctilio of an honor the most sensitive . . . extends not only to the trust estate . . . but also to the operations of the corporation.”

Missouri has also determined that a trustee-manager owes the trust’s beneficiaries the highest level of fiduciary duty. In Betty G. Weldon Revocable Trust ex rel. Vivion v. Weldon ex rel. Weldon, 231 S.W.3d 158 (Mo. Ct. App. W.D. 2007), the court enjoined the trustee-directors from selling certain property owned by the trust. The court recognized that “[w]here a corporate director or officer’s decision falls within the business judgment rule, the court will not interfere with that decision.” Rather than apply the business judgment rule, however, the Weldon court applied the stricter standards under Missouri’s version of the Uniform Trust Code. Determining that the “trustee’s duty of loyalty to administer the trust solely in the interests of the beneficiaries” governed, rather than the business judgment rule, the court enjoined the trustee-directors from selling certain property owned by the corporation.

Courts that have applied the lower business-level fiduciary standards. While many courts have applied the heightened trust-level fiduciary standards to evaluate the actions of trustee-managers, others have applied the more deferential business-level standards.

In Perry v. Perry, 160 N.E.2d 97, 99–100 (Mass. 1959), a trust beneficiary challenged the actions of his uncles as trustees and directors of the company owned by the trust, claiming those trustee-managers engaged in various transactions that
amounted to self-dealing. The Massachusetts court noted there was no evidence of actual fraud or bad faith and held there was “no basis on the findings for disregarding the corporate entity in determining the obligations of the officers of the corporation who were also trustees.” The court refused to set aside the transactions, even though they amounted to self-dealing.

The Rhode Island Superior Court in *Wood Prince v. Lynch*, 2005 WL 373805 at *5 (R.I. Super. Feb. 8, 2005), applied the more deferential business judgment rule to evaluate the conduct of a trustee-manager. The court recognized that trustees owe their beneficiaries the “highest” fiduciary duties. Nonetheless, the court concluded it was appropriate to apply the business judgment rule because it found commonality between the duties of trustees and directors; it noted both trustees and business managers owe the “tried” of duties to exercise good faith, loyalty, and due care.

The grantor’s ability to control the governing fiduciary standard. Where the grantor exhibits, either explicitly in the trust instrument or through his conduct, an intent that the lower business-level fiduciary duty govern the trustee-manager’s conduct, some courts will honor that intent, although in many instances this type of exculpatory language is disfavored or strictly construed.

Georgia has recognized that a grantor may explicitly provide in the trust instrument that the trustee-manager is to be governed by the lower business-level fiduciary duties. In *Rollins v. Rollins*, 294 Ga. 711 (2014), the Georgia Supreme Court reversed a decision of the Georgia Court of Appeals that extended the higher trustee-level fiduciary standard to the conduct of trustee-managers. The Georgia Supreme Court noted the Court of Appeals’ ruling “may be appropriate as a general rule.” Based on the facts, however, the Supreme Court found the settlor took great pains to clarify in the trust instrument his specific intention that the trustee-managers were to manage the companies owned in trust not solely for the benefit of the trusts’ beneficiaries, but also for the benefit of other shareholders. The court determined that a corporate-level fiduciary standard was more appropriate to evaluate the trustee’s conduct as director of the corporation.

New Hampshire has recognized that a grantor’s own conduct may evidence his intent that the trustee-manager’s conduct be governed by lower business-level fiduciary duties. In *Bartlett v. Dumaine*, 523 A.2d 1, 5–6 (N.H. 1986), the grantor created trusts during his lifetime that were funded with stock in corporations the grantor controlled. After his death, the grantor’s children pursued claims against the trustees who also managed the company. The New Hampshire Supreme Court recognized that trustees owe a high fiduciary duty to their beneficiaries. The court, however, determined that “[t]he general principles of trust law apply to a trustee unless the settlor imposes different constraints on the trustee.” In this case, conflicts of interest of the trustee-managers were “inherent in the declared scheme of the settlor.” During his lifetime (when he served as trustee-manager himself), the grantor ran both the trust and the company as an integrated entity, maintaining the very conflicts of interest of which the beneficiaries later complained. The evidence demonstrated “that the settlor intended the trustees . . . within their discretion, to take business risks with trust funds in concert with the . . . Company.” In this particular case, the New Hampshire Supreme Court therefore did not apply trust-level fiduciary duties to the conduct of the trustee-managers.
Most of us have a life of constant movement and deadlines, whether they are driven by our career, family, friends, or volunteer efforts. Often, we find ourselves simply reacting to what is thrown at us rather than proactively directing our lives. I have my fair share of these moments. When this happens too much, I finally need to stop and get a grip on things. When I finally stop, breathe, and give intentional thought to my life, I realize there is a better way of living.

**ARE YOU FOCUSED?**

It may seem silly to ask lawyers if they are focused. After all, we are required to focus (at least sometimes) when we are representing our clients, whether it be listening to their story, determining legal strategy, or being in court. Transactional lawyers must focus on the details of their work product as well, lest a word or punctuation be wrong and change the entire meaning of an important clause in an agreement or other document. So, if part of your job is to focus, why would I ask you such an obvious question?

The answer is that the focus that most lawyers do, out of sheer necessity, is directed toward others. We direct our focus on our clients, our cases, our opposing counsels, our judges, our juries, and our employees and co-workers. Who is not included in that list? You guessed it: you! How can you effectively represent your clients and our profession if you don’t focus on yourself at least part of the time? You can’t, and that’s why I’m reminding you now.

As we all have heard and read and thus instinctively know, this profession is a killer if we let ourselves go. The rate of depression, alcoholism, drug use, and suicide in our profession is higher than in most, if not all, others. Our constant focus on other people leaves little room for ourselves. We let our bodies, minds, and morals go in the name of advocacy. In Texas, we have lost some high-profile attorneys in recent years due to overdoses and suicides. The losses of these attorneys have shaken the Texas legal community and made it clear that we need to do more as a profession to help attorneys deal with the pressures of our career and remind them to focus on their own mental and emotional health. The State Bar of Texas and other bar associations throughout Texas have responded and doubled their efforts to teach attorneys how to recognize when our colleagues are in need and how to appropriately intervene if necessary. Programs have been developed to bring this topic out into the open and try to erase the stigma of being weak...
if we are suffering from depression, financial stress, or any number of other mental and emotional issues that cause us to neglect our mental, emotional, and physical health.

My reminder for you to focus on yourself is not simply a reaction to tragedy but rather a call for each of us to live the best life possible. Being focused will improve your life and therefore the lives of others. When we are focused on and taking care of ourselves, we become better attorneys, spouses, parents, friends, colleagues, and leaders. I urge each one of you to understand the importance of focusing inwardly as part of your life, and not letting the pressures of your life always dictate your thoughts and actions.

WHAT ARE YOUR PRIORITIES?
If I’ve convinced you about the need to focus on yourself at least some of the time, then the logical question that follows is what do you focus on? The short answer is your priorities. This begs the question: What are your priorities?

While most of us think that our priorities are obvious, I urge you not to gloss over this question. Priorities are different for each of us because we all have unique lives. A good starting place to determine your priorities is to determine all the roles you play in your life. Once you figure out your roles, then the priorities will become self-evident. Besides being an attorney, most of us have family in one form or another (whether they be parents, children, siblings, or extended family), friends, volunteer efforts, and leadership roles. For every role you have, you have certain duties and obligations in fulfilling that role meaningfully as well as goals you would like to achieve in that role. You want your children to do well in school and turn out to be good, decent, and caring human beings. You want your spouse or significant other to love and respect you. You want your boss, colleagues, or employees to be able to depend on you and trust you to make sound decisions. The list goes on and on.

But even more than your roles, you need to focus on your own health regardless of the roles you have. Your mental, emotional, and physical health must be your top priorities because you cannot be there for others in a weakened state. As the flight attendant reminds us before takeoff, in case of emergency, put your own oxygen mask on first before helping others.

GOALS BASED ON PRIORITIES
Once you know your priorities, you must set goals to keep them as priorities. Your goals must be smart goals. In other words, each goal associated with a priority must be specific, measurable, actionable, relevant, and time-sensitive. When your goal is specific, you don’t need to guess about it and veer off path later due to vagueness. When your goal is measurable, you know what it takes to achieve the goal. When your goal is actionable, you know how to be productive and accomplish your goal. When your goal is relevant, you’ll be motivated to accomplish it. Finally, when your goal is time-sensitive, you’ll know when to complete it and how it fits into your life. If your priority is to lose weight, your goals should help do that; set up diet, exercise, and lifestyle goals that you can actually measure and track and thus keep yourself motivated. If your priority is to write a book, your goals should move you forward to accomplishing that priority, such as writing goals, writing class goals, etc. When you create and follow through with smarter goals in support of your priorities that are based on focusing on yourself, your life will be much more fulfilling to you and keep you fit and out of the danger zones of depression and abuse of drugs and alcohol.

INTENTIONAL LIVING
As I pointed out in the beginning of this column, most of us live a reactionary life when we should be living an intentional life. If you invest in yourself and intentional living, you’ll accomplish far more than you ever could just by reacting to the demands of the day. I beg each of you to give yourself the freedom and permission to focus on yourself for a change. Once you do this, you can determine your priorities, set smart goals, and act to achieve those goals. I promise you that focusing on yourself and fulfilling that focus will result in a life full of significance and value. Once you have done this for yourself, you can do it for others. We will be a better profession with healthier attorneys and hopefully push back the tide of depression, disease, and self-doubt that plague our profession.

Benjamin K. Sanchez (bsanchez@sanchezlawfirm.com) has a general litigation practice based in Houston, Texas, and focused on business, consumer, real estate, family law, and criminal defense matters. In addition to his law practice, he has a leadership training, speaking, and personal/business coaching company (Kirk & Hazel Company) and is certified by John C. Maxwell and licensed by Les Brown to train and speak on their respective material. Benjamin has been a solo/small firm Texas attorney for 20 years and a leader in local, state, and national bar associations since becoming licensed.
ALL THINGS MUST PASS

By Cynthia Sharp

When the board of GPSolo magazine invited me to write a biannual column (The Social Media Strategist), I was both honored and thrilled. This column has given me a platform to share knowledge and points of view with thousands and thousands of solo and small firm lawyers.

However, the time has come for me to step aside and pass the baton to an author who can give you yet another perspective on this critical and evolving topic. I am pleased to introduce Jordan L. Couch, Esquire, who will serve as GPSolo’s Social Media Strategist beginning with the January/February 2019 issue. To learn more about Jordan and get a taste of the great writing and helpful tips you can expect in future installments of The Social Media Strategist, check out his article “Communicating with Clients: Five Conversations You Must Get Right” on page 14 of this issue of GPSolo.

My final column consists of a compilation of past articles written for both GPSolo magazine and GPSolo eReport. My great hope is that you will refer to these resources as you grow your presence and participation in the social media world.

“THE SECRET OF GETTING AHEAD IS GETTING STARTED”—MARK TWAIN

Most agree that success in a given arena requires strategic planning and execution. Some of you have followed suggestions provided in my past columns, and I appreciate the feedback and encouragement you have sent my way. However, I suspect that others did not have the chance to read the articles at the time of publication or weren’t ready to move forward in the social media world.

Building a social media program that attracts new business requires an investment of time and money. The “why” is obvious, but the “how” can present a major obstacle. For the convenience of GPSolo members, I have compiled below the titles of each of the articles that I have written in the arena of social media for both GPSolo magazine and GPSolo eReport, along with a brief synopsis of the content. Through the years, I have attempted to give broad coverage to the topic and to touch on areas that would help lawyers in their day-to-day practices. If you are unable to access any of the following articles, please e-mail me at cindy@thesharperlawyer.com, and I will be happy to send you a PDF version.

COMPILATION OF SOCIAL MEDIA ARTICLES BY CYNTHIA SHARP

“Making the Case for Social Media,” GPSolo eReport, August 2013 (tinyurl.com/yb735sh4). As the first installment of a GPSolo eReport column on social media savvy, this article answers the question: Are attorneys ethically obliged to take a greater interest in social media? Digital natives and digital immigrants alike will benefit from the information.

“Social Media Marketing and Ethics,” GPSolo eReport, October 2013 (tinyurl.com/yb87l9zy). Discussion of online ethical pitfalls, including the problem of unintended representation and why attorneys must review every detail of the firm’s website before it goes “live.”

“Social Media and Other Research Tools,” GPSolo eReport, December 2013 (tinyurl.com/y91bezy). This article introduces practical no/low-cost resources and includes material regarding the proper citation of social media sources as well as a solution to the sticky problems of link rot and reference rot.

“Social Media: The Litigation Context,” GPSolo eReport, February 2014 (tinyurl.com/yak39rbr). Introduces several key issues in the litigation context that cannot be ignored and suggests a few strategies that can be immediately implemented.

“Social Media: Moving Forward with Social Media,” GPSolo eReport, April 2014 (tinyurl.com/y8b83a5u). Seven tips designed to motivate attorneys to engage in a social media initiative.

A must-read for lawyers who have not yet enacted formal social media guidelines for their firms and who are looking for guidance on how to begin. “Research in the Cyber World,” GPSolo eReport, April 2015 (tinyurl.com/y72abfeg). An introduction to a smattering of the infinite online research tools that will be useful in any lawyer’s bag of legal tricks.

“Social Media Ethics in the Age of Documented Mischief,” GPSolo, May/June 2015 (tinyurl.com/y7ev3dpe). Advice on how to avoid online professional and personal embarrassment, guard your ethics, safeguard your bar admission and employment prospects, adjust your privacy settings, and plan for the digital hereafter.

“Leverage Your Professional Brand Online,” GPSolo eReport, June 2015 (tinyurl.com/yaypukwl). Although personal professional online branding cannot be reduced to a blueprint, the five-step process set forth in this article can be relied on as the basis for an initial action plan.

“The Social Media Strategist: Using Video to Connect with Your Target Audience,” GPSolo, May/June 2016 (tinyurl.com/ycbigw4d). I urge each reader to consider stepping more deeply into the worlds of video sharing, videoconferencing, and instant live streaming. The focus is on leveraging these platforms to attract more business to your law firm. After all, creating and deepening connections with clients and referral sources will result in more cases coming your way.

“The Lawyer’s Guide to Profitable Virtual Presentations,” GPSolo eReport, Part 1, January 2017 (tinyurl.com/y717nqvo); Part 2, February 2017 (tinyurl.com/yazshkh); Part 3, April 2017 (tinyurl.com/y6w2yt5). Many attorneys are participating in online webinars offered by third parties such as bar associations or by their own law firms but don’t feel equipped for the project. Part 1 addresses the challenges of choosing topics and finding audiences. Part 2 focuses on how to engage viewers/listeners who will ultimately either refer or become a client. Part 3 provides guidance on effective preparation for and deliver of a presentation to a virtual audience and gives tips on following up.

“The Social Media Strategist: Gain a Competitive Advantage by Using Competitive Intelligence,” GPSolo, January/February 2017 (tinyurl.com/y7d66mg2). Discusses the use of competitive intelligence as a means of guiding, informing, and leveraging a law firm’s traditional marketing plan. As with all marketing activities, results will improve when a strategic approach is adopted and consistently implemented.

“The Social Media Strategist: Social Media Content Strategy,” GPSolo, July/August 2017 (tinyurl.com/y8rp3r5). My mission in this article is to help lawyers who have a message to disseminate but who remain unheard by the marketplace. A six-step strategy for consistent, efficient, and effective content development is provided.

“The Social Media Strategist: Building Profitable Relationships,” GPSolo, January/February 2018 (tinyurl.com/y9x27zzl). Outlines a plan of action for lawyers who want to enhance their firm’s market share by engaging in meaningful and personal communication with the firm’s community.

“Book Review: LinkedIn Marketing Techniques for Law and Professional Practices,” GPSolo eReport, February 2018 (tinyurl.com/ycr7j6l). This review includes a list of six recommendations in the LinkedIn arena that can be implemented immediately. The book’s author, Marc W. Halpert, urges readers to “get into the game” and notes that “LinkedIn is not a spectator sport.”

“PARTING IS SUCH SWEET SORROW”
—WILLIAM SHAKESPEARE

I would be remiss if I did not thank the Editorial Boards of both GPSolo magazine and GPSolo eReport for their support through our years together. Editor-in-Chief Jeffrey Allen and Managing Editor Rob Salkin have given me great professional latitude, and I appreciate their confidence in my writing. Most of all, I am grateful to you—the readers—for being open to new ideas and for taking the time to read in the midst of a demanding career. Please connect with me on LinkedIn (linkedin.com/in/cynthia-sharp-esq-5226371a) or send a Facebook Friend request (facebook.com/sharperlawyer).

And now I pass the baton to my esteemed successor, Jordan Couch. It will be fun to be a reader, instead of a writer, of this column.

Business development strategist and veteran attorney Cynthia Sharp, Esq., works with motivated lawyers seeking to generate additional revenue for their law firms. The business development strategies and skill sets that she shares were developed and tested over a period of 30 years in practice and are constantly refined to reflect modern marketing techniques. For additional information about business development issues, check out thesharperlawyer.com. She can be reached at cindy@thesharperlawyer.com or 609/923-1017.
TIPS AND TRICKS TO BEING PERSUASIVE

By Ashley Hallene

The art of persuasion generally boils down to the practice of effective communication. It is sometimes mistakenly presumed that you emerged from the law school cocoon as a silver-tongued fox ready to argue and win every time. The reality is, while you may be a persuasive master in one or two aspects of practicing law, you have not mastered all of it. This magazine issue is loaded with great advice to hone your skills, and this column is intended to be the icing on the cake—offering a few “hacks” for being more persuasive to get you quickly on your way.

Be confident and firm on the point you are trying to make. Humans tend to prefer cockiness to expertise, especially in that initial short window where you are trying to persuade someone who may not know you or your level of expertise. Avoid weakening your assertion with phrases such as “I think” or “I believe.” Stand behind your assertions, even if they are just opinions.

Use small wins to build momentum in your favor. Think back to physics class, and recall that a body in motion stays in motion. This also applies to a head that is nodding in agreement. Rather than jumping straight into the core of your argument, try to start off with statements or premises that your target audience will agree with. This will build momentum for further agreement. Once you have momentum, you may want to vary your rate of speech. If you are speaking to an audience that is likely to disagree with a point you are about to make, try speaking faster. Speaking faster gives your audience less time to formulate their own counter arguments (think of the fast-talking car salesman). Pay attention to your audience, though, if you believe they are more likely to agree with you; then you will benefit by speaking slower. This gives them time to evaluate your arguments and consider their own initial bias. They are more likely to persuade themselves.

Friends don’t let friends overuse PowerPoint. This advice was borrowed from an ABA Journal podcast on using theater techniques with juries, but it is good advice in mediations, community events, seminars, or many other situations lawyers find themselves in. When you are speaking to an audience, you tell the story, not PowerPoint. PowerPoint is a helpful tool for highlighting key points your audience should retain from your story, but do not depend on it to make your argument or hold your audience’s attention.

Track eye movement to measure your success. If your audience, whether it is a single colleague or an entire jury, appears bored or is looking away, then they are not receiving the information you are trying to convey. If you are not communicating with them, then you are not persuading them. You need your audience to be engaged with your story to keep the momentum of agreement going.

Practice your persuasion skills in e-mails. Before you hit send on that e-mail, step into the shoes of the person who will be receiving your message. With this in mind, be sure to:

1. Make the goal of your e-mail clear—is it readily apparent to the recipient what he or she needs to do?
2. Explain why your recipient should care or receive/act on the message—is this request holding up progress on a matter? How will your recipient benefit from taking action?
3. Avoid redundant words—this same point applies to your persuasive writing. Don’t waste your recipient’s time with redundant words.

None of these tips will guarantee the effective delivery of your message. Nor will they guarantee your success in being persuasive. However, they will help you along the way. Plan ahead for success and be mindful of your audience when you are communicating in any medium.
ADVISING THE SMALL BUSINESS: FORMS AND ADVICE FOR THE LEGAL PRACTITIONER, THIRD EDITION

BY JEAN L. BATMAN

Advising the Small Business, Third Edition, includes many updates and new forms, in addition to all the general guidance, forms, checklists, and resources from the first two editions, on issues that small businesses commonly face. This guidance can be invaluable to attorneys who do not have access to enough other lawyers or deal flow, or who haven’t had enough experience, to know what is “standard” in this area of practice.

Although there are many guides available for entrepreneurs, this book speaks to the advisor, not the entrepreneur. Advising the Small Business is designed to help legal counsel provide more effective legal and strategic guidance to small business clients, produce relevant documents, and spot issues that require further research or a specialist. It’s unique in its discussion of both how to approach an issue from scratch (e.g., drafting a contract or forming a corporation) and how to clean up an existing situation (e.g., amending agreements and corporate cleanup).

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