

# Social Media Musings

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My Reflections  
on the Practice  
and Life

*By Frank Ramos*



*To Ana,  
You Always Clear My Mind.*

*To David and Michael,  
Your Music Has Fueled My Writing.*

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# Acknowledgement

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To Marilyn Pedraza, who transformed my random LinkedIn posts into a book. Without you, I would still be looking at the data dump LinkedIn sent me, saying “Whoa, what am I going to do with all of this?!”





## About the Author

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Francisco ("Frank") Ramos, Jr., is the Managing Partner of the Miami litigation boutique firm of Clarke Silverglate, P.A., where he practices in the areas of personal injury defense, product liability, employment and commercial litigation. He served on the board of DRI and is a member of the Federation of Defense and Corporate Counsel (FDCC), where he served as co-chair of the Deposition Boot Camp, the Art of Marketing Seminar and the ACT Initiative. He is a Past President of the Florida Defense Lawyers Association and Past Chair of the Eleventh Judicial Circuit Historical Society. He has served on the boards of the Miami-Dade County Defense

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This is Frank's ninth book. His other eight books include—*Go Motivate Yourself*, *From Law School to Litigator*, *The Associates' Handbook*, *Attorney Marketing 101*, *Training Your Law Firm Associates*, *SLDO Strategic Planning Manual*, *Future of Law* and *The Practice and Process of Law—A Checklist for Every Occasion*. He has written over 300 articles and has edited four books—*The Defense Speaks*, *The Trial Tactics Defense Manual*, *The Deposition Manual* and *Leadership for Lawyers*. Please follow him on LinkedIn, where he regularly posts and has over 36,000 followers, or feel free to e-mail him at [framos@cspalaw.com](mailto:framos@cspalaw.com).



# Prologue

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For three years I have posted every day on LinkedIn. Each post is advice to lawyers about the practice and life. This book is a sampling of those posts. They are organized by topic. These posts served to focus my thoughts daily and have helped me reflect on what I do as a lawyer and how to do it better. I hope you enjoy the posts and I encourage you to follow me on LinkedIn where you can read new posts every day.



## Personal Strategic Planning

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A little financial advice for young lawyers. There is positive spending and negative spending. Spending on books, classes, courses, memberships, functions, conferences and the like to make you a better lawyer is money well spent. You're investing in your career. Spending money on status—a huge house, a fancy car or an over-the-top vacation simply as a reflection of whom you are or as a symbol of your status—is not money well spent. I'm not suggesting you shouldn't have nice things. I'm saying ask yourself why you want to buy something extravagant. Spend money on the things that last, that make you better, that improve your career, health and well being. Everything else is noise.

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Identify an attorney you admire, ask her or him out for coffee and find out about her or his success. They may say no. They may never respond to your inquiry. But if they say yes, those thirty minutes may change the trajectory of your career for the better.

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Tip more. As lawyers, we talk about making a difference. Changing circumstances, changing lives, changing society. Well, here is a very small



way to make a difference. Tip more. I saw a recent viral video on how you can save \$400 a year by tipping less. How does the guy in the video do it? He simply tips less. Waiter and waitress jobs are tough jobs. They get paid terribly and they rely on tips to pay their bills, put food on their tables and put their kids through school. Save money somewhere else. When you go to a business lunch or dinner, and talk about your firm, and the check comes around and you tip poorly, you give all us lawyers a bad name.

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Somewhere along the way, many of us lost our imaginations. Remember elementary and middle school, where we painted and drew, wrote short stories and poems? Many of us put those days and activities away years ago, and never looked back. Look back. Take a drawing or painting class, take a fiction class or improv class. Stimulating your imagination will help you view your cases in a new light and possibly lead to epiphanies for case themes or theories.

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My first article sucked. My second sucked a little less. 300 plus articles and 7 books later, I'm far from sucking. But I never would be here if I hadn't written that subpar first article. You want to do something well? Accept that at first you'll likely suck at it and just keep at it.

— — —

Each of us has a drive and grit to pursue something wholeheartedly. For some, it's exercise. Others, it's work. For others, it's writing, or speaking or leading. Identify the one thing you fight through the fog and distractions, you push past the discomfort and naysayers, and study why you have a passion for that one thing. Study why you are driven to do that one thing so you can evaluate for yourself whether that drive can be applied to other aspects of your life—whether your career, your health or something else. You already have the drive—it's just a matter of redirecting it into other aspects of your life.

— — —

Passion. It is integral, because without it you will walk away from the challenges and obstacles. That is why we must define what we're passionate about, because we will only give every ounce of what we have for what we are truly passionate about. You lack passion, and sooner or later, you will walk away. You have passion, and no obstacle or challenge seems too big. Each of us are passionate about something, and many of us are passionate about several somethings. Pursue that. Pursue something else and odds are you'll walk away.

— — —

Write it down. Take a business card, turn it over, and write down the big thing you want to accomplish. Tuck it into your wallet or purse and look at it every day. That's the goal. Always keep it in front of you. Always remind yourself

of it. Always have it close by. Never throw it away. Never forget about it. It's your compass. It's pointing north. Follow it to the destination.

— — —

Folks make a mistake knowing the difference between the big choices we make and the little ones. They focus on the big choices—where to go to school, what career to pursue, what job to take, whom to marry. And while focusing on these big choices they overlook the little ones—how early they get up, what they eat, what they read, what they watch, what they do with their time. It's these little choices that add up to making a big impact on our lives, for better or worse. So what do folks get wrong when defining the difference between the big and little choices? It's assuming there is any difference at all.

— — —

After too long of a hiatus, I'm working out again. I've looked at too many recent photos of myself at conference events and can't recognize who is staring back at me from those photos. So, I'm taking my own advice, and taking it one step at a time. One work out at a time. One salad at a time. Saying no to temptations one day at a time. Doing the hard work one day at a time. Eating the elephant one bite at a time. But since I'm eating healthy, I'll change the elephant in the metaphor to a mountain of kale. One bite at a time works for any big project. Don't focus on how big the overall task is. Just focus on the bite sized steps.

— — —

The power of the daily. Work on something every day, even if it's a little bit each day, and with time you will see big results. You blog or post every day? In a year, you have enough material for a book. You read on a given topic each day? Within a year, you can be an expert on that topic. Work out and eat right each day? Within a year, you'll feel and look great. Each day, advance the ball, even if only a few inches. Eventually, you'll get it across the goal line.

— — —

When I fly, I find a book store at the airport, buy a book, read it on the flight and give it away when I land. Yes, I know I'm paying retail at an airport bookstore. Yes, I know it would be cheaper to buy an e-book on my phone. The act is about picking up a physical book off a physical shelf, holding it in in my hands as I read it, and then handing it off to someone else, and sharing the book and experience with them. But I digress, because this post has nothing to do with that. It has to do with a book I picked up during one of my trips—*The Subtle Art of Not Giving a F\*ck*. Yes, it's a crass title and uses crass language, but its central tenant—not sweating it—is crucial to your sanity as a lawyer (and for any other profession). Being able to keep your head while those around you are losing theirs, as Kipling says, to see the humor in the chaos and the storm, to not give a f\*ck, as the book says, that'll keep you from getting a stress heart attack, or grind your teeth at night or drop dead

at 45. It's just not worth it. You're a better lawyer sometimes when you care less than when you care too much.

— — —

Ideas, not stuff. Find others whose conversations gravitate toward ideas, not things they own or things they want. Folks who have vision talk about big ideas and about pursuing them. Folks who focus on stuff talk about houses, cars, vacations and other toys. They're small with small minds. Leave them to their things.

— — —

Any project, no matter the size, is comprised of small, manageable tasks. You can handle those tasks. Focus on those. Focus on them long enough then lift your head, look around and you'll find that you've finished most, if not all, of that monstrous, impossible task.

— — —

Embrace what you fear and do more of it. If you shun public speaking, do more of it. If you're self-conscious about your writing, write more. Fear is the biggest obstacle to achieving one's purpose. Define your fear, confront it, and wrestle it to the ground over and over until it taps out.

— — —

Find time each day to work on you. Maybe it's daily exercise. Maybe it's reading business and leadership books daily. Maybe it's writing a 1000 words a day toward a book. Each day, set aside time for you to develop you.

— — —

Yesterday, I attended a comedy improv class. Things I learned that I can apply to the law practice:

1. Make statements, don't ask questions. In improv, you don't ask the other actors questions, because questions interrupt the flow of the scene. This rule is applicable when cross examining witnesses. Make statements with which they have to agree.
2. Accept the gifts others give you. Whenever another actor says or does something, they're volunteering something which is a gift to make the scene funny. In deposition, whenever a witness volunteers information, he's giving you the gift of facts you may not have otherwise secured. Accept the gift and ask follow up questions.
3. Be in the moment. Don't think about what you're going to say next. Be in the moment and let the moment push you toward what you do next. When deposing a witness, listen and be in the moment so you don't miss something you should follow up on.

— — —

Lies we tell ourselves—doing things that don't add value are valuable, such as watching television. Every choice we make to do something, such as

binge a television show, is a choice not to use that time to pursue something valuable, such as honing our skills. Let's be honest with ourselves about time wasting activities and reduce or eliminate them altogether and replace them with activities where our talents are used, shine and contribute to others.

— — —

Many rely on Fitbits and similar devices to keep track of their health-related progress. Measuring progress is a proven way to remain engaged in exercise and diet plans. The same holds true for other long term projects. Measuring progress on your attorney business development plan, or the book you're writing or the development of your public speaking skills will help you remain focused, on task and engaged. Progress—achieving steps toward your goal—keeps you working toward greater progress.

— — —

Encourage your high school and college children to develop personal strategic plans and help them develop their plans. I think a common mistake students make when it comes to their lives is they lack a sense of urgency. And we parents are responsible to contributing to their complacency. Hunger, Grit, Hustle—these come when our needs aren't being met. The problem is that we allow our blessings to allow ourselves and our kids to be soft, weak and listless. It's like wild animals in captivity who get fed three squares a day and lose their instinct. They can never be released into the wild again. They wouldn't survive. If you don't have to fight to survive, you lose your fighting instinct. Never let yourself or your kids lose the sense of urgency or survival skills.

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The last few days in the year is a good time to tidy up around your office and home. I have a hard and fast rule—unless it's a memento, if I haven't used an item in a year it's gone. If it's been six months, it's likely gone too. Owning your stuff rather than it owning you frees your mind and pocket book. If you don't need stuff, you buy less of it.

— — —

Thinking about a New Year's Resolution? How about a New Year's strategic plan? Instead of choosing a resolution you may abandon in a few weeks, sit down and write a personal plan for the coming year addressing your career, your health and your relationships. A thoughtful plan for your life for the upcoming year will likely prove more fruitful than a resolution.

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Improve your practice by finding aspects of it that can be reduced to checklists, prepare them and follow them. Finding the best way of doing something, reducing it to a process and following it increases quality, efficiency and client satisfaction.

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Plug in deadlines on your calendar to accomplish certain goals. For example, for the last day of each month write something like "finish reading my one

book for the month” or “finish writing my one article for the month” or “finish writing my chapter for my book for the month.” Consider a wall calendar you affix to the wall at your office or pinned with a magnet to your refrigerator. Seeing the goals written down, and seeing how many days you are away from a deadline will push you to complete the task on time.

— — —

As you think of your goals, remember to reduce your goals to action steps and have an accountability partner to ensure you follow through. Let’s say you have a goal of reading more business books in 2019. That’s admirable but amorphous. Change the goal to reading one business book a month and have your action step be reading 20 pages a day, Monday through Friday. And then have someone hold you accountable for reading a business book a month. A broad, general goal is a good start. It must be honed to a specific goal with specific, doable action items.

— — —

Bite sized. How do you eat an elephant? A bite at a time. I don’t care how big or overwhelming an idea, goal or project is—it’s manageable if you take a step or bite at a time. Define the big picture, divide it into bite sized pieces, stuff the napkin under your neck and take one bite at a time.

— — —

Often you have a great idea but are uncertain whether it will work. It’s when you sit down with your idea and devise a plan to execute it, you will realize when trying to connect the dots from idea to reality whether in fact you can actually connect the dots from idea to reality. Can your idea be turned into a process and if so what’s the cost? This exercise will decide for you whether it’s advisable to proceed.

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Clarity. Knowing what’s important and what isn’t. Knowing what goals to pursue and which to ignore. As lawyers, whether in our cases, our voluntary bar associations or careers, we need clarity. We need to define the mission and do what’s necessary to accomplish it and avoid everything else. That clarity—that singularity—that focus—that’s what we need each and every day.

— — —

Align your hobbies with your talents to accomplish your goals. You want to be a great trial lawyer? Pursue improv or public speaking as hobbies to develop your communication skills in front of a jury. You want to be a thought leader? Join a book club, a political campaign or take a writing class. Hobbies can both be fun and support a larger purpose.

— — —

“And?” When making a decision ask yourself—“And” what happens if you choose option A “and” what happens if you don’t choose option A? Then ask yourself—“And” what decision follows after doing option A? “And” what happens after that? “And” after that? Every decision changes the trajectory



of your life, and every subsequent decision changes it further. A decision takes you down a different path which in turn compels you to make different decisions in the near and distant future. Think ahead as many moves as you can to visualize where the decision you make will affect you tomorrow, the year after and the decade after that.

— — —

Don't hold on too hard. The safe choice—the safe career, the safe job, the safe cases—it's easy to hold onto them too hard. And in holding onto them too hard, we hold onto them too long, and miss the risks that were meant for us to take, the risks we were born to embrace wholeheartedly. And the irony, of course, is there are no safe choices. That job you thought you would have forever? You get laid off. Those easy cases you wanted to handle? They're not around anymore. And now the risks, the chances, the opportunities are gone too, because you waited too long. Don't hold on too hard because sometimes you're holding onto the wrong thing.

— — —

Read. Always have several books downloaded on your phone ready in the queue so when you're waiting on something somewhere, you can read. I used to always keep a book in my car and one in my briefcase. Now I have them on my phone. Yes, I know, as lawyers we read all the time. Don't let that serve as an excuse not to read books, whether nonfiction or novels.

— — —

Decide. Yes, weigh the pros and cons. Yes, evaluate the strengths and weaknesses. But then, decide. Don't table it. Don't put a pin in it. Don't "meeting" it to death. Decide. And then commit. Do the hard work. Each and every day commit to your decision. Will you fail? Yes. Will you fall? Yes. Get up and recommit. Not deciding for fear of the outcome is far worse than deciding and failing. By deciding and failing, you have tested your decision, you have learned from it and you can pick yourself up and proceed in a different direction. I know folks who are always telling me about the book they're going to write. They're telling me about the big idea they have for their firm, organization or charity. But they never decide and they never commit. I tell my boys I will never be mad at them if after serious consideration, they made the wrong decision. I will be mad if they choose not to choose. I will be mad if they debate endlessly, sleep on it perpetually and wait for other alternatives everywhere. Have they failed? Yes. Have they also succeeded? Beyond their wildest dreams. Today, if you are debating a decision you've been debating for too long, decide. Decide to do it or decide not to. But decide. Don't play pretend with your life. Decide and live.

— — —

Stop saying you don't have time, or that you can't or that you don't have the resources. Just say you choose not to do it. Assume responsibility for your decisions. You say you don't have time to tackle your dreams? Do you watch television? Then you have time. Do you follow sports? Then you have time.

You play golf? You play video games? You take long naps? Then you have time. Don't say you don't have the resources. Resources are all around us. Go get yourself some resources. When we say we can't what we mean is we won't. When we say we don't have the time it means other things are more important. Be honest with yourself. If you're not doing something you want to do, if you're not chasing a goal you want to achieve, it's because you've decided you don't want it bad enough. That's fine. That's your decision. Accept it. Accept that you're choosing not to chase your dreams. When you accept that it isn't the lack of time, or expertise or resources that's holding you back, but that it's you holding you back, when you accept that reality, you'll be more inclined to say you can and less inclined to say you won't.

— — —

I write as much as I do because I have to. It's like breathing. Or eating. Without it, there's no living. Each of us has something we must do. Each of us has a purpose, a destiny, a course we must pursue. My older son David, a junior at FSU, was born to conduct music. The baton is a natural extension of himself. I can't tell you where his hand ends and the baton begins. My younger son, Michael, a senior in high school, was born to play the double bass. The music he makes transcends all understanding. There is something you were born to do, something that is akin to breathing to you, necessary for living. You find that something, embrace it, wrestle it to the ground, and don't let it go even if the dawn breaks. You're going to change the world with it.

— — —

If you want to discover your purpose ask yourself who you are. There's a difference between what you do and who you are. Sometimes the answer to both questions is the same. Sometimes they are not. What you do is the wrong question to ask. Who you are is the ultimate question—What is your purpose? Why are you here? I wrote a book titled *Go Motivate Yourself—Stop Chasing Gurus and Do the Hard Work*.

In the book I describe my process regarding how to find out who you are—to find your purpose. To do so—do the following:

- Define your talents.
- Identify your passions.
- Pinpoint your dreams.

The place where your talents, passions and dreams intersect is who you are, it is your purpose, it is where you need to be and what you have to run after. We are imbued with talents, passions and dreams to pursue our purpose. Find yours.

— — —

We suffer from an excess of excellence. How often do we hear from friends that we must binge on a great new show, download a great book or watch a great movie? Never before have we had access to so many great shows, movies and books. It's an excess of riches. Unfortunately, it provides us

an excuse not to pursue our dreams and goals. Pick wisely when it comes to excellent media. By picking it, you're choosing not to write or speak or exercise or to do something else.

— — —

Each of us is born with at least one talent. That talent makes us better than most, if not the best, at something. It is not a coincidence we have that talent. It is not by happenstance that we have that talent. We have that talent to improve others' lives. That talent may be something the world places a premium on, such as athletics. That talent may be something the world may at times overlook, such as teaching. It could be something we don't really consider a talent at all, like making ice cream (Ben & Jerry's), or fried chicken (Colonel Sanders) or cookies (Mrs. Fields). But there is a talent in each of us that we need to discover, develop and share. Until we do, we are not living up to our potential and not pursuing our purpose. You will know you've discovered your talent when you direct your energies, invest your time and focus your dreams on developing and sharing that talent. Now I wish I could tell you that your journey ends by discovering your talent. In fact, that's where it starts. And it's a long, difficult and at times treacherous journey, with its share of barriers, obstacles and failure. But I will make you a promise. If you take that journey, and develop your talent with every fiber of your will, you will change yourself and others for the better.

— — —

It's hard for us to understand why others aren't particularly interested in our passions. Maybe you're an avid golfer, a fiction writer, a photographer or movie buff, but those closest to you don't share your passion and don't want to engage you about your pursuits. That's OK. Each of us has our passions and it's a lot to ask of others to speak to us on our terms about what we're truly excited about when they have little if any interest in those things. Understand that most people simply don't care about what you're passionate about. Don't take it personally. Pursue your passion and don't worry what others think or whether they roll their eyes or avoid engaging you in conversations about your passions. They probably experience the same thing when they speak to others about their passions. That's life.

— — —

I'm surprised how many books there are on the market about decluttering your office and living space. It's easy. Except for keepsakes, throw out anything you haven't read, used, or relied upon in the last 12 months. You don't need a bigger office or a bigger house. You need less stuff.

— — —

I've read my share of articles about those who say don't chase your passions. They argue that you may not have the talent to chase your passions. You may want to become a professional football player, but despite endless passion, the odds are that's not going to happen. They say pursue what you're good

at. Others say pursue your passion no matter what. Dream and dream big. I think they're wrong too.

This is what I say in my book *Go Motivate Yourself*. Create a Venn Diagram. The first circle consists of your talents. The second circle consists of your passions. The third circle consists of your dreams. Where your talents, passions and dreams intersect, that's your purpose. Do that. Everything else is noise. Do what you find at the intersection point. You will have the talent, the drive, the dream, and the plan to get there. Good luck.

— — —

We all have periods in our lives we spend in the wilderness, much like Moses, who spent 40 years in the desert of Midian before confronting the Pharaoh. It could be due to illness, a death in the family, a divorce, a prodigal child, or an addiction. These periods in the desert test us, mold us, refine us and teach us. The pain, the depression, the anxiety, the loss, the bereavement—all of it breaks us down and builds us up. Those moments where we were left to wonder why this is happening, what good can come of it, often don't make sense at the time. But in the midst of all that, we are growing in strength and in wisdom, in patience and virtue. And after we leave the desert, sometimes years, perhaps even decades later, something will happen where we'll need to draw from those experiences, that wisdom and strength, and absent having lived through it, we would never be prepared to face this new opportunity, risk or challenge. We suffer to overcome so we can help others overcome. That's what gives our pain and loss value—to help others overcome their pain and loss, and so they one day may pay it forward to someone else.

— — —

Often our weaknesses shed a light on our strengths. Those of us who are not detail oriented, often are good at seeing the big picture. Those of us who can't focus on any one project for long, are good at multi-tasking. I don't believe in turning our weaknesses into strengths. I believe in allowing our weaknesses to reveal our strengths so we can work on making them even better.

— — —

We all live by First Principles—rules of ethics, behavior and thought taught to us by our families, our schools, our religious and spiritual leaders and others. Do unto others as you would want them to do onto you, chase your dreams, failure leads to success, etc. Take 15 minutes and jot down your first principles—whatever comes to mind in whatever order it comes to mind. Your first principles will reveal to you what rules you play by and what you cherish.

— — —

Get in the habit of sending one “big” e-mail once a week. For example, send a message to TED Talks with a topic you want to speak on, or send a

trade magazine an email proposing a regular column, or send an e-mail to the local law school with a proposed seminar you want to teach. And then forgot about the e-mail. Don't give it another thought. Odds are you won't hear from most of the folks you e-mailed. But when you least expect it, when you've long forgotten about the e-mail, when you need a boost the most, "you'll get an e-mail back asking "let me hear more." Eventually you'll hit a chord with someone and have a chance to pursue something big, something really big.

— — —

Ideas are the new currency. Look at TED Talks. An organization built around sharing ideas. One of the most valuable assets you have as a lawyer are your ideas. Ideas on how to win a case, how to improve your firm's bottom line, how to help a client grow its business or how to get your message out. We all crave great ideas. Take time to go to the local coffee or donut shop periodically to brainstorm. Getting away to think is time well spent.

— — —

Play the long game. What are your life goals? On your death bed, what do you want to remember? How do you want your obituary to read? Life is made up of some big decisions, but for the most part, it's made up of a whole bunch of little ones. Make the little ones thinking about the long game. The little ones add up and will decide what your long game is.

— — —

When pursuing your 2018 goals, schedule time in your calendar to advance them. We're all busy, and getting back from the holidays often means deadlines, unanswered e-mails and emergencies. It's easy to kick your goals down the road like a can and soon forget about them. If you want to make them a reality take the time right now to pencil in time in your calendar in January to pursue them. Finding the time to chase your dreams is the first step to making them a reality.

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At the beginning of the year, it's a good time to discard unwanted stuff in our homes and offices. Other than keep sakes, mementos and the like, if you haven't used something in a year, consider getting rid of it. Books? Maybe you know someone who wants to read them? Clothes? There are less privileged folks who need them. Own your stuff. Don't let it own you. You'll never see a hearse followed by a U haul.

Get a pad or journal and pen, head to the local diner or coffee shop, and prepare your attack plan for the year. Answer the following questions:

- What are my professional goals for this year? What steps can I take to achieve them?
- What are my personal goals for this year? What steps can I take to achieve them?
- What do I want accomplish this year? How do I plan on doing so?

Write down the following for this year:

- GOALS >> PLAN >> ACTION STEPS >> TIMETABLE >> CALENDAR OF EVENTS

You want to start with your goals and then write out how you get there. Writing out how you get from here to there will keep you focused this coming year.

— — —

For litigators, the second half of December can be quite slow. No hearings, no depositions, no client meetings, no trials. It's a good time to look ahead to the next year. Yes, spend time with family and friends over the holidays, but also make time to conceptualize and write a personal strategic plan for the following year. What are your business goals? Personal goals? Family goals? The craziness of January always catches me by surprise. I use the second half of December to get ahead of that madness.

— — —

When it comes to stuff, I'm a minimalist. I buy a book, I read it, I give it away. If there's something in my house or office I haven't used in six months, I give it away. By giving stuff away, you control it—it doesn't control you. You define yourself, the stuff doesn't define you. And the next time you're deciding on a purchase, and you ask yourself, am I just going to give this away in six months, maybe you save the money and avoid additional clutter. It's just stuff.

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I believe we all have the potential of being the best at one thing. We all have talent, passion and work ethic to be the best at something. For my older son, he has the potential of being the best classical conductor there is. For my younger son has the potential of being the best double bass player there is. Each of us has that one thing. Each of us has an obligation to ourselves, our families, our friends and society as a whole to pursue that one thing wholeheartedly and try to become the best. Are we all going to become the best at that one thing? No. But we have to try. The world demands the best we have to offer and we have to give it that. Will my sons become the best conductor and double bass player? I don't know. But by pursuing their gifts and making the absolute most of their gifts, they're going to change a lot of lives along the way. We can all change a lot of lives by thriving to be the best at our one thing.

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Each of our lives are defined by the books we read, and just as often, by the ones we don't. And many believe that the nonfiction books we read affect us the most, have the most impact on our trajectory. I believe, though, that fiction, changes us the most. Through stories and characters, themes and dialogue, we learn about the best and worst in us and we hold out hope to direct ourselves to the former and shy away from the latter. Seeing

ourselves in a character, good or bad, and learning about ourselves through them—that’s, in my opinion, the most important things books have to offer. Keep reading.

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When deciding to accept a new job, responsibility, position or pursue a new adventure, I apply what I have termed the Rule of Five. I ask myself, if I pursue this, what benefits will be accrued? If I can come up with five or more substantial benefits, either to me, my firm or my family, I generally jump in with both feet. For example, let’s say I have an opportunity to write a new book. The book is about X. In researching for the book, I will increase my expertise in area X. That’s one benefit. In getting the book published, potential clients who need help with X will read it and possibly refer our firm business. That’s a second benefit. In getting the book published, I’m advancing the goals and meeting the needs of the organization publishing the book and developing my reputation in the organization. That’s a third and fourth benefit. By adding the book to my list of publications, I have something else to give away and further build my brand. That’s benefit five. I can come up with a few more. Think about how a new project will benefit you and those around you and if you need two hands to count all the benefits, seriously consider pursuing it.

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There’s a debate whether one should play to one’s strengths or improve one’s weaknesses. This is how I see it. I think one can go from good to great, from mediocre to good and from bad to mediocre, but I don’t think any of us can go from bad to great. We’re all able to go one step above us, possibly two, but rarely three or more. So If you’re bad at something, why kill yourself and never become great at it? Focus on your talents—what are you good at? What do you better than most? If you’re good at it, become great at it. And if you’re great at it become the best at it. Each of us can distinguish ourselves if we focus on what we’re good at and get better at it.

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What if the dream you wanted more than anything in the world didn’t happen? You didn’t get into the school you wanted? You didn’t get the job you wanted? You didn’t catch the break you wanted? And what if that dream that never happened allowed you to have the time, resources and wherewithal to stumble upon the dream that was actually meant for you? When you don’t take the time to evaluate your talents, passions and purpose and where they intersect, you end up chasing the wrong dreams, someone else’s dreams or what society says your dreams should be. And when you do, the best thing that can happen to you is that those dreams don’t become a reality. Because if there is anything worse than not achieving your dreams it is achieving someone else’s. By living another’s dreams you lose the motivation to chase what belongs to you and only you.

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No matter what you want to accomplish, others have already done so. Maybe not exactly what you've done and they may not have had the same motivations for doing it, but others have come darn close to doing what you want to do. Search out those folks, invite them to lunch and ask them how they did it, and most importantly, ask them what they didn't know or expect as they pursued their goals. Most folks are happy to share their successes with you and explain how they did it. If you're a lawyer, seek out more experienced lawyers whose resumes you'd like to emulate, and ask how they did it. Do your homework first. Don't ask them the obvious questions, just the important ones.

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The best ideas are simple. You hear them and you think—"wow, that's right! That's it!" Whether it's your career, an organization you're leading or a trial theme, the direct, simple common sense ideas often win out over the more complex, arcane ones. The best business books I read can be reduced to a sentence. A book on writing can be reduced to "write a thousand words a day." A book on leadership can be reduced to "in order to lead, you must serve." Search out the simple ideas that can be applied simply and directly.

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We all have talents. We all have passions. We all have dreams. Study where your talents and passions intersect and use your passions to fuel your talent to achieve your dreams. As lawyers, we all have talents to advance the mission of our firms and legal departments. See where your talents best serve the organization and find other attorneys in the organization whose talents are complimentary to yours and find synergies where by working together you advance the organization's goals.

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Your success is directly tied to you identifying your talents, passions and dreams and studying where they intersect. Each of us was placed on this earth with at least one talent, at least one passion and at least one dream. To do anything else, to pursue anything else, to even think about anything else is a choice to turn your back on what you were meant to do with your life. As lawyers, many of us struggle with our purpose—what should I be doing with my career to bring me joy, satisfaction and fulfillment? If you spend time with a journal and a pen in a quiet room thinking of what you're good at, what motivates you to do what you do and what dreams you have for your talents and passions, you will find your purpose. And a life filled with purpose, is a life that is self-motivating and self-driven. You don't have to be chasing gurus to motivate you. The motivation will spring up inside of you. Discover your purpose and discover your "why" as Sinek says, why you were placed on this earth and what you were meant to change for the better.

I believe in the multiplicity of ideas. At any given moment, I have over a half dozen pitches outstanding to a dozen different groups and organizations. I have a pitch to my son's high school to do a documentary with him and



them on a local jazz legend. I have pitches of several books to several voluntary bar associations. I have pitches to two associations that retools how they provide and charge for CLE. Why so many ideas all at once? I know most of my ideas will be rejected by most of the groups I pitch them to. In fact, to maintain my sanity, I need that to happen. If everyone said yes to me I would have to turn around and say no to most of them. Turn rejection into an ally.

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Setting goals can be overwhelming. You want to pursue big, challenging dreams but setting your sights high can undermine your motivation and drive. Remember that any larger than life dream can be broken down into smaller goals. Create a plan where you break down your dreams into smaller manageable goals and pursue those smaller goals one at a time. It's like the old adage—"How do you eat an elephant? One bite at a time." No matter how big your dreams, they can be pursued by taking the smaller steps that comprise the long road toward them.

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Play to your strengths. As lawyers, focus on your talents and leverage them. If you're a good writer, seek publishing opportunities. If you're charismatic, seek speaking opportunities. If you're a social butterfly, seek networking opportunities. We are who we are. Despite all our efforts, we're likely only going to change around the peripheries. Don't focus on what you don't do well. Focus on what you excel at. There are many ways to be a successful lawyer. Focus on what works for you.

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Without a plan for your career (or for life, more generally), you're not going to be motivated because you have nothing to shoot for. There's no finish line you're running toward. To be motivated, you need to have something to be motivated about. Maybe you want to become an expert in a field of law? You start out with that as your goal and you prepare a plan that gets you from here to there, with definitive steps and acts you will do to move toward your goal. You find an accountability partner that you share your goals with and she keeps you honest about doing your part to fulfill the steps and acts you spelled out for yourself. And as you accomplish the smaller goals that together comprise the overall goal, you'll have the motivation to proceed forward.

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Each of us has at least one gift. Some call it talents, some call it strengths. But each of us has at least one. Play to your strengths. That's why you have them. To develop them and share them with others.

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When it comes to pursuing goals, have an accountability partner. Have a friend with whom you share your goals and have her share her goals with you, and

meet monthly to hold each other accountable about what each of you has done since you last met to advance those goals. So many of us have great ideas. Some of us have plans to make them happen. Few of us follow through. We get busy. We get distracted. We get discouraged. If you have someone to answer to, someone who will ask the hard questions, hold your feet to the fire and expect you to do your part to make your dreams a reality, the greater the likelihood that you will follow through. Find a like-minded goal-oriented person, share with one another your goals, and hold one another accountable to make sure everything is being done to make those goals a reality.

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I moved my older son, David, out of his dorm yesterday. He just finished his freshman year at FSU. As we packed, I noticed a dry erase board next to his desk with a title across the top—GOALS. He had written a list of goals he wanted to accomplish during his freshman year and had check marks next to the items he had accomplished. I was proud that he had listed his goals and followed through with them. But what I was most proud of was these weren't small, manageable goals. These were big dreams fueled with big ideas. Have your own GOALS board.

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Don't let the urgent displace the important. As attorneys, we're bombarded with emergencies. They demand our reaction. Don't let your practice, much less your life, become reactionary, jumping from one emergency to the next. What's important? In the practice, taking the time to think through and implement a case strategy to win. In life, it's taking time to talk to or text with your spouse and kids. You can stop typing on your keyboard five minutes to listen to them and be in the moment with them. You'll never regret finding time for the important.

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Companies and law firms have mission statements. You should too. Take the time, away from the office, to brainstorm your mission statement—what are your goals? Your values? Your plans? Who do you want to become? Write it out on an index card or plug it into your phone and refer to it regularly to help keep you focused on where you want to go.

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Regularly assess your skill set and write down your top three strengths and your three biggest weaknesses. Seek out opportunities in your practice and legal marketing to exploit your strengths and take the time to work on those weaknesses. If you're writing needs work, for example, read books on writing (legal and otherwise), take an online writing class and commit to writing several articles this coming year.



## Motivation

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At some point, sooner or later, the effort, the daily grind, the discipline of marching toward your goal each day, pays off. It could be your efforts to become a public speaker, a writer, a trial lawyer, or even getting into shape. The little things you did each day, the persistence, the effort, moving forward even though there were days the forward progress was imperceptible, pays off. There may have been a time you struggled with writer's block or personal insecurities that prevented you from putting 10 words on a page. Now you can write a 1,000 words a day without blinking. The time will come that you will surpass terminal velocity, where what you do defies even the law of physics. And what's funny, when that day comes, you won't notice it at first. But sooner or later you'll look at what you're doing, look at yourself, look around and say, wow, so this is what it's like? Not bad. Not bad at all.

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There is no perfect time to start on a goal. That time will never come. The perfect circumstances will never appear. Start now. Right now. Even if it's just putting your toe in the water. Put it in and move forward.

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You can't always choose what life throws at you, but you can always choose how to respond to it. There will be hard times. There will be challenges and



obstacles. Life will be unfair, over and over again. You can respond with fear or with courage. You can respond by ignoring and avoiding what's in front of you or tackling it head on. Choosing to get up, again and again, and refusing to quit, that response will make all the difference Irrespective of how bad things get.

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Strong winds create strong trees. Strong winds make trees dig their roots deeper into the ground and grow wider trunks. Many of us want to avoid adversity, pitfalls and setbacks. But without them, when life comes for us we won't have the deep roots and thick trunk to withstand the assault and will topple over. Don't fear life's challenges. You need them to face even bigger challenges down the road.

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The first step. That first step toward your goal, whatever that goal may be, is a life changing step. Many will never take that step. They will talk about it. They will think about it, even obsess about it, but never take it. That first step is the biggest step you will ever take, because it sets everything in motion, and according to Newton's First Law, once in motion you'll stay in motion. That first step will lead to so many others and that goal of yours will get closer with each step. Stop thinking about it and take the first step.

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Each day, we're at a crossroads. We either push forward or fall backwards. We either advance or we retreat. We fight or we surrender. Whether it's pushing your career to the next level, meeting your fitness goals, writing a book or public speaking, each day you're at the crossroads and you have a decision to make. It's actually an easy decision. If you quit, you'll never realize your goals. If you proceed, you're one day closer to realizing them. Make the easy decision, the right one, and press forward. You'll regret quitting. You'll never regret advancing.

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I try to motivate and inspire through my posts. But I have to make a confession. I can't motivate others. None of us can motivate others. External motivations are transient, temporal, and ephemeral. They're like gossamer wings. Only you can motivate you. Lasting motivation is internal. Lasting motivations comes from the inside. Find your passion, dig a well into it, and draw your motivation, discipline and hard work from there. You're your own guru.

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Every day, move the needle forward toward your goal, no matter how little. If you're writing a 1000 words a day on your book and one day you can't write 1,000 words, write 500 words, or even 100 words or even 50. If you do 100 pushups everyday toward your health goal and one day you can't, do 50 pushups, or even 25 or even 10. Whatever goal you set for yourself, every day you move the needle closer to that goal, even if only by a tad. You

either move forward or fall back. You have a positive day or a negative one. Always forward. Always positive.

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Sometimes we think we need words of encouragement to motivate us. Ironically, sometimes words of doubt motivate us. Hearing others tell us we can't, we won't, we're unable, it's impossible, it can't be done—these negative words can push us more than any motivational speech, aphorism or saying. You say I can't? I will. You say I'm not smart enough, not talented enough, not skilled enough? I will. The doubters sometimes are our best encouragement.

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Your biggest opponent isn't opposing counsel, the opposing party or the judge. Your biggest opponent is you. Developing the self-control and self-discipline, developing the work ethic and drive, controlling your emotions and behavior, and pushing yourself to achieve new goals and overcome challenges—that's bigger than the challenge of any external opponent. Beat your undisciplined self and the external opponents will be easy by comparison.

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Some treat the morning alarm as just that—a blaring noise that snaps us out of sleep and imbues in us some dread about the work and uncertainties of the impending day. For others, it's a starter pistol, that gets them to run the race for the day. They're out to win that day. And some even cheat, by setting that alarm earlier than most, so they get a jump on the day, on the race, and sprint out before the others even approach the starting line. Treat the morning alarm as a starter pistol.

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You are not the college or law school you attended. I attended a state university that no one knew outside of South Florida. You are not what you own. I've never driven a new car. You are not the house you live in. I live in a working class neighborhood. You are what you give away. You are defined by how you help others, give back, pay it forward. You are defined by how you help others achieve their goals and dreams, achieve their purpose. Many of you didn't go to prestigious schools, own nice things or have the things this world use as metrics to define success. Throw out those metrics. Use the metrics that matter. None of them involve status, wealth or stuff.

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Don't live your life for the detractors and the doubters. Don't give a second thought to what others think about you or the goals you're chasing. They don't pay your law school loans. They don't wake up early with you in the morning when you want to get a jump on the day. They're not up late with you, when you have your arm under your pillow, staring at the ceiling, planning your next move. That big idea of yours? Half the people are jealous you have one and are pursuing it and the other half are too busy with their

own lives to care. You do you. Everyone else? They're a distraction, a mirage, a hindrance. Let others say you will never do it. Don't engage. Don't give it another thought. When you do, that'll shut them up.

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There is no stasis. You either move forward or fall back. You either get better or get worse. By doing nothing, you don't stay put, you fall behind. Doing nothing is doing something—it's trailing further behind the pack. If you are pursuing a dream, each day do something to bring into reality. Waiting until tomorrow is choosing not to pursue it. There are no tomorrows.

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Short cuts. Quick fixes. Magic pills. Do you want to know the secret short cut? Here it is. There isn't one. If you want to become a great trial lawyer, rainmaker, speaker or writer, you'll have to work hard, sacrifice and deny yourself. The best got there by putting their goals before watching television, playing video games, sleeping too much and killing time. They sacrificed, a lot. The upside is that being among the best is within each of our grasps if we too sacrifice.

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Decide. Decide you're going to work on your book today. Decide you're going to market your practice and develop your book of business today. Decide you're going to use that exercise equipment you bought for Christmas whose only use has been as a clothes hanger this first quarter of the year. You think you can push off a decision, a choice, a path? Let me fill you in on a little secret. Every day you didn't write, you decided not to. Every day you didn't network, you decided not to. Every day you don't pursue your goals, you are already deciding. Each day you make a choice. You decide to do the hard work or you decide not to. Today, choose to do the hard work. Tomorrow, choose it again. Keep choosing it. That book isn't going to write itself. Those clients aren't going to magically walk through the door. Those weights are going to move themselves. Decide. Right now.

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My motto is you won't outwork me. You may be smarter, cleverer, have more resources and be more qualified, but you will never outwork me. As young lawyers, your work ethic can level the playing field. Outworking your opponent can help you beat a more experienced, more seasoned opposing counsel. Never underestimate the power of hard work.

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Right now an opposing counsel is trying to outsmart me, out maneuver me and is under the misconception he or she can out work me. I and you can leave opposing counsel believe they can outwork us. The reality is they can't and they won't.

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If you're pressing forward, putting in the hard work, ignoring the detractors, you're going to pull away from the pack. Soon, you'll be running ahead, alone,



by yourself. It's tempting to slow down, to stop, to rest. Don't forget you're not running against the folks you've left behind. You're running against yourself, you're pushing yourself, testing yourself and doing more than you ever gave yourself credit for. Don't stop running, don't look back and don't slow down.

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Doing something big is 90% thought and 10% action. When you set out to chase and wrestle to the ground a big dream of yours, so many will question you, challenge you, ignore you. And often your biggest detractors are your own self-doubts. You're not smart enough, not talented enough, not strong enough and not audacious enough. Let me tell you, if you buy into others' negativity and your self-doubt, you've already failed. You'll try, but you've already cast the die and you'll fall short. But if you start with the image of the dream already accomplished, believing you have the grit and wherewithal to make it happen, you'll be 90% there. You'll still have to work hard and give it every ounce, but your likelihood of success has skyrocketed. As Hamlet said, things are neither good nor bad, but thinking makes them so.

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Sometimes work or life takes you too far from shore, and you're barely treading water, tasting the brine. I used to believe there were only two endings—drowning or swimming back to shore—fighting back or giving in. But I've come to realize that sometimes when you go under, the challenge, the loss, the pain and the suffering makes you something altogether different so that you can now breath under water. The experience has given you gills and while those on shore have assumed you're gone forever, having sunk to the ocean's floor, you know that you've conquered the elements and that you neither have to drown nor swim back and the fear and the sense of loss are gone. You're a new creature, altogether different and in a way, indestructible. And it wouldn't have happened if life hadn't pulled you under.

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Some of you young lawyers equate your value with your career. You derive your worth from the law school you attended, the firm you work for, the salary you earn, the matters you handle, and most importantly your victories in and outside the courtroom. I'm here to tell you that your value, your self-worth, your person hood has nothing to do with your class rank, your salary, your win/loss column or what the partner in the corner office thinks of you. Your value comes from you being you. Your value does not come from what you do but who you are. You will fail. You are not a failure. You will lose. You are not a loser. You will be outsmarted and outplayed. You are not dumb. You are you and you were put on this earth to do amazing, wonderful things. Focus on that, because that's what matters.

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You know you've found your passion when you can't wait to the weekend to pursue it. Whether it's writing, speaking, volunteering, leading or something else entirely, the things you want to do when everyone else wants to sleep

in, watch television or go to the movies, follow sports or just hang out—those are things you were born to do. Go do them. Roll up your sleeves, do the hard work and go do them.

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Persistence. No matter how many ways you've tried to crack a nut without success, there's likely another way. No matter how many approaches you've take to resolve a problem without results, there's likely an avenue out there that leads to the answer. Approach every question as if there's an answer, every problem as if there's a solution, ever obstacle as if there's a way to overcome it, and keep at it and keep keeping at it until you figure it out and come out the other side.

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We limit ourselves. We create our own boundaries. We pound down posts, lay a fence and refuse to walk past it. There are folks who run in 100 mile races, who do a 1,000 pushups, who write a book a month, who do what we consider the impossible. For the longest time no one thought any one could run a mile in 4 minutes. One day one guy does and then a bunch more follow because he showed it was possible. Embrace the impossible and make it possible.

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You say you have gifts to buy for the holidays and it's too late to order them online and have them delivered on time? And who wants to go to a crowded mall? I got you brothers and sisters. Google your nearby neighborhood stationary stores, which are often stand alone or are in small strip malls away from the hustle and bustle, and finish your holiday shopping with the following gifts for every person on your list:

- Journals
- Pens
- Stationary and envelopes for personal handwritten notes
- Inspirational books or calendars

Include a handwritten note encouraging the recipient to journal, write, develop a personal strategic plan or write personal notes to others this upcoming year. You're in and out of the store in 20 minutes or less and you've bought meaningful gifts. You got this.

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The best gift you can give a loved one, a friend or colleague during the holiday season is a handwritten note thanking them for all they have done for you and for the positive impact they have had on others. I've given away most every gift I've ever been given—books, appliances, clothes, electronics—but I have kept the handwritten notes. Those take time, thought, effort, love and appreciation—those stay with you months, years and even decades after you receive them.



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It never ceases to amaze me that we pick our country's leaders. They're there because we voted for them. And then I think that we get to vote because our country is built on laws that empower us to do this. And who created the laws? Who modified these laws? Who interpreted these laws? We lawyers. We have played, are playing and will continue to play an integral role in our democracy. When Dick the Butcher exclaims in Henry VI "the first thing we do, let's kill all the lawyers," he wanted to remove those who create and protect justice. We're the superheroes, brothers and sisters. Let's go create and preserve some justice.

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Many consider Charlie "Bird" Parker to be the greatest jazz saxophonist of all time. An amazing accomplishment for someone who died at 34. The thing though is that the Bird wasn't always the Bird. At 16, Parker played on stage with Jo Jones, a jazz drummer. He started strong, but soon lost his way, both with the tune and the beat. Frustrated, Jones threw a cymbal at Parker's feet and Parker walked off to laughter, humiliated. Parker promised he'd be back. He mastered the sax and come back he did. I don't care how badly you fall, how big the failure or how overwhelming the embarrassment. Whether in the practice of law or elsewhere, promise yourself you'll be back, hone the craft and take the stage again. Make believers out of them all.

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I had the pleasure of judging a pretrial skills law school competition recently. The winner of the best speaker award was a young blind man. Because he's blind, he couldn't rely on notes, read his argument or flip through a notebook of cases. He had to have everything memorized. Because of his blindness, he was better prepared than anyone else in the competition. He turned his disability to his advantage. If anything is holding you back, find a way to turn a drawback into an advantage. Sometimes life's challenges are actually blessings.

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Embrace the grind. The boxer wins the fight before he steps in the ring. The marathon runner wins the race before she steps up to the starting line. The grind precedes victory. Taking a killer cross examination, securing a favorable jury verdict and winning on your terms occurs well before you step in the courthouse. Reading others' transcripts, shadowing experienced lawyers, reading the leading books, blogs and articles on the practice, doing the hard work—that's how you win. Embrace the grind.

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That's all you got? When the practice or life hits you with everything it can muster—loss of a job, dissolution of a firm, death of a loved one, cancer—you stare it back in the face and you tell it "That's all you got?" You are much stronger, more determined and more resilient than you can imagine. When

the storm comes, and the lightning flashes and the thunder rolls, know you're bigger. You've got this.

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The road from idea to fruition is a marathon. The first mile is the idea. We all have ideas. Plenty of them. The first mile is easy. The next three miles is the plan. Devising the plan is more work than the idea. It's the blueprint to transform the idea into a reality. The rest of the running—the 22 plus remaining miles—is the hard work—enacting the plan. Rolling up your sleeves and making it happen. It's where most of the marathon is run. Idea people who have the ideas but not the work ethic to make them happen will saddle down your organization. Find those who will run all the way to the finish line.

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You're tougher. The deponent is tough. You're tougher. Opposing counsel is tough. You're tougher. Running a practice is tough. You're tougher. It wouldn't be fun if it was easy. Easy is for the spectator. Tough is for the gladiator like you. You may never admit it, but you enjoy it tough.

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Put it in the rear view. Don't beat yourself up over your failures. Don't pat yourself on the back over your successes. Learn from them both and once you do, put them in the rear view and move onto the next thing. Leave the past in the past and focus on the now and on the next.

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Bury your dreams to resurrect them. We all know someone who has been writing the same book, starting the same start up or chasing the same dream for years. They talk about it. They plan. They dream. But they don't act. Best advice I have for them? Bury the dream. Say to yourself that you don't really want to do it. You don't have the grit, or the time or the energy to do it. And when someone asks you about it, be honest and say you're not chasing that dream any more. It's dead and you buried it. Funny thing. When you say those words—my dream is dead—one of two things will happen. You'll either be released from a pursuit that was never yours to pursue or you'll get angry and disappointed in yourself and you'll resurrect that dream and work toward bringing it to fruition. Sometimes the best thing you can tell a friend is to bury their dream to give them the kick in the pants to resurrect it.

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Will it. Take one of your business cards, flip it, and write down one big thing you want to do. Stick it in your wallet or purse and look at it once a day. Make that one thing happen. Will it into existence. Do something each day to bring you closer to the reality you wrote on your card. Choose to turn the words you wrote into something tangible. Think it, write it, look at it, work on it, look at it again, work on it, and by doing the daily grind, you can will it into existence.

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Work harder. Opposing counsel is more experienced? Work harder. Opposing counsel is smarter? Work harder. Opposing counsel has more resources? Has a larger staff? Has a team of attorneys? Work harder. Litigation is a struggle of wills. Sometimes it's little more than surrendering or forcing a surrender. Never surrender. Never get outworked. Never be out hustled. You can overcome a host of shortcomings if you simply work harder than your opponent.

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Walk like Laika. We have an 11 pound Chihuahua Terrier mix rescue named Laika. I don't walk her. She walks me. The German Shepherds next door don't terrorize her. She terrorizes them. Grownups don't scare her. She scares them. She carries herself like a Rottweiler. Either she doesn't know or doesn't care she's only 11 pounds and her attitude has everyone convinced not to mess with her. You're a young lawyer? In the eyes of the practice you're still a Chihuahua Terrier in a world of German Shepherd lawyers. Who cares. Carry yourself with confidence. Own your space. You're much bigger, more ferocious and more effective than you think. Walk like Laika. At night, if there is a sound at the front door, she runs toward it. If we ever have a home invader, I pity the fool. An 11 pound dog shouldn't stop a burglary, but I have no doubt in my mind that Laika could. And I have no doubt in my mind that you can outperform that more experienced lawyer at the hearing, deposition or trial if you put all your heart, work ethic and mind into the task at hand.

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Get up. Life knocked you down? Get up. You lost a hearing on a dispositive motion? Get up. You lost at trial? Get up. You lost a client? Get up. Did worse things happen? Serious illness? Personal bankruptcy? Loss of a loved one? Get up. It's all about getting up. Get up, put up your gloves, stare life in the eye and move back to the center of the ring. Do you see it. Life is smiling its crooked smile, nostrils flaring, spreading its lips. As its exhales, you hear it whisper, "Finally, an opponent worth fighting."

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Fair. Eliminate the word from your vocabulary. "But that wasn't fair." "Life's so unfair." Cancer is unfair. Being laid off is unfair. Divorce is unfair. You want fair? Play a board game with friends who follow the rules. Life doesn't follow rules. It blows its nose with the rules. When you eliminate the word "unfair," you stop wondering why bad things happened, you accept that bad things happen and you're prepared to pick up the pieces and soldier on when bad things happen. When you accept life ignores the rules, that it doesn't play fair, then you're better prepared when it hits below the belt.

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Moving onto the next thing. You don't want to publish my book? I'm moving onto the next thing. You're not interested in my vision for your organization? I'm moving onto the next thing. Some focus all their energies on one thing and if it falls through, there's no Plan B. Me? I'm chasing multiple prey. Most will escape. Some, I will capture. Failure is built into the equation. If I caught it

all, it would come out of my nostrils and become loathsome and nauseating. Always be on the hunt. Explore various options and opportunities. Throw your hat in multiple rings. Do that, and failure won't be an emotional blow. It will be a relief, affording you the time and energy to eat the prey you managed to kill. Failure for me is a necessity. I couldn't possibly walk through all the doors I knock on.

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No one talks to us more than we talk to ourselves. We can either lift ourselves up or tear ourselves down. Take a second and think about a major accomplishment in your life. Repeat it to yourself several times. Next time you find yourself talking to yourself, reflect on that accomplishment. Confidence comes from achieving. In those quiet moments with yourself, reflect on your achievements.

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So often we read, reference and quote sayings from the famous. Why not take the time and write down sayings from family, friends, teachers and mentors and reference and quote those in our daily lives? This exercise helps us reflect on what we've been taught, what we've learned and what we still carry in our minds and hearts.

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Plant a flag. Columbus did it. The Royal Crown did it. The US astronauts did it. Seek our uncharted territory—a dream, a goal or an objective that others don't have the will and temerity to pursue, and plant a flag there. Maybe your firm wants to pursue a goal other firms have not. Perhaps you want to take an organization in a direction no one else has. The big bold moves do carry a lot of risk. But they also have the potential of a huge upside. Take a risk, take a chance and plant a flag.

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As young lawyers, there will be a moment when everything finally clicks for you. You won't notice it at first. Between juggling your cases and your life, you won't notice how your questions in deposition come with greater ease and fluidity. The long pauses and insecurities give way to the rat-tat-tat of one admission-securing question after another. The nerves give way to excitement. The butterflies stop being concern for what's about to happen and rather are in anticipation about what you're about to accomplish. If you haven't achieved that moment yet, you will. Just give it time.

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Often, we compete with others instead of competing with ourselves. We compare ourselves with others—their accomplishments, their stuff, their skills, their finances—instead of looking at ourselves in the mirror and accept and understand and appreciate that the person in the mirror is our only competition. Being our best—maximizing our talents, pursuing our passions, chasing down our dreams, competing against ourselves, improving

ourselves—that's how we truly become who we are, how we achieve our potential and fulfill our destiny. Each of us are in a race and each of us is the only runner in that race and we are running to better ourselves and no one else. Stop looking around. No one else is in your race but you.

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There are things we are taught and there are things we experience. There are things we learn from a book or lecture and there are things we learn by living them. Bouncing back from failure, learning from failure, overcoming failure are all learned from failing. Grit, will, perseverance and getting up off the mat is learned from getting knocked down and getting back up. The more challenges we face, the more obstacles that block our path and the more disappointment that comes our way the more we develop our will to push forward and overcome. My wife and I tell our two boys that it's not our job to protect them from failing, from disappointment or loss. Because it will happen to them and if they haven't experienced it when they were young, they will struggle to deal with it when it eventually comes their way when they're older. So if life has knocked you down, smile to yourself and know the more challenges you face the better equipped you'll be to handle the big issues when they come your way, and they will. They always do.

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In a TED Talk, Regina Hartley, HR Manager at UPS, categorized applicants into two categories—silver spoons and scrappers. The first group went to the best schools, landed the best internships and had the best credentials. They came from wealthy families and were engineered for success. She has nothing against these candidates and is impressed with their achievements, but notes they have not suffered some of life's challenges and have not been fully tested. And then there are the scrappers. These folks went to state schools, may have worked a series of odd jobs and may have gaps in their resumes because they took care of a sick parent or sibling. Life has not been kind to these applicants. Life has thrown them curve ball after curve ball and they are still standing at the plate swinging, making contact. They have faced existential challenges and are still scrapping. Hartley makes the point that if your company undergoes an existential crisis, and its own survival is in doubt, do you want someone who has gone through these challenges in their personal life and know they can come out the other side, or someone who was been engineered to win and lacks the experience of losing and the grit of how to deal with it? Grit can't be taught. It's experienced.

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Some of you young lawyers are struggling to pay the bills and keep your heads above water. You look around at other lawyers with higher salaries, fancy things and living the life. It's daunting, challenging and discouraging. But your situation gives you one advantage. It's called grit. Having to get up every day and fight and claw and struggle to keep the lights on—that hunger—that makes you resourceful, more imaginative and creates a

stronger work ethic than many other lawyers. It's like being a cornered wild animal. The hunter thinks he has the animal caught but the thing is a wild animal is at its most dangerous, most resourceful, most powerful when its back is against the wall, it has everything to lose and is fighting for its survival. Sometimes it feels like your fighting for your survival. Keep fighting. You're dangerous to opposing counsel, to all your problems and challenges and to life which is trying to corner you and has no idea the world of pain it's about to experience at your hands.

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Take The Stage. If you want to succeed, you need to take chances. If you want to be a great speaker, you need to Take The Stage. Standing off to the side, in the dark won't make you a great speaker. If you want to be a great trial lawyer, you need to Take The Stage. Not seeking out opportunities to attend trial and playing a real role at trial won't make you a great trial lawyer. There will be failures. There will be losses and disappointments. But you can't sing if you don't take hold of the mike. Take The Stage.

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Choose to fail. Until you've done your share of failing, you won't learn how much bigger you are than the obstacle and challenges you face. Fall down and get up enough, and failure loses its sting. Venture out and seek out different opportunities. For example, I'll pitch numerous publishers book and article ideas. I know most will say no. What happens when I get rejected? Nothing. Nothing happens. I'll pitch numerous ideas to volunteer bar associations. Most will be rejected. What happens? Again, nothing. I think salespeople understand this intuitively. They may get rejected by dozens before making a sale. Do they worry about everyone who said "No?" No. They learn from No and focus on Yes. Find something where the success rate is low and try it. Get rejected. See, it's not so bad. It builds character. And you know what, sometimes that "Yes" comes along when you least expected, and that Yes never would have come without all the No's that preceded it.

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As parents, we don't do our children any favors by protecting them from failing. Eventually, we all fail, and some of us do so fantastically. That's life. And the longer kids think they shouldn't fail and aren't allowed to suffer the consequences from failure and learn from their mistakes, their maturity will be stunted. Encourage them to pursue big goals and big opportunities and help them learn from those experiences if the outcome is less than desirable. Don't be a helicopter parent. Don't do everything for your kids, especially upperclassmen in high school and college kids. Taking risks, sometimes big ones, and falling short, is part of growing up. If you prevent your kids from experiencing this, you're raising boys and girls, not men and women.

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Your mantra should be that you won't be outworked. Like Jacob wrestling the angel into the morning, never stop working, pushing, striving, clawing,

fighting. Being lazy is a character flaw. Thinking life is easy and that total commitment is unnecessary is a lie. You won't outwork me. I won't cry uncle. I'll force you to give me the blessing every time. That's how to live life. Make it give you the blessing.

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Life doesn't play fair. That lump you thought was innocuous turns out to be cancer. The tremor in your hand you attributed to too much caffeine is early onset Parkinson's. You get laid off. Your son gets hooked on drugs. Life's a bully. And that's why we need to stand up to it. If it pushes a friend down, we help her up. If it proverbially knocks the books out a friend's hand, we pick them up. And we go on the offensive. We help out those who need our help. We meet them where they're at and we marshal our gifts to help them through the situation. It's our way of standing up to life and showing that we won't be bullied. And if you're the type of getting in a bully's face and showing him who's boss, look at your acts of kindness as giving life the finger. It's my way of giving it a bloody nose.

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As professionals, we have the privilege of an education and to a degree, the luxury of time. Unlike less blessed individuals, who have to work physically demanding jobs, sometimes two of them, to make ends meet, most of us have the energy, resources and time to think and to reflect. We have time to conceive ideas, share them, develop them and turn them into a reality. I'm not suggesting others can't do the same, but we have greater opportunities to do so. That privilege, though, is accompanied with responsibility. To whom much is given, much is expected. The man with ten talents is expected to do more than the one with five. We owe it to ourselves and others to always be thinking and allowing our ideas to flourish and grow and to transform them into realities for others' benefit.

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I caught a few minutes this morning of the 2002 movie *Signs*, an alien invasion film about faith. As with most science fiction movies, the movie is not about the aliens, it's about us. The message of the movie is there are no coincidences. I agree. I think the most random interactions with others, however small or seemingly inconsequential, have the potential to impact the parties for the rest of their lives and send them careening to their destinies. Folks ask me why I post, why I give my books away. It's my way to set in motion those interactions that may seem coincidences to some, but to the rest of us, are so much more. If you have something to give, give it freely, give it away, and set in motion a chance encounter which may turn into so much more.

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Sometimes life will kick you in the head and knock you to the canvas. At first, you're disoriented. It could be a cancer diagnosis. Heart attack. Soul crushing depression. Loss of a loved one. Your law firm closes. You're going to be on a canvas a bit. Take a deep breath. Shake it off. Now get up. Get



the hell up. No one is going to lift you to your feet. The bell isn't going save you. That's life looking down at you, smirking, its arms up. Get up. Don't give it the satisfaction. Don't let it win. It's best too many before you. Too many have stayed on the mat. Not you. You're getting up. That's what separates you from the rest. You're going to get up. You're going the distance. Life's not smirking anymore. It sees that look you got. That look that says, "that's all you got? Now it's my turn." Yeah life, now it's my turn.

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The poet Antonio Machado wrote:

Wanderer, your footsteps are the road, and nothing more; wanderer, there is no road, the road is made by walking. By walking one makes the road, and upon glancing behind one sees the path that never will be trod again. Wanderer, there is no road—Only wakes upon the sea.

Machado has something to say to each of us.

Each of us has a destiny, each of us has goals to achieve that destiny and each of us has a road toward those goals. That road is our road. Don't look for the road. You won't find it by following others. Create it by walking. Each step you take creates your road. Each step takes you closer to achieving what you were born to do.

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It's easy to pursue conventional wisdom and seek to attend the "best" law schools and work for the "best" firms, and be disappointed when reality doesn't match our expectations. But what if the conventional wisdom wasn't meant for you? I was going to go to a top college upon graduating high school, but opted to stay at a local state college instead because my mom was in poor health. Everyone thought I was crazy for passing on the opportunity.

But you know what? On the first day of classes I met my future wife. I would never have met her but for attending this local college. I may have gone on to graduate from a top school, but I would have lost out on my soulmate. Sometimes life closes a door. Look for the window. Life always opens a window. Often, that window was your window and that door was just a distraction from what would bring you joy, peace and satisfaction. Live your life and let the world have it.

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Get together with several friends who are avid readers and agree to buy hard copies of books for a month and exchange them among each other after you read them. This way, you'll be exposed to books you may never have read.

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Staying hungry as a lawyer can be tough. With the years, we can grow comfortable and complacent. We can continue doing things how we always have because it's worked in the past and who has the time to learn new



software, a new way of thinking or a different paradigm in how we approach our matters and our clients? But staying hungry is key. Those lawyers out there in small firms, with their names on the door, trying to make payroll—they're hungry. They have to be to keep their doors open. We all need that sort of hunger. It focuses us. It makes us up our game. It makes us go to that cocktail hour we would rather skip or meet someone for coffee at a time we would rather be sleeping. Stay hungry my friends. Stay hungry.

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When I read bios on Abe Lincoln, they all focus on the personal hardships he lived through. When I was younger, my thought was, "he made it despite these challenges. I can make it too." Now I realize that he made it because of those challenges. Getting beaten down by life helps you rise to the challenges it throws you.

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Grit. It's what separates the adults from the kids. Health Issues. Divorce. Death in the family. Failures in business. Failures in our personal life. None of us wants to experience any of this. And it hurts like hell when we go through it. But this is life. No one can protect us from it. And often those of us who get punched in the face by life repeatedly are best equipped to handle challenges and obstacles in our cases and in our law firms. Embrace the pain. Through it all, you developed grit. You've gotten knocked down to the canvas and you've gotten back up. You've gotten knocked down again and you've gotten back up. You've been hit and you know you can take it and go the distance. You know you won't throw in the towel. Others who haven't shared your heartache and misery don't know this. Life will eventually catch up to them and hit them and they may throw in the towel. But you, you never will.

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Success is all based on the measuring stick you use. If it's financial reward, you may never feel you've achieved success or if you do, it's fleeting. If your measuring stick is how much you help pull others up and lend a hand, you may reach success at a young age and never lose grasp of it. Before measuring, see what measuring stick you're using. You may have to toss it out for another one.

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We need to be tested. We need to face adversity. And we need to get knocked down. Sometimes repeatedly—over and over. We need this. We need to embrace these low moments in our lives. We need this because we need to learn to overcome the worst life has to throw at us and come out the other side, prepared to face the next crashing wave. We need this because that's what life does and if we haven't lived through it and survived it and overcome it then when the hard times come, we'll fold, and we can't afford to do that. Our families and our law firms can't afford for us to do that. As far as our practices are concerned, whether it's the loss of a trial, a loss of a

client, or a loss of a partner, things will happen at our firms that will challenge us. If you've faced and embraced the worst life has to offer then you'll be prepared to face any challenges your practice and your career throw at you. Don't ever shy, run away or avoid life's challenges. You need to go through the fire, be purified and survive to know that you'll survive and overcome whatever is going on in your firm.

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As young attorneys, it is easy to become bitter. Too much debt. Too few jobs. Many of the jobs available are not the ones you had hoped for. I came up during a recession when it was hard to find jobs, but that was a cakewalk compared to how things are now for young lawyers. So you have two choices. You can allow yourself to get bitter, hard-hearted, and be angry at life or you can decide, right now, that you're going to make the best of a bad situation. And yes, you're going to make lemonade out of lemons, and yes, focus on the opportunities, however limited, as opposed to all the doors that have been slammed in your face. This is your life and your career and there's no time to be bitter or to complain or feel sorry for yourself. Search out more senior lawyers through your family, friends or voluntary bar associations and ask them to sit down with you and brainstorm opportunities you may not have thought of. You can't change the reality of our economy. But you can focus your energies on making the most of the limited opportunities available. I wish I had better news, but hard work, persistence, imagination and family and friends will help. I'll be rooting for you.

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There is no stasis in law firms. Your firm is either living or dying. It's growing or shrinking. It's reputation is improving or diminishing. That's true for your law firm, your career and your relationships. Going through the motions is a recipe for losing ground. If you're not running, and I mean running right now, someone just passed you.

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Try the "impossible." Try to do something you've wanted to do but just thought you couldn't. Try to accomplish something you think is out of reach. If you achieve it, you've done the "impossible" and if you've done it once, you can keep doing it. Past success breeds future success. If you don't achieve it, you'll surprise yourself by how close you came. Last year I decided I was going to write a book in 30 days. I figured if I can do that, I can tackle anything. Since then, I've written 3 books, in 28, 18 and 24 days respectively. I don't say this to brag, I say this because if you try the "impossible" you may surprise yourself and make the impossible mundane.

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Relying on external motivators isn't as effective as relying on internal ones. Let's say you rely upon self-help books and motivational speakers to motivate you. Don't you find you have to keep going back to the well to stay motivated? You have to keep reading those books and attending

those presentations to stay focused and accomplish your goals? You're better off identifying and relying on your passions and talents, and allowing them to direct your actions. You'll be motivated to pursue those actions as opposed to ones you think you should pursue because others have told you they're good for your career, or health or just life in general. You're already motivated to do what you love, you're passionate for, what you were you born to pursue. Identify those things and motivation will naturally follow.

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So many of us look for inspiration from others. I've read my share of self-help books and attended my share of motivational speeches. I think we're looking in the wrong place. If you first define your talents and passions, you can find your dreams where your talents and passions intersect and be self-motivated to pursue them.

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The television in our living room died. We haven't replaced it. We've decided not to. Our younger son doesn't have a TV in his room (our older son is off at college, and he stopped watching television when he was 17) and we have a small TV in our room which has been acting up lately. It's amazing how much time television consumes. You don't fully appreciate it until it's gone. Suddenly, there is time for so much more. If you're having time management issues, turn off the TV for a week and see how things change. You may refuse to go back.

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The most important quality a young lawyer brings to the table is hunger. The fire in the belly. The eye of the tiger. Grit. You're young. You're inexperienced. You've handled fewer matters. Taken fewer depositions. But you have one distinct advantage. If you have the drive, and you want to prove yourself, you have the ability to outwork opposing counsel. Fighting harder, fighting longer, taking the extra punch and not getting knocked out—many senior attorneys lose that. They get tired. They get comfortable. They get distracted. But you, with Ramen noodles and tuna out of a can not far in your rear view, you still have that drive. You may not always be able to outsmart opposing counsel, but if you can out hustle him, you'll be well ahead of the game.

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## Professionalism

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“You’re one of those people in the world that really should just kill themselves because you’re worthless.” A lawyer spoke these words to a tenant. Let that sink in. Each day, every word we speak, every act we take, we either build up or tear down the profession. We are either part of the solution or part of the problem. We think our words don’t matter? Our actions don’t matter? They matter more than we think.

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As lawyers, some opposing counsel will try to get under our skin, get a rise out of us, invite us to wrestle in the mud. Sometimes it’s not opposing counsel. I see it on social media all the time in the comments that fly back and forth. It’s so easy to lose composure. I’ve done it at times myself. When you do that, even if you win, it’s pyrrhic. You’ve debased yourself. You’ve given away a little of yourself to win, to prove yourself. I don’t have a good answer to avoid the rage other than not to give into it. Just walk away. That’s why these days when I receive a hostile or personal comment on LinkedIn, I block the user, delete the post and don’t think about it again. You want to be small? Go be small somewhere else. I’m busy.

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Some clients don’t understand why you have a professional, ethical and amiable relationship with opposing counsel. Some believe opposing counsels should be at each other’s throats or they’re not being zealous advocates. I make every effort to have a friendly and amicable relationship with every opposing counsel. I explain to my clients this improves efficiency, reduces costs and avoids costly discovery fights.

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Stress highlights who we are. It brings out our true nature for us and everyone to see. Lawyers who become jerks under stress didn't become jerks because of external stressors. They are jerks and the stress pulls away the facade of who they want others to think they are. We all need to take an honest and hard look at ourselves when bad things happen and work on us. Don't blame the stressors. Don't be all smiles and apologies once the obstacle, issue or stress is resolved. Work on yourself so your true self is someone you're not trying to make excuses for.

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Act professionally and be nice in your practice, not only because it is the right thing to do, but it pays off dividends. I have trial in a week. Opposing counsel and I have been asking each other for favors and doing each other solids, which have allowed us to focus on the task at hand—getting ready for trial—and avoid the side battles and petty arguments that typically multiply as trial gets closer and closer. Do the right thing—it makes trial prep and trial go much smoother.

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Take a measure of a person from the little things they do. How do they treat and tip wait staff? How well do they know their firm staff? Do they make the coffee at the office? How do they behave when they're stressed? The weight and mark of a person is rarely determined by the big decisions they make. They are determined by the hundred little choices they make each day—the numerous times they have to decide to serve their own needs or serve another's. These little decisions serve as a window into a person's nature. Pay close attention because folks will always act according to their nature, good or bad.

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Three seconds is a lifetime. If you want to know the true nature of another—opposing counsel, a client, a witness, anyone—see how they react in the first three seconds after an adverse event, an obstacle, a setback or even an inconvenience. Your true nature is who you are before three seconds pass and you realize others are watching. Those three seconds reveal a lifetime of how you have dealt with adversity. Those three seconds represent you. Those three seconds are your lifetime. Three seconds is a lifetime.

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As a young lawyer, I often heard the following—if you think lawyers spend a lot of time sharing their opinions about judges, that is nothing compared to how much time judges spend sharing their opinions about the lawyers who appear before them. Behave badly before one judge and word will get around to all the judges. Don't be unprofessional, don't be disrespectful and don't burn bridges. It's your reputation. Build it. Don't undermine it.

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Everybody does everything for a reason. When dealing with opposing counsel, ask yourself why is she taking the action she is taking? Give her the benefit of the doubt. Your first thought should be—how does her proposed

action advance her case? Usually giving others the benefit of the doubt makes for better relationships with opposing counsel. Now of course the reason for opposing counsel's behavior may be nefarious, obstreperous or just bullying. But start with the notion that there is a tactical reason that benefits their client for their behavior and go from there.

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As you may have read, a partner at a national law firm was suspended for refusing to agree to a trial continuance requested by a pregnant opposing counsel who asked for the continuance because her due date was during the trial period. As lawyers, we have to show one another respect, act professionally and make appropriate accommodations when the time calls for them. Being a lawyer is very stressful. Among all professions, lawyers have one of the highest levels of suicide, mental health issues, alcoholism and drug addiction. This type of behavior only adds to these stresses and advances the narrative that lawyers are selfish jerks. All misogynistic, discriminatory and disrespectful words and behavior have to be addressed head on in our profession and eradicated.

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As lawyers, if we take treat clients, opposing counsel, opposing parties and the like as if they are indeed special, and inspire them to do the same, we would all enjoy the practice much more.

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How about the next time opposing counsel fails to respond to written discovery on time, instead of moving to compel, you give him a call, pleasantly remind him that his responses are overdue and agree to a reasonable extension for him to get them to you? If he asks whether his objections and privileges are preserved, say yes. So few people do this that you will foster immediate goodwill in that case and in future cases with that lawyer.

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There would be less disagreements between opposing counsel if they e-mailed less and called each other more. We lawyers, of course, want to have a record of communications with opposing counsel and e-mail makes that easy. But take the time and pick up the phone and speak with opposing counsel from time to time and spend some time talking about non-case related items—family, vacations, hobbies, etc. Being collegial will help you and opposing counsel to keep things civil.

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5 second rule. You get a nasty e-mail, a nasty comment by opposing counsel at deposition, a nasty anything. Take 5 seconds and ask yourself, "Have I ever made a stupid comment? What mercy would I want to be shown?" Do this before responding. Do it enough, and it will become second nature. You'll avoid a lot of stress in your life by taking those 5 seconds.

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Words matter. What we say to others matter. What we say builds others up or tears them down. What we say elucidates or obfuscates. It inspires or sows doubt. We can choose to smile or frown. We can speak truth or spread lies. Words can change lives, for better or worse. Inspire. Motivate. Lift up. Make the most of words.

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Esquire”—“a title of dignity next in degree below knight and above gentleman.” That’s what the word means. It expresses nobility. It harkens back to a time where civility, honesty, chivalry and a code of honor took precedence. It was a time when a personal moral code served as a compass to keep one’s path straight. It is a privilege and an honor to be a lawyer. It obligates us to live by an ethical code and uphold it in everything we do. There is something very noble about our charge. Let us not forget the meaning and spirit of the word “esquire” as we lawyers—women and men, experienced and new, civil or criminal—represent our clients.

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For you attorneys who think you’re doing your clients a favor by turning everything into a legal fight, costing countless hours and fees, hoping you’ll make the other side buckle, let me fill you on a secret. All you manage to do is upset everyone. You upset opposing counsel, you upset the opposing party and you upset the judge, and when folks get upset they don’t act rationally. Where they should settle, they dig in and fight because you’ve gotten their back up. Being a jerk isn’t a productive strategy. It’s just being a jerk.

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Whenever arguing to a judge, you have to get your point across but not be unprofessional when doing so. As lawyers, we always want the last word. We want the reply and the surreply, we want to butt in, and say, “just one last thing your honor.” We all have reputations. Yes, we have to be zealous advocates, and there are times when getting the last word is appropriate. But it’s not every time. Do it every time and you’ll get the reputation you richly deserve.

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Sun Tzu advises when attacking an enemy, leave them a means to escape otherwise they will fight to the death. In litigation, don’t belittle opposing counsel or her client and don’t attack needlessly and try to win battles that are only battles in your own imagination. By doing so, you are creating a monster that will raise its head and damage you and your litigation strategy in ways you could never have suspected.

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Those Saturdays when you have to come into the office and prepare a complaint and motion for TRO and your computer crashes? Have you had those? When you need everything to go right and everything goes wrong? Days like these are a good test of our character. We all know folks that when things get stressful, they’re jerks to everyone and once the emergency passes



they're nice again? You know what, they're still jerks. You put someone or something under stress, and you get to see their true nature. Don't be that person. For your spouse's sake, your kids' and your co-workers, rise above it.

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I am blessed to have followers and connections who are lawyers and law students from around the world. The fact that we have this forum and share our thoughts about the practice from so many regions and countries and irrespective of where we're from or what the procedural and substantive laws are in our respective countries, we have this common language where we vigorously, passionately and ethically represent our clients and where we share the same values of fair play, hard work and justice. That the practice of law can transcend culture and language is quite heartening.

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We took in a dog named Laika. She was a neighbor's who wasn't feeding or bathing her, having her sleep outside and letting her run around the neighborhood unattended. She was covered in fleas, a skin rash, avoided being petted and had heart worms. My wife asked for the dog and now it's ours. What's amazing is that in a couple of days she became the friendliest and most loving dog. Sometimes we interact with opposing counsel or witnesses or others who are looking to pick a fight and all we see is that, not considering their circumstances may have driven them there. Sometimes showing kindness and patience can result in a positive as opposed to an antagonistic relationship.

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Whenever you write an e-mail to opposing counsel, remember it may appear as an exhibit to a motion—either yours or theirs. Whatever you say may be read by a judge who will develop an opinion of you, either favorable or not, and that opinion may color her view of your case, of your client and her ruling. Keep your e-mails civil, succinct and above all else, avoid a tit-for-tat argument which undermines your reputation for professionalism before the judge. Our reputations are built up and torn down an e-mail at a time.

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Try as hard as possible to have a good relationship with opposing counsel. You will need extensions and documents and information. You will need cooperation and a free flow of communication. You will need to discuss the good and the bad and potential settlement. And for your own mental health, you don't want to wince each time an e-mail from opposing counsel comes into your in box. Yes, there are some bad apples. But most attorneys are pleasant and professional. Most don't want to turn every communication or e-mail exchange into a battle. Work together. Your cases will run so much smoother if you do.



## Leadership

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Praise your team. If someone at your firm prevails, praise her. If someone at your firm bested the odds and won a hearing he shouldn't, praise him. Praise costs you nothing. You do not have to reach into your pocket for it. You don't need a line item in your firm budget for it. Telling your team that they did a great job, that you're proud and privileged to work with them, costs you nothing. And it means everything to them.

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If you want to lead, you must be committed to learning the passions of your team members and be vested in having them pursue those passions and empower them to do so, even if that leads them to another team, another career or another life.

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Be a pack leader. They say dogs can smell fear. They also sense, and react to dominance. I walk our dog Laika past several much larger dogs barking behind their chained linked fences. I got tired of the barking and used my body language, voice and attitude to show them I wasn't afraid, but rather, they should be afraid of me. They still come around and bark, and once they realize it's me, they turn around, their tails between their legs and skulk away. In your practice use your body language, tone of voice, diction and attitude to show you are the pack leader. You are not afraid. Instead, you should be feared.

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Everyone at your firm is great at something. Writing, speaking, cross examination, business development, mentoring—you name it. Have a monthly meeting where one attorney at each meeting shares how others can excel at what she excels at.

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If you have ever served on a nonprofit board, you have attended at least one meeting where folks go around the table and list colleagues they can reach out to for sponsorships and donations. What's important to understand about this ritual is that the "ask" is premised on a personal relationship with the person. These meetings are eye opening because you quickly realize who is in your circle of influence and how many others you have helped that you feel comfortable reaching out to for theirs. Whether it's business referrals, fundraising, or volunteering, the relationship always precedes the ask. Invest in relationships first. It's from those relationships that everything else comes.

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Always set the agenda. In your cases, your organizations or in your life, set the agenda. By setting the agenda, you're setting the rules and parameters, defining the focus and the plan, and running the show. In a game, if you're both the team and referee, you have a huge advantage.

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When I was younger, I was naive enough to think I could change others and arrogant enough to think it was my job to do so. I now know, when leading organizations, that everyone is whom they are and we can't change that. Our job as leaders is to identify who others are and place them in the organization where their strengths shine. To have them somewhere doing something that doesn't suit them is frustrating for them, you and the organization. We're not here to change others. We're here to help others be them—the best them they can be.

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If you're leading a firm, it's crucial that you identify and encourage the use and development of your team members' talents and skills. In fact, if you want to foster loyalty, encourage your team members to apply those skills outside the firm. If you have a team member who loves to write, encourage them to write in a variety of venues, read what they publish and praise them for their work by sharing their content with others. Squelch their use of talents outside of the office, ignore them or complain about how much they talk about their interests (especially if they're exceeding the firm's billing expectations) and run the risk of running them off.

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There is a scene in *Mad Men* where Peggy Olson tells Don Draper that he never says thank you and he responds "that's what the money is for!" If all you're doing is paying your team and not fostering their talents in and out of the office, you're creating a transactional relationship and the problem

with transactional relationships is that once a better offer comes along, then you'll lose that team member, because you taught him/her that their interests don't matter, only the bottom line, and if the bottom line is the only thing that matters to you, then it will be the only thing that matters to them.

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Look around. Look around at those who work at your firm or company, at those who serve alongside you at your voluntary bar association or nonprofit. So much talent. Each of them has at least one talent. Each has the passion to develop that talent and realize both their dreams and the organization's. And here you are, working, serving alongside them, sharing the team's vision and values. Imagine now—all that talent and passion, all that work ethic and all those dreams, helping them fulfill their destiny, helping them discover why they are working next to you, why none of this is a coincidence or happenstance. You want to lead? And more than that, you want to be a transformational leader? Help your team discover why it so happens each has a given talent, and how that talent, if nurtured and developed, fostered and fed, how that talent will help each achieve their individual dreams and achieve the team's dreams.

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Meetings take too long. Whether at your firm, your company, nonprofit or voluntary bar association, they just take too long. When I lead meetings, I preface them with e-mail exchanges which include an itinerary, my thoughts on the various line items in the itinerary and an invitation to have others share their thoughts. If there is a specific issue which I suspect will be a particular time suck, I address it before the meeting in a separate e-mail(s) or call(s). Yes, it seems that these extra steps only add to the time you're spending, but in fact, generally they can turn a 3 hour meeting into a 1 hour meeting and a 1 hour meeting into a 15 minute meeting. We have meetings to set goals and decide how to achieve them. Get in the meeting, discuss, decide and get out. Yes, I love everyone sitting in the conference room or attending the conference call, but we all have other things we need to do. There are many miles before we sleep. Many miles before we sleep.

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Sometimes the best ideas are those that revisit old ones. There was a time families sat around the radio to listen to serial stories. Today, they're popular again. We call them podcasts. When looking for the next big idea, reflect on re-envisioning old ones.

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I have the privilege to serve on the board of my son's high school and one of my responsibilities is to help choose new board members to assist us with our work. Having served on this board and others I realize that any organization must first define and know its values and then select leaders who share, embrace and live those values. Whether you're looking to hire a lawyer for your firm, bring on a leader to your non-profit or have someone join the board of your voluntary bar association, find those who share and

live your values. This way, they will buy into your mission and vision and pursue them wholeheartedly.

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Let's understand leadership for what it is. It is enabling an organization, a team or a person to fulfill their purpose. Each of us has a purpose. Each firm, company or organization we work for has a purpose. Each team we work with has a purpose. Leaders help others discover their purpose and achieve it. If you are doing this now, you are a leader. If you are a parent, you are a leader. If you are a spouse, you are a leader. A friend, a volunteer, a helper—you are a leader. We are not leaders because someone calls us a leader. We are not leaders because we sought and secured a title. We are leaders because we empower, irrespective of where we are in the hierarchy of the firms, voluntary bar associations, houses of worship or nonprofits we serve. I've found that I can more often fulfill the mantle of leadership without a title than with one, without being called "President," or "board member," or "chair," or whatever title organizations bestow on us. All of this is to say, don't wait until you have a title to lead. Lead now and make the title irrelevant, because when you think about it, it truly is irrelevant.

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My leadership tip is simple—have a vision for your organization, firm or company, create a plan to implement the vision and roll up your sleeves to do the hard work to make the plan a reality. If you want things to happen, you have to be willing to work alongside your team to make them happen.

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Have you noticed how many leadership books are written from the perspective of various disciplines? Sports and leadership, music conducting and leadership, military and leadership, the Bible and leadership. These books often apply ideas and concepts from disciplines or activities that at first glance shouldn't offer leadership skills, but upon closer inspection, they do. Creativity is finding these connections between seemingly unlike things. Spending time finding relationships between things that don't appear to be related or connected will help you develop and spur your creativity.

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The power of an idea. Everything we use, every product, every service, everything was born of an idea. Ideas will transform your law firms and your companies. Encourage your team to share their ideas and reward those whose ideas you implement. Ideas set apart the great firms from the good firms.

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Leaders follow the vision and pursue the goals to achieve the vision and lead others to follow and pursue it with them. They don't follow themselves and they don't want others to follow them either. They want others to do as they do—follow the vision and pursue the goals to achieve it. When leaders make it about themselves, they're setting themselves up for failure. When others follow the leader and not the vision, they're creating a cult of personality and

may be let down when the leader, as we all do from time to time, stumbles and fall. Everyone on the team—from the leader all the way down—must keep their eye on the vision, not the leader.

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I've taken improv classes and when you improvise comedy you learn to always say "yes" to what other participants offer you for the next bit, conversation or joke. As young lawyers, one of your biggest assets is a positive attitude that always says "yes" when faced with a challenge, obstacle or problem. In improv, saying "no" stalls the forward progress of the humorous interaction. In our practice, saying "no" prevents us from finding creative, out-of-the-box solutions to problems many others believe there are no solutions for. Say "yes" more.

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Being an inspirational leader begins with showing your team you're vested in their personal success. You care about them as individuals—their dreams, hopes, concerns, fears and desires. You want to inspire them not only to make your law firm or company better and empower them to help achieve the firm's or company's mission and goals, but you want to empower them to achieve their personal mission and goals too. By equipping them to achieve their dreams, they'll be inspired not only to achieve their dreams but your team's dreams too. Care for them as individuals and they'll care about what you want to achieve as a leader.

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Great leaders inspire. If you want to inspire your team members, work with them to define their talents, interests and passions and find where best at your law firm or company they can apply their talents and pursue their passions. Just as importantly, help them define their fears and obstacles and equip them to overcome them. If you help others find their purpose in life and help them find the means, strength and courage to overcome what's holding them back from achieving their purpose, they will achieve their purpose not only in their personal lives but at your place of business. They will succeed and your law firm and company will too.

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Putting an effective team together starts with identifying your team members' talents, gifts, passions and values. Each person on your team excels at one or more things. Find places for them where they can best use their talents and apply their passions. They will enjoy the work that much more and they will contribute greater value to the team. Leaders who put the wrong team members in the wrong positions are asking for unhappy, unproductive members.

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We can lead, inspire, train and manage others but we cannot change, nor is it for us to try to change, others. Each of us is who we are. Each of us has



our strengths and weaknesses. Each of us has our values and beliefs. Each of us has our passions and priorities. Good leadership isn't about changing others. It's about helping others make the most of their skill set and passions and placing them in your firm or organization that helps them make the most of their skills and passions.

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When I was young, I remember seeing Suggestion Boxes at retail stores. There was a stack of notecards and several pencils, and you could write your suggestions on how the store could improve its services and drop it in a slit in the box. What if law firms asked their attorneys and staff for suggestions and gave a prize once a month, a gift card for example, for the best idea? Firm leadership has to realize that ideas are going to drive their future success and some of the best ideas may be in the minds of those in the smaller offices and cubicles.

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Ideas can revolutionize your firm. The right ideas can double your firm's margins. So where are these ideas going to come from? From the imaginations of your lawyers. And how do you develop imaginative lawyers? You foster their creativity. Create a firm culture that encourages its lawyers to visit art galleries, attend lectures at the local university, join books clubs, listen to classical and jazz music, take up drawing or photography—anything and everything that develops their right brain. We already use our left brain. If we can kick start our right brain and get both hemispheres humming, we can conjure ideas that can truly revolutionize our firm and the practice.

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If you lead a firm, an organization, a non-profit—anything—ask yourself four questions:

- As the leader, is it your job to know what motivates your team? The answer is yes.
- Is each person's motivations his or her own? The answer is yes.
- Is it up to you to learn each person's motivations? The answer is yes.
- Finally, do you know what motivates each of your team members? If you don't know the answer to this, go find out from them.

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Never give someone else at your law firm an assignment for the weekend unless you're going to do your share. If an emergency comes up, and something needs to be done over the weekend, take the lead. Come Monday, you better have spent more time on the project than anyone else. Do you know what you call a leader who asks someone else to do work over the weekend and is not willing to do so himself? That's a trick question. He's not a leader.

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Leadership can be learned. Yes, there are natural born leaders. But there are many leaders who studied the process of becoming a great leader, followed that process and became great leaders.

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Whenever you're planning a new long term project or plan for an organization, share with your team not only your vision of the final outcome but a visual as well. For example, if you're planning a complete revamp of an organization's website, prepare the final look of the website, minus the functionality, to get the buy in.

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If you're guiding your team to the proverbial promised land, expect that some of your team will only see the obstacles and challenges while others will see the opportunities and benefits. Don't succumb to the scouts who only see the giants. Embrace the scouts who see the land as one flowing with milk and honey.

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When assuming a leadership position at a voluntary bar association or nonprofit, learn what your members want, need and expect. To do so, ask them, by sending them a survey and studying their responses. Often when a new leader assumes the helm, he/she has a lot of ideas but only an educated guess as to whether the members want what he/she is proposing. Avoid this guessing game by asking them.

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Every firm, company or organization you work for or volunteer for needs a strategic plan. The organization must define its purpose and develop a plan to fulfill that purpose. This plan should be regularly revisited and tweaked.

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To be an effective leader, communication is key. You need to know how to communicate with each member of your team. Not everyone has the same communication style and not everyone is going to react to you the same way. For example, I grew up in Chicago, where there were a lot of street gangs. If someone was aggressive or hostile toward me, I had to give it right back. That was par for the course. As an adult, if someone tries to lead me by being aggressive or overbearing, my instinct is be aggressive in return. That form of communication doesn't work well with me. Then there are others who need leaders to be more assertive. They respond to that form of communication and it motivates them. As a leader, you're not going to change your team members' communication styles. They're going to respond well to what they respond well to. Approach each team member on his or her own terms, speak to them in a manner that works best to motivate them and get to know them so you learn what gets them excited, inspired and proactive and speak to them on those terms. Of course you can choose to lead only those who see the world just as you do, but what would be the fun in that?

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As attorneys, always set the agenda. Whether it's a meeting with a client, opposing counsel, a witness, a business meeting, a committee meeting—you name it—decide what the agenda is going to be, reduce it to writing and circulate it to everyone. Invite their input, of course, but you are the first to decide what's going to be discussed and in what order. You want to set the terms of every meeting and direct how it will proceed and what will be discussed. Volunteering to set an agenda is more work but it ensures the issues you want covered are covered. You want to ensure you're on the agenda? What better way than preparing it.

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No matter where you are on the corporate chart or pecking order, you can be a leader if you choose to be. Titles aren't necessary. In fact, they can get in the way at times. If you put others before you, and work toward elevating them and your firm, and move forward toward achieving the firm's goals, then you are a leader. Forget titles. Do the work of a leader and the title may or may not follow, but you will make a difference.

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Whatever organization, company or firm you lead, you won't be an effective leader if your team doesn't trust you're committed to them, that you want to build them up along with the organization you're leading, that you have a plan and that you have confidence in yourself and the team to make your goals a reality. In football, when a team is trying to make a comeback, the quarterback has to believe his team is going to score a touchdown. In fact, he has to believe that his team already scored one and that the plays he is calling are catching up to the reality that his team already put 6 on the board. A team isn't going to believe in you if you don't believe in yourself.

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If you lead a law firm, legal department or voluntary bar association, one of your primary tasks is to identify the individual talents and passions of your team members and assign them a role where those talents and passions work in tandem to bring their gifts, motivations and energies to bear on the task at hand. Leaders pick the right individuals for the right jobs best suited for whom they are and what motivates them.

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Clients want lawyers who are leaders and are winners. That means you have to come across as someone with an endgame and a plan to secure it. Leaders know where they're going and how to get there. Initial case strategizing and planning is key. You also have to be confident and competitive, wanting your client to win and expect that the plan you have laid out for winning (what winning will look like in any given case will have to be agreed upon by you and your client) will succeed. You decide how you're going to take the hill and then lead your troops to take it. If you have that perspective and attitude, clients will take notice.

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Do you want to identify the leaders in your law firms and voluntary bar organizations? Have a contest. E-mail all the lawyers and ask them to respond to the following questions:

1. Do you have a revolutionary idea for the organization?
2. What's your plan to implement it?
3. What will you do personally to implement it?

Leaders have vision, a plan for the vision, and the work ethic to implement it. See who responds to your e-mail. Those who can answer all three questions are your leaders. And take a close look at their ideas. They're likely ideas you're going to want to adopt and you're going to want them to make those ideas into reality.

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"I am sorry." Three very powerful words. When a mistake is made, don't compound the problem by making excuses or blaming someone else. Assume responsibility, apologize and make it right. Partners don't want you blaming something or someone else. Clients certainly don't. We all make mistakes. Own up to them. Trying to find a scapegoat or blaming the victim never helps.

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There are a lot of books on leadership. My favorite author is John Maxwell. Whether it is the *21 Irrefutable Laws of Leadership*, the *360 Degree Leader* or the *21 Indispensable Qualities of a Leader*, I recommend you Google him, browse through his book descriptions, and order several of his over 20 books on leadership. He has studied leaders throughout history and has distilled their wisdom in his books, teaching us the skill set to become an effective leader.

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Start leading a smaller, local organization or voluntary bar association. I started with local organizations, then graduated to state wide organizations and then assumed leadership positions in national organizations. Local organizations provide more opportunities for younger lawyers to get involved and advance in the ranks more quickly. Local organizations generally do what national organizations do, but on a smaller, more manageable scale, where you can cut your teeth as a leader, and develop the skill set to leader larger groups.

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Law firms, voluntary bar associations, nonprofits and companies are craving leadership. They need leaders with a vision and a plan to implement it to better serve employees, clients and customers. They're looking for bold thinking, thoughtful risk taking, and inspirational team building. If you can devise a plan to take the hill and inspire the troops to charge it then you are well ahead of other lawyers.

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Law firms, voluntary bar associations, non-profits, houses of worship, and any organization needs and craves leadership. If you want to make an impact, become a servant leader, where you lead by serving others, putting others before your ego and your agenda. You don't need a title to lead, and by serving, everything else, including titles, will take care of themselves.

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For you firm leaders, don't use the following phrases at work unless you mean them:

"How was your weekend?" Don't ask someone about their weekend unless you're genuinely interested in their weekend. And for those of you who are asked this question, often the questioner is just being polite in asking.

"My door is always open." If you're going to tell your attorneys and staff that they can ask you anything about work anytime, then expect them to come to you with questions and take the time to answer them. There was a time you had lots of questions. You may still do. If you say your door is always open, leave it open and talk to those on your team who need help.

"We're a team." If you're a team, that means you sacrifice for others just as you expect them to sacrifice for you and the firm. That's what teams do.

"We're in this together." Ditto. Are we really in this together, because if we are then lead by example.

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## Business Development

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For those of you who are struggling to keep your solo firms open, are getting impatient looking for a job or feel like you're running out of options, the first question you should ask yourself is—how much of a reserve fund do I have and how long can I live without life making me choose a less than favorable option? If you need to move back in with parents or siblings, consider it. Cancel any discretionary monthly subscriptions—gym membership, cable, etc. Stop eating out. After you've thrown all the non-essentials overboard, do a budget and see how much time you can tread water before you are forced to decide. It could be only a few weeks. Maybe a few months. Maybe even a year or more. Once you know what your timeline is, you know by when you have to fish or cut bait, press forward or go back, keep fighting or throw in the towel. Decide when the hard stop deadline is and plan accordingly.

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Create a business development calendar. Write down all the trips you are considering taking this coming year for business development—conferences, client visits and other events which will take you from the office. Planning it out now helps you appreciate what trips you should and can take and which ones you should cross off your list.

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Marketing isn't going to work if you're not going to do it, and you're not going to do it if your marketing activities are ones you don't enjoy. Align your marketing efforts with organizations, activities, and events you would enjoy. If not, you'll likely not follow through.

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In season four of *Mad Men*, the ad agency loses their biggest client and are desperate to bring in new clients to survive. But nothing works. Everyone is out pressing the flesh, calling, meeting prospective clients for drinks and lunch, but nothing. Everyone is confused except Don Draper. He explains their failure—"it's because we're desperate. They can smell it on us." The best time to market your practice is when you're too busy with paying clients to market your practice. If you find yourself marketing just to keep the lights on, keep any sense of desperation in check. What we sell as lawyers is confidence. We're confident when dealing with opposing counsel, appearing before a judge or presenting a case to a jury. If we come across as desperate in our marketing efforts we're telegraphing to prospects that we lack the one thing we need the most to win their case—confidence. I don't care how much you need the next case, how large your credit card bills are or how much you owe—no matter what, never let them see you sweat. If you can be confident through trying times then that's true confidence.

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Legal customer service is akin to any other customer service. Before any of us spend a lot on a product or service, we want to like and trust the person providing the service or good. Many lawyers have a hard time closing on a sale because they don't come across as empathetic, confident and trustworthy. You have to believe in your skills and the services you provide and what you do must be client focused, not you focused. If you were a prospective client and felt a salesperson was only interested in making a sale and not serving your needs, odds are you'd go somewhere else. Folks in search of legal services feel the same way.

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There are free ways to augment your firm marketing. Include links in your e-mail signature blocks to free books, articles, podcasts or webinars you've done. Seek out one or more of the many online CLE providers who are always searching for speakers and topics. Seek out trade, community and local organizations who regularly seek speakers to address their members. Everyone is looking for free content, speakers and information. Be a provider of all of this and raise your profile.

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If you're going to market your practice via e-mail, understand each of us receive too many e-mails and find marketing e-mails intrusive and unwelcomed. So if you want to market via e-mail, always give something when you send something. For example, enclose a link or PDF to an article, book or other materials you or someone from your firm has written which will have value to the recipient. That's why I'm a proponent of free e-books that you can give away. It's great promotional material and the recipient is receiving something of value for free—win-win.

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What are your best marketing ideas for the holidays? Personally, I write my share of handwritten notes, wishing others happy holidays and enclosing a copy of a favorite poem. Great way to reconnect.

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Holiday gifts. When buying gifts for clients and referral sources, go beyond the typical gifts of food baskets, cookie bins and bottles of wine. Send your favorite book or a subscription to a magazine. Also consider buying reasonably priced antique items online or at the local antique shop. These items are precious, have meaning and history and are well received.

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Holiday parties. Each of us will go to our share. Some do's and don'ts. Do mingle, network, exchange cards and follow up with those you meet and greet. Do not overindulge, over stay your welcome or forget for one second you're a professional among other professionals. Do choose your parties wisely. I'm generally invited to over two dozen. I'll attend 3, 4 at most. Do not overextend yourself over the holidays. It's fun going out, going to events and having drinks with colleagues, but don't overdo it. December is a good time to slow down and reflect, not to speed up and overextend.

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When developing your brand on social media, be true to your law firm's mission, vision and values and reflect who you are as a lawyer, professional, leader and thinker. Once you appreciate what you want to project, stick to those themes to develop a voice and become a thought leader in a given area or areas.

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Ah, firm holiday cards. Some do's and don'ts.

- Quality over quantity. Instead of sending everyone cards that only bear your signature, spend that time sending out personalized notes to fewer friends and colleagues.
- E cards. They've become ubiquitous. We all complain about how many e-mails we get. Don't add to the madness by sending out e-cards claiming you're saving the planet by saving paper. It reminds me of hotels who claim they don't want us to ask for fresh towels or sheets to save water and the environment. We all know why they're really asking us to do it. People send e-cards because they want to do the minimum. You're better off not sending anything than doing the minimum.
- Send something personal. Send a copy of your favorite poem, a link to a song you composed or performed or a book you wrote or something unique to you.
- Books. Books are a great gift. A book of quotes, inspirational sayings or poetry are good gift items.



- Personal. At the end of the day, none of us want to receive something impersonal. If you're sending out cards because you feel you have to but there is nothing personal about them, you're wasting your time and the time of the recipient.

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Your firm should approach marketing as a team event. Each team member has his/her strengths which can contribute to and advance the firm interests and play a role in securing new matters and clients. Not everyone is a natural networker, or a great speaker or superb writer. But everyone excels at something and those individual talents can be combined for the benefit of the firm as a whole.

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I heard a great presentation on mingling at events by Compass Legal Marketing. Some takeaways:

- Before the event, find out who is attending and reach out to at least two attendees you know.
- Bring business cards and a pen so when you get someone else's card you can write down notes on the back of the card.
- Get to the event early where mingling is easier to do.
- Talk to those who aren't mingling. They'll appreciate the company.
- Don't sell. No one wants to talk to a salesperson at a networking event.
- After the event, follow up with those you met.

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In legal marketing, there is a tension between pursuing a marketing activity until you reach the tipping point and start garnering business from it and when you should stop digging a dry well. Marketing takes time, money and energy, but conversely certain efforts prove to be a poor return on investment. When should you keep going and when should you stop?

Consider keeping with a pursuit when:

- You continue to enjoy it
- You've made friends through it
- You've developed business contacts through it
- You've become an expert or thought leader through it
- Your out of pocket expenses have been limited
- Consider abandoning a pursuit when:
  - You no longer enjoy it
  - You don't enjoy the company of those involved with it
  - You haven't developed meaningful personal and professional relationships from it

- You've spent too much money on it
- The type of clients you're interested in pursuing aren't involved with it

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Here are some suggestions of making the most of the last quarter of the year:

- What can you give away? Consider writing an e book, recording a podcast or webinar, or a lecture video series. Giving away your expertise is a great way to get much more in return.
- How are your professional relationships doing? If you've stopped meeting others for lunch or coffee, schedule four such meetings in each of the three remaining months of the year.
- Holidays. Are you getting holiday cards? Gifts? Service projects? Holiday parties? Every year, the holiday sneaks up on us. This year sneak up on them.
- Strategic planning. Most folks wait until January to do their firm and individual strategic planning. Do it now and be ready to hit the ground running at the beginning of the new year.
- Read. Read more and read a more varied list of books.

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Marketing and sales are tough. Convincing someone to buy your service or product is challenging. There are right ways to do it. The following are the wrong ways:

- Calling or e-mailing me, pretending you know me. If you don't know me, don't call me as if we're old friends. We're not.
- Forcing a contact of mine to give you my name and then calling or e-mailing me telling me that so-and-so suggested to you to reach out to me. He didn't suggest any such thing. By the way, asking folks for five names you can follow up with so you can tell those folks so-and-so suggested you call them—that's bottom of the barrel stuff. If a friend of mine has used your services and is blown away by them, she'll let me know. Don't hound her for my name until she relents.
- Calling me out of the blue. Reach out to someone by e-mail or message them first. If they're interested, they'll respond. If they're not, calling them won't change things.
- Praising me for a post and then using that for the sole purpose to sell me something.

— — —

Before you attend your next legal conference, do the following:

1. Secure the attendee list and plan coffees, breakfasts and lunches with folks you know.

2. If there is someone you want to meet at the conference and you know someone who knows that person, ask for an introduction at the event.
3. Is there a committee you want to get involved with? Reach out to the leaders of the committee before the meeting and plan on speaking with them at the conference.

In short, you want to do the legwork before the conference to make the most of your time once you arrive.

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Give it away. If you're a firm or voluntary bar association, get used to giving stuff away for free. Articles, books, webinars, podcasts, CLE—just give it away. Folks are paying for these less and less. Use these items that you once charged for as branding and marketing opportunities for others to learn more about your firm or organization and reach out to you about them.

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Consider creating a digital business card you can share at events, cocktail parties and other functions. Digital business cards allow you to pack more information about yourself than a typical card and are less likely to be lost, discarded or forgotten about. You can include links to your social media and other items that distinguish you and your practice.

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Conversations. They're integral to developing meaningful relationships with others. As lawyers, myself included, we're trained to get others to say what we want them to say using the words we want them to use. This training doesn't make us good conversationalists. It makes us interrogators. Take the time to have real conversations with loved ones, friends and colleagues. Here are some basic rules.

- Ask open ended questions.
- Let the person finish without interjecting.
- Listen.
- Pay close attention.
- Empathize.
- Don't make the conversation about you.

Being genuinely interested in what the other person is saying, listening to him or her, and not planning your response or clever comment will make you better at conversations.

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There are so many opportunities to network, meet, fellowship and learn every day in our communities, but often we are unaware of most of these events. Staying on top of what's going on in your community and sharing these opportunities with others is a great way to network. There is a lot going on in our communities each and every day, and most of it we will never hear

about unless we're proactive in tracking down resources that track down and share these events.

— — —

A selling point law firms are offering is how safe their clients' data is in their hands. With more and more companies being hacked, clients want to know that your firm is doing everything possible to protect their confidential and sensitive information. Take the time to learn what your firm can do to improve its cyber security. It's not only good for your clients, it's good for business.

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I had brunch today. I'm not a brunch guy, but there I was having brunch. I realized I'm not a fancy breakfast guy. No, I don't care how the coffee beans were roasted. No, Stevia doesn't taste just like Splenda. No, I don't care that Splenda has been found to cause epilepsy in goats. No, I don't want salmon eggs in my omelet. I'm an IHOP and Original Pancake House sort of guy. Regular omelet. Regular pancakes. Regular coffee and an endless supply of it. We lawyers have to give clients what they want—quality service at a fair price. Good old fashioned quality service. Don't tell them what they want. Give them what they want.

— — —

Small firms have a value proposition large firms can't match. Clients don't want to pay for your overhead, and larger firms have greater overhead. Smaller firms that avoid the high rent districts, the glass walls, the larger corner offices, the fully stocked kitchens, and all the amenities and perks larger firms provide to attract personnel, spend less and therefore can charge less, sometimes much less, and still make a reasonable profit for their services. Unlike companies that sell products, where greater size can translate into lower costs, generally companies that sell services can do so for less if they're smaller and spend less on frills.

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If you have your own firm and have limited resources, you can still have an effective marketing plan. A few suggestions:

- Instead of taking out potential referral sources to lunch or dinner, suggest coffee instead.
- Seek out free publicity by befriending local legal and business reporters and get quoted.
- Volunteer to write a legal column for business or trade publications.
- Start your own BNI-type of group, where you pick the members and meet at a local coffee shop for coffee or a local breakfast place for a light breakfast, where everyone pays their own way
- Make the most of social media, with daily posts, articles and self-published e-books.

- Volunteer to speak at local trade association meetings.
- Buy nice, but reasonably priced stationary, and send hand written letters to your contacts.
- Serve on the board of a local nonprofit or non-voluntary bar association.
- Marketing can be expensive, but it doesn't have to be.

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Junior lawyers, begin to specialize your practice now. As the legal market continues to evolve, there will be greater demand for specialists and less for generalists. Clients will have the data to find lawyers who are best suited for their specific needs and you want to develop the expertise to be on that short list.

- Lawyers shouldn't outsource their legal marketing copy. That doesn't mean a firm shouldn't have marketing personnel. They can handle a lot of tasks other than write copy:
- Design newsletters, e-mail blasts, e-brochures—anything that need's an artist's eye and touch.
- Track down art and photos for the website and any digital publications.
- Track down publications and venues where the attorneys can write and speak.
- Develop relationships with reporters who will write about the firm or quote firm lawyers for their stories.
- Modify contact lists.
- Organize firm events.
- Organize webinars, podcasts and presentations.
- Train lawyers how to write copy that avoids legalize and keeps the reader's attention.

This list can go on and on, but one thing that doesn't belong on it is writing content. Lawyers need to do that, and if they don't know how, they need to be trained.

Don't outsource your marketing copy to marketing companies. Make sure lawyers at your firm write all the copy. Whether on your website, social media, newsletters, etc., lawyers need to write the content. Yes, we're busy. Yes, it's cheaper to have a non-lawyers draft it. But you get what you pay for and ultimately it's your name and reputation on the line. If your firm doesn't have enough time to blog, engage in social media or write its own newsletters, then simply don't do it.

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The cost for law firms to create their own webinars has dropped dramatically over the last several years. Companies like Zoom, for a fixed monthly cost, will allow your firm to put on its own webinars and offer them for download later. Giving away substantive webinars is a great way to share your expertise with prospective clients.

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When marketing to prospective corporate clients, focus on how your firm's mission statement and values overlay the company's. Partners who share the same vision and values will work well together.

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When marketing, pursue activities you enjoy. Serve on the board of a nonprofit you volunteer for, start your own basketball league for professionals, write for a legal column for your local newspaper or befriend the local business reporter. Tie your marketing to what you love.

— — —

Social media, like LinkedIn, serves to complement our personal interactions, not supplant them. Hoping to develop personal relationships at your computer ignores the term "personal." Relationships can be fed through social media, but to be truly nurtured, the personal touch, whether in person, by phone or by handwritten notes, is necessary for long lasting and vibrant relationships.

— — —

If you're a lawyer and want to start a networking group with other lawyers, think outside the box and organize something other than a weekly or monthly breakfast or lunch meeting where everyone talks about their practices. How about starting a book club? Or a writer's club where the members encourage each other to write a book and get it published? Or a lawyers' sports team to play in a local professionals league?

— — —

Before attending a networking event, ask for the attendee list, review it for familiar faces and reach out to those you know and give them the heads up you'll be there. Also make a point to get there early. It's easier to start mingling at the beginning of an event where there are fewer attendees. Make sure to bring business cards or the equivalent by having your information on your phone you can share with others.

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Everyone likes being remembered on their birthdays. Boxes of generic birthday cards are relatively inexpensive. Keep a couple of boxes in an office desk drawer and send out the cards with handwritten notes inside to friends and colleagues to brighten their special day.

— — —

It's easy to jump on Amazon, run a search or two, click here and there, and order gifts for colleagues and referral sources. I suggest instead go to E-Bay

or Etsy, find a vintage item (vintage doesn't have to mean expensive) and look for gifts that folks will love, keep and show off in their offices. Mementos kept close at hand remind your referral sources of you when they have matters to refer.

— — —

When marketing your law practice, follow the Golden Rule—don't do anything you wouldn't want to be done to you. No cold calls or cold e-mails. Get to know others before talking business. Don't make conversations all about you or about your practice. Don't be looking for the first opportunity to shove your card in someone else's hand. If an approach isn't going to work on you, why should you think it'll work when you do it to someone else? Follow the Golden Rule in all things business development.

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If you're a lawyer and have a tight budget for holiday gifts, consider ordering multiples copies of your favorite books online. You often receive a discount ordering in bulk. Then mail a copy of the book with a personal hand written note to your colleagues, thanking them for their friendship over the last year and explaining why the book you're sending them means so much to you. It could be a book of poetry, a novel or a book on leadership. Pick a book that means a lot to you and share it with those who mean a lot to you.

— — —

If you're getting holiday gifts for your clients and referral sources, a few suggestions:

- Include a handwritten note.
- Make it personal. Don't send everyone the same gift.
- Send it early in the season. Think week after Thanksgiving, so it doesn't get lost in a barrage of gifts.
- Gift ideas? An autographed book, a favorite bottle of wine, a memento for the office, paid lessons (cooking, painting, golf).
- And know your clients' policies about receiving gifts. Some don't allow it.

— — —

As you head into the holidays, start writing your holiday cards. Actually, skip the cards and send out handwritten notes. Pick 30 people who have had a profound impact on your life or practice this past year, and each day, take the time to write a handwritten note to one of those persons, thanking them for everything they've done. This will mean more than another holiday card. Soon, we'll all be inundated with holiday cards and e-mails). Do something different, and in this season of giving thanks, thank those who've helped you this year.

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The firm brochure, hard copies of attorney CVs and other hard copies of firm marketing materials have become largely irrelevant. More and more,



prospective clients look us up online. They view our firm's websites, our LinkedIn pages and whatever else has our names on it which pops up in their Google searches. There's probably someone right now sizing you up, deciding whether to refer you a case based on your online footprint. Take the time to ensure your profiles, whether on your firm's website, LinkedIn and elsewhere are up to date, relevant and catch the reader's attention.

— — —

A lot of what we do as attorneys is legal marketing. The best advice I can give you when marketing yourself or your firm—don't do anything that turns you off when you interact with salespersons. What doesn't work when it's tried on you won't work for you when you try it on someone else. And when making an ask, keep in mind that we ask our friends for favors, not strangers. If you're going to ask for work from a prospective client, make sure you have a relationship with the person.

— — —

As an associate, if you see someone in your lobby who looks lost, help him or her. Act like a host and make sure they get to where they need to get to and get what they need to get. Think about a Ritz Carlton hotel. If you look lost in one of their lobbies for more than five seconds, someone will ask how they can help you. Be that person at your firm.

— — —

For lawyers, it's more than becoming a member of an organization and showing up for events. It's about getting involved. If you want to make an impact, if you want to make friends and influence people, if you want to develop referral sources, then paying dues to an organization and attending the luncheons or cocktail hours isn't enough. You need to broach the leadership of the organization, ask them where they need help, volunteer, roll up your sleeves and do the hard work. It's by getting involved that you get to know others, work with others and build your referral network. Just going to an event and passing out a few business cards isn't going to work. You have to get to know others in the organization and the most effective way of doing that is by getting involved.

— — —

As young lawyers, get involved in your firm's marketing efforts early. If you haven't already been recruited, volunteer to write or edit the firm's newsletter, post to its LinkedIn page or contribute to the firm's blog. See if you can help with the firm's Requests for Proposals or assist with a partner's power point for a presentation. You're going to have a lot of demands on your time as an associate but if you want to distinguish yourself at your firm help implement their marketing plan.

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A great gift to send to your contacts is a book of poetry. My two favorite are the Complete Poems of Emily Dickinson and Leaves of Grass. There's

something about a poem—how it squeezes so much content into so few words. We as lawyers can learn a lot about communication from reading poetry. Send out the books with handwritten notes. Your contacts will remember this.

— — —

As young lawyers, you need to think what your curriculum vitae is going to look like 30 years from now. To give you some idea, look up lawyer profiles who practice in the same area you do. Look up firms who have the same practice area as yours, look up the attorney profiles of senior attorneys who practice in that area, and study what they have accomplished. That can provide you a roadmap of what you want to accomplish.

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Let's discuss what it means to be an entrepreneur and lawyer:

- We need to keep our eye open for legal trends, burgeoning practice areas and changes occurring in our clients' businesses (because those changes will trickle down to us).
- We need to grow existing relationships and build new ones with potential referral sources. This isn't crass sales. This is building honest to goodness relationships which one day may bear fruit in one or more case referrals.
- We need to become experts in a field or sub field and become the go to lawyer.
- We need to be leaders, speakers and writers in our local, state and national bar associations.
- We need to have an individual business plan irrespective of what size firm we work at and work toward it every day.
- We need to take responsibility for our own career, future and goals. You may have a firm committed to your success, but at the end of the day your success is in your hands and no one else's.
- And finally entrepreneurs don't work 9-5, don't do it for the paycheck and don't watch endless hours of television. We have grit and determination and we roll up our sleeves and do the hard work. That's what lawyer-entrepreneurs do.

— — —

If you're a young lawyer, you've heard you need to be entrepreneurial. What that means is that there are too many lawyers chasing too few jobs and the traditional job search techniques may not help. You need to show firms how you can improve their bottom line. You need to go to mixers, receptions and legal events, introduce yourself, make small talk and develop relationships with prospective employers. You need to look at nontraditional opportunities, where you share space and resources with other likeminded lawyers. You'll need to

send out more resumes and consider a greater variety of firms. Entrepreneurial is short for working your butt off to pay the bills. That's what it means.

— — —

Pick an area you want to specialize in and write articles on that topic and submit them for publication to attorney magazines, newsletters and blogs. Doing this forces you to stay on top of legal developments in your field, makes you write on the topic and provides you resources to share with prospective clients who are looking for an expert in your field to hire.

— — —

A favorite book of mine is *A Simple Act of Gratitude*, where a lawyer discusses how writing a thank you letter every day for a year changed his life. As lawyers, it's easy to overlook what we should be grateful for in the midst of the daily battles of litigation. But writing handwritten notes to family, friends and colleagues, reaching out to them, letting them know you're thinking of them, grateful for what they've done in your life, that you're taking the time to write them a personal note (few of us still send handwritten notes)—these small gestures impacts them and impacts you. Handwritten notes can be transformative for both the sender and the recipient.

— — —

A phrase in house counsel and law firms and companies use a lot—"value added." Is what you are doing adding value for your client, your firm or your practice group? What we do as lawyers is as much a business as it is a profession. Is this research adding value? Is this motion adding value? Is participating in this organization adding value? Is writing this article adding value? Can I leverage this activity into making/saving money for my client? My law firm? Going from simply doing legal work to doing legal work that improves the bottom line requires a paradigm shift for many lawyers, but it's a necessary one to compete in this saturated market.

— — —

If you practice in a specialized area, take time to identify and follow blogs, e-newsletters and online publications that cater to your practice area. Being on top of the legal trends that affect your clients helps you provide better legal services and helps you come across as an expert in the field.

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Add value to your professional relationships by working into discussions books you've read that your contacts would benefit from, such as a book on leadership, business development or team building. Biographies and books on business trends can also be recommended. Instead of e-copies of books, I buy hard copies and give away my books after I've read them to contacts, letting them know I loved the book and thought they would love it too. Books can serve as the glue of many of your business relationships.

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Have something to give away on your bio on your firm's website. Include a link to a free webinar you did, or a book or an article you wrote. Show that you're adding value even before an attorney-client relationship has begun.

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If you're going to follow up with colleagues after you meet them at a conference, use your time at the airport and your flight back home to write personal notes. If you wait until you get back to the office, after being out of the office several days, you're going to push your stationary to the side, get to work and likely write fewer, if any, notes.

— — —

So much of marketing is follow through. You meet someone, get her card and stick it in a drawer. You run into an old colleague when you're out and about, promise you'll meet for lunch soon and never do. Referral relationships need proper care and feeding. The best of intentions are just that. Without making a concerted effort to schedule coffees, lunches or dinners, or simply a drop by at someone's office, the relationships you have will stagnate. You're wondering why your referral sources aren't calling you? When the last time you took them out to lunch and just talked about their families and hobbies?

— — —

I was cleaning out my desk and came across some old stationary I used to send handwritten notes to colleagues. These were cards of various sizes, with various designed covers and various quotations and sayings on the inside. Today, I use standard issued stationary with my name across the top in a plain non-descript envelope. I forgot how much fun it was to collect unusual cards and stationary stock and send it out to folks. Take the time to look online for cards and stationary that is a bit different and a bit eye catching and change up the stationary you send out to your contacts. They'll notice and appreciate it.

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Try to schedule coffee with a different colleague each week. An early morning meeting at the local Starbucks is inexpensive and quick and can lay the foundation for a relationship that leads to referrals. A coffee meeting can run as low as \$5 whereas lunch for two typically goes for 10 times that. Coffee makes more sense financially and it also allows you or the other party to cut things short if the meeting isn't going well as opposed to having to wait for a check.

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Don't you hate it when you've met the same person for the third time and they ask you, yet again, do you have any kids? Yes! The same two I had the last two times you asked me. Just as you find this annoying, others find it annoying that you don't remember details of their lives they previously shared with you. When someone is talking to you about what matters most to them—their spouses, their kids, their dreams, their goals—listen carefully. Consider jotting down important details in your electronic Rolodex. Also,

following folks on Facebook, where many share details about their family, helps you remember what matters most to them.

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So much of what we do as attorneys is what business folks would call client services—attracting clients and keeping them happy. We are a services sector, which means we are providing a quality service, at a fair price on our clients' terms. As a young lawyer, we can spend too much attention on the facts and the law and not enough time on the client whose case we're handling. Think about how you want to be treated by a retailer, at your doctor's office or at the auto repair shop, and incorporate that behavior into your client relations. You want them to come back the next time they have a case and recommend you to their friends. Turn your clients into referral sources by treating them the way you would want to be treated.

— — —

Find a niche and specialize in that area of the law. Drill down, read everything there is to read about that practice area, attend the seminars and follow the news. Eventually write and present in that area. Become known as an expert in the field. Through specializing, you'll develop a reputation as the go-to attorney in that field and will start getting calls from others who are looking for the best in your niche practice area. Being all things to all people often gets you being nothing to no one.

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Getting the next case depends on being on a referral source's mind when they get a new case to refer out. To do that, you need to maintain regular contact with your friends and colleagues so they're thinking of you when that case hits their desk. Don't simply see them once or twice a year at a conference. Follow up throughout the year through calls, handwritten notes, personalized e-mails and regular social media posts. Referrals are based on relationships and relationships need proper care and feeding.

— — —

When you attend an event, don't simply hang out with your friends. Make a point to introduce yourself to folks you don't know. If the event is sponsored by an organization you belong to, and have been a member for a while, it's easy to identify new or newish members. Meet them. Tell them about the organization. Introduce them to others. Explain how they can get involved. You'll make new friends in the process.

— — —

Volunteer to be a greeter at a reception or dinner. You get to say hello to everyone who walks in, you learn who is there and who is not, and get a sense of the room. You also get to show up early and meet with the organizers. Even if you're not an official "greeter," the best place to position yourself is near the entrance to meet folks as they join the event.

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Don't settle with preparing a personal marketing plan. Find someone in your firm who will hold you accountable to fulfill that plan. Consider finding another attorney at your level at your firm, exchange marketing plans and help each other reach your goals and meet regularly to have someone to hold you accountable. Meet bi-weekly. By doing so, you know you'll be facing someone who will ask you, "So, what have you done since we last met?" That will inspire you to work toward your marketing goals.

— — —

Before heading off to a cocktail reception, seminar or conference, try to figure out who is going and reach out to friends and colleagues beforehand, making plans for coffee a meal or drinks. Also, see who on the attendance list you want to meet and consider how best to approach them. Networking doesn't happen by accident. Have a plan.

— — —

Generally, younger lawyers are more adept at social media. They are on more platforms and are more active on them. These platforms offer an opportunity to "meet" and plant the seeds of relationships with others. The key to social media is to use it as a springboard to connect with others through more traditional means—phone calls and in person meetings. Social networking expands your network. Traditional efforts, like meeting for coffee or meeting at a reception or function, deepen those relationships.



## The Practice

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I have two assumptions when it comes to memory. First, we rarely remember when we need to do something the moment it needs to be done. Second, reminders for everything—whether on a calendar or an alarm—ensure those things get done when they need to get done. Will you spend more time calendaring and setting alarms? Yes. Will you ever forget to do anything or miss anything? No.

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At our firm, several of our partners meet weekly to discuss our business development efforts over the past week. This weekly accountability keeps us focused to push forward each week with efforts to develop business. A lot that goes into developing business is showing up and doing the work, and if you have an accountability mechanism in place, you're more likely to do so.

— — —

We lawyers are pack animals. Like wolves hunting, we work best in teams. If you work at a small firm or are a solo, put together your pack to help brainstorm and tackle your cases. It's a full moon, a clear night, and the scent of prey is in the air. Go hunt.

— — —





For small firms who feel out gunned by the huge firms, remember that the US didn't send multiple divisions to capture Osama bin Laden. They sent in a small team, SEAL Team Six, who killed him and extracted his body. A small firm can accomplish big things.

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Lawyers who devise creative solutions and who anticipate problems and address them before they arise set themselves apart. Always be thinking out of the box, pursuing epiphanies, and always be thinking about how things may go wrong and taking precautionary steps to ensure they don't.

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I keep a case list of all my cases and include "to dos." I review the list each day to ensure I'm being proactive in my cases. If there is a case that hasn't been receiving my full attention over the last few days, I make sure to engage that case. Whether you represent a Plaintiff or Defendant, you should always be pushing your cases forward and dictating the speed, the style, the tone and activity in your cases.

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Staying on top and ahead of your caseload is challenging. I started an exercise about 10 years ago that has served me well to ensure deadlines don't sneak up on me. What I do every Monday through Thursday morning is that I look through the next 30 days of my work calendar and every Friday I look through the next 90 days of my work calendar. It doesn't take long and it emblazons in my mind what I need to do and when to do it. Since I've started, I've never once been surprised about a deadline or missed an appointment.

— — —

Empathy is an important trait for lawyers. Empathy toward our clients, our staff, opposing counsel and toward one another allows us to advocate zealously without losing our humanity. We look at ourselves every evening when we brush our teeth. Empathy towards others allows us to look ourselves in the eye without blinking or looking away.

— — —

When I was an associate, I had a partner who asked that whenever a mistake was made, whether by him, me, another associate, a paralegal or legal assistant, why was the mistake made and how could we prevent it from happening again? "I made a mistake, I'm sorry," wasn't a good enough answer. He wanted to make sure the mistake wasn't repeated. To this day, when something goes wrong I ask myself those two questions.

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Have your firm send out a weekly e-mail, where each week a lawyer from the firm recommends a book on writing, speaking, leading, managing, business development or litigation.

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Some of what we do as lawyers requires original thought and imagination and creativity. Some of what we do is based on tried and true processes. As to the latter, take the time to review, revise and update your processes to ensure the best and most efficient services to your clients.

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30 second rule. If I can respond to a text, voice mail, e-mail or other message in 30 seconds or less, I do so immediately. There was a time we could respond to messages at the end of the day or even at lunch, but two things about that approach. If you wait, you'll have so many messages that you're going to miss or inadequately respond to one or more of them. Second, no one wants to wait. We all say or think others should get off their phones but when we send a message, we want an immediate response. We're such hypocrites, aren't we? Apply the 30 second rule and see how it works for you.

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Your legal assistants are your partners in the cases you handle. Take the time to explain to them the facts and legal issues in your cases so they understand the actions you are taking, so they may help you fulfill them and from time to time, offer you some lay advice on your proposed courses of action. Legal assistants have instincts and common sense which sometimes are more effective than our legal research and analysis. Get them involved and listen to them.

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We prepare strategic plans for our firms. Prepare them for your cases. Sit down when you first get a case and develop a strategic plan for defining and executing a win for your client. If you represent corporations, they inherently understand the importance and relevance of business plans and will appreciate that you see your cases through their prism.

— — —

Soren Kierkegaard, a Danish philosopher, said "life must be understood backward, but it must be lived forward." So much of what we do as lawyers is through personal trial and error or through others' trial and error. It's only once we get on the other side of our first, fifth or tenth deposition, trial or appeal can we look back and really understand how to take a deposition, try a case or handle an appeal. We are tasked as lawyers to be as prepared as possible before assuming any task for the first time, but it is not until we look back at performing those tasks do we truly learn how best to do them.

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Follow the facts wherever they lead you. This is a mantra of the FBI, investigators and journalists. It should be your creed to do the same as a lawyer. You need to track down all the relevant facts, good or bad, so your case theory, themes and recommendations are based on reality and not on assumptions.

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When a court doesn't impose upon the parties the obligation to prepare a proposed case management order, suggest to the other parties you prepare one anyway. Setting guidelines and deadlines approved and sanctioned by the court ensures that a case proceeds smoothly and orderly.

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Be prepared. Have a portable phone battery when you travel. Keep protein bars and nuts handy. Have books and movies downloaded on your phone. Have an umbrella nearby. Things rarely go as planned. Don't go hungry, bored, wet, etc.

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Consider having your firm keep a chart of local judges that includes what they like and don't like when attorneys appear before them. It can be used as a reference tool by your firm's attorneys the next time they have to argue a motion. Each time an attorney from your firm appears before a local judge, if there are any takeaways about the judge, they can include it in the chart for future reference for others at your firm.

— — —

Question everything. I popped into the gift store for the Spy Museum in New York City and bought a t-shirt with the caption "Question everything" As lawyers, every move we make on the chess board is strategic. We must assume this is also true for opposing counsel. Why did she do X? Why did she ask for Y? Why did she agree to Z? Everybody does everything for a reason. Question everything.

— — —

Let's say your team—your firm, organization, non-profit—is looking at various options or alternatives on a given issue. Write out the options, give each option a number and ask everyone to write down the order of options from favorite to least favorite. And here's the trick -give everyone only 15 seconds to do so. You want their instinctual response. Have everyone share their order of options and then discuss why everyone chose what in what order.

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My cousin taught me to play chess when I was 5. He told me that from the first move I must have a plan to take the King. With each move, that plan will change, but with each move, I'm thinking far enough ahead to take the King. Litigation and life have been compared to chess. You think through your move, how opposing counsel or life will react, you think through the next move, how opposing counsel or life will react, and so on, all the way to the end. You're constantly analyzing and predicting all the way to the end, constantly changing the next move and the 10 moves after that based on what opposing counsel or life throws at you. You think only a couple of moves ahead and you'll lose every time.

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We lawyers need to incorporate humor more into our daily lives. Our jobs are stressful. As trial lawyers, our job is literally to win and make the other side lose, and our opposing counsel has the same objective. That's our job. In the midst of this and in the midst of our lives as a whole we need to spend more time seeing the humor and embracing the humor to create breaks in the tension. If you follow me on Facebook, you've noticed that on most days I'll post something humorous (at least it's humorous to me), where I post an unusual image I've come across and add some comical commentary. I've had a number of folks say they enjoy the posts, look forward to them and the posts help them bring down the temperature in their own lives. We're way to serious. We all need to laugh at ourselves and our situations more and help others do so too.

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When preparing for a hearing, I close the door to my office and speak, out loud, the argument I plan on making to the judge. The judge is going to hear your argument, so you should listen to it and hear how it sounds. How do the arguments sounds? The diction? The cadence? The theme? The tone? Also, saying it out loud will help you get your thoughts, ideas and nerves in order.

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In personal injury matters, try to interview witnesses where the incident happened. Being where it happened, standing where they stood, may result in extracting more details which the witness wouldn't remember if he were interviewed at his office or home.

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How can a young attorney specialize? Here are my suggestions:

- Read everything you can on the topic. Volunteer to write for a legal publication that covers the topic. Volunteer to help organize events and presentations covering the topic. The more your name is associated with a given niche practice area, the more you will become associated with that area. And obviously, do your best to work on matters at your firm involving that area.

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Getting back to asking experienced lawyers to share their thoughts with younger lawyers, let's discuss inter-office conflict. What should an associate do if he/she butts heads with one of the firm's paralegals or legal assistants? Personally, I like to see the associate, in as a polite and professional manner as possible, try to resolve the issues on their own and only get a supervising attorney involved when necessary. Many times, it's simply a misunderstanding or it's two different styles colliding with another.

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A great resource for lawyers are legal podcasts. If you Google "lawyer podcasts" or "legal podcasts," you'll find a plethora of lawyer-related podcasts, at least a few which you'll find useful for your practice. Some state bars have

exemplary podcasts, including the Florida Bar and the Texas Bar. Great content and great conversations. For the drive to and from work, listening to podcasts is a way to better yourself as a lawyer while stuck in traffic.

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When arguing your position at a hearing, consider preparing a one page document or possibly a blow up that reduces your argument to a visual, flowchart, timeline, key words or themes which reduces the complex to the simple.

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Insurance defense counsel and claims professionals who work together on matters should share with one another their respective processes. What does the claims professionals do? What are her supervisor's expectations? What are her obligations? What does defense counsel do? How does she approach her cases? How does she try to resolve her matters? The two sides should discuss what a "win" looks like, how to achieve it and all the issues they encounter from everyone involved in getting there. When any two professionals work together to resolve a case, they need to understand what each does, how they do it and how they can meld their backgrounds and expertise to achieve the best resolution.

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Your job as a lawyer is to ferret out the bad facts, bad documents and smoking guns from your case. You want to know the bad news well before your opponent and have a plan to address it, which may mean early settlement. As defense counsel, you may make an early settlement offer. As Plaintiff's counsel, you may make a very reasonable demand early on. Assume that it is not a question of "if" the other side will discover your smoking gun, it's a question of "when." You have a ticking time bomb on your hands. Good lawyers diffuse it and resolve the matter before it blows up and sends shrapnel everywhere, maiming your case.

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I receive about 250 e-mails a day. This is how I tackle them:

- I relentlessly unsubscribe where appropriate. I used to receive about 400 e-mails a day.
- I respond right away where reading and responding to the e-mail will take a few seconds. I've trained myself to get to the heart of any e-mail and respond to that central issue or issues in 30 seconds or less.
- For e-mails that take more time I mark them as unread and go through them at certain times of the day.
- I make the most of deadtime to respond to e-mails—waiting in line, waiting for a hearing, waiting for a deposition. If I'm waiting, I'm checking e-mails.

- If it's an e-mail that can be handled by my legal assistant, I forward it to her. She knows the pleasantries and niceties to include when responding in my stead.

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I'm cleaning out our law firm's file room and shredding our files this morning and I was looking through these closed matters, many of which were closed years ago, I remember the anxiety I had about this deposition or that hearing and realize now it was all for naught. As young lawyers, you'll have your share of hand wringing over whether you should have asked one more question at deposition (or whether you asked one too many) or whether there was another case you should have cited in your motion. You know what? That's all small stuff. One day, years later, you'll clean out old files like me and laugh at yourself and ask, "what was I so worried about?"

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We travel too much as lawyers, but it is what it is. Here are some things I do when I travel for business:

- Pack snacks. I travel with several types of snack bars and nuts.
- Books. I download a book or buy a hard copy of one and make it a point to finish it before I return home.
- Medications. I have a ziploc of two doses of common over the counter medications for headaches, fever, flu, upset stomach, diarrhea and acid reflux.
- Comfortable clothes. On the flight, dress down if you can. Business suits and economy class don't mix.
- Catch up. Travel equals downtime when it's hard to get work done. Use that time to reach out to friends and family.
- Walk. Find time to walk around the city you're in. Be a tourist for an hour or two and take everything in. Visiting a new city and not seeing it is a downer.
- Souvenirs. Bring back something for your spouse, or kids or legal assistant.

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For those of you in a pinch for a proposition from a statute, regulation, case or secondary source, Westlaw's app for researching on your phone is very effective. It's easy to use, intuitive and easy on the eyes. When you get hit by a surprise case at a hearing by opposing counsel, a couple of minutes on the app can be a lifesaver.

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If you're a young lawyer, with your own firm, and you're struggling to make ends meet, it's tempting to agree to any client's request. There are clients who lack moral and ethics in search of desperate firms to do their bidding. They

want to make a buck at the risk of your reputation and they suspect you need the money bad enough to compromise your principles. Don't do it. I know how much diapers cost. How much private school costs. How much a home health aide for an elderly parent costs. I've been there. But the price you'll pay for crossing that line is too big of a price. Move in back with your parents, get a roommate. Eat oatmeal every day (I did it for six months. I ate peanut butter sandwiches for four). When you make a deal with a devil, you believe you may be gaining the world, but you're losing your soul in the process. Tell the prospective client you have a conflict of interest. You have an existing client, Mr. Conscience, and he won't let you betray your loyalty to him.

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When your research and your case theory revolves around one or two cases, take the time to pull the pleadings and motions that led up to that appellate opinion (or two) and try to garner additional facts or legal citations from the filings on the docket sheets that push that case or cases further into your corner.

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Self-critical analysis is crucial in your development as a lawyer. After every deposition, hearing, mediation and trial, analyze what you did well and what you could have done better. Provide yourself concrete pointers to work on for the next time. For example, "speak more slowly, make more eye contact, or build up your points to a crescendo" are concrete tips. "Be more persuasive" is not.

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Whenever meeting with a client or opposing counsel, prepare an agenda for the meeting and circulate it before the meeting. It will show you're organized, thoughtful and allows you to control what topics will be addressed.

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If you represent insureds in personal injury matters, remember that you need to communicate with them regularly and keep them informed of all developments. The insurer who is paying your bills understands the legal system. The insured you're representing may not. It could be a truck driver or a small business owner who has never been involved in a lawsuit and has no idea what to expect and is waiting by the phone to hear from you. Take the time to explain it to her and regularly communicate with her about the case.

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Never assume a judge's procedures are "standard." Whenever you're handling a matter before a judge with whom you're not familiar, download her court and hearing procedures and ask around to your colleagues regarding her style, demeanor and pet peeves.

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Take the time to reduce the activities you do as a lawyer to checklists. By doing so, you don't forget to do something or skip a step the next time you



perform that activity. For example, there's a lot to do when conducting due diligence on a prospective expert. Having all the "to dos" written down for you to follow ensures you don't miss any skeletons in the expert's closet.

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When providing legal services, consider what services you receive day to day and what you enjoy and what you don't. How do you enjoy being treated at your favorite restaurant, retail store or by other professionals? What are your pet peeves? Follow the Golden Rule. Treat your clients the way you want to be treated by those who consider you their clients.

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Remember, whenever submitting an affidavit in support of a motion, expect that the affiant will be deposed. Therefore, when choosing affiants, don't simply find the person with the most knowledge on the issue at question. Find someone who has personal knowledge about the issue and will make a good witness at deposition. If they can't stand up to cross examination, don't have them sign on the dotted line.

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Five things to calendar during the first two weeks in January:

1. Coffee and lunch meetings through February.
2. A morning at a coffee shop or diner to work on your yearly goals and plans.
3. A meeting with an accountability partner to discuss your plans for 2018.
4. Dinner with your spouse and/or kids.
5. Your first vacation for the year.

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At the beginning of the new year, update a few things:

- Your firm website bio.
- Your social media bios.
- Your brief bio you send to publications or organizations when you write or speak for them.
- Your contact list.
- Your library. What books should you be reading this year?
- You're e-mail signature block.
- You want to make sure that whatever others read about you is up to date.

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We lawyers have a hard time setting boundaries—with our clients, partners, firms and others. We want to always be available but that comes at a price.

I generally provide advice on LinkedIn, but I'm flummoxed when it comes to providing advice on balancing personal needs and being available for work. But I do believe a balance needs to be achieved and during this new year I recommend to each of you to reflect on how you'll make the balance a reality in your lives.

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For young lawyers, a major challenge is knowing that you don't know something and that the lack of knowledge can lead to mistakes. A way to avoid this is to seek out CLE, books, articles or blogs that address both the law and practical aspects of your area of practice. There is a lot of free and low cost educational materials available online that provide a roadmap on litigating various matters. I know you have a lot of demands on your time, but find the time to search out and review these materials. They'll provide you peace of mind and make you question yourself and your decisions less.

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

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As lawyers, accepting cases you don't generally handle is risky because you don't know what you don't know. You think a matter is straight forward, but that is based on your current expertise which may or may not be relevant to the case you're considering accepting. There are cases within the range of your expertise, though not squarely within your expertise, and then there are cases far afield from your expertise. Accept those at your own risk.

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If your case has an Achilles heel, don't assume you'll keep it a secret forever. Good litigators, sooner or later, find all the skeletons in the closet. It's just a matter of time. So If you have a serious weakness in your case, whether Plaintiff or Defendant, casually but proactively, pursue early settlement discussions. The idea that you'll hide a smoking gun forever is pie-in-the-sky thinking.

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As defense counsel, we're accustomed to writing status letters to clients with our case analysis. Some consider it too time consuming and generally a pain in the neck. But the more I practice the more I appreciate writing these letters, because you don't fully appreciate the strengths and weaknesses of your case until you sit down at your computer and reduce the facts and law to writing and see them in black and white. I've had my share of epiphanies writing status letters. Yes, I would rather be taking a deposition of at trial

than in front of a computer, but embrace the process. It will help you better understand your cases.

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With large caseloads, as lawyers it's difficult to be in charge of your calendar as opposed to it being in charge of you. The best way I find of taking charge is coming early to the office and planning my day and week ahead. Yes, it is extra time in the office that requires one to get to bed earlier and get up earlier, but it has two benefits—you avoid rush hour traffic and you get a jump on the day where you can proactively figure out what you're going to do as opposed to responding to emergencies.

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As lawyers, we want to be cost conscious when handling litigation on behalf of our clients. But one can be penny wise but pound foolish. When you first get a case, you need to make sure you understand how the law applies to the facts of your case, which means you need to identify and secure the relevant facts and research the law you don't know to ensure your case evaluation is correct. You can't change the facts or the law, but you can do your client a disservice by not knowing them both well.

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When calendaring due dates, deposition dates and other items in your cases, calendar two reminder dates so a due date doesn't sneak up on you and you're left scrambling at the last minute. For example, I calendar 20 and 10 days out before my discovery responses are due. Yes, it bulks up your calendar, but it avoids surprises.

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In litigation, there's a tension between showing your hand too early and allowing the other side to out maneuver you and showing your hand too late and costing your client too much time and money. At some point, you'll make the "big reveal" to convince the other side to view the matter through your prism. Timing is everything when doing this.

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There's an anecdote about Jackie Gleason watching a young Woody Allen at a club and predicting every punch line. When asked by another at his table whether he had heard the jokes before, he said he had not. He was then asked how he knew the punchlines. Gleason responded that humor is built on comic theory, rules and form and that the punchlines he "predicted" were the natural punchlines for those jokes. Everything—whether comedy, music or the practice of law—is built on theory and rules. I cringe when I hear musicians tell me they don't study music theory. I also cringe when young lawyers tell me they've never studied the theory that undergirds being a trial lawyer. Study the theory behind the practice, whether it's the theory on how to take an effective deposition or developing a case theme.

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Sooner or later, everyone lies. Sometimes, you'll know when someone is lying. When you do, study the person's body language, diction and voice. Unless you're a sociopath, you have tells when you lie, and almost invariably, you have the same tells each time you lie. Make a mental note when you know someone is lying, whether to you or someone else. Catalog those glances to the ground or to the sky, those crossed arms or slow, deliberate speech patterns. The next time you note them, you know you're being lied to. And yes, this works. Unfortunately, it works all too well. Sometimes ignorance is bliss.

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If you're a civil defense associate at a firm, and you have inherited an active case either from another associate at your firm or from another firm altogether, the first place to look are the firm's invoices to the client with everyone's time entries. More than correspondence or e-mails, a firm's bills will tell you what's transpired in a case thus far and where the case was headed. It takes out a lot of the guess work.

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Carry a pocket sized journal and a pen wherever you go. We don't control our imagination, and you never know when you'll have an epiphany about a case you're working on, an article you're writing or a presentation you're preparing for. Writer's block happens when we force ourselves to be creative at a moment we're not. We avoid these dry spells by allowing ourselves to always be thinking, writing and reflecting and jotting down our ideas when they come to us, whether in line at the supermarket, in our cars, or watching television.

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As lawyers, we have to anticipate legal issues for clients before they become legal issues. For example, I bet within a year, with all the sexual harassment and sexual assault claims coming to light among media, political, entertainment and sports circles, some which had remained confidential due to settlement agreements, that Congress will pass legislation prohibiting confidential and non-disclosure clauses in sexual harassment settlement agreements, finding them void on public policy grounds. I remember the interviews of the congressmen and women trying to explain why they couldn't reveal the names of fellow congressmen who had been accused of sexual harassment or what they allegedly did because of confidentiality clauses and the reporters and the general public insisting those agreements be breached. I can see a time, not far in the future, when those clauses will be null and void and companies will have to keep that in mind when addressing sexual harassment claims and will need lawyers to help them address those issues without being able to keep them confidential any longer. Think about changes to the law before they happen and stay ahead of the curve, advising clients how such changes may affect them.

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Nick Saban calls it the “Process.” It’s not focusing on the outcome. It’s focusing on the task at hand, no matter how small, and doing it perfectly. Doing it the best you can do it. The focus isn’t on winning. The focus is on the process. Focus on the process and winning will follow. As young lawyers, don’t focus on “winning” at the hearing, deposition or trial. You can’t control whether you “win.” You can control that you performed each step along the way as best as it can be performed and that you were ready to perform it at the “game” when the time came. The Process reminds us of the adage that games are won or lost on the practice field and as young lawyers, you’ll “win or lose” sitting in your offices, in front of your computer, strategizing, thinking, researching and writing.

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Whatever side of the “v” your client is on, you must dictate the direction, rhythm and speed of the case. You must be proactive. You must have a goal in mind and pursue it relentlessly and meticulously. You set the tone and the pace. You serve the written discovery first. You set the depositions. You interview the witnesses first. You prepare the proposed scheduling order. You dictate when you go to trial. Whether you’re plaintiff or defendant, you set the agenda. It’s your case. Not theirs.

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So much I learn about the practice and business of law doesn’t come from books by lawyers on these topics. They’re business, leadership, marketing and futurist books written by business leaders, journalists, and thought leaders. Keep an open mind about what you read to develop your practice.

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If you’re dealing with an attorney who fights you on everything and suddenly capitulates on an issue you raise, watch out. There’s a reason he gave up. He’s laying a trap, and because of his historically belligerent behavior, he isn’t being particularly subtle when he rolls over.

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In litigation, we may have an end game in mind, but we think we can’t achieve it, and discard it and move onto another end game. But how about instead of saying, “we can’t do this,” we start with the statement, “we must do this.” If we make ourselves think through every way something impossible may get done we may be able to figure out a way of doing the impossible. The best lawyers find solutions where others only see dead ends and obstacles. Changing our perspective can change the spectrum of solutions we come up with.

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When arguing a motion, win or lose, make sure you get the judge on the record addressing all the details needed for the order, even the details you believe opposing counsel will simply agree to later. There’s nothing more frustrating than agreeing with opposing counsel that you two will reduce

the order to writing at a later time only to find that you can't agree on the details not addressed by the court, requiring another hearing.

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There's strength in numbers. When pursuing or defending a new wave of matters, reach out to others who are handling those matters and discuss both short and long term strategies, goals and action steps. New areas of law require imagination and strategy, and someone else may have the imagination you lack.

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Treat evidentiary hearings like trials. Have a theme, prepare a brief opening and closing argument, have direct and cross examinations ready, ensure your witnesses understand your goals and themes and have the exhibits prepped. Consider it a mini trial.

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As attorneys, we are always trying to direct the agenda. Whether it's with opposing counsel, witnesses, experts or the court, we are trying to define what needs to be discussed and on what terms. That's why you should always volunteer to take the first crack at a proposed scheduling order, for example. Whenever appropriate, in a multi-party case, you should be the one setting the depositions and deciding who gets deposed when and in which order. You want to be in control of your cases as much as possible, and have others follow your lead.

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When representing a client in a commercial dispute, learn the story behind the story. Business people try to make deals and avoid litigation, so when a business relationship devolves into a lawsuit, there is generally a backstory. The backstory provides you background to see where there is common ground and what issues may be resolved in hopes of resolving the matter short of trial. Business people see us as cost centers and if we can get to the bottom of why a business relationship soured and can resolve that conflict, you're adding value as opposed to being seen as prolonging litigation.

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You want to be the person clients and voluntary bar associations think of when they have a need. You do that by promptly responding to e-mails and calls, serving their vision, being a servant leader, having big ideas with plans and the work ethic to implement them and focusing on service, hard work and humor. Get things done, get them done regularly and expect the phone to ring.

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As attorneys, when having a technical conversation with a client, witness or expert, ask permission to record the conversation to ensure you have all the details and to free yourself up to have a conversation as opposed to acting as a scribe.

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An untapped resource that firms and voluntary bar associations can do a better job gathering and sorting are unpublished court opinions, particularly state court opinions, addressing discovery issues. Often there is no case law on point on the narrow discovery issue at dispute, but there are likely unpublished court orders addressing it which would be persuasive in your matter. Our firms could do a better job gathering and organizing court orders our firms and colleagues secure to rely on them in subsequent matters.

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Mistrust any opposing counsel that tries to put words in your mouth in their confirmatory e-mails or provides a false narrative of what you told them and its significance. I don't trick or trap opposing counsel by manipulating their own words. Never trust anyone who tries to do that to you.

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For young lawyers, being afraid to make a mistake can be paralyzing. The following adage can be taken too far but it can be reassuring:

“Do not fear mistakes. There are none.”

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Whether plaintiff or defense counsel, if at all possible, go to the scene of the accident in a personal injury matter and visualize what may have happened. You'll see things that are missing from photos taken by the investigators in the case.

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As young lawyers, when reviewing statutes, always go to the definition section first. Whatever the statute is getting at, it has its own terms and what they mean and that's the best place to start when figuring out its scope.

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Each day at work, we have productive periods and less productive periods. Perhaps you're a little slower out of the starting gate in the morning or you have a lull post lunch or by 5, you've had it. Each of us has a time of day that we're distractible, tired or less than focused. Try to schedule your day so tasks that require all your wit are done at a time of day when you're at your best and reserve work that is less intense for the other parts of the day.

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As an associate, when you're assigned a task, project or case, always ask the partner what a “win” looks like. What you define as a “win” may be very different from how they define a “win.” Always make sure you're pursuing the right goal. Achieving the wrong “win” may be worse than achieving no “win” at all.

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As an associate, never let your first response to a partner's or client's request be, “no, we can't do that,” or “that's not possible.” Your first response should be, “let me see how we can make that happen.” It may be that you ultimately



can't do something, but no one wants that as the first response they get. Nobody wants to hear "no" out of the box. They may not be happy hearing "no" after you've looked at the various avenues and possibilities, but they'll take it better after you've tried to turn a "no" into a "yes we can."

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As an attorney, there is an adage about staying in your lane. Having defended legal malpractice matters, my experience has been that the attorneys who are being sued often are practicing in an area of law which is outside their practice areas. You have a commercial lawyer handling a personal injury case, a transactional lawyer handling a zoning matter, etc. It's hard to turn down a paying client, especially when the fees are potentially high, but you're not doing yourself nor the prospective client a favor by handling a matter you shouldn't be handling. Sometimes the best advice you can give is to recommend another attorney handle the matter.

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As a litigator, your actions can create equal and opposite reactions. You file a lawsuit with a statutory claim that allows for attorneys' fees. If your client loses, he's paying the other side's fees. You file a proposal for settlement as a defense attorney. Suddenly, you have an insurance policy demand that creates a variety of issues, or you receive a counter proposal for settlement that wins the day at trial. Being aggressive is a strategy but it's not always the right strategy. It can increase litigation costs, stall settlement discussions and result in unintended consequences and outcomes. I generally favor being proactive but understand that whatever you do will prompt a response from the other side and you need to think through that response.

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As lawyers, reflect on the non-monetary costs of litigation. A company may be concerned about its reputation, bad publicity, not getting its employees involved or subjecting them to deposition, not disclosing confidential documents, etc. In addition to letting your client know what a case will cost in terms of dollars and cents, tell her what other intangible expenses may be incurred.

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Toys R Us sought bankruptcy. Let that sink in for a minute. If you're a Generational Xer like me, you grew up watching the Toys R Us commercials and begging your parents to take you. When I had kids, I took them to Toys R Us and relived the awe I felt as a six year old pulling from a peg on a wall the new GI Joe action figure. It seemed like Toys R Us would last forever. But the times passed Toys R Us and it never learned to keep up with the likes of first Walmart and then Amazon. Never assume your firm or a voluntary bar association or charity you belong to will last forever because it's been around forever. Just because it has great history doesn't guarantee a great future. Study market disrupters and get ahead of them or run the risk of getting rolled by them.

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As a child, my favorite show was Mr. Rogers' Neighborhood. Mr. Rogers was a child development specialist, and knowing what he knew, he talked a lot about imagination. If you think about all the educational kids' shows, they all have something in common. Encouraging a child's imagination. As we grow older, we stop discussing, much less developing, our imagination. But seeing old things in new ways, thinking out of the box, developing creative solutions—this all takes imagination. Have a hobby or two that stokes your imagination—take up painting, sign up for a pottery class or join a book club. Read fiction, go to art museums or take a night class on the history of jazz. And if you have kids, encourage them to take art, try out for the school play or join the band. These mind opening activities will prove helpful for them later in life in whatever career they choose to pursue.

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Great lawyers are imaginative. They have epiphanies where they see the facts, law and their arguments in a new light. All of us are capable of having these flashes of brilliance but to do so you need times during the week where you give your brain a rest. You go for a walk by yourself, you sit on your recliner petting your dog, you watch the rain fall through a window or on your porch. These quiet moments where you're literally doing nothing are opportunities to let your mind wander, daydream and allow random thoughts in. Genius comes in these small, quiet moments. Being too busy can be a hindrance to making huge leaps and bounds.

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As lawyers, we need a healthy dose of urgency. Urgency to build relationships with referral sources, to become experts in our fields, to speak and write, to become leaders, to mentor and give back. We have busy lives. 9-5 doesn't apply to us. When we get down time we want to enjoy it. And you should look out for your health and sanity and spend quality time with family and friends. But don't assume your plans, goals and pursuits can wait until tomorrow. You need to create your own set of internal deadlines so you create the proverbial fire under your feet and keep pressing forward. Staying put is not an option.

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Not knowing what you don't know is the most dangerous thing in a lawyer's practice. It can lead you to losing a case, losing a client and possibly malpractice. When you're starting out in a new practice area, take the time, on your own dime, to learn the area—substantively, procedurally and practice wise. None of us want to handle the same case over and over, but there are risks involved when venturing out into other practice areas, so read the materials, download the CLE, follow the blogs and scour the legal news in that area. Also join the committee of a legal organization which focuses on that area and soak up as much as you can from other members of the committee.

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As a young lawyer, you have two obligations—serving your firm's goals and serving your career goals. You owe your firm your loyalty, work ethic

and your talents. You also owe yourself your focus, energies and passion. Because the thing is the firm you work for wants your best but may not necessarily want what's best for you. You owe it to the firm to advance their mission. You owe it to yourself to advance your professional mission. Don't trust your career to others. It's your career. Assume responsibility for it. Serve your firm and serve yourself.

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I'm amazed how much great research and analysis firms give away for free on their websites and blogs. White papers, webinars, posts and the like. Sometimes the issue you're researching and analyzing has already been researched and analyzed in a wonderfully written white paper that you can download for free. Also, I belong to DRI and FDCC. As a member, I have access to large archives of articles and white papers that not only break down the law for me on a given subject but also provide practical advice on dealing with issues that arise in those cases. Sometimes Westlaw shouldn't be the first place you go for research.

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If you're a young lawyer at a medium or large sized firm, consider having a weekly lunch with several associates once a week and use that time to discuss your respective cases and use one another as a source of ideas, case analysis, research answers and case theories and themes. Sometimes we see our cases too narrowly and don't know what we don't know, and having a group of 4 or 5 associates talk through your cases and theirs offers you and everyone at lunch insight on how better to handle their matters.

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Praise. We all enjoy receiving it. Take more time from your busy schedule to praise other lawyers, whether it's other attorneys at your firm or colleagues outside your firm. If they've won a trial, written an article, made a presentation or won an award, take the time to send them a quick e-mail praising them for the accomplishment. I always feel good when I receive a message congratulating me. Make someone else's day and do the same. And as lawyers, getting in the habit of praising others keeps our own egos in check and helps us look beyond ourselves.

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Sometimes the date and time someone said or did something is as important as what they said or did. For most cases, creating an annotated timeline of events referencing e-mails, correspondence and other documents helps you figure out who fell below the standard or care or who breached a contract. When you have all the relevant documents in one place, in chronological order, with notes of who said and did what, you can develop a clear picture of who is liable and who is not, and how the case should turn out. For me, preparing and reviewing such timelines have provided "aha" moments about cases.

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As young lawyers, you have a lot demands on your time. Full caseload. Marketing. Business Development. Involvement in voluntary bar associations. Speaking and writing engagements. It's easy to lose sight of your own personal health amidst all these demands. You need to make time for yourself to eat properly and exercise. I'm a big believer in saying yes to new opportunities, but even I have to admit that sometimes you have to say no for your own sanity and long term health. Take the time to shop for nutritious foods and snacks at the supermarket to take to work and find an exercise regime you enjoy and is convenient. Eating well and exercising will help you deal work-related stress and will help you get a better night's sleep.

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If you play chess you understand that you have a reason for every move you make. From the first to last move, each is part of a larger strategy. There are no throwaway moves. There is no waiting to the next move to develop a long term strategy. Litigation is the same way. Even the little, apparently inconsequential moves have consequences. They either advance your overall strategy or they don't. They move you closer to victory or they don't. In fact, every move you make without thinking about its impact on the overall case and strategy not only prevents you from advancing, they leave an opening for opposing counsel to advance her case. Never assume a decision is too small in litigation. You want to depose someone. Why? You want to depose him first? Why? You want to do the deposition at your office? Why? You want to start at 10 am? Why. You want to premark exhibits? Why? You want to use a certain court reporter? A certain interpreter? Why? Every decision you make is part of a larger strategy. There are no throwaway moves.

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Before filing motions to compel or response to motions to compel, we lawyers don't do a good enough job to communicate with opposing counsel. Before filing a motion or a response to one, explain your position and the legal support of your position to opposing counsel. You're not showing your hand because you're going to be including those same arguments and the legal support for them in the memo you file with the court. There are no more gotchas at a hearing. In fact, most judges frown upon them. So if you're going to show your hand anyway in your memo to the court, pick up the phone or send an e-mail to opposing counsel and talk through each other's positions on the issues. Sometimes, you'll get opposing counsel to see your side and abandon theirs. Sometimes you'll abandon yours. Either way, you'll narrow down the issues and gain insight into the likelihood of winning or losing a given motion and better advise the client of the potential outcome.

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So many analogies are made between litigation and sports, that making one here would just come across as another cliché. But in the end, litigation is about winning. Winning means different things to different clients in different circumstances. But in effect, they've hired you to win. That means

you need to dig deep into your competitive spirit and want to win, on behalf of your client and behalf of yourself. Anyone who plays sports isn't on the field or court to just have fun. They're there to win. To outplay, outthink, outperform the opposing team or player and leave it all on the field until the whistle or buzzer blows. Some of us are natural competitors and some aren't. If you're not, you have to learn how to become one. You need to learn to fight for every inch, make every tackle and out rebound your opponent. Clients want attorneys who are competitive and will leave it all on the field for them. Never leave a client doubting that you went the distance with opposing counsel, you gave as good as you got and whether by knock out or by decision, you fought to win.

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If you're defending a civil case, one of the first things you should be thinking about is how I can extricate my client through summary judgment. Early in the case, evaluate the viability for a summary judgment, research the law and identify the facts you need to support the motion. The earlier in the case you can develop a road map for a summary judgment, the more the case investigation and discovery you can conduct to secure that outcome. When appropriate, I prepare an outline for a summary judgment early on with a list of the facts I need to secure to win.

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A lot of what we do as lawyers requires imagination and creativity. To foster that, be an avid reader. Read books outside your comfort zone and explore different genres. Business and Leadership books are good for the practice, but also explore books on current events, biographies, and read your share of fiction and even poetry. And don't be shy to talk about the books you're reading with others and ask them for book recommendations. You may learn of a book that deeply affects you that you may never have heard of otherwise. Let me know what you're reading and why. And start that conversation with others.

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There's something about getting into the office early. You have time to get coffee, sit down, and set an agenda for the day. The e-mails haven't started trickling in yet and you are in control. There was less traffic, you had time to read the daily news stories and send some personal e-mails to colleagues to catch up or suggest getting together for coffee. Starting the day on your own terms makes a world of difference and the best way of doing that is by showing up early.

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As lawyers, it's important to document everything we do in a lawsuit. Because of this, we often rely on e-mails when it comes to communicating with opposing counsel and clients. Though e-mails are a great way to have a written record of communications with others, also take the time to pick up the phone and speak with your clients and opposing counsel. Phone

calls allow you to build a closer relationship with others and avoids any misunderstandings that e-mails may cause. You can always follow up a call with an e-mail if need be.

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As a litigator, always be thinking how you can advance your cases toward your goals. There is no down time in a case. Always think about what you can do to have the case be litigated on your terms. Are there witnesses to interview? Research to be done? Depositions to take? Just because you represent the defendant and didn't file the lawsuit doesn't mean you can't dictate where the case is going. Yes, it is a game of chess but it's always your move.

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The Hippocratic Oath applies to lawyers too. As lawyers, our first job is to do no harm. We can make a bad situation worse by not doing a thorough analysis of our cases and providing our clients a fair and honest assessment of their exposure. If we don't learn all the relevant facts or understand the applicable law, and simply buy into our clients' version of the facts without doing our own independent analysis, we run the risk of transforming a tough case into a tougher one.

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Remember, opposing counsel is not your friend. Yes, you can be friends. You can be professional. You can talk about your spouses, kids, pets and vacations. But she wants to win, which means, by extension, she wants you to lose. She's looking for any chinks in your armor, seeking every advantage, exploiting your weaknesses and your clients' weaknesses. Remember that and don't inadvertently reveal something you shouldn't when speaking with her or e-mailing her. As far as she is concerned, you're going to win, not her. To quote Matthew 10:16, "Behold, I send you out as sheep in the midst wolves. Therefore be wise as serpents and harmless as doves." Always be thinking like a serpent.

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In a multiple defendant case where you represent one of the defendants, take the initiative and the lead to set depositions, conduct discovery, propound written discovery and collect third party records. You want to set the agenda. Also, to the extent possible, develop an amicable relationship among the defendants' counsel to work together and prevent them from pointing their fingers at one another for as long as possible. Plaintiffs want to set one defendant against another. If you can avoid that, do so. If you can avoid it, but only for a limited amount of time, settle for that.

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When researching for a motion in state court, if state court orders are part of your Westlaw plan, look for favorable ones on your issue. For example, there are a lot of discovery issues that never become the subject of an appellate ruling but are often addressed in trial judge orders that can be tracked down

on Westlaw and cited in your motion. Remember to attach these orders as exhibits to your motion since they're not easily accessible.

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What happens to a company when no one wants its products anymore? Do you double the marketing efforts to convince consumers to buy what they don't want? What happens if you're Coca Cola and folks stop drinking Coke? Do you spend all your energies convincing consumers they're wrong? That they should ingest over 150 calories of a sugary drink that contributes to obesity and diabetes? Or do you focus some of your energies on selling something other than carbonated sugar water? Maybe you sell sugar free vitamin water? Maybe sell protein drinks? Maybe you find where your consumers are, or better, where they're headed, and meet them there? As lawyers, we need to think this way too.

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Each year, and sometimes more than once a year, our office manager comes around our offices and hands out the latest version of the Florida and Federal Rules of Civil Procedure. Invariably, there are changes, often related to technology and e-discovery issues. Set time aside and read through the changes. In fact, there are probably blogs online that will spell them out for you. There may have been changes that affect your cases right now. Yes, it's another to do to add to the list, but knowing the rules of the game is necessary to play the game well.

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As a lawyer, always be advocating. Whether it's in an e-mail, a pleading, a motion or correspondence, think how you can advance your client's case by the way you couch the facts, law or both. Every call with opposing counsel can provide a segue into advocating on behalf of your client (without, at the same time, being obnoxious about it). Always be advocating.

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Learn the MO of your opposing counsel. Ask around, find out who has litigated against her and learn what to expect. You want to know if opposing counsel is trustworthy, keeps their word, how they handle negotiations and how they behave at hearings, depositions and trial. Sometimes it's smooth sailing, and you can focus on your case. Sometimes, you have to be constantly looking over your shoulder for the next dirty trick. Try to learn what to expect sooner than later.

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Your first step in a case is defining your client's goals. Once you and your client agree on where you want to end up you need to devise a plan on how to get there. To do so, I recommend creating a to do list of each and every activity you need to do (what discovery to propound; whom to interview; whom to depose; what motions to file) to reach those goals. By doing so, you can develop a point by point plan and share it with the client so she



knows what to expect and what it's going to cost. It may be that after you tell her that yes you can win at trial, but it will require us to do X and for you to pay Y, she may think it's better to enter into early settlement discussions. Your client should always know where you're taking the case and how you're getting there.

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Whenever representing a professional in a professional liability matter, the first thing I want to know is what was written down? If it wasn't written down, it may as well not have happened. We as lawyers hope we'll never be the subject of a legal malpractice case, but if we ever are, we want to make sure we documented everything pertinent to show what we did, who we spoke to and what was said. In a battle of he said/she said, a memo to the file can become your best friend.

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At the commencement of a case, gather all the relevant documents and create a chronology. This document will help you better evaluate the case and decide how best to handle it. Having all the relevant dates and events in one place in chronological order helps you determine what's missing and correspondingly what additional investigation to conduct. Whether it's a personal injury claim, commercial matter or employment dispute, having a chronology helps you evaluate the strengths and weaknesses of your case.

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If you inherit a case from another attorney from your firm, the best place to look at what has been done, the evolution of the case and development of case themes and theories are the billing records. Lawyers don't always reduce conversations or analysis to memos, but they record their time for these activities. The time entries will provide you a guide of just about everything that's happened in the case and will help you avoid treading old ground.

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A "mem com"—a memo of the conversation. As lawyers, get in the habit of reducing all important conversations with witnesses, opposing counsel and clients to mem coms. Those memos help you develop your case theory and will serve as reminders as to which witnesses said what, your opposing counsel's position on various issues and your client's thoughts about the case. If you're ever challenged about what was said and when, you can rely on your memos to support your position and help avoid the he said/she said scenarios.

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I write about process. I believe everything we do as lawyers and leaders can be reduced to a process that can be taught and followed. How to take a deposition, interview a witness, lead an organization, market your practice, create your own deposition boot camp—anything—and I mean anything—can be reduced to a series of steps which can be taught to others to replicate what you and others have done. Clients understand developing

and implementing processes. It's integral in quality control. Firms need to take the time to create processes for their attorneys to follow.

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Learn everything about your judge. Google her. See what lawyers have to say about her. See what litigants have to say. Pull appellate opinions affirming or overruling her. Ask your colleagues about her. Secure any procedures and protocols she has about how she runs her chambers and courtroom. If you have the time, go watch her preside over a hearing. By doing so, you'll have a strong sense about how likely a party will be able to prevail on a motion to dismiss or on a summary judgment, based on her approach, temperament, history and her prior rulings.

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Prepare checklists for specific tasks in cases. For example, have checklists for interviewing witnesses, preparing clients for deposition, preparing for a plaintiff's deposition, etc. You'll find that 80-90% of tasks we perform as lawyers can be reduced to checklists. To ensure you cover everything when performing a specific task, prepare a checklist and update it each time you perform that task so as you gain experience you add to or modify the list. You may seek others' input from the firm to amend the checklists.

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Litigating a case is akin to playing chess. You're planning 8-10 moves ahead and anticipating your opponent's moves. Do you play it safe? Do you take risks? How do you not give away your strategy? How do you figure out the other side's strategy? Through a combination of planning ahead, disguising your plan and misdirection, you can achieve checkmate in your cases. Prevailing on summary judgment or at trial requires you to play the chess game on your terms and set up one check after another until the other side has run out of options and has to turn over his king.

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Before you start your day, sit down with a pad and pen and write out what you need to get done that day. So often as litigators, we let emergencies dictate our daily schedule, which causes us to push off assignments or tasks until they too become emergencies. Write down the 2 or 3 things you must do that day and keep an eye on that note, making time to address those concerns. That way you control your schedule and not the other way around.

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The two best gifts you can give. The first is a letter to a family member, friend or colleague on how he or she has changed your life for the better. The second is a book with a handwritten note on the inside cover telling him or her how the book has changed your life and how you hope it will change theirs.

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"The lady doth protest too much, methinks." Hamlet.

The more someone tries to block you from getting a document, an answer to an interrogatory or a response to a deposition question, the more likely that you've stumbled onto a smoking gun. The harder the fight the better the prize. From your end, if you have something you're trying to keep from the other side, don't draw attention to it or make a big deal about it. You don't want to draw the dog to the scent.

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Never ask a judge to stick her neck out for you. When you argue a motion and you don't have a statute or case that supports your position, you're asking her to stick her neck out for you. When you're arguing some novel interpretation of a case or asking her to jump to one too many conclusions, you're asking her to stick her neck out to you. For issues that are appealable, no judge wants to read an opinion in the advance sheets and find out they were wrong. They don't want their peers to read they were wrong. Never forget judges are people and the easiest thing for them to do is play it safe so always couch your arguments so that by adopting your position, they're playing it safe.

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As lawyers, we need to identify the "X" factors—the facts we don't know and how those facts may affect our case evaluation. When you first get a case, you have some facts, mostly from your client, which are colored through her prism of what facts are important and which ones are not, and the case generally looks pretty good. You need to identify what you don't know—what witnesses were there? What did they observe, say or hear? What are the relevant documents? What do they show?—and evaluate whether your client's view is borne out by the facts. The most optimistic picture you will get of your client's case is when she first tells you about it. Often, what comes after provides a more well-rounded, and sometimes not as positive, vantage point of the case. Your job is to find out what actually happened and how those facts are viewed by the law. Though perhaps that's not what your client wants, that's what he needs.

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As the US and North Korea stare each other down and North Korea threatens nuclear war, there are lessons we lawyers can take from this international crisis. In settlement discussions and mediation, be careful when you throw down the gauntlet and issue an ultimatum. Others won't assume you're saber rattling. And you shouldn't be making idle threats. You and your client have to follow through with what you say. If you're going to make a last and final offer, you have to be willing to walk away. Refusing to do so only undermines your negotiation position, your word and your reputation. If you insist on taking a case to trial, you better be ready to try it. Your words mean something. Act accordingly.

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The problem with remembering something is remembering it at the right time. "I need to do x." You remember it in the car and forget about it by the

time you get in the office. When something occurs to you, dictate it into your phone and at the first opportunity calendar a date and time when you can reasonably tackle the to do that just came into your mind. Relying on your memory hoping you'll think about the right thing at the right time is a recipe for forgetting the little things and sometimes the big things too.

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Keep an eye out for new causes of action being filed or old causes of action with a new twist. For example, Title III cases focusing on website accessibility or premises cases for negligence related to sex trafficking. See what the new legal trends are, get out of ahead of them, study them and become one of the first to write and speak about them, becoming an expert in a new, burgeoning legal area. If a new type of lawsuit takes off, you want to know who the plaintiffs firms are handling those matters, their approach and what clients can do to defend against them.

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As young lawyers, not having done something before has its benefits. More experienced lawyers tend to serve the same written discovery, ask the same questions at deposition and tend to approach their cases in the same manner. By not having handled the same case a hundred times, you can take a fresh look at the matter and conceive of new, novel, and creative approaches. You want to see what others have done before you, but you want to allow yourself room to think of new ways to tackle the same old problems. There may be a new opinion, a new argument, or a new interpretation of the facts that change the trajectory of the case. Be open to it.

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Read your local legal publication. In Miami, it is the *Daily Business Review*. If your firm doesn't subscribe, talk to your managing partner or office manager. You need to follow the legal trends in your community, know which firms are up and which ones are down, what legal issues prospective clients are struggling with and opportunities you and your firm can seize upon. Being knowledgeable about what's happening in your legal community and being conversant about it at cocktail hours and receptions will improve your personal marketing plan and increase the likelihood of attracting new clients.

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Whatever motion you write, whatever argument you present at a hearing and whatever case strategy you develop should be formulated around a theme—in a phrase, why do you win? It could be a catch phrase, or a cliché, or a popular song lyric—a few words that encapsulates your position and why it's the right one. If you can't reduce it to a theme, then go back to the drawing board until you can. It will become the foundation for your case, and from which all your discovery and case investigation will blossom.

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Tonight I appreciated how great a research tool Pacer can be. Handling a website accessibility lawsuit in South Florida, I was able to find all the lawsuits filed by a serial Title III plaintiffs and see how those cases were handled to conclusion. Most importantly, I came across some orders on dispositive motions that will help my case. Appellate opinions on Westlaw are a great start for your research, but consider looking at docket sheets of similar cases as yours and you'll be surprised what you'll find.

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When preparing for a hearing, close the door to your office and verbalize your argument. Hear it out loud. How does it sound? It's one thing to have an outline written on paper. It's quite another to hear how it sounds out loud. The arguments. The words. The cadence. Also, hearing it out loud will help you think through what opposing counsel will say and will better prepare you to respond to her arguments. Also, practicing out loud will boost your confidence and will help you rely less on your outline.

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Humor is a great tool to break the ice, grow relationships and assuage belligerent opposing counsel. Learn to work in humor in your discussions and relationships. Those who risk being funny and succeed at it come across as more personable and confident and tend to be the center of attention. Whenever I'm at a function, I search out colleagues who make me laugh. I try to reciprocate when I can. My Facebook feed is filled with silly observations and posts to brighten my friends' day. Of course, avoid sarcasm, insults and inappropriate jokes.

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"What are you reading?" Get in the habit of asking others this question. What we read speaks volumes about who we are, our world view and what we consider important. You can learn so much from others from what they read. You can also get recommendations for great reads. Look out for books on leadership, business, personal development and biographies.

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As young lawyers, it's hard to leave the office. Plenty of late nights and your share of weekends. There are a lot of things you're going to miss out on. But don't miss out on Valentine's, Anniversaries, Birthdays, Graduations, Recitals and the Big Game. And always go to the funeral. It means so much to the family.

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Prepare a daily checklist each morning before starting your day—a list of work assignments you want to complete and a list of legal marketing activities in which you want to engage. Be proactive each day about what you want to accomplish. Simply coming to the office and reacting to partners' or clients' e-mails or calls doesn't allow you to implement a plan of your choosing.

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As lawyers, we need to know what we don't know. When do I have the requisite knowledge and skill to answer a client question or offer a case strategy? Young lawyers may not appreciate difficult situations they find themselves in because they don't appreciate the different avenues available to them and the consequences associated with each of them. Always keep in mind how your blind spots may affect the outcome.

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As lawyers, there are things in our control and those that are not. We don't create the facts and we can't change them. Learn all of them, including the ugly ones, and develop a plan on how to deal with them.

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## Law Firm Management

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A great indicator about how a firm cares for its people is how it deals with an attorney, paralegal or staff member when a loved one is at death's door. The cases we work on aren't going anywhere, but a loved one in dire health needs us at his/her bedside. We'll never regret not billing enough hours but we will regret not being close to family in their last days and hours. Good firms don't make their people choose between their jobs and their loved ones, nor make them guilty for doing so. Attorneys remember and are loyal to firms who do right by them.

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Attorneys at firms have a hard time remembering when other attorneys or staff plan on being out of the office due to vacation, especially long vacations in locations where they will be hard to reach. If you're an attorney, paralegal or legal assistant, even if you have cleared vacation dates with the partners, and it's on their calendars, make sure to remind them of your departure at intervals before you actually leave. Yes, you shouldn't have to remind them, but invariably one or more partners will forget, and he/she won't have planned for your absence and the office will become tense and stressful. I wish we didn't have to remind each other when we're going to be out of the office, but unfortunately, we do, and if you're the one going to be out of the





office you need to let folks know enough times that they're not surprised when they come into your office and find the lights off.

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If you watched LA Law back in the day, you remember each episode started in the conference room with each lawyer discussing his or her current caseload. There is value for the attorneys at your firm to get together regularly and discuss their cases in a forum to brainstorm new and creative approaches to each other's cases. Sometimes a fictional legal series gets it right and regular meetings to discuss cases with those not directly handling them is a great value add to clients.

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Small to medium sized firms rise and fall on effective processes. We have so much going on that we need a process for the administrative, marketing and case handling tasks to ensure efficiency and quality control.

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I took improv classes and one of the improv rules they taught me was always to say "yes." The proper response when you receive an idea from another improv actor is to say, "yes, and..." You take what they give you and expand on it. This is a great brainstorming technique when working with your team. Everyone feels open to share their ideas knowing that others will accept them and work with them as opposed to simply saying "no." That doesn't mean all ideas are ultimately accepted, carry equal weight or are good for the law firm or company. But this process ensures that all ideas are shared and explored.

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Some smaller firms struggle to attract and keep top associate talent because they can't pay big firm salaries. There are certain things small firms can do to compete which don't cost anything:

- Allow associates to work from home one or more days a week.
- Have a proactive mentoring program for your associates.
- Take the time to get to know your associates and their passions and encourage and equip them to pursue their passions.
- Encourage them to develop their own books of business and teach the skill set to do so.
- Provide them a family oriented, supportive and friendly work environment.

Some big firms offer these too, but if you're looking to compete with big firms for talent you have to think out of the box and spend more personal time investing in your associates, their interests and passions.

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Best practices are what our clients want for their businesses and what we want for our law firms. Best practices can be found all around us. In different businesses, different publications, websites, social media posts and the

like. As law firms, we shouldn't limit our definition of best practices to what other law firms are doing. We should be looking at what others are doing, irrespective of profession or business, evaluate why they're succeeding and determine whether what they're doing makes sense for our firms, and if so, how we can adopt their best practices.

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If you want to train your associates consider the following exercise. Take a task lawyers do and reduce it to a checklist. For example, preparing for an expert deposition. Make it a fulsome checklist and then send it to the associates, copy other partners, and ask those partners, in turn, to redline the list and circulate it. Let's say you copy 5 partners. Have each take a turn redlining the checklist and circulating it, all the while, having the associates part of the e-mail chain seeing these changes first hand. Getting a checklist from a partner and having several more amend it is eye-opening for associates to see how different attorneys approach the same task and lets them learn various nuances from a variety of sources.

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At my biannual mediation recertification class one of the speakers presented on surviving an active shooter situation. This is the world we live in. Great, sobering presentation. A few takeaways from the presentation:

- Be aware of your surroundings and be aware of changes in behavior by colleagues at work. Each of us has a behavior baseline. Significant changes from that behavior may be indicative of a bigger problem.
- Have an escape plan. We have fire plans. We need active shooter plans.
- Have something to barricade your doors. Something as simple as a wood wedge that keeps a door open can also keep it shut if used from the inside. There are many commercially available items to lock or barricade doors.
- Be quiet. Hysteria attracts shooters.
- Hiding or playing dead doesn't often work. Barricading does.
- Shooters often shoot at chest level. If you're barricaded in a room, stay close to the ground.
- If you're in a room with a shooter and there is nowhere to hide or run (the shooter is between you and the only exit), fighting may be your best option.

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If your firm's lease is coming up and you're thinking of renewing or considering new space, consider the following experiment:

- Let your attorneys and paralegals work from home for a month. If it works, and works well, consider downsizing your commercial space footprint.

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If you want to hire a 3L but find on campus interviews lacking, consider volunteering as a judge at a moot court competition. The law school and students benefit from you volunteering and you get to see which potential candidates have the oral advocacy skills you're looking for.

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For those types of cases your firm litigates the most, take the time to put together an anatomy of that type of case, from beginning to end. It's a comprehensive checklist with links or references to documents in your firm's system that includes standard affirmative defenses, discovery requests, discovery responses, etc. Having a guide for let's say, your standard auto negligence case, and having everything in one document allows you to see the case as a whole and appreciate where you're going and what needs to be done to win.

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Firms struggle with different generations of lawyers working together. Each generation has its own approach to work, communication, marketing, etc. Instead of pitting one generation against another, or taking sides with one generation over another, firms need to focus on their purpose—their mission, visions and values—and not as much on how they achieve that purpose. Make sure that every lawyer has bought into the firm's purpose, and ensure they are working toward fulfilling its purpose. If everyone has the same goals, how they individually achieve those goals becomes less important. Not to say the "how" is not significant, but the "why," as Sinek says, is what holds a firm together.

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When working on a case with multiple attorneys at your office, it's important everyone use the same "language," "key words" and "terminology" so everyone defines the issues, themes, facts and case approach the same way and handles documents and makes connections between and among documents, depositions, testimony and facts in the same manner. "X" must mean the same thing to everyone on the team.

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Successful law firms have a team approach to their cases. They discuss their matters with one another, brainstorm together and develop solutions to tough problems. If your firm or practice group is small enough, meet once a month in the conference room for lunch and spitball your cases and see if someone else in the room has an idea on how you can win.

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If you're in firm management, reward financially the behavior you want from your attorneys. If you want them to get more involved in organizations, volunteer more, write more and speak more, these activities must be considered when ascribing bonuses. Clearly, those who bring in business should receive the greatest reward, but those who try should receive

some reward. If associates aren't being encouraged financially to do more than billing hours, some, perhaps many, won't, and that affects the long term viability of the firm. So when it comes to compensation, find ways to encourage the behavior that will lead to more business down the road.

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If you're involved with hiring associates at your firm, don't stop with asking for a writing sample. Ask for a transcript from a deposition and from a substantive hearing from the candidate. These items say a lot more about the candidate than a writing sample she's revised over and over.

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When upgrading law firm technology, don't start with seeing what software and apps are out there. Start with the questions, "What do we need?" and "What can we improve through tech?" Start with what the firm wants and then study what is out there that meets those needs at the right price point.

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A great law firm creates processes for the various tasks its lawyers do to create quality control among the attorneys in the firm. A great tech-driven law firm works with tech folks to create programs that they can provide clients to improve their processes.

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Every lawyer at your firm is better at something than you and you're better at something than them. Each of us has our strengths and weaknesses. Often the best "CLE" can be offered in house, where an attorney at your firm who is highly adept, at let's say, taking expert depositions, can provide an informal talk over lunch in the firm's conference room, and an attorney who is great at arguing motions, can give a talk a week or two later. Firms should identify their lawyers' strengths and have them share them with the other attorneys of the firm.

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Whether with your firm, your organizations, or your family, consider having a Saturday or Sunday retreat, where you have an agenda, and discuss long term strategic planning and goals. We can get caught up in the minutia and lose sight of the bigger picture and how to achieve that bigger picture.

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Have your firm keep and organize orders entered by your local judges. A prior order entered by the same judge on the same issue you're raising in a motion can be very persuasive. In fact, if you have the initiative, work with your local bar association to keep and organize orders provided by multiple firms. It's a great resource and a great way to make a name for yourself in your local bar association.

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Law firms and law departments should invest in the development of their lawyers' leadership skills. Companies and law firms rise and fall due to their

leaders. Without a vision, a plan, a call to action, motivation, collaboration—an organization has nowhere to go and gets there fast.

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When it comes to hiring associates, firms may be better off hiring less experienced lawyers they can mold in their own image. This is an advantage less experienced lawyers have when interviewing. Each firm has a culture, a structure, an approach, a mindset and a philosophy. All this is easier to teach someone who isn't already ingrained with another firm's culture and approach. So if you're a less experienced lawyer and you're at an interview, don't run away from your lack of experience, embrace it as a positive.

Of course, I'm not suggesting that firms shouldn't hire experienced lawyers. Experience, reputations, trial practice, clients—all good reasons to hire them. You have a niche practice and you have an experienced lawyer in that practice area? Also a good hire. But my point is that less experienced lawyers have a real shot getting hired because many firms want to mold lawyers, not re-mold them.

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If your firm or an organization you belong to is having a holiday party, take the time to organize a toy drive. It's easy to do—simply ask attendees to bring an unwrapped toy and partner with Toys for Tots or another organization that gathers toys for kids who without your efforts, may not get anything this holiday season. Short of that, the next time you shop online or at the mall, make a point to buy a toy and drop it off at a local store or business collected toys.

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Encourage your law firm to provide you and other lawyers at your firm lunch and learn training sessions on technology issues—could be iPad aps to use at trial, Trial Director, Power Point, Excel or others. Someone at your office knows how to make the most of the programs. Have her teach the rest of you.

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Ask more questions before pursuing an idea. If you want to start an associate training program, ask your associates what they want. If you want to start a new initiative in an organization, ask the members if they want it. If you want to better serve your clients, ask them what they want. Never assume you know best about what someone else wants. Ask them.

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Everything we do as attorneys, whether in the practice or out, is a reflection on us and on our firms. Each firm has its own values, mission and vision. Each firm has to impart these to all its attorneys, junior or senior, and must remind everyone employed by it that even though they're not working 24/7, they represent that firm 24/7. Whether through social media posts, or how they behave in public, it all comes back to the firm. I tell my boys, you're a Ramos, and that means you have certain values and principles and you

must always live them, not just in our household. Working for firms is no different. Imparting firm culture is as important (if not more so) as teaching attorneys litigation skills.

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In order for your associates to fully understand how to conduct discovery they have to experience getting ready for trial. It wasn't until I prepared my first case for trial that I fully understood the purpose of discovery, developing themes and securing admissions. Any associate training program should teach your associates how to try a case, and even if they can't be second chair, they should be involved with helping prepare cases for trial so they gain greater insight how to prepare written discovery and taking depositions.

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When developing an associate training program, a firm needs to survey its attorneys and ask what skill sets should be addressed. Both the associates and partners should be asked. Each firm has its own brand, style and approach and each firm needs to teach its associates what's expected of them. In addition associates know firsthand what they need help with and should be asked what those areas are and how the firm can help them develop their strengths and work on their weaknesses.

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Any associate training program should include lessons on the business of law and the business of clients. Whether it's in house counsel, insurance adjusters or owners of companies, clients have certain expectations from their lawyers, many of which have little to do with the substantive area with which you're helping them. They have expectations about your availability, your attitude, your approach to litigation, how you can help them look good and what you know about their business model and business operations. There's a whole other side to the practice of law that firms need to teach their associates so as to keep existing clients and bring in new ones.

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There's an old business joke:

CFO asks CEO: "What happens if we invest in developing our people and they leave us?"

CEO: "What happens if we don't, and they stay?"

If you have your own firm or manage a practice group in a larger firm, make sure to create an implement an associate training program. This will ensure quality control and provide your clients improved work product.

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Many firms outsource their associate training to CLE vendors and voluntary bar association training programs. These can be a great source of education but should not be the only source. Each firm has its own mission and perspective, its own approach and personality. Your firm litigates a certain

way and you want your associates to litigate that way too. To do so, you need to implement your own associate program geared toward teaching your associates your litigation style, theory and approach.

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Any associate training program must have as a central component a vibrant mentoring program. Associates need mentors. We all do. Make sure all your associates at your firm have a mentor they can work with and learn from. And if you're an associate at a firm without a mentoring program, seek out mentors who are willing to invest in you and your career.

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What most associates crave and need and often lack is trial experience. As a firm, search out pro bono opportunities for your associates to obtain that coveted trial experience. It could be through the local public defender's office or elsewhere. Look around and get your associates involved. Attorneys who haven't tried cases may have a hard time appreciating what discovery to conduct to prepare a case for trial.

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Any associate training program needs everyone's buy in. It is a big time commitment and requires a lot of firm resources to create and implement a plan to teach a firm's associates to handle their matters in a client-centric manner according to your firm's mission and values. Create questionnaires for everyone involved about what the program should entail, what topics should be covered, who should teach, who should lead and what it should look like. Every firm needs a program tailored to it and that requires everyone's input.

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When creating an associate training program, survey your partners, associates and staff and ask them what issues they want addressed and how they want them addressed. Everyone in your firm has something to offer in helping you develop a program that will benefit your associates, your firm and your clients.

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Consider having your firm sponsor regular lunches in your conference room for your associates where you invite several partners to provide their thoughts on a specific task attorneys regularly handle. For example, you can have several partners discuss the "Do's and Don'ts for preparing for and arguing at a hearing." Or you could do one called "Judges' and client's pet peeves." It doesn't require much preparation on the partners' parts. They simply provide their thoughts on the topic based on their personal experiences and associates get an inside view on issues they wouldn't otherwise get except through hard earned experience and mistakes that come with that. String a few of these together and you have the beginning of the making of an associate training program.

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No matter the size of your firm, you can and should implement an associate training program. To ensure quality control, to empower your associates and to provide your clients better work product, take the time to identify what you want to teach your associates and develop a curriculum to do so. It could consist of a formal program with a formal training manual or it could be more casual—a series of luncheons to brainstorm how take a deposition, or answer a client’s questions or prepare for trial.

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When seeking out lawyers for your firm and organizations, you’re looking for three qualities. First, does she have vision? Second, does she have a plan to make the vision a reality? Third, will she do the work to implement the plan? If you have someone with vision, a plan and works hard, you want to promote that person within your organization.

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More and more companies are expecting their outside counsel to hire and promote diverse attorneys. For many years, companies have preached diversity but now more than ever they are letting go of firms who are not committed to diversity. Firms have to do more to attract diverse attorneys not only to serve these clients but because as our communities and jury pools grow more diverse, we need law firms to have more diverse views and perspectives to effectively communicate with and persuade these diverse fact finders. We live in a global economy. Our firms need diversity to address this.

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## Volunteering for Voluntary Bar Association

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Chase the impossible. If you lead an organization—a voluntary bar association, a non-profit, a charity—allow your imagination to reflect on what hasn't been done and do it. Who wants to do what everyone already has done? Where's the excitement to chasing the possible? Consider doing more than simply adding more CLE credit or changing the entree at the monthly luncheons from chicken breasts to beef tenderloin. Do you want to be remembered as Mrs. or Mr. Tenderloin? Or do you want to be remembered as being transformational?

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If you're running a voluntary bar association, your two biggest costs are food and speakers. Coffee can cost a \$100 a gallon and speakers can cost \$10,000, \$20,000 or more. I don't have a solution on how to get cheaper coffee, but I beseech you to find speakers in your own ranks who can share their stories to your members for free. So often keynote and main stage speakers aren't lawyers and don't discuss the law. Your members have similar stories as these paid speakers, their stories are as compelling as paid speakers and they're more relevant because they're just like you and their stories are your stories and your members' stories.

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If you plan meetings for voluntary bar associations, sooner or later something is going to go wrong that is completely outside of your control. Bad weather,



bad food or the dreaded speaker cancelation. That's right—that speaker you've been touting is a no show so you scramble for a replacement and it's not what the audience expected or wanted. It's disappointing, frustrating, even maddening but it's not your fault. This too will pass. It will be forgotten. Everyone will move on. And if you're in the audience, appreciate how much work it takes to put a meeting or presentation together and show grace. One day you may need your own share of grace. We all do.

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The more projects I work on for voluntary bar associations, the more I realize that it isn't the lack of ideas that keep organizations stagnant, it's the lack of faith in those ideas. I hear so many great ideas from so many different people from varied backgrounds. But the ideas hit a wall of doubt and concern. "That's a great idea, but we've never done that and we don't know anyone else who has." "Can you guarantee this will work? That it will succeed?" Voluntary bar associations are on the precipice of thriving or dying, and those that thrive will embrace their members' big ideas.

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I've served in my share of voluntary bar associations and have seen, over the years, some members position themselves for leadership slots by pursuing and volunteering for high profile tasks in the organization. These tasks generally fall in the areas of membership and marketing. They're crucial tasks that require a lot of energy, time, service and sacrifice. On occasion, though, I'll see a member pour herself into an area that likely won't lead to a top leadership position, but she pursues it because it serves the members and serves the less privileged outside the organization. These are service projects, volunteer projects, pro bono, fundraisers and related tasks which also require a lot of energy, time, service and sacrifice, but don't receive the same attention, and the person pursuing these activities knows this, knows she may be sacrificing a top position in the organization by pursuing these perceived secondary activities, but embraces them wholeheartedly anyway. To those of you who do this, you have our thanks.

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When selecting speakers for your legal events, particularly when it comes to experts and consultants, choose speakers who will share their expertise, answer tough questions and avoid self-promotion. Even if speakers are paying to speak, their primary objective is to teach, not sell. They don't have to share all their trade secrets when they speak, but they should share many of them.

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What if voluntary bar associations made house calls? Fewer firms, especially larger firms, are sending their associates to fewer conferences and bringing more training in house. What if voluntary bar associations created 1, 2 and 3 day training programs and had their members go directly to firms, and present directly to the associates at those firms in their conference rooms, with associates at satellite offices attending via Zoom, Skype or Go to Meeting?

More revenue for the voluntary bar association at little or no cost and firms get expert training of all their associates In one place? Food for thought.

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I belong to various bar associations. Some are quite selective. Imagine all of them working together, realizing their potential and power together, and aligning themselves to do things that are nothing less than life changing, community changing, history changing. Imagine that. Look around. What a team. What potential. What transformative power.

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Voluntary bar associations are well served to identify thought leaders among their ranks. As bar associations struggle to remain relevant and solvent, incremental change such as another CLE program or an additional webinar isn't going to turn things around. Drastic change may be in order and if so, you need to identify your members with big ideas, who have plans to implement them and have the time and wherewithal to make their ideas a reality. They don't have to be leaders in your organization or have titles. They simply have to see the writing on the wall and see how your struggles can be turned into triumphs.

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Our internal data and market research clearly show that the ABA is on a trend line that will render it irrelevant and fiscally unviable. This is from an internal ABA memo. Think about that. The ABA itself is saying it may become obsolete. Most voluntary bar association struggle with decreasing membership and relevancy. How can they turn this around?

Who are you?

Organizations have to break through the noise so lawyers can learn who they are and what they have to offer. To do this, organizations should consider giving stuff away—e-books, webinars and other resources to hook prospective members.

What is this going to cost me?

Organizations have to give more for less. Instead of raising dues, how about lowering them? And in addition to lowering them, how about giving more freebies that accompany membership? For example, reduce membership cost by 20% and offer 3 CLE credits for each year's membership. How does an organization increase revenue by charging less for more? If you're providing more value than other voluntary bar associations, you're going to attract more members, so many more, that any loss of income will be exceeded by new membership dues and attendance fees at your events paid by these new members.

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Podcasts are a great way for a voluntary bar association to introduce itself, what it's doing and its members to the general legal community. They're

quick and inexpensive to produce and provide another vehicle of sharing content. More of us lawyers spend more of our time listening to podcasts and even though new legal podcasts are regularly popping up, we are far from reaching the saturation point for legal podcast content.

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Cleaning out the Florida Defense Lawyers Association's office in Tampa and moving stuff back home and I realize a few things:

- Most voluntary bar associations need less space than they think for their offices.
- Paper is overrated. Get rid of all the paper.
- An office has to be fully mobile. With conferences and events everywhere, a laptop and cellphone should have everything a bar association needs. An executive director should be able to run a bar association from a Starbucks.
- If you have banners, and gifts and other items to promote your organization, keep it simple, keep it small and remember attorneys will join your organization because of its services and value, not because it has cool flyers or banners.

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Most voluntary bar associations struggle to recruit new members and keep these new members engaged. Some organizations give a free one year membership. This may be ineffective because those who have to be given a free membership to join are not likely to stay when they have to start paying for membership. Some organizations try to convince members to pay for membership out of their own pocket when firms won't. This approach often doesn't work either because being involved in an organization financially costs more than annual dues. There are conference fees, travel and hotel costs and the like which can add up to thousands of dollars a year. An attorney is not likely to reach into his pocket to cover these costs and without such involvement, attorneys paying their dues will quickly question whether it's worth the investment and not continue paying their own dues. So where does this leave associations? There are firms who understand the value in having their attorneys join and get involved with bar associations and appreciate the return on investment in supporting their attorneys by paying their dues, conference fees and travel costs. Associations have to identify these firms, identify the decision makers at these firms and discuss the value of membership with them.

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Voluntary bar associations struggle to attract more members to attend their conferences. These associations need to understand that many law firms ask themselves the following two questions when deciding whether to send their lawyers to a conference—Will it make us money? and Will it save us money? In short, firms want to know will the conference potentially lead to new

business and will it show them how to reduce their costs. Great CLE remains a factor, but it's becoming less of a factor because there are so many great free resources, including CLE, that provide comparable continuing education. So yes, keep offering great CLE, but go beyond that and show how your conferences provide a resounding "yes" answer to these two questions.

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Voluntary bar associations regularly bemoan their inability to attract diverse members. How about this—sponsor a daylong event where your organization invites diverse lawyers to participate and have them tell you how to attract them and serve their needs. Provide CLE on diversity, leadership and empowerment issues, charge a nominal amount to cover your refreshments and CLE registration costs, and have your members interact with, listen to, and learn from diverse lawyers. Stop wondering how you can attract diverse lawyers and pick up the phone, call them, ask them to share with you and break bread with you and make your organization relevant to them.

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There's been an upsurge by voluntary bar associations undertaking charitable work, with more and more of them creating philanthropic committees and committing time and resources and attention to those committees. With all the needs in our communities, it's great to see this uptick in volunteerism and charitable contributions. If you serve on a board of a voluntary bar association and it does not have a philanthropic committee, discuss creating one and putting the organization's energy behind it.

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If your voluntary bar association is struggling to attract diverse members and getting diverse members involved, I would suggest you confer with other voluntary bar associations with similar issues and collectively set up conference calls or even in person meetings with diverse bar associations and seek out their advice on what your organization can do differently to attract and serve diverse members.

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For some organizations, strategic planning is both foreign and paralyzing. They've never done it, they don't know how to do it, they don't know where to start. Whenever I'm asked about strategic planning I say the same thing—it's easy. The leadership defines or updates its mission, vision and values, uses these to define its goals, develops a plan to achieve those goals, assigns tasks to specific individuals to effectuate the plan, sets a timetable and deadlines and creates accountability to ensure everyone is fulfilling their role to achieve the plan. It's actually quite simple. I'm always saddened to see any organization with potential—whether it's a voluntary bar association, a charity, a church or other group—not achieve its full potential, or worse, whither on the vine, shrinking into irrelevance. You have a purpose. Your organization is meant to do big things. But it won't if it doesn't have a plan.

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As lawyers, try to get involved in a local, a statewide and a national voluntary bar association. Local groups help you mingle with local referral sources and judges, statewide organizations help you mingle with firms who don't have offices in your neck of the woods and national organizations help you mingle with prospective clients who have litigation in your city or region.

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If you lead a voluntary bar association and are considering some networking ideas, consider the following:

- Speed networking. Have an event where your members can meet and get to know each other through speed networking, similar to speed dating.
- Lunch and learn. Have a firm sponsor CLE at their offices and have a modest charge to cover the cost of catered sandwich and chips lunch.
- Happy hour. Many bars will agree to drink and appetizer specials if you have your group meet at their locale on typically slow nights, like Tuesdays. Your organization can hand out drink tickets and pay for some appetizers and invite a vendor or two, who can sponsor the event and cover the modest cost.
- Joint events. To encourage diversity, do joint events with local diverse bar associations.

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The ABA is laying off staff due to dwindling membership. This is a common problem across most voluntary bar associations. The membership committee of any voluntary bar association seems these days to be the most active, hardworking, frenetic committee, like sailors hustling to pour out buckets of water on a ship with a hole in its hull. I've worked with my share of voluntary bar associations and believe too much time is spent trying to sell the product rather than improve it. If your organization is providing a quality product, members will join. Maybe not as many as you want, but they will seek you out. My approach has been to spend less resources on seeking new members and more on better serving existing members. Those members will sing your praises and recruit new members for you. No one likes a salesperson trying to sell them something they don't want. We're lawyers. Let's build associations other lawyers come to realize they can't live without. Less selling. More service.

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Having worked with several voluntary bar associations, it's a challenge to balance the need and desire for new initiatives, which will cost money and take time, both from the professional staff and attorney volunteers, against the need to keep an organization in the black, both in terms of membership and money. My approach has been to first create new revenue, either through cutting costs or creating new revenue streams, before spending



on new measures. In effect, spending money today in the hopes of making money tomorrow is always risky, particularly for voluntary bar associations with limited funds and a finite income stream. So strike a balance between focusing on money making ventures first (creating a membership drive, for example, with modest gifts for the highest recruiters) before focusing on money costing ventures, even if there is a potential financial upside to those money costing ventures.

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If you're involved in a voluntary bar association, and it's been a while since the leadership met to discuss strategic planning, or worse, has never discussed it, take the time to plan a one day meeting and discuss the mission, vision, values and goals of the organization and develop a plan to achieve its short and long term goals. This approach applies equally to nonprofits, law firms, companies, etc.

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When pitching a new idea to a voluntary bar organization or charity you work with, remember the phrase "new idea." New to most will mean untested, unproven, and a risk. If they green light and it fails, it's on them and they don't want it on them. So when you propose a new idea, propose a plan to implement it and volunteer to do so. And don't be afraid to discuss new ideas with others for fear it will be co-opted. Most will be too afraid to pursue it themselves. That's the thing with new ideas. Most are too tied to custom and tried-and-true to try anything new.

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If you lead a voluntary bar association, you need two things—members and money. You need members to lead, volunteer and attend events. You need money for just about everything. We can complicate things as leaders. How do we simplify? Ask yourself—Does your idea serve members and make or save money? There's always other questions to ask, but start with these two. By answering these first, you'll save your organization time and money.

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Voluntary bar associations should not be in the business of selling their members services they don't want. They're not in the business to convince their members, particularly their younger members, what's best for them, and if they only were to listen to the organization, they and their practice and their firm would be better served. If there is a segment of your membership you're not serving or you're wondering why you're not attracting more members, find out what services these folks want and how they want them delivered and give it to them on their terms. You would never return to a restaurant if they insisted you eat something other than what you ordered. We who volunteer at bar associations are in the service industry and we have to provide the services our clientele want not what we think they need or what we have done all along.

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When leading a voluntary bar association, you need to learn what your members want and meet them where they're at. To do so, you should be speaking and e-mailing with members. A survey is a good idea, but they provide only a partial picture. Actually e-mail and call individual members and ask them what more they want from the organization. What do they want changed? What do they want added? What concerns of theirs are not being addressed? Speak to both members who are active and those who are not. For those who aren't active, find out from them what would get them active and participate more. At the end of the day, any organization is made up of individuals and as a leader, you're serving them, and to do so, you need to know what they want.

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When getting involved with voluntary bar associations or charitable organizations, I prefer creating something from scratch than taking over a project that has been done for years. I'm not shy to suggest a brand new project, whether it's new programming, new marketing efforts or a new book, and volunteer to lead and take ownership of it. It's simply more satisfying. Having a vision, proposing a plan for it and executing the plan—it's a blast. When you're done, you can look at it and say, "I helped make that happen." When getting involved at your firm, company, a voluntary bar association or a charity, think big, be creative, exercise your imagination and propose your ideas to the leadership along with a plan on how you will make your ideas a reality. Dream and take the reins. Trust me, you'll love it.

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Whenever you join an organization, find out what their strategic plan is and volunteer to help bring it into fruition. If the organization doesn't have a strategic plan or has one in moth balls, volunteer to help them devise and implement one. No organization can do great things without a defined mission and a plan to execute that mission. There are few things more exciting when it comes to volunteering than being on the ground floor of molding a strategic plan and participating in it being carried out. Every organization should have a plan and you should do your best to play a role in it.

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To lead a voluntary bar association, you need to have a vision of what the organization can accomplish during your tenure that advance's the organizations mission statement. You want to think big, out of the box, and explore things the organization has never done, possibly that no voluntary bar association has ever done. Let your imagination roam where it chooses and brainstorm ideas that improve the lives of your members. Having another luncheon or adding a CLE isn't vision. Creating a pro bono or mentorship program is a vision. What is the biggest, coolest, most radical, life altering thing you can think of? Start with that.



## Future of Law

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Sears, which started in 1893 and was once the nation's largest retailer, was liquidating. A store that sold everything, couldn't compete with Walmart and Amazon and others who figured out how to sell everything faster, smarter, cheaper and better. They didn't keep up with the technology, trends, changes and interests. We can learn a lesson from the company who was once the best and may soon cease to exist. Change. Adapt. Evolve. Stay in front of the wave or be crushed by it.

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As firms seek to reduce costs, many firms are reducing their office space footprint by reducing the size of attorney offices and encouraging some among their ranks to work from home. Some see virtual offices as the future while others feel it is disruptive to the practice. Let me know if your firm has experimented with letting attorneys work from home and what your firm's experience has been.

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And now there is only one Blockbuster store left, located in Bend, Oregon. It's easy to say now that Blockbuster's days were always numbered. The model of customers going to stores, hoping their movie was in stock, standing in



line and invariable paying a late fee had a shelf life. It was the very type of model that entrepreneurs look at and ask, “how do I make a better mouse trap?” Blockbuster refused to see the change that was coming, digging their heads in the sand, assuming the income stream would never end. Blockbuster could have been a Netflix rival. But they refused to change because they were making good money and thought if it ain’t broke, well, you know. As law firms, no matter how well we’re doing, we need to be looking toward the horizon, studying the trends and staying ahead of the curve.

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Ignoring change doesn’t stop change. Newspapers ignored online content. Film companies ignored digital. Voluntary bar associations who ignore change won’t stop it. They will lose members and their relevance. Firms that don’t change will lose clients and eventually close their doors. Conversations that start “I don’t understand why X doesn’t want what we offer,” are useless conversations. I’ve sat through my share of conversations while serving nonprofits and voluntary bar associations where others have expressed exasperation as to why so and so doesn’t want X or why so and so doesn’t understand he needs y. It doesn’t matter what you think they need or want. We have to meet others on their terms, and those terms are changing.

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“Few law firms have a long-term, market-based strategy, or recognize that by proactively embracing new methodologies and technologies they will create the differentiators they need to compete effectively going forward,” Altman Weil principal Eric Seeger recently said. Many have said that technology wouldn’t change the profession during their careers so they didn’t have to worry about it. Well it has and it’s time to plan for it. Firms who learn how to leverage technology will be ahead of the curve in the years ahead.

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Predictive analytics has changed sports. Sports have gone beyond skills, craft, intuition and experience and have come to rely heavily on data to evaluate who to add to one’s team, who to play on a given night and which individual players to put together on the field or court for a given play or series of plays. It won’t be long when predictive analytics becomes integrated in jury selection, where lawyers will extract data points during jury selection and that data, along with any publicly available data of prospective jurors, will be analyzed and a formula will recommend whether to select or deselect a given juror.

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Companies invest in R&D. Why not law firms? The real money for firms in the future will be in software, apps and programs they develop and license to companies and other firms. Playing the long game, firms should consider investing some of their profits into studying, analyzing and developing legal programming which can create a secondary stream of income.

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What will revolutionize your firms, legal departments and voluntary bar associations are ideas. It does not matter from whom in the organization they come. Those with titles in the organizations are not oracles and do not own all the ideas. Ideas are not simply created from on high and trickle down to all below. Ideas are born of discussions, debates, and forums where everyone can speak openly, honestly and safely and can bring all they have to offer, from all their diverse and varied backgrounds, and in this incubator, they are hatched, nurtured and grow. Create forums where those in your organization can discuss and brainstorm the big ideas that will differentiate you from the rest. Consider having forums with broad topics to discuss, have a moderator that advances the discussion and have a scribe who takes down the ideas for further discussion. Doing things the way we always have, and tweaking things here and there does not make things better. Talking big picture will make things better. Ideas will make things better. Let's make things better.

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Do your firm a favor and become an amateur legal futurist. Study legal tech trends and postulate where legal tech is going. Firms who use the best of today's tech are at an advantage. Firms who can analyze the future of legal tech and be among the first to use the technology can dominate the market. And for those firms who partner with investors and tech companies to develop the next law tech, they will have the golden ticket. That's the top of the mountain.

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Today law firms send associates to deposition and trial boot camps. Soon they'll be sending them to law tech boot camps to learn the latest technology to better litigate and try cases. The FDCC has an intensive seminar teaching trial lawyers how to better use technology in the courtroom. Expect programs like this to become common. Also expect law schools to soon offer JDs with a certificate of law tech (some already are) designating their students trained and qualified in using the latest legal technology. Don't be surprised if joint JD-computer science degrees gain traction. Getting the most out of tech takes training and firms will have to invest more to train their attorneys, either in house or through standalone programs.

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As lawyers, we limit ourselves. We limit the direction of our firms, our cases and how we serve our clients based on how things are traditionally done and how our firms have traditionally done things. The practice and business are evolving too fast to assume that how we did things yesterday applies to cases we're handling today. Whenever tackling a problem—whether at your firm or with a case—conceive of the best solution or solutions and determine how to achieve those solutions without being bound by the steps, processes or procedures you've typically used.

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Many employers choose not to hire students right out of law school because they don't want to invest the time and money in them, when so many experienced lawyers are available in the marketplace. What if law schools addressed this issue by teaching 1 and 2Ls the basics—evidence, contracts, civil procedure, torts, criminal procedure, constitutional law, research and writing, etc.—and transformed the third year into an apprenticeship where their students would participate in a one year, unpaid internship at a private law firm, governmental entity or public interest group, and would be trained as lawyers in return for providing free legal work. The program could have a detailed curriculum to ensure these students were learning the necessary skills. The employers would recoup their investment in these students by billing some of their time to clients, while not having to pay the students. And this would dramatically reduce the cost of law school, because you wouldn't have to pay tenured professors to teach 3Ls in a classroom setting. Food for thought.

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Law firms in the coming years will take up less physical space. With paperless offices, remote access, and more clients who don't come to a physical office, expect law firms to dramatically downsize office space to reduce overhead. As a lawyer, all I need is a laptop and my phone to work. I can have these anywhere. There is going to be a downturn in commercial leasing in the coming years due to this phenomena and I don't believe developers have fully realized it's coming.

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How far off are we to having an app for lawyers that tell us what to do? What deposition should we take? In what order should we take them? What written discovery should we propound? How do we respond to that nasty e-mail from opposing counsel? Let's take a step back from our decision-making process as lawyers. Our analysis—based on the facts, law, the judge, opposing counsel, the client, etc.—is process oriented. If we learn this, we do that. If case X says Y, we do Z. With enough data, some of the process, not all of it, but possibly most of it, can be reduced to algorithms which lawyers can use to make decisions in their cases. Until this happens, our law firms owe it to ourselves and our clients to reduce our analysis to a process that can be replicated by the attorneys at our firm.

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Firms should have their own R&D departments, where a subset of their lawyers discuss and analyze ways they can provide better services for less, whether it's developing new internal processes, purchasing new technology or partnering with a third party. Clients appreciate your efforts to serve them better while costing them less.

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Corporate clients hate litigation because it is inherently unpredictable. How a given judge or a jury will rule cannot be predicted. But what if it could?



As more and more court records are available online and more and more algorithms are designed to evaluate data, the day will come when a service comes along that will predict how a given judge will rule on your client's motion or how a given juror pool will resolve your case. The information is out there. For the entity willing to gather, review and study it, they have the ability to create a certain degree of predictability in a field that historically is unpredictable.

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Ask your clients what technology they use for their businesses. What hardware? What software? What programs? Which apps? Learning how your clients use technology helps you better serve them and you may learn what new technology you should incorporate at your firm and practice.

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Two rules for your law firm. First, be the market disrupter that other firms have to chase. You're being proactive, not reactionary. Second, that market disruption you're so proud of? That has a shelf life. Conceive of the next market disrupter and do that. Rinse. Repeat.

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Young lawyers have an advantage in detecting and getting ahead of market disrupters, particularly those driven by technology. How long will it be before those who provide CLE transition to a subscription based website like Netflix? How will social media continue to evolve? How will what Amazon is doing in the retail industry trickle down to the legal industry? Some more experienced lawyers are not in tune with these upcoming changes because they're technology adverse. Young lawyers, who generally have embraced new technology and are looking for new and better technology advances, are key to firms embracing changes and adapting to them.

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What if the legal industry goes the way of gathering data like Google and Facebook where it's not just one client mining and quantifying our individual law from data, but an umbrella entity that mines and measures most clients' outside counsel legal spend and results? How far are we, as law firms, from a time where not only do individual insurers and companies look at their respective firms and compare those firms to one another, to having most of these insurers and companies work together and share this information? Algorithms feed on data, and the more data (assuming the data is pertinent and accurate) the more accurate the results. What results do you think clients will find from so much data and how can we, as firms, stay at or near the top of those calculation results? It's coming.

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Litigation has become very data driven. if you work at a small firm and don't have access to litigation data available to larger firms or larger clients, consider the following when evaluating risks in a given case:



- Review local jury verdicts and awards.
- Review articles about local trials.
- Review how opposing counsel's firm has done at trial.
- Review how opposing counsel has done at trial.
- Review appellate decisions upholding or overturning your judge.
- Discuss with your client how their corporate representatives and employees have done in prior depositions in prior matters.
- The more relevant data you have, the more informed your client's decision will be on how best to proceed.

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Let's say you're 26 and just starting your career as a lawyer. You got about 40 years ahead of you. That means you don't retire until the late 2050s. Think about how different the practice of law will be then. Will there still be trials? Will companies simply put everything out to bid online? Will androids be helping you do your job? Perhaps replacing you? You need to reflect on how technology is changing our society and business and how it will change the practice in the next 5, 10, 20 and 40 years. You want to study the trends so you can anticipate the news ones and get ahead of them instead of them getting ahead of you.

Don't settle for knowing what's going on today in the field of law and business—take the time to learn and study future trends that will affect your practice, your firm and your clients. Create a list of websites, blogs, journalists, LinkedIn Groups, online magazines and newspapers and Twitter handles to follow to keep current about the changes that will affect you and those around you. By doing do, you will come across as better informed and will have sources for papers and presentations you do. Due to technology, our practices are changing at the speed of light. Make sure you keep up with what others are saying about these changes.

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## Mentoring

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Ah, what to expect from your relationship with your supervising lawyer. There's a lot to unpack here.

First, there are generational differences, generally, on how partners relate to their associates. Many senior attorneys received limited mentoring, had demanding bosses, and worked harder and for longer hours than was reasonable. They went through it so they expect the same from their associates. This is a tough place to be as a junior or mid-level associate, because you're working in 2019 but expected to work as if it's still a generation or two ago. My best advice is to sit down with other associates who have worked with that partner, including attorneys that have moved onto other firms, to better learn how to deal with him/her.

Second, none of us learned how to mentor, lead or manage in law school. So be proactive with your supervising lawyer to learn about his/her expectations and address any issues about your responsibilities and role. It's not uncommon for a senior lawyer to leave something unsaid or have unspoken expectations and become upset when they're not met.

I could tell partners to change their behavior, but most of us are set in our ways. The best I can do is help you navigate those set ways. Communication is key.

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Find the lawyer you want to be and ask him or her how they got where they are. When I started writing for lawyers, I reached out to Ervin Gonzalez, who wrote and was published the way I wanted to write and be published. He told me everything he did. I did it too and it worked. We all have egos. If someone emailed or messaged me they wanted to do what I do, I would tell them. You would too. Find that one attorney you want to learn from and reach out to her.

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If you're a young lawyer at a small firm or at a small satellite office of a large firm, and you don't have peers you can go get coffee or lunch with, search out young lawyers at local firms and get together once a week. We all need peers who are going through what we're going through to help us through the hard times.

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Support one another. Take the time to celebrate other young lawyers' accomplishments. Each of us is inching and scraping, clawing and grasping to create our own space and voice, our own impact and change. Sometimes we fall and get scraped on the ground. Sometimes we falter and fall short. And when we do, it's good to receive words of encouragement. And when we succeed, it's rewarding to hear compliments from others. Do you part to encourage others. It makes a difference.

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I've had the pleasure to meet with a lot of young lawyers for coffee in the morning at a Starbucks near my office. I'm impressed with how they understand that the practice of law is intertwined with the business of law, and their success depends not only on producing quality work product but on developing relationships with potential referral sources through getting involved in voluntary bar associations, trade associations and nonprofits. I am concerned, though, how many of them do not have attorney mentors in their lives. They get ad hoc advice from the likes of me and others and are desperate for a deeper mentoring relationship. If you're a more senior lawyer and can make the time, mentor a younger lawyer. He or she will greatly appreciate it.

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If you're an experienced attorney and are not currently mentoring a young attorney, find one and mentor her. With firms and legal departments cutting costs, young lawyers are receiving less training and guidance. We all need to do our part to fill this gap and help young lawyers develop the skills they need to better serve their employers, clients and profession. It doesn't have to take much of your time and it will change a life and a career.

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This goes out to all the experienced lawyers out there. You have so much to teach young lawyers, who crave a mentor. Take the time to post your advice on LinkedIn and offer to be the mentor to one of your less experienced

lawyer contacts on LinkedIn. We've all been blessed by this profession. Without it, my boys may have had to give up on their dreams related to music, because between the instruments, lessons and travel, the costs add up. Pay it forward.

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We all have a duty to pay it forward and help others up to where we now tread. If you're a senior attorney, mentor a younger attorney. If you're a younger attorney, mentor a law student. If you're a law student, mentor a college or high school student. As lawyers, we were blessed with the opportunity to go to college, go to law school, pass the bar and practice law. There are billions of people on this planet who because of their circumstances, never had that opportunity. Yes, we worked hard, we made sacrifices and we earned the right to be called lawyers. But never forget that we had the support of family and friends and circumstances that many don't. For this privilege, we owe it to others to bring them up to our level and teach them what we know. If you're on LinkedIn, post about your experiences and your advice to help others not make the mistakes you made. It's rewarding and life affirming.

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As associates, you need to seek out mentors. Find a mentor at your firm, but don't stop there. Seek out mentors outside your firm. We all don't have the same skill set. One mentor who is great at depositions may be terrible at marketing, and a great trial lawyer may not know how to run a law office. Make a list of what you need help with and seek out mentors who are considered among the best in those areas. And if you're searching for mentors on LinkedIn, search out other attorneys like myself who enjoy sharing their thoughts on the practice, and follow them and read what they have to say.

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Read your firm's website attorney profiles and the profiles of attorneys of other leading firms in your practice area. See what they have written, what organizations they belong to, the leadership roles they have held and generally, their background. These are the folks you want to emulate. Study them.

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Each lawyer has one or two skills at which they excel. They may be attorneys at your firm or they may be attorneys you come across in your practice. Ask them to be your mentor, take them out to lunch and establish a long term mentoring relationship where they help you grow as an attorney. And of course, pay it forward, to less experienced lawyers than yourself.



## Confidence

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We underestimate what our body language conveys to others. If you want to convey confidence, your body language has to express it. Make eye contact. Shoulders out. No slouching. No aversion of the gaze. Take up more space with your legs and arms and hands. Own your space. I'm not tall—five foot nine—but I stand the full five foot nine and then some. Stand like you're the tallest person in the room.

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Own the space. Own your office. Own the space when you sit or stand. Own the space when you argue a motion or present your case to a jury. It's your space. Use it to communicate. Use it to express your confidence. Use it to support your authority, position and arguments. Use it to show you're in charge. You've got this. Own the space. It's yours.

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Confidence, self-possession and owning your space isn't physical, it's mental. Years ago I was in the greatest shape in my life, but was depressed and anxious, and exuded little if any confidence. Today, I'm far from being in great shape, but through my writing, speaking and leading, the one thing I don't lack is confidence. Of course, I should eat better and exercise more, no doubt (and both of those are on my to do list). But for those of you who think you're too tall or too short, too thin or too heavy, too slight and too small, confidence is not born of your physique but in your mind. Develop it and don't be preoccupied how you look in the mirror.

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## Job Search

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I believe the marketplace propels entrepreneurs to find solutions to problems and satisfy unmet needs. It won't be long until someone figures out how to do the following:

Serve as a recruiter to those who didn't graduate from the best schools with the best grades.

There are a lot of attorneys who didn't go to top schools and didn't get great grades, and struggled dealing with a lot of noise in their lives. And they're out there and their resumes don't garner the attention of recruiters. A lot of them have the grit and work ethic to succeed if someone gives them the chance.

For those folks, why isn't there a recruiting service that provides them the skill set they need to thrive in firms, provides them a curriculum to achieve those skills, has tests to measure their skills and then places them at firms who are less concerned about what diplomas are on their walls and more with what hustle and fight they bring to the game?

If someone could serve this underserved class of lawyers while serving those firms that would be a good fit for them, they would have a corner on that market. Create a reasonably priced training program for young lawyers and charge reduced recruiter fees to make the young lawyers more attractive to firms—that could revolutionize everything.

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A mistake some associates make is leaving a good job for another good job hoping it'll bring them closer to their great job. If you're at a good job but not the job you really want, do the following:

1. List 5 attorneys in your geographic area who are doing the work you want to do, who represent the clients you want to work for and who have a reputation of mentoring their associates.
2. Reach out to them, let them know you want to learn their practice area, that you consider them among the best in that area and you want to invite them to coffee to learn more about the area.
3. After coffee, thank them for their time and stay in touch. Offer to write an article with them, speak with them or volunteer on a project with them.
4. Develop a real relationship with them. If you're working to become an expert in that area, and they see that, and they see your work ethic and grit, you may get an offer from one or more of them. An offer from the perfect boss, as far as you're concerned.

You want to land your ideal job? This is a way to do it.

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Getting a job often comes down to whom you know. But what if you don't know anyone? You need to get to know others. If you're a law student or young lawyer looking for a job, and you don't have connections, join a voluntary bar association, volunteer for committees in the practice areas you want to work in, get to know folks in those committees and when the time is right, inquire about job opportunities. Yes, this is long term commitment, but it works.

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So you're at a firm and it's not a good fit. You're thinking of switching jobs, but there's a part of you saying to stick it out. How do you make the best of a bad situation?

- Learn as much as you can. Soak up all the wisdom and experience the attorneys there have to offer. Read their hearing, deposition and trial transcripts and discuss with them why they said what they said. Listen to free CLE and legal podcasts in the car and read legal blogs and publications at home.
- Network. Join a local voluntary bar association and network with prospective mentors and employers. Maybe you'll discover you don't have it so bad. Or maybe you'll confirm to yourself you need to leave and find someone who will provide you a way out.
- Play to your strengths. Find a skill set you excel at and make it even better. Being great at something gives you more autonomy and more control over your destiny.
- Pursue a hobby. Join a book club, take an improv class or join a gym.

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Soft skills get you hired. Being an effective public speaker—having command of a room, owning your space, good posture, eye contact, a confident smile that is expressed through your eyes—being an effective communicator—saying what’s important clearly and succinctly—being confident—having confidence, having a bounce in your step, taking up space with your physicality and voice—these soft skills are what prospective employers notice in an interview. Take the time to develop them through Toastmasters, improv classes, speech classes or pay for a lesson or two with a speech or voice coach. Investing in yourself will pay off big dividends.

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Don’t choose a firm. Choose a mentor. When you’re looking for a job and you’re choosing between law firms, find the best, most ethical, kind lawyer you can find who wants to invest in you and our career.

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Getting a job in this legal market is tough. It helps to have relationships with lawyers who can hire you or recommend you to their peers. Here are some suggestions:

- Get involved with your local bar associations and volunteer to organize, market and run local events.
- Volunteer for local nonprofits and charities where other lawyers also volunteer.
- Seek out any local legal mentoring programs. If there are none, work with other lawyers to develop your own.

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If you’re a law student and are considering an internship, how about reaching out to a local voluntary bar association and volunteering for them? You’ll become one of the faces of the organization and will interact with lawyers in your local community who may offer you a job after graduation.

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If you’re a young lawyer struggling to pay the bills, here are some suggestions to supplement your income:

- Teach a class. Apply to teach a class at your local law school or college.
- Teach CLE. Some CLE providers pay lawyers to offer CLE.
- Freelance writing. As a young lawyer with a young boy with sensory integration dysfunction that needed loads of therapy not covered by insurance, I freelance wrote articles to pay his therapists.
- Freelance research and writing projects. Small firms and solo practitioners need outside lawyers to jump on research projects for them for an hourly fee.

- Focus groups. Third party legal vendors, including Westlaw, pay lawyers a per diem for focus groups testing their new products.
- Vendor recruitment. Voluntary bar associations struggle securing vendors for their events. Agree to recruit vendors for voluntary bar associations in return for a finder's fee.
- Tutor. Tutor students in writing, taking the LSAT and classes you excelled at.

It's a shame as lawyers that some of us have to seek out supplemental income, but there are supplemental opportunities available if we have to pursue additional funds.

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If you're a young lawyer and are interviewing at a firm, speak with associates who previously worked there and get their opinion about what it was like working there. You can find alumni of firms through LinkedIn. There's little worse than an attorney who is all smiles when he interviews you and turns out to be a jerk after you start working for him.

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If you're a lateral candidate, and you want to distinguish yourself from other applicants, do the following:

- Send a copy of a deposition transcript of an opposing party you took.
- Send a copy of a Motion for Summary Judgment in which you incorporated the testimony of that opposing party.
- Send a copy of the hearing transcript from the summary judgment hearing. It doesn't matter if you won or lost the hearing.

If you secured admissions that served the basis to move for summary judgment, you in fact moved for summary judgment based upon those admissions, and you tried to convince a judge how those admissions demand summary judgment be entered, whether you won or lost the hearing, if you did all that, you're going to get hired. Maybe not by your first or second choice firms, but you will get hired.

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If you're an associate, don't chase the money. Chase the best lawyer in the practice area you want to pursue and go work for her even if you can make more elsewhere. You will more than make up for that compensation over your career by learning from the best.

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Law students ask me how to get a job in this competitive environment where we have more lawyers than jobs to fill. I always say the same thing:

1. What area of the law are you passionate about? Employers can sense excitement. It comes across in interviews. You can't fake that. Look for those jobs that get you excited.

2. Network. Seek out organizations that cater to attorneys that handle that type of work and attend their functions. They generally allow law students to attend for free or for much less than what full-fledged members pay. Network, meet people, set up lunches or coffees, and follow up.
3. Write. Even if you're in law school, there are opportunities to write, namely for the publications of these voluntary bar associations that cater to lawyers you want to work for. Being published sets you apart from the pack.
4. Know about the firms you're applying to. Form letters seeking jobs get tossed into the round file. Learn about the firm, the attorney your writing to and explain how you can help them better serve their clients and fulfill the firm's mission.

Getting jobs out of law school is tough. I'm not going to lie. But think about ways you can network and get in front of the decision makers who can offer you your dream job.



## Clients

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Some clients complain we lawyers talk too much and say too little. Sometimes the answer to a client's question is just one word—"yes" or "no." It may not be the answer they want, but it's the answer they need.

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Each client has a base knowledge of the legal system, her case, and how her case should be handled. Speak to your client on her terms. Determine what her base knowledge is (it may be greater than yours) and talk to her on her terms, not yours.

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Communication is an overlooked skill among lawyers, especially with clients. We ignore discussing with them aspects of the case and strategy we take for granted but which is foreign to them because they are not litigators. It's better to keep your client over informed than under informed. Put yourselves in the client's shoes. Personally, I would want to know more than everything and I interact with clients that way.

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Define the scope of your relationship with your client in your retention agreement. If that relationship changes, amend your retention agreement. You may need to rely on this clause in the future.

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Take the time to learn your client's business, including its mission and vision statement and company's values. If your client's case goes to trial, you will need to tell its story and you want to know from the inception of the case what matters to your client and what values it lives by.

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Managing client expectations. These days, we all expect immediate responses to our communications, as do our clients. When you receive an e-mail, call or text from a client and you can't substantively respond to it right away, provide the client a place holder where you acknowledge receipt and let her know when you'll fully respond so you show your concern and interest. If you don't respond promptly, the client will find an attorney who will.

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Clients want lawyers who are their partners—lawyers who study their business, learn their needs, collaborate with them on how to define a win, choose goals to pursue and how to pursue them. At the end of the day, whatever the outcome, it's first and foremost the client's outcome and the lawyer needs to work with the client to achieve what the client wants to achieve, not what the lawyer thinks the client wants to achieve.

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Clients want confident lawyers. They want lawyers who believe in them, in their cases, in themselves and in what they say. You don't need a great case to be confident. Actually, the best lawyers exude confidence when handling terrible cases. Clients want to know they're in good hands. They can smell fear and desperation. Believe in yourself, and train yourself to do so by tackling tough situations outside the practice, through volunteer work or otherwise, to show yourself you can stare down the toughest situations.

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One of clients' biggest pet peeves is not being kept informed about their cases. Make sure you speak with them before making any decisions in the case or spend any of their money and send them regular e-mail updates which create a paper trail if there are any questions down the road about what you told them and what you did not.

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Always ask your client for their organizational chart. This will be immensely helpful when tracking down witnesses and documents and deciding upon whom will testify as a company's corporate representative.

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As lawyers, even dealing with sophisticated clients, we should not assume they understand the litigation process and why we do what we do. Without being condescending, explain, for example, how one prevails for summary judgment, and specifically how you plan on preparing for summary judgment in their specific case. Assuming our clients understand the litigation process can result in unintended miscommunications.

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You're a young lawyer and you get an e-mail from a client angry about something—a motion that was filed, a letter you sent, advice you offered—and the panic sets in. This is where you stop, take a breath and think about how best to respond. This is where you get the partner involved or a senior attorney. The situation needs to be addressed, defused and handled. Your first goal is not to make the situation worse. Don't engage. Get help and craft a response. In all likelihood, the situation isn't as bad as you think and the right person offering the right response can put it to bed.

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As lawyers in law firms or companies, we can never respond to a request from a client, supervisor or customer that it's "not my job." It's always our job. Even when it's not remotely our job, it's our job. If you can't do the job or don't know how to, find out who at your firm or company does the job and get her involved. We're a service industry. It's always our job.

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Before representing a client in litigation, take the time to learn about the company. Start with its mission statement, its vision, its goals and most importantly, its values. What drives your client and drives their decisions will drive you when representing them. If the case goes to trial, not only will a case be tried but the company itself will be on trial. How you represent them is a reflection of them as much as it is a reflection of you. You want to represent your clients zealously within the confines of not only ethics and the law but within the framework of what defines and drives your client.

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Clients don't like surprises. Don't paint too rosy of a picture of your client's case. Don't propose a budget that you likely will exceed. Never guarantee an outcome. Yes, clients want confidant lawyers who can see the case from their vantage point and fight for their position. But you're not doing anyone any favors by providing a less than honest evaluation of the cost, risks and potential outcomes of a case to your client. Not all cases are winners. In fact, some have quick settlement written all over them. Telling clients what they want to hear may get you the client but that approach will also cause you to lose that client over the long term.

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We all want what we want right now. With the advances in technology, we expect immediate responses to our e-mails, text messages, Facebook posts, etc. I can't pinpoint when the expected response time became what it is, but there's no denying that this wasn't an issue 20, or even 10 years ago. Just as we have become accustomed to immediate responses so have our clients. This creates two issues—first, availability. There's a tension between meeting your client's needs on their terms and still preserving a personal life with family and friends. There's no easy answer to this issue, other than to say that many lawyers will make themselves available anywhere at any time, and some clients will insist on this. You have to make your own choices on

this issue (unfortunately, for some of you, your firm will make these choices for you). Second, there's the thoroughness of you responding to clients' inquiries. Not only do clients want a quick response, they want the right one. Never let speed undermine accuracy. If you need time to research an issue, provide the client information that you know and let her know you need X amount of time to respond to the rest of her inquiry. Unfortunately, the speed of business is approaching Mach I, and we have to do our best to keep up.

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As lawyers, we need to regularly communicate with our clients and let them know of any facts that develop that change the likely outcome of a case and therefore changes our analysis of that case. As lawyers, we evaluate risks and outcomes. We know the law, we learn the facts, we understand our clients' needs and wants, and based on this we evaluate likely outcomes and offer strategies to handle matters based on these likely outcomes. This case assessment is based on an honest evaluation of the case, good and bad, and a regular updating of this analysis based on new evidence, for example a smoking gun document or a lying witness. There are a host of things that can happen that can change a case's trajectory. Always keep the client informed of new evidence and its effect on the case at hand.

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Had closing arguments today in a bench trial. Had to remind myself of the basics. Focus on common sense and credibility. What plays to the fact finder's common sense? What undermines the opposing party's credibility? If your side of the story makes more sense and you can make the other guy look like a liar you've done your job. Take a seat and let the fact finder do their job.

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When you discuss with your client what their goals are for a lawsuit, don't simply find out what they want but find out why they want it. Why must a case settle for X? Why don't they want to bring a certain claim? Why can't a company say Y or do Z? Knowing your client's "why" is as important as learning their "what." We all want things and expect certain outcomes based on our perspective, world view, experiences and desires, and getting to the bottom of these with your client will help you direct your litigation strategy on terms consistent with your client's wants and needs.

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In your retainer agreement with your client, spell out the scope of the representation to avoid misunderstandings down the line. Also, when you first get a case, see if anyone else can pay your bills, either through insurance or indemnity. No client likes paying legal fees. If you can get someone else to pay your fees, your client will greatly appreciate it.

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We're in the solution making business, not the problem creating business. When a client brings us a problem, they want answers, not more problems.



They want you to make an informed decision about what's best for them, based on the facts and the law. You never want to guarantee outcomes but you don't want to shy away from helping your client make an informed decision. Falling back on saying "it can go either way" or chances of winning are "50/50" are not particularly helpful. Take a position, without overstating it, and then stand by it (unless the law or facts substantially change).

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When dealing with high profile cases, make sure you and your client have a media plan. Who is going to respond to media inquiries? What's going to be said? What if counsel receives a call? How should one respond? With more and more news outlets vying for copy and leads to put in their publications and on television, the greater the interest in cases that once would not garner any public attention. Many companies have public relations arms on dealing with bad publicity. Make sure you and they are on the same page.

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Clients seek confident attorneys. Hesitancy, lack of eye contact, weak body language, providing indirect answers to direct questions—these are things that make clients lose confidence in you and your firm. They want to know that you have a plan and that you have the confidence to execute it even when things don't go exactly as planned. And just as clients seek out confidence, so do judges and jurors. Advocate with conviction. Be sure of yourself and the position you're advocating, and it will translate into convincing fact finders of finding for your client.

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Never answer a client's question from the hip. Make sure you know the answer before offering it. If you're not sure, even a little not sure, let the client know that you will get back to her. "Let me check" or "Let me be sure before I address X" is a perfectly appropriate answer. Let the client know you will look into the issue and provide a time table as to when she should expect a response. It's better to ask for time to think through and possibly research the answer to a question than offer the wrong answer and have to back pedal later.

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Read what your clients are reading. If you're connected with them on LinkedIn (and if you're not, you should), see what they're posting, what they're "liking" and what groups they belong to. Explore what magazines they read and websites and blogs they follow and do the same so you understand their business and can better serve them.

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My partner Bud Clarke likes to say "Don't make the client's problem, your problem." You can't control what they do. You can only control your reaction and your advice on how they should address their situation. Bad facts are not your problem. Not managing them properly is. Learn the difference.



# Public Speaking

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We lawyers can learn a lot from comedians. They know how to say so much with so few words with the most impact. Watch your favorite comedian on YouTube or Netflix and study how he/she builds to the payoff and then delivers it. By the way, humor is a great skill to develop when it comes to public speaking.

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Being a good story teller depends on developing a good memory. I've learned to take fewer notes, write less stuff down and listen more to train myself to retain more in my head. Effective speakers don't rely on notes. To train yourself to do this, you need to break yourself of writing everything down and constantly referring to your notes in your everyday practice. It takes time to develop this skill set but it's worth the time and challenge.

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Every presentation isn't a monologue, it's a conversation. Even if your audience doesn't speak a word, you are having a conversation with them. You're looking out into you audience, you're evaluating what is working and what isn't, and you're responding to their communications by adjusting yours.

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When I attend conferences, I see others take notes while the speakers present. Most folks don't keep their notes and what they learned is quickly



forgotten. Be the type of speaker that shares truths that are so memorable they don't have to be written down. Use catchphrases that serve as hooks for larger truths that burn into your audience's mind and stay there weeks, months and even years later.

When presenting to lawyers at a conference, keep the following in mind:

- Get to the point. Avoid digressions, war stories and unrelated comments.
- The power point is a tool, not a crutch. Avoid reading from or overly relying upon your power point. In fact, consider not using one at all.
- Don't self-promote. If you come across as a master of the subject area, you don't have to say you're a master of the subject area.
- Walk around and engage the audience. Have a conversation with them on your topic. Keep them involved.
- Have a list of the main points you want to cover to ensure you cover them. It's easy to overlook some crucial points when you start engaging with the audience and answering their questions.
- Will it play in Peoria? An old vaudeville reference to ask yourself—will your presentation resonate with most folks or will it either be too basic or too esoteric?
- Know your audience. Ask before you speak what your audience members are interested about regarding the topic you're presenting upon.

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Public speaking is a great way to attract clients. But it's so much more than coming across as an expert in your field. The audience is looking at you and evaluating whether you're confident, you're engaging, you're in charge and in control and you're a leader.

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We overuse PowerPoints. Yes, they can be effective, but not always necessary. PowerPoints have become a crutch. If you have a PowerPoint, the audience, jury or judge is often looking at the PowerPoint and not you, and the attention should be on you as the speaker. Lincoln didn't use a PowerPoint to deliver the Gettysburg Address. Kennedy didn't have the phrase "ask what you can do for your country" on a slide on a screen behind him. Always ask yourself—does the PowerPoint add value. If not, skip it.

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As lawyers, we do our share of public speaking. We assume we all know how to speak well, but speaking is actually an art. There are voice coaches who teach radio hosts and television personalities how to speak to the audience. Practice your public speaking by recording on your phone a run through of your next presentation and then listen to it carefully. Study what you don't

like and change it. Watch and listen to annunciation videos on YouTube. Consider hiring a voice coach for a lesson or two to learn voice exercises. You want to be able to hold the audience's attention through your voice, particularly if you're recording podcasts or webinars, so work on your voice.

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Folks listen to us for what we have to say much more than how we say it. I often hear speakers spend so much time and effort in being humorous, clever or overly engaging and their message is lost by their delivery. Public speaking should be focused on the message, not the messenger, on the idea and not how the idea is conveyed. If you have something to say, people will listen. If your focus shifts from the idea to you, from what you're trying to convey to how you're conveying it, you're missing the point. I'm not here to entertain you. I'm here to share an idea (or two) with you that will change you. I need to get out of the way of the idea and let it do its job.

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Whenever making a presentation, make sure the audience has at least one take away they can immediately apply in their lives or professions. So often, we get caught up in the minutia of our presentations. No one is going to remember the details. They're going to remember the big picture so make sure you have something to say, say it clearly and directly and show how what you said can be applied to the audience's life to improve their circumstances for the better.

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I'm preparing power points for talks I have coming up and I'm going to try something different. One word per slide. No images. I have a theory—if you can tie an idea to a word and share that word, the next time your audience hears or sees that word, that word will trigger your idea. It's great to have an idea, but unless people remember and live your idea, it's an unfulfilled idea.

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When speaking—at a hearing, trial or at a conference, or otherwise—take your time. Don't speak at a crawl, but deliberately slow down. This allows you to think as you speak and be more selective about your diction, cadence, emphasis, etc. I'm a notoriously fast speaker. I've realized that by speaking fast, I don't get my message across and I don't sound as confident as I should. Think of motivational speakers, religious leaders and other leaders regarding how they speak. They want you to hang on every word and they speak in a manner to make you to do just that. Remember, slow down and live in the moment of what you're saying.

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If you use too many fillers when you speak (“um,” “like,” etc.) practice speaking with a friend with an empty bowl and a handful of coins. Every time your friend catches you using a filler, have her throw a coin in the bowl.

After hearing that sound over and over” you’ll hear that sound long after the exercise and catch yourself. It’s an old Toastmaster’s trick.

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Getting comfortable with public speaking comes from doing more and more public speaking. Start small. Think of teaching opportunities—Sunday school, your kids’ school, lunch and learns at your office. If you do enough small scale speaking, speaking before larger audiences will be much easier.

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When you’re speaking publicly, be energetic, be interactive with the audience, have a beginning, middle and end and keep it brief. We all have shorter attention spans, and no one wants to listen more than they absolutely have to. Don’t talk about what you’re going to talk about and how what you’re going to say is going to help the audience. Just say it and let the audience react and make their own decisions about the impact of your words.

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A few power point tips. Fewer words, more images. Careful with font type, size and color. Avoid long videos. Fewer slides. Always fewer slides. Abraham Lincoln gave the Gettysburg Address without a power point. If the power point doesn’t enhance your presentation, fix it or skip it.

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If you want to work on your public speaking skills, watch Ted Talks and listen to their podcast. I listen to the podcast in the car. The ability to convey an important message, in a humorous engaging manner in under 20 minutes—that’s public speaking gold. Whether it’s arguing a motion, presenting opening statement or speaking at your local Rotary Club, holding an audience’s rapt attention will distinguish you in your field.

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Power Points have become ubiquitous among attorneys. We use one at every speaking engagement. To keep our audiences engaged, we should keep the following in mind:

- Limit the amount of copy. You want your audience watching you not reading the screen.
- Use images that convey your thoughts. I know speakers who only use titles and images in their power points. Very powerful.
- Don’t use it as a crutch. We can overly rely upon it during presentations. It’s a visual for the audience not for the speaker.
- If a slide doesn’t enhance your presentation, don’t include it.
- Slides should convey the big thoughts and takeaways.
- Show your slides to a loved one or friend and gauge their reactions to it. Their input is very valuable.

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## Writing

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If you want to write a book but it seems too overwhelming, commit to blogging or posting each day. After 3 months, you'll have enough for a strong start for a book. In fact, I'm considering cutting and pasting my LinkedIn posts, organizing them by topic and turning them into a book. It's easier to write a book when, without realizing, you've already written most of it.

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Teachers and professors—eliminate a mandatory minimum number of pages or words for your papers. This teaches students to use more words, not less. It teaches them to draw out what they're saying as opposed to reducing it to as few words as possible. One of the toughest skills to unlearn is to say too much and go on for too long.

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Don't underestimate the power of writing things out. Often, when I'm thinking through a case, I brainstorm with a pad and pen or prepare a to do list in an e-mail or Word document. Seeing on paper or on a screen what you plan to do helps you better think through and envision the various goals in your cases and how to achieve them. Writing it down and seeing how it looks kicks your right brain into gear.

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I rarely use adverbs and adjectives. Sometimes, they're called for, but generally one is overlooking the perfect verb or noun that would make them superfluous.

If I were asked to share only three writing tips, they would be:

1. Use the active voice.
2. Most sentences should be structured—noun, verb, predicate.
3. Use short words, sentences and paragraphs. Eliminate wordiness.

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Brevity. Communicate through brevity. Say more with less. Communicate more with fewer words. When I write my books and articles, I strip them of personal anecdotes, meandering stories and self-congratulatory accomplishments. No one cares. We want answers and we want them as succinctly and quickly as possible. When writing for publication, get to the point, make the point and move onto the next point. That's what readers want. That's what I want as a reader. Does that mean that 200 page book you wanted to write is only 50 pages now? Yes! Isn't that wonderful for all involved?

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Good writing entails two things. First, an idea. The idea will write itself. It will tell you how many words you need and what words you need and once you've conveyed the idea, put your pencil down. Second, check the ego at the door. So many get writer's block because their focus is on what other's will think about them and not the idea. You are writing because what you have to say is important enough to share with others. Let the idea speak for itself and get out of its way.

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Writing is like running. The more you do, the easier it gets. Some folks who run marathons previously struggled running just a mile. For those who ask me how I post every day, it's become second nature and quite easy. It's hard to remember when it wasn't easy, but if I look back there was a time when I struggled to come up with ideas and once I had an idea I struggled with reducing it to writing. For those of you who want to post regularly, write articles regularly and write books regularly, start by writing every day. Set aside a 1/2 hour to an hour to write each day. Within a few months, possibly even a few weeks, you'll find that you can write an 800 word article in a 35 minute lunch break like I did yesterday. I'm not any smarter, or more talented or more special than you. I've just been writing longer and it's become second nature. It can become second nature for you too.

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Great nonfiction writing engages the mind and moves the heart. Whether you're writing an article or book, you want to engage your reader intellectually and emotionally. Many business, leadership, sales and marketing books fail to do both. They engage our minds but not our hearts. Spiritual and religious



writers are good examples to follow to learn how to do both. Irrespective of your spiritual or religious views, consider reading one or more books by, for example, a preacher, rabbi or other spiritual leader. For example, I enjoy reading Mark Batterson, a Christian pastor, whose nonfiction books are simple, direct and both intellectually engaging and emotionally moving. Specifically, I would recommend *Soulprint*, a short book filled with powerful prose. If you want to engage your readers, whether it's an article in a trade journal or voluntary bar association or a book about the practice, engage the reader with the law and facts they need and address the emotional aspect they need too. Some of the best trial lawyers have emulated preachers. If you want your writing to have the same punch, consider emulating spiritual and religious writers.

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As lawyers, we are focused on reducing our message to opposing counsel, judges and juries to the fewest, most compelling words. If you want to develop this practice read poetry. Dickinson. Frost. Hughes, Angelou. See how these poets reduce powerful ideas into powerful words that convey powerful images. Learn from them when developing your trial themes and catch phrases.

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The best business books can be reduced to one sentence. The writer has a purpose and that purpose is to teach you one overarching thing and that thing can be reduced to a sentence. When I consider reading a new business book, I read the table of contents and skim through the headings and see if I can determine what the one overarching point of the book is and if so, if it will help me for the better. If so, I buy and read it.

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If you can't find a publisher for your book, consider self-publishing and producing your own e-book you can provide to friends, colleagues and clients. If your primary motivation is to get your ideas to the greatest number of people possible, self-publishing an e-book which you can give away for free on social media and via e-mail is the cheapest and most efficient way to do so. Short of self-publishing, see if you can find an organization willing to create an e-version of your book and which will allow you to give it out for free. It's good advertising for you and for the organization, whose name is on every e-book being shared.

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When people ask me for writing tips, I often get asked, "how do I find the time to write?" That's not a question, not a real one anyway. If you binge watch shows, watch sports, have a favorite tv show, if you refuse to set your alarm an hour earlier or stay up an hour later, if you pursue time-consuming hobbies, then you already have the answer to your question. Don't bother asking me the question. Now if you want to know how to write, we can talk.

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Folks ask me how I write so much. It's easy. Focus on the idea and not the words. Focus on the message and not the messenger. Paralysis and writer's block occurs when you're more concerned how you're saying something than with what you're saying. Writing is about conveying meaningful ideas. If you focus on the ideas, the words will follow. We've all read articles that are self-indulgent, where you can read between the lines the self-aggrandizement. Don't be that guy (or gal). I don't care if anyone remembers whether I wrote something. I just want them to remember the idea I wrote about. It's not about you or me. It's about the ideas.

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You ever wondered why business books, whether on leadership, team building, marketing, management, etc., average between 250 and 300 pages? The good ones revolve around one idea. The best books revolve around an idea that once you hear about it, you embrace it -it's self-apparent. The idea is what gives the book value. It's not the first 50 pages on how the author devised the idea. Not the following 50 pages on how the author tested the idea or how he's observed others test the idea. It's not in the following 50 pages on why you should apply the idea in your life. It's not until the middle of the book when the author provides the big reveal, explains the idea in full and further explains how you can apply the idea. It's only then that the book provides real value. I have a theory. I believe any business book that truly offers a life changing idea can be written in 15 pages, but few would pay \$25 for a 15 page book. So authors bury the idea in stories and anecdotes, statistics and examples. They feel they have to justify the idea, explain it to death and provide a detailed plan to use it. You know what? The great ideas, the life-altering ones—you can explain them in 15 pages or less. The time will come when mini books will take over, and it'll be long overdue.

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If you're going to pitch a legal or business magazine or newspaper a story about your firm, seeking out free publicity, understand publishers are looking for a good story that their readers would enjoy and find compelling. Simply telling a publication they should feature your firm without an intriguing angle or a compelling story is going to fall on deaf ears. A good story could be a charity your firm started, efforts to diversify, or community outreach.

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Effective writing has 10 parts of speech.

- |          |                 |
|----------|-----------------|
| 1. Verbs | 6. Nouns        |
| 2. Verbs | 7. Nouns        |
| 3. Verbs | 8. Nouns        |
| 4. Verbs | 9. Prepositions |
| 5. Verbs | 10. Adjectives  |

Sorry adverbs, there was no room for you on the list.

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Do you have an idea for a book you want to write? Great books start with great ideas. If you already have the great idea, you're halfway home. Sit down, brainstorm your idea, and expand it into a detailed table of contents with chapters and sub chapters. Then set aside enough time to write 1,000 words a day. If you thought through your idea, writing a thousand words will take less time than you think. The average nonfiction book is between 50,000 and 80,000 words. In 60 days, you'll have a 60,000 word book.

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When writing, your first sentence should both grab the reader and encapsulate your overall point or theme—that first sentence should resonate with the reader and set the tone for the rest of your article, motion, brief, etc.

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As lawyers, a good way to get your name out is by getting published—a LinkedIn post, a blog post, an article, an e-book. There are so many things to write about—that new case or legal trend, a practice pointer or business disruptors. Whatever you write about, follow a few basic rules:

- Say something. It's ok to have an opinion, point of view or perspective.
- Find your voice. Each of us has a way of communicating. Be true to that.
- Say it as simply and in as few words as possible. We're all busy. If you can make your point in two sentences, post it on LinkedIn. Don't turn it into 600 words so you can squeeze an article out of it. Some topics are appropriately addressed in articles. Some need to be expressed in books. Most, you'll find, need neither.

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Always be writing. Imaginative, clever writing comes when you least expect it. If you're only writing when sitting in front of your computer and not daydreaming or imagining while in the car or walking through the aisles at the supermarket, you're missing out on the best of your ideas.

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When preparing declarations in support of or in opposition to a motion, remember, fewer is always better. Don't have three witnesses say what can be said by two, and don't have two witnesses say what can be said by one. Your declarants are subject to cross examination at deposition, hearing or trial and the more folks you have the greater the likelihood there will be contradictions among them.

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The first paragraph of whatever you write—pleadings, motions, letters, e-mails—should summarize the reason you're writing what you're writing. It's more than an introduction—it spells out your themes and position and sets the stage for the rest of the document. For example, in a Complaint, there

is no prohibition to start with a paragraph that explains the whole case and why you win. In a letter to a client analyzing the pros and cons of their matter, nothing prohibits you from providing an overview in the first paragraph and explaining in a few sentences, why you win or lose. As lawyers, we're accused of not getting to the point or of using ambiguous language to hide any real advice, so as to avoid being blamed later. Avoid the double talk and the constant generalized language and get to the point in your first paragraph and use the rest of the document to explain and support that point.

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When drafting a pleading or a motion, strike a balance between keeping it simple without making it simplistic. Make sure someone who knows nothing about your case can follow the facts to your conclusion—why your client should win. Connect all the dots for the reader and hold their hand to have them see the case from your client's perspective.

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Have you ever read a novel or short story and questioned the plot, the characters or themes? When you draft a motion, argue a motion or try a case, you're telling a story, and all the characters have to be true to themselves and the plot has to hold up under the scrutiny of common sense. Working on a Complaint and Motion for TRO, and I'm trying to tell a story where my client is the protagonist, he's been wronged, the Defendant is the antagonist and asking the Court to make things right. My client wins at the end, fade to black, roll the credits. Always tell a story.

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If you're a lawyer, get in the habit of journaling. Writing your thoughts down by hand as opposed to sitting in front of a computer gets your creative juices flowing and helps you reflect on where your career, family and life are going and puts you in charge of thinking through affirmative steps to take to improve all three. Whether it's setting goals, fleshing out ideas or wrestling with personal issues, sitting in a quiet place with a journal and a pen allows you to be more deliberate in what you do as opposed to going through the motions day in and day out. Don't let weeks, or worse months or even years go by without intentionally figuring out what your purpose and destiny are and pursuing them.

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If you're a young lawyer and want to get published I have two suggestions. Start a case law update column for a voluntary bar association publication. Attorneys want to know the holdings of new cases. Second, start a judicial profile column where you share Judge's backstories and their expectations of counsel in chambers and in the courtroom. Maybe a column called Judicial Pet Peeves about the dos and don'ts when it comes to hearings. You don't need to be an experienced lawyer to conduct and write up interviews with judges.

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If after you analyze a case you believe you have a potential summary judgment on your hands (once sufficient discovery has been conducted), take the time to craft the introduction of the prospective motion. An introduction, which should only be a paragraph or two, and which encapsulates why the court should find in your favor, makes you think about why you should win and directs your focus and attention on the discovery you need (whether an admission in a deposition or securing a document in response to a document request) to lay the foundation for summary judgment.

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I still go to bookstores. Most of the books I read are hard copies, not e-books (yes the irony isn't lost on me that all my books are only available by download). One of my favorite sections is the business section. The best books are ones I can skim through in 15 minutes and know what the author wants me to do and how to do it. The ones buried in anecdotes, descriptions, and just general wordiness—they never hold my attention. If you're planning on writing a book, have an idea (just one), explain the benefits of the idea and provide a plan on how to pursue it. That's it. The best business books can be reduced to a sentence, like a great case can be reduced to a brief theme.

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Journaling is a good habit for lawyers. You should always have a small journal with you that you can keep in your pocket or keep notes on your phone. Often ideas come to us about a case, or how to achieve a goal we've set for ourselves or the outline for an article when we're in line or doing something completely unrelated. Always be open to ideas coming to you at any time and jot them down. Epiphanies happen when we least expect them. Always be ready to write them down and follow through with them.

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Find a trade journal or publication that does not have a legal or law-related column and volunteer to write one of interest to their readers for free. They get free copy, their readers receive legal insight and you have an audience whose legal needs can be served by you and your firm. Also, by writing a legal column for let's say a retail industry magazine, the publication is providing you a mantle of expertise in that area, and telling their readers, "Hey look, this attorney is good enough for us to publish in our magazine, consider hiring her."

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When preparing a motion, start with crafting all the section titles and subtitles. What are the arguments you're going to make and how are you going to summarize them in a few words as the titles for the various sections of your memorandum? In effect, you're starting with an outline with catchy, to-the-point headlines, that provide the reader a roadmap as to why your client should win. Once you're done with that, you'll find drafting the motion will take less time and be more focused.

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Most articles start with a hook—something that grabs your attention and drags you into the piece, making you want to read more. When preparing a motion, always have an introduction, and use that introduction to grab the judge's attention, explaining why you should win, and serving as a hook for the rest of the motion. In a few sentences, you need to suck the judge into your motion and explain to her why she should find for your client. Leaving it to the judge to figure out after a long factual and procedural history is not effective.

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When preparing a motion, see if you can find a similar motion with similar issues in your shared files in your firm. Also, look for similar motions on Westlaw, where you can find responses and orders related to the motions. Also, pull the docket sheets of cases you find on Westlaw to see the motions, responses and replies that went into those opinions. By doing so, you can see what arguments have been raised, which ones have resonance, what counter arguments to expect and how to address them.

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Before you sit down to your computer to draft a motion, sit down with a pad and pen and brainstorm the arguments you want to include, the facts to support them and how to flow from one argument to the next. Using a pen and paper can tap your creative juices more than staring at a blank screen.

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## LinkedIn Advice

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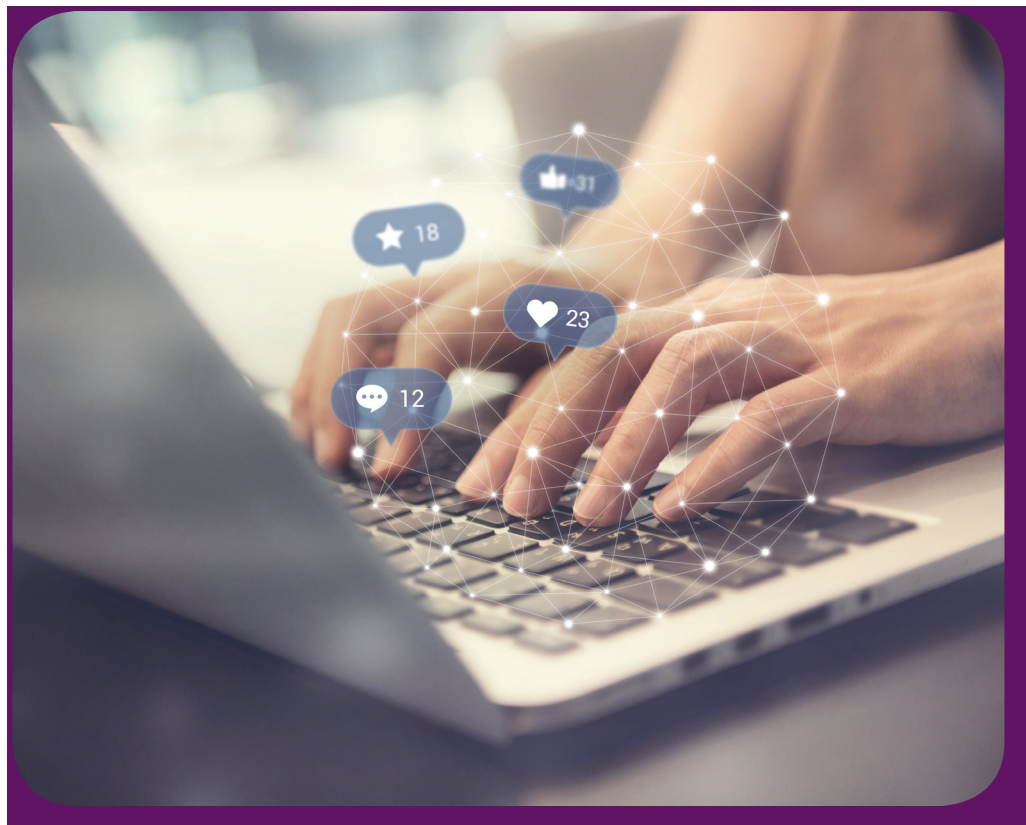
I post every day on LinkedIn. It's not hard at all to do. Choose a broad topic you're interested in, and post a short thought on it each day. Let's say you're an attorney specializing in cyber security. It's a cutting edge area where new law is developed every day, there are new cyber breaches all the time, and the standard of care for protecting against them and then litigating about them is constantly changing. You have a lot of material to discuss in your daily posts. If you stay abreast of the area, you can see how easy it would be to post about it each day. So define an area, a broad one, and become the voice on LinkedIn (or one of a handful of voices) on that topic.

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I discovered we can ask LinkedIn for a copy of all our data, including all our posts, and they'll send us a series of spreadsheets with all that information. If you ever want to transform old posts into an article or book, and you can't pull them up easily, ask LinkedIn to send all of it to you and they will. They say it takes 24 hours for them to send it to you. It took them about a week to receive mine, but it was all there.

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I've seen many attorneys attempt to create their own online platforms and forums. They have done it through blogs, websites and even alternative social media platforms they created themselves. I too, not once but twice,





started a blog for lawyers. I had a friend who started a social media platform for diverse lawyers. Most of these ventures will have limited success because you are dragging folks from sites they regularly visit to yours, and most are happy where they're at. That's why if you plan on having an online presence, make the most of existing platforms, such as LinkedIn, before you consider starting your own. I'm not trying to dissuade you from starting your own, but appreciate the built in obstacles when doing so.

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LinkedIn is a great forum. We lawyers, from around the world, can discuss first principles and the rules of the road, and despite working under different legal systems with different rules and procedures, so much of what we do and how we represent our clients is universal. We belong to a universal brother and sister hood of counselors doing our best to serve our clients. In many ways, we are all the same and we all owe our clients the very best of ourselves.

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Others follow your social media posts because they believe their lives will be better by following you. If so, if you want to attract followers, your posts should reflect this. This means giving away your expertise, wisdom and advice and treading lightly when it comes to self-promotion.

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Having posted daily, I have some suggestions if you want to do the same:

- Pick a large, encompassing theme or topic which you can revisit day in and day out.
- Carry a small notepad, journal or notebook to jot your thoughts when stuck in traffic, in line or elsewhere.
- If you prefer, use the notebook or recording feature on your phone.
- Spend 10 minutes a day just thinking of possible ideas. Controlled daydreaming in the car is a way to do this.
- Read varied books, articles, blogs, etc. Watch varied movies, shows and videos. Listen to varied music, podcasts and radio shows. Ideas are often born when unlike things are exposed to and collide with one another.
- Repurpose your down time to writing. Less wasted time and more writing time.
- Remember, my posts are short. 1300 characters or less. It doesn't take much time to write 1300 characters a day.

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For folks who are trying to get others' attention on LinkedIn, give away your expertise. Give first and ask later, sometimes much later and most times, not at all. Sales is based on personal relationships and relationships take time.

When I was a boy and I went to the airport, I would see Hare Krishnas give flowers and books away and then wait for a donation. The person receiving the item would feel obliged to give something in return, namely money. The Hare Krishnas were some of the most effective solicitors because they understood human nature—if we receive something we feel obliged to give something in return. If you give stuff away—books, webinars, articles, advice, podcasts, etc.—some of the recipients will want to return the favor. None of us want to feel like freeloaders and if someone is regularly giving us stuff we want to give them something to help them. So this brings us to LinkedIn. If you are a lawyer and regularly give stuff away for free on this platform, sooner or later one or more of your recipients will be repay the favor and refer you a matter. That's just human nature. So don't hesitate to give stuff away here. Not only is it a great way to pay it forward, but sometimes you get something back.

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The power of social media, whether LinkedIn, Facebook, Twitter and others, is that you just never know whom you'll influence for the better. I post daily on LinkedIn and the thoughts I share range from attorney practice tips, to leadership, to marketing, to parenting, to inspiration to you name it. I know my older son, David, follows me, and sometimes my posts will be directed to him, even though I never use his name. I know my wife, Ana, follows me, and sometimes my posts are directed to her without naming her. Sometimes my posts are directed to a young lawyer who needs an encouraging work, or sometimes to someone who suffers from chronic depression who needs to hear from someone who has struggled with the disease himself or directed to an old friend who is going through a difficult time. And sometimes each of these messages will positively impact many others to whom the message was never directly intended. What we say on social media matters. Do your best to use the LinkedIn platform and those like it to positively impact others—help others, encourage others, raise others up and give others hope.

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Folks ask me how to draft posts to generate views, likes and comments. Let's start with what not to do:

- Don't say something controversial to say something controversial to start a conversation.
- Don't create click bait by taking meaningless polls or asking for opinions when you're not genuinely looking for others' opinions.
- Don't simply play off current events or provide a hot take on a current issue for nothing more than to get folks to see your posts and follow you. There's nothing wrong with addressing current issues, but don't do it simply because certain terms are trending and you're hoping your post will be caught up in that.

In short, don't post anything whose primary purpose is to attract attention to a post, without having the intention to say something meaningful or impactful.

If you freely give away your expertise with no strings attached, and you genuinely want to share your experiences and wisdom to better other LinkedIn members, and you do this consistently, preferably daily, you will get views, lots of them. And the funny thing is, that when you do this, you don't really care how many views, likes or comments you get, because that's not why you're doing it.

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Some LinkedIn etiquette. Be genuine when you post, comment and congratulate. Don't post for the clicks. Don't comment to stir trouble or draw attention to yourself. And don't congratulate someone simply to get their attention so you can sell them your product or service. I understand that LinkedIn is a business development tool and we're on it to develop business relationships. But do so genuinely. I received much heart felt congratulations on a post noting my promotion to managing partner at my firm, and for that I was deeply touched. But I also received a number of calls, e-mails and messages from folks congratulating me in their first breath and trying to sell me something in their second. Folks, don't do that. It's off putting and accomplishes just the opposite of the intended goal. Do you want to develop relationships on LinkedIn? Post something valuable daily, give away your articles and books and make yourself available to meet for coffee or lunch. Give a lot away and you'll get much in return. It's not simply a cliché. It's a fact. And if your motivation to congratulate someone is simply to butter them up to sell them something, please don't.

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I post every day on LinkedIn. I've made it a habit. Once you make something a habit, it becomes second nature. You stop thinking about it and you simply do it. It's like someone who is serious about exercise taking the stairs or parking further from the entrance to the mall to get more exercise. They don't think about it, they just do it. If you want to get in the habit of posting every day on LinkedIn, use the Note feature on your smartphone and type ideas during the day that pop into your head that you may want to write about, and then take a few minutes and write about them. Soon, the ideas will come fast and furious and they'll stick in your mind so you don't even have to write them down before getting a chance to post about them on LinkedIn. What I do every day isn't special at all. It's a habit anyone can do. If you train yourself to think more and generate more ideas, that will benefit you not only on LinkedIn, but at work and at home.

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When posting on social media about your practice, skew heavily toward providing free content—case law updates, how to articles, etc.—and light on recent accomplishments. Yes, feel free to share about a jury trial you won or a position you were elected or appointed to, but those posts should be far fewer than content rich posts where you're sharing valuable information with your followers.

As lawyers, we each have our own approach to LinkedIn. I see it as an opportunity to share my experiences from my practice and learn from others sharing about their experiences.

As a rule of thumb, I give everything away. I give away my articles, books and any other resources I have created. I'm not a fan of those who use LinkedIn as a teaser to get you to buy something. LinkedIn is about giving it away—your advice, your experiences, your thoughts and your wisdom. The more you give away, the more others will learn about you and your practice and will be more inclined to hire you and your firm. The paradox—the more you give away the more you get—applies to LinkedIn.

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LinkedIn is a great venue to connect with other like-minded professionals, but nothing beats in person relationships. Consider LinkedIn as a means to connect with others online and start a professional relationship that blossoms into one where you speak with others on the phone and meet in person over coffee or lunch. Social media can be part of your networking plan but it should not be your entire plan.

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Social media reminds us when it's others' birthdays, work anniversaries and when they have a new job or title. They make it easy to congratulate others. In fact they make it too easy. They even provide what to say at a click of a button. If you're going to wish someone a happy birthday or congratulate someone online, take the time to write something longer than just a few words. Personalize it. And if you don't have the time, don't write anything at all. The recipient isn't going to miss another "Happy Birthday" or another "Happy Anniversary." They will remember salutations that go beyond two words.

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## Mental Health

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Holiday traditions. It's the source of nostalgia, fellowship and warm feelings for many. But for others, they remind them of loss, absence and pain. For some, depression and anxiety are acute during the holidays because they are trying to pursue some ideal of the holidays captured in some Thomas Kinkade painting or Macy's advertisement. My wife, Ana, our boys, David and Michael, and I decided a while back that we'd give the proverbial middle finger to holiday traditions and just enjoy our time together, without living up to anyone else's preconceived notions of how the holidays should be celebrated. After Thanksgiving dinner, for example, we'll shop at the malls and end up at IHOP in the middle of the night and spend hours over pumpkin pancakes laughing hysterically at jokes that only make sense to the four of us. If you know someone suffering from depression during the holiday season, don't insist on them being part of your holiday traditions. Spend an afternoon or evening with them doing something completely unrelated to the holidays and give them the freedom to give the proverbial middle finger to the traditions that are weighing them down and let them live their life on their own terms.

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Years ago, while I was struggling with depression, there was an elderly gentleman at my church. I would share my latest tale of woe and his response



was always the same “what a blessing.” In his eyes, when something went wrong or unexpected, when there was failure or a problem, he considered it a “blessing” because every loss, every failure, every blow life dealt led to something better. It led to a blessing. In his eyes, bad things happened so we could overcome them. Failure happened so we could learn from it and succeed. In his eyes, anything worth having was only worth having if we sacrificed for it, if it cost something, if the road to it was filled with disruption and disappointment. Right now, you may be struggling with something and you’re hoping and wishing, and pleading and praying that it be taken away, that it be relieved, that it be removed and that it be vanquished. Maybe it will. Maybe it will resolve. Maybe it will disappear. Maybe it will go away. But if it doesn’t, don’t fret or worry. Don’t be scared or upset. Just say to yourself, “what a blessing.” Something good will come of it.

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Bourdain. Spade. Celebrity Suicides. I’m not a psychologist but I suffered from crippling depression. I wanted to push everyone away. If a loved one is pushing you and others away, hold onto them harder. They’re trying to clear the decks to make it easier to let everything go. Don’t let them go. Not letting them go isn’t giving them cliché advice, offering hotline numbers, giving them a motivational speech or telling them to snap out of it. Be there for them and help them get help.

If you’re the one severely depressed, all I can tell you is what would have helped me. A dog. When I was most severely depressed, I wished I had a dog. I would put myself to sleep hugging my pillow, imagining it was a dog. We have a dog now. A rescue. She’s imprinted on me for saving her from an abusive owner and she never leaves me out of her sight when I’m at home. I really could have benefitted from her during my depression. I can’t fully articulate why a dog. I guess it’s the unconditional affection without the endless questions or condemnation.

One last thing. Severe depression is not rational. Your rational advice often falls on deaf ears. Your refusal to walk away, no matter how difficult that is for you, means a lot for the person suffering from depression.

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## Being a Trial Lawyer

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As trial lawyers, we need to keep our finger on the pulse of pop culture while not living in it. None of us has time to be watching reality TV and celebrity news shows. But we do owe it to our clients to be familiar with what's going on in the world, because jurors live in the world and relate to one another and our clients in this world. Take time when scrolling through the news of the day to spend a few minutes to read about what's going on in entertainment so you can better relate to jurors, some of whom watch too much television, listen to too much music and see too many movies and relate to the world through what they watch and listen to.

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We lawyers tend to complicate matters. Our job is to simplify them. Simplicity is clarity. To make the complex simple (not simplistic) is our bread and butter. Take depositions. When you boil them down, we have two objectives when we depose a witness—secure admissions and either build up or tear down the witness's credibility. That's it. Every question we ask is directed to one of those two objectives. Eliminate the chaff, the noise, the distractions and what you're left is a simple objective and a simple directive.

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In a society where many prospective jurors only follow news that supports their views, it's harder for trial lawyers to find a common language that speaks to all jurors. Everyone doesn't listen to a Tom Brokaw or a Peter Jennings anymore. When trying to find a common language with jurors start with the premise that it's harder than ever to find common ground to communicate with everyone sitting on your jury panel. When you think you've come across a common theme test it out on peers to make sure it's universal and doesn't ruffle feathers.

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Common sense. If your argument to a judge or jury doesn't pass the common sense smell test, don't make it. Be too clever at your expense.

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The hook is the part of the song—a short riff, passage or phrase—that catches the ear and sticks in the mind. When you make an oral argument to a judge or a closing argument to a jury, you need a hook—a catchphrase, a cliché or series of words that captures your case and argument and that will catch the listener's ear and stick in their mind.

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Occam's razor is the principle that the simplest solution tends to be the right one. When presented with competing hypotheses to solve a given problem, the principle states that the simplest solution is likely correct. When preparing themes for juries, when creating case theories and when presenting your case, provide the simplest reasons why X happened or why Y did something (or didn't do something). Over complicate your case at the expense of losing it.

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When picking trial themes, avoid ones that invoke controversy. You want jurors to agree with you. You want jurors to accept the prism and paradigm you are setting forth for your theme. By picking a theme which some will embrace but others may bristle at, then you're stepping on your own message and your client's case. Relying on political references or themes, for example, can equally help and hurt your case and because they do, they're best avoided.

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Many of us follow media that supports our views. That's no different with our prospective jurors. We accept statements that fit into our worldview and disregard those that don't. As lawyers, our job is not to change our jurors. Our job is to deselect those whose worldview conflicts with our client's needs in the case. The idea we can turn biased jurors to see things our way is presumptuous and can result in an adverse verdict.

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When developing trial themes for your cases, be open to using lines from movies, songs, television shows or just pop culture. We want to use one or

more trial themes that will resonate with our jurors and those themes can be found anywhere and everywhere. Use the note taking feature of your phone to jot down trial themes that come to you sitting in the theater, standing in line in the supermarket or walking through a bookstore. (Titles of books, by the way, are great inspirations for trial themes).

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We lawyers tell stories, but law school didn't teach us to be storytellers. Go to Amazon, search "writing fiction" and "writing a novel," scroll through the titles, and order 2 or 3 books that discuss plot, characters, scenes, themes, etc. These books will tell you how novelists tell stories and will provide you a foundation on how to tell stories to judges and juries.

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To call yourself a trial lawyer you have to have tried cases and these days, that's tough, particularly for young lawyers. To counter the trend of fewer trials, and by extension, fewer trial lawyers, we lawyers need to work with our judiciary and volunteer to try cases brought by pro se plaintiffs. This was done in the Southern District of Florida where lawyers, including myself, represented incarcerated pro se plaintiffs suing for money damages against correctional facilities. There are probably a host of cases that get tried by pro se plaintiffs which would go a lot more smoothly if a volunteer lawyer stepped in a week or two before trial, took over the reins and tried the case. We lawyers need to explore these possible opportunities and help make them a reality to create more trial opportunities for our associates.

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Volunteering to teach a class at your local law school or college and speaking at events develops the teaching skills you need to teach jurors at trial. When I hire experts, I hire those who are good teachers. As trial lawyers, we need to teach jurors why our clients should win and to do that we need to develop our teaching skills.

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I'm a defense lawyer, but a lot of what I have learned about trying cases has come from observing Plaintiff lawyers. They know how to communicate with jurors. They speak their language, they use their diction, they share their body language, they study their pop culture and interests—they are truly the every man (and every woman). They are storytellers and preachers and show men and show women, they are performers, actors and artists. If you are a defense lawyer, study plaintiff lawyers and how they communicate—it's quite the education.

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A trial lawyer is like a jazz musician. She can't rush a case. She can't drag it. She needs to know when to jump in, when to follow the rules and when to improvise. She needs to know the theory that undergirds her case, respect it and make the most of it. She tells a story that touches the heart as much

or more the mind, and transcends the mundane and reaches for the sublime. She is writing a song, telling a story, communicating why she wins to the client, opposing counsel, the judge, the jury—anyone and everyone willing to listen. And we listen, with baited breathe, for the next note she’s going to play, waiting for it to transport us somewhere else, somewhere we’ve never been.

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As lawyers, never pass up an opportunity to tell your client’s story—in your discovery responses, in motions, in depositions and certainly at trial. In the story, your client is the hero (this is true whether you represent the plaintiff or defendant). Mold the story to cast your client as the protagonist and the opposing party as the antagonist, and have the “plot” lead the fact finder to the conclusion that your client deserves the happy ending.

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You can develop your cross examination skills by watching the Sunday morning political shows where the top political journalists grill politicians and make every effort and use every trick in the book to get the interviewee to provide a direct and honest answer.

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Old television shows like Twilight Zone, the Alfred Hitchcock Show and The Outer Limits (which you can find on Netflix, Amazon Prime and Hulu) teach us how to tell a story in a short period of time. Study the episodes and study how the story is told. The observations you make can help you tell stories to judges and juries.

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Arguments, like stories, have a natural progression. A is followed by B which is followed by C. When telling a story, you lay the foundation so the conflict naturally results from the characters you introduced and the resolution of the story is consistent with how you developed the characters and their situations. When you present an argument in a motion or to a judge, one point naturally leads to the next so that when you reach the last and final point—why your client wins—the progress from A to Z is seamless and no one is wondering where L, M, N, O and P are.

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Former plaintiff attorneys make some of the best defense attorneys and vice versa. Knowing how the other side thinks, plots, strategizes and executes is a huge advantage when representing your clients. If you’re a plaintiff’s attorney, read books for and by civil defense lawyers. If you’re a civil defense lawyer, read books by and for plaintiff lawyers. Understanding where the other side is coming from and where they’re going enables you to head them off at the pass and beat them at their own game.

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As an attorney, you need to work with your client to develop case themes at the onset of the case and weave them throughout the case and at trial.

In order to have effective themes at trial, you need to develop them early in the litigation so that you use every opportunity during discovery to develop them and have them parroted by witnesses, especially by the other side's witnesses. The first one to establish her themes and direct her discovery to support those themes has the upper hand at trial.

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If you want to be an effective lawyer, learn how to tell stories. Story tellers hold the rapt attention of juries and audiences. You'll be invited to speak at functions and hold court at cocktail parties. Everyone loves a good story—the plot, the characters, the setting, the details. Take time to read a how to book or two on writing fiction and learn how to tell stories.

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Try out your case themes on your non attorney friends. Your jury isn't going to be comprised of lawyers. It's going to be comprised of regular folk who rely on common sense, not complex legal arguments. These folks watch reality shows, follow entertainment news and sports, and have ever shortening attention spans thanks to our iPads and mobile phones. Talk to them and see what moves them. Those are the themes to keep. And do this early in the case when you can still weave your themes throughout your depositions.

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As a trial lawyer, keep your finger on the pulse of pop culture. Be aware of what prospective jurors are watching, reading and listening to. Why the interest in reality shows? Why are folks so interested in the personal lives of others? What draws and holds others attention will hold your jurors' attention. Keep an eye out for viewing and listening trends and think about how they can play into your trial presentations.

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I had the pleasure of watching a mock trial today put on by the DRI Trial Tactics Committee. Fabulous program. What I enjoyed the most was that the jurors had hand held devices where they noted their positive or negative responses to each question and answer. It was amazing to see, witness after witness, how each juror consistently responded to them, either in their favor or against them. It was as if they had pre-existing paradigms, or biases, through which they evaluated every witness and every answer each witness gave. Like real jurors, they each have their own predetermined world view, and agreed with everything that fell within that world view and dismissed what fell outside of it. Goes to show how important jury selection (or deselection) really is.



## Written Discovery

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E-mails—who sent them, who received them, when they were sent, when they were opened, to whom they were forwarded, what activity they led to—these issues can be relevant to your case. Sometimes you need professional help from IT personnel to help you secure these answers. If these issues matter, take the time and spend the money on professional assistance to get the answers so you know all the facts as opposed to just guessing at them.

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Responding to written discovery is challenging. You need to know what your client has and does not, what she can get and cannot, how much time it will take to get it and how to produce it. There's also the issue of objections and how to avoid producing too much. Keep the following in mind when you next respond to written discovery:

- E-mail the discovery requests to your client immediately. You want to allow her as much time as possible to respond.
- Calendar the due date and 20 and 10 days out as reminders.
- Determine what objections you can raise and research the scope of those objections.



- Set up a call with your client to decide what she has, what needs to be produced and what will be objected to.
- If there are going to be any delays in responding, seek an extension as early as possible.
- Set reasonable expectations with the client as to what you will have to produce and what you can object to.
- Determine any issues related to production—privilege, cost of production, timing of production, etc.
- Avoid self-inflicted wounds. Don't say something or produce something without thinking through the implications of what you're doing to the overall case.

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When responding to written discovery, take a close look at the interrogatories being posed and the documents being requested. Sometimes, opposing counsel telegraphs his case theory through his written discovery. You can see by what they're seeking exactly what they're trying to prove and how they plan to prove it. Always study the other side's discovery requests because it sheds light on their thinking and case strategy. Conversely, try not to telegraph your case theory through your written discovery.

When addressing discovery disputes, your strongest arguments are common sense and fair play. What discovery should a party be entitled to and how hard is it to get it? On one side, why do you need it? On the other side, why don't you want to turn it over? How much effort does it take to find and produce the documents? Looking through the prism of the jury instructions, are the documents relevant and if so, how burdensome are they to get them? Many of these issues can be worked out between the parties if they simply put themselves in their opposing counsel's shoes.

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## Depositions

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A witness may be less prepared for a deposition if she is not a party to the case. With that in mind, sometimes you want to depose a corporate representative or individual in an ongoing case before naming them as an additional party, to secure more favorable testimony at their deposition. This isn't always practical, but there are times you can depose a crucial witness before naming her or her company as a party.

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When preparing your client for deposition, appreciate her need for lodestars and markers as to what to say and what not to say. Consider reviewing with her your case theory and themes, opposing party's case theory and themes, catch phrases and words to embrace, catch phrases and words to avoid and generally statements that will help her case and those that will hurt it. Providing the two polar ends of what helps her case and hurts it will center her on her role for the deposition.

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Had my improv class last night. The big take away was the importance of listening and being in the moment to better play off the improv players. When deposing a witness, listen and be in the moment, so you can follow up on any information a witness inadvertently volunteers.

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When deposing witnesses, determine what order you want to take their depositions. Sometimes you need one's expert's testimony before deposing another. Sometimes you need a fact witness to say what she saw before deposing other fact witnesses. Think through not only whom you want to depose, but the order of depositions.

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Whenever deposing an expert, learn the terminology in her field and when questioning her, have her explain the terms and concepts as you ask her about them so if the transcript is ever read to a jury, it makes sense. Plain language and plain English is the key.

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If you depose treating physicians, odds are you subpoenaed the doctor's file and reviewed it before the deposition. Don't assume, however, you received her complete file. Often, you have not. Have your legal assistant call the doctor's office and confirm you received the complete file. The office may not have sent you its billing records, correspondence or test results, all of which you want to review before the deposition.

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When preparing a corporate representative for deposition, remember his answers on topics designated by the notice bind the company. Admissions can be damning but so can be ignorance. Not knowing answers to questions a company should know can hurt its credibility with the jury. It's your obligation to educate your corporate representative on the designated topics. This takes time. Take the time and make sure the witness does too.

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Had the pleasure of teaching deposition skills at FDLA's deposition program today. A few takeaways:

- When deposing an expert, read his publications and ask him to agree with statements in his publications that support your case.
- Secure all prior sworn testimony of any witness you're deposing.
- Ask one fact per question, and have each fact build on the last. Go from general to specific, and funnel the witness's answers to the conclusion you're seeking.
- Don't let opposing counsel get away with speaking objections.
- If you expect to instruct a witness not to answer a question have the legal support to cite at deposition in support of your position.

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When asking questions in deposition assume they will be read to a jury. Keep the questions short, simple, free of big words and complex ideas. One day you may have to read the transcript to a jury. Also, trial lawyers can spot other trial lawyers. Attorneys who ask one fact per question, use questions with ten or fewer words, build each question on the last and have

each question lead into the next come across as trial lawyers and most lawyers don't want to tussle with trial lawyers. You'll secure more favorable settlements and come across as more earnest when you threaten to try the case when you take an effective deposition.

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In deposition, when cross examining a witness, whenever possible, keep your questions to 10 words or less. You want to keep your questions as short and clear as possible and secure "yes" answers to them. When I was a kid, I watched the game show Name that Tune where contestants tried to name songs by listening to the fewest notes as possible. I can name that tune in 10 notes. I can name it in 5. I can name it in 3. Practice asking questions with as few words as possible. It makes for a better transcript and more convincing impeachment at trial. And yes, I've gotten into rhythms where I have asked 20 or more consecutive questions with 5 words or less. Practice this exercise at your next deposition.

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If at all possible, if it is permissible and ethical, before deposing a witness or attending a deposition, interview the witness. This avoids surprises and helps you plan better for the deposition. If the witness refuses to speak with you, note how often you tried to reach him and why he refused to speak with you. Bring this out in deposition to show his possible bias.

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For young attorneys, ask senior associates or partners about a deposition they took recently that they're proud of, pull it up, read it and then discuss it with them. What was their approach? Their theme? Their goals? What worked? How did it work? Reading a deposition transcript and speaking with the person who took the deposition about their method is a great way to learn how to take effective depositions.

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When defending a case with multiple defendants, a few rules of thumb for deposing the Plaintiff:

- Coordinate with other defense counsel about who is asking what and whether anyone intends to throw your client under the bus. Knowledge is power.
- Understand your role at the deposition. What admissions do you need to secure for your client?
- Do no harm. A Plaintiff's deposition with multiple defense lawyers asking questions can take days. Pay close attention and don't undo a favorable admission by retreading ground another defense lawyer covered and where she secured the best admissions you can possibly get.

- It's not about you. If you're not a target defendant, you may have few and possibly no questions. If you don't have to ask any questions, don't.
- Know what the goal is. Are you trying to lay the foundation for summary judgment? Mediation? Trial? All of the above? Every person asking the Plaintiff questions has a goal. Know and pursue yours.
- Respect. Everyone there has a purpose and is pursuing it. The questions may seem redundant, unnecessary or pointless to you, but the person asking the questions likely has a reason for asking them. If you're exasperated, keep it to yourself.

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Depositions are an exercise in truth seeking and truth telling. As lawyers, each of us are amateur lie detectors, searching for indicators that the deponent is lying so we can press further, deeper and more robustly to get to the truth. I've written before that it is easy to detect when those we know lie. We study them closely when they lie and they will display the same body language, cadence and diction the next time they lie. But how about a witness or opposing party you've never spoken to? Here are some tips that work for me.

- Liars talk too much. They explain too much. They provide too many details. They think details are what folks telling the truth would say.
- Their body language betrays their words. They say yes but they gently nod no. They say something mournful but they smile at the end, almost congratulating themselves about how mournful they sounded. Contradictions indicate liars.
- They either move too much or move too little. They either exaggerate body language or keep themselves closed off. They know what they're saying isn't true and they're trying to mask it through their expressions and body language. They think they're helping their case. They're only hurting it.

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Whenever preparing a witness for deposition or questioning a witness in deposition in a premises liability matter, you should have photos of the incident scene, even if not taken at the time of the incident (so long as the photos accurately reflect the scene at the time of the incident) to ensure the witnesses can properly identify where everything and everyone was at the time of the incident and you can have a visual of what happened when it happened.

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Whenever we prepare our clients for deposition we give them the "Speech" where we tell them what a deposition is, what to expect at their deposition, the do's and don'ts of a deposition, the rules of the road and what their

role is (and isn't). Take the time to prepare an outline of your "speech" and compare notes with other lawyers to ensure you not only cover all the bases but you do so with the right tone, attitude and approach.

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I type out my case themes and catch phrases on a piece of paper and keep that next to my deposition outline to work them into my questioning as much as possible.

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There's a balancing act when preparing a client for her deposition. On the one hand, you want to reduce any anxieties and concerns about the deposition and the process. On the other hand, you want to emphasize how important her deposition is. In fact, it's not an understatement that her deposition is potentially the most important deposition in the case. Adverse admissions could cost her the case. The best way to balance these competing concerns is to start deposition prep early in the case and make it a gradual, long term process so she comes to understand her role and the importance of her role while having time to address her anxieties and fears. This will involve several phone calls over the course of the case and at least one in person meeting. Patience with your client is key.

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Some of us learn much better from reading and seeing than from listening. This holds true when preparing clients for their depositions. Some attorneys prepare a written document, protected by privilege, which they provide their clients that provides a road map to their depositions and lists what to do and what not to do. Consider creating a master document you provide clients which spells out the deposition experience and includes the main issues you plan on covering during your in person prep session so they can take that home with them after the in person session.

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When preparing your client for deposition, you cannot emphasize enough how her deposition is the most important deposition in the case and that significant preparation is required to ensure the best outcome possible. Like a boxing match, where the fight is won is training in the gym, a client "wins" in deposition by training with her lawyer and getting ready for opposing counsel's cross examination, so when the "bell" rings and the court reporter swears in the client, the fight is already won.

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Four rules to help your client during her deposition.

1. Wait two full seconds before answering every question, even the most basic questions. This allows the witness to control pace.
2. Include the question in every answer. This also controls pace and ensures the witness only answers the question to the extent she feels comfortable.

3. Only answer the question being asked. “Do you have the time?” “Yes.”
4. The same questions will be asked over and over—the money questions—to get the desired admission. The response. In the most pleasant voice possible—“I apologize. I must not be communicating well. My answer is” and then provide the same answer.

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A client’s website, social media posts, policies and procedures are all game. Don’t simply ask the client whether there is anything relevant or anything you should be worried about that opposing counsel can easily find on the internet. Take the time to look for yourself, reach your own conclusions and determine how to address any issues before the client is asked about them in deposition.

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When taking a deposition, have all your exhibits you’ll be using in order, with sufficient copies for everyone. What I do is I take a banker’s box, and I have all my exhibits in the order I plan on using them in separate file folders, with enough copies in each file folder for me, the witness and all the counsel attending the deposition. Yes, it’s a pain, but it makes the deposition run smoothly.

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As a young lawyer, it’s tempting not to cull out all the bad facts from a witness at her deposition. It’s as if the witness doesn’t say it on the record, it didn’t happen. It’s your obligation, however, to learn the good, the bad and the ugly from deponents. If there are bad facts, you need to learn them, and do your best to inoculate them at deposition. Otherwise, you may learn the bad facts for the first time at trial and be caught flat footed before the jury.

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When I go into a deposition, I have a list of admissions I intend to secure from the witness. I have separated them into three categories:

- Obvious admissions. These are admissions any witness should admit to. I have fun with witnesses who fight me on these. They sound ridiculous denying the obvious.
- Advanced admissions. These are more significant admissions that lay the foundation for proving or disproving elements of the case.
- Game changing admissions. If I get these, I go straight to Summary Judgment. These are worth their weight in gold.

I keep this list to make sure I’ve achieved my objectives by the time I’ve concluded the deposition. I keep this list in addition to my deposition outline. You also want to keep a list of case themes nearby that will assist with the direction of your questioning. It sounds like a lot of lists, but each serves its purpose to achieve your objectives.

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Clients who have never given a deposition (and even some who have) don't appreciate how long it takes to get them ready for their depositions. Early in the case, well before my client is even set for deposition, I explain the deposition process to her and how much is involved in ensuring she performs as well as possible under the scrutiny and cross examination of opposing counsel. Then I set up periodic calls and send her case documents to start the deposition preparation process. By the time I sit down with her, she understands the rules of the road, she appreciates my expectations and knows what we need to do to get her ready.

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Clients may not perform well at depositions because they don't understand their role in your case theory, theme and strategy. A client in any case has a specific role and specific tasks to advance their case. They need to know how by saying X, they move the case forward and by saying Y, they move it backwards. Context must be provided and explained.

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When I take a deposition of an adverse witness I want the transcript to read the way I want the cross examination to go at trial. I want to have set forth all my impeachment and gotten the witness into a rhythm to answer my questions with yes or no answers, so I can use that Q&A at trial. Long rambling answers aren't useful for impeachment. Short succinct questions with short succinct answers that are favorable for you are perfect for impeachment.

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One of the toughest kinds of witnesses to prepare for deposition is the one who talks too much. The one who can't say yes or no. The one who must explain everything and digress at every turn. For witnesses like this, I spend a separate session practicing answering only the question being asked. For loquacious witnesses, it takes a lot of effort to get them to answer the question and then stop. A whole lot of effort. Even though it's just one issue, it's a crucial issue, and one that deserves a lot of mock questioning and answering to get it to sink in.

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When defending a corporate representative deposition, make sure to secure the transcripts of any prior depositions of the corporate representative. Prior depositions are a trap ready to happen. You and the witness have to review the transcripts and discuss how they may come into play at the deposition.

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If your client is going to undergo a video deposition, use your smart phone and video a portion of your mock deposition with her and then watch the video together and point out the issues that need to be rectified and do it again until she improves.

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Here is another visualization technique when deposing a witness of an accident scene—car crash, slip and fall, etc.—visualize the scene in the

manner that best serves your client. Where is everyone? What are they doing? What's happening? The video playing in your mind is playing a video of the accident that has you winning at trial. OK. Got it? Keep the scene in your head, freeze frame it from scene to scene, and use those images to question your witnesses. Do your best to draw out answers that overlay as much as possible as the pictures in your head.

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When deposing a witness about a personal injury incident, it's important to nail down all the relevant facts or you may find that you left the witness an opening at trial. What I do is start with a visual in my head as to what I think happened and freeze frame it scene by scene and go through each detail with the witness. At times I'll even close my eyes as I ask my questions, studying the scene in my head, making sure I asked everything and checking the witness each and every time he makes a statement that doesn't jive with the visual in my head. The devil is in the details.

— — —

When preparing a deposition outline, don't write out every question you want to ask. It'll hinder your ability to pin down answers and corner witnesses. If there are money questions you need specific answers to, for purposes of summary judgment or trial, write those out, but writing out the specific questions you plan on asking should be the exception, not the norm. You need to know what your themes, purpose and goals are for the deposition and be flexible when a witness doesn't give you the answers you expect and want. You won't find solace in pre-scripted questions when this happens.

— — —

Before taking any deposition, understand the role the deponent plays in your case and in your opponent's, and know the case law relevant to his testimony so you secure the admissions you need for summary judgment and trial. Just asking a bunch of questions without a target in mind may get you what you need, but most likely it will not. You may end up with a long transcript with few, if any gems.

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Always keep a few protein bars in your briefcase. You'll thank me when your next hearing, deposition or mediation run long.

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If you're going into a deposition with an opposing counsel who has a reputation to use speaking objections, make sure you have a copy of your local bar association's civility rules and relevant case law to make a record, and if need be, get the judge on the phone. Usually, correcting opposing counsel once, sometimes twice, does the trick, but if it's pervasive, reference the relevant rules, standards and cases and lay the foundation for a motion for sanctions.

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When deposing a Spanish speaking Plaintiff, if at all possible, have a Spanish speaking attorney conduct or attend the deposition. There are dozens of Spanish dialects and thousands of idioms. You need to be able to know if your translator is doing his job. It can make the difference between winning and losing at summary judgment.

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The most important deposition in your case is your client's. He can give away your case by making admissions that undermine your case or strengthen opposing counsel's. You need to spend significant time with him to prepare for his deposition. By the end of the preparations, there shouldn't be a question or document he gets hit with that he hasn't already been asked by you or shown by you. You can't control the facts, but you can control how your client does at deposition.

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Just as you should avoid surprises at trial, you should avoid them at depositions. If you're not ethically precluded from speaking to a witness before deposing her, talk to her. If you're not sure what she's going to say about a document at deposition and you can ask her about it before deposition, do so. Not every lawyer is quick on their feet and going into a deposition you should learn as much as you can about a deponent and what she's going to say so your deposition outline and your lines of questioning are best suited for the challenges you're expecting as opposed to reacting to challenges you should have anticipated if you had done your due diligence, but you didn't. Once a witness says something on the record, it's in black and white and you will have to deal with it, whether at a summary judgment hearing or trial, so do everything you can beforehand to be prepared to ask the questions that get you the answers you want and need.

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In deposition, it's rare you'll get the opposing party to agree with you on the ultimate issues. So start small. Start with common sense statements with which any person would agree. You may get push back on these too. That's OK. Keep working backwards to even more common sense statements. Sometimes you have a witness who won't agree with statements that any jury would feel should have been admitted. Sometimes not getting the answer you want is as effective as getting an admission because the witness comes across as unreasonable and not credible. Showing that a witness shouldn't be believed can be better for your case than securing every admission you wanted.

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The more I depose adverse witnesses, the more I realize that if I can't procure favorable admissions the second best thing is to have their testimony defy common sense. I want them to be on the record saying things a jury would never buy and sinking their credibility in the process.

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When preparing an outline for a deposition, create a separate document and label it Themes and Goals. Write down your themes for the deposition and the goals you want to accomplish (for example what types of admissions you hope to procure) and keep that near you when preparing the deposition outline and when questioning the witness at deposition. By having a list of what you want to accomplish during the deposition at your fingertips, you will increase the likelihood of having a successful deposition.

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When representing a defendant and preparing for a co-defendant's corporate representative deposition, make sure you learn as much from co-defendant's counsel about the representative's prospective testimony so you can be prepared to address at deposition any unfavorable testimony. Also, before the deposition, take the time to share relevant documents with the rep's counsel in support of your case and discuss issues that help both your clients to help direct the prospective testimony in a favorable direction.

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When selecting a corporate representative to testify on behalf of a client at deposition in response to a notice of deposition for a corporate representative with knowledge of A, B and C, you always select the best witness, not necessarily the company employee who knows the most about A, B and C. You can make a mediocre witness into a good witness and a good witness into a great witness, but it's rare to make a mediocre witness into a great witness, and when you're putting forth a corporate representative, you need a great witness. You can teach a great witness the facts he needs to know to answer the questions. You cannot necessarily teach a poor witness who knows all the facts on how to be a great witness. Being a great witness is like being a great leader, or a great speaker. Some folks have it and some don't. Always go with those who have it.

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Before attending the deposition of a witness, make every effort to learn beforehand what he is going to say. If it is ethically permissible, interview the witness. If he's represented, speak with his counsel. You should never set a deposition of a third party witness without a general sense, and preferably a specific sense, of what he will testify to. If you're attending the deposition set by another party, you want to know how this witness helps or hurts your case, how he advances or undermines your case themes. You never want to be surprised at a deposition. If you're going to get hit with bad news, you want to know ahead of time so you have a plan (and documents and impeachment materials if necessary) to deal with it.

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## Experts

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In a personal injury case, depending on the seriousness and scope of the alleged injuries, each side may need multiple experts to address Plaintiff's various diagnoses and prognoses. This can quickly become complex and expensive. Each side, early in the case, has to evaluate on behalf of their client what are the relevant medical and mental health issues, how to address them, which experts to address them and their respective roles in addressing them.

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Often, you want to hire experts early, well before expert disclosures are due, because you are dealing with technical, difficult issues that are outside your expertise and absent an expert consultant, you may miss the boat on the strengths and weaknesses of your case and that of the opposing party's case. Yes, experts are expensive, but it may cost you more not to get them signed on and involved early.

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When hiring an expert make sure he is a good teacher because the time will come that he will have to teach the jury your case and why you win. If she can teach the jury difficult facts and issues in terms lay people can



understand, that will go a long way in convincing the jury that the facts and issues are on your side. If he has a great resume but can't explain difficult concepts without the jargon and verbosity, take a pass on him and look elsewhere for an expert.

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Defense counsel often want to delay trial and it's counter intuitive for a defendant to notice a case for trial. But if it's an expert driven matter, and you believe you have a summary judgment once you depose the other side's experts, noticing the case for trial may be the only way to compel the parties to disclose experts by a date certain. Alternatively, the case may drag on for months and possibly years while your client continues to incur fees and doesn't get any closer to bringing the matter to a resolution.

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## Mediation

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After an impasse at mediation, you should work toward two things—a settlement and trial. On the one hand, you should leave the lines of settlement discussions open. On the other hand, you tried to settle, it didn't work and a case isn't going to prepare itself for trial. If I don't prevail at mediation, I draw up a plan for trial and let the client know how much it will cost. Trials aren't cheap, and a client needs to know what she's committing to if she's going to have you put six in the box.

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I had a mediation today which did not settle, but all the attorneys, clients and the mediator were complete professionals and we declared an impasse professionally. Sometimes you can't agree. We can see a case differently but still smile, shake hands and walk away. It's called being a lawyer.

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As a mediator, when facilitating a settlement, your job is to understand the parties' proclivities, world views, prejudices, and paradigms. We live in a polarized world where many of us pursue news, programming, books and friends who agree and support our views. That wasn't always true, or at least it wasn't as pervasive as it is now. But that is the reality. It's is not your



job to convince others that their long held beliefs are wrong in an effort to procure a settlement. It is your job to speak to everyone on their terms, terms they understand and agree with, and convince them they need to settle because their own preconceived notions tell them it is in their best interest to do so.

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Mediation isn't the place for surprises. Each side goes into mediation with a settlement number and range in mind and any big surprises at mediation that require them to reassess the valuation on the fly upsets them, and rarely has the desired effect. If you're planning on showing your hand at mediation, show it before mediation so the other side has a realistic and reasonable settlement view going into mediation and improve the likelihood of settlement.

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Good mediators read people well. They can, within a short time, develop a rapport with the parties, learn what motivates them, what catches their attention and what presses their buttons, and work with you to get on the same page with her to speak the other side's language on your terms to get them to be open to your terms.

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There's a lot of planning for mediation. You need to be on the same page with your client. If you're a defendant, and there is insurance involved, both the insured and insurer need to be part of the planning discussions. If there are co-defendants, getting on the same page with them before mediation is a good practice. There is the mediation statement to the mediator, possibly a power point or exhibits to be used at mediation, a proposed settlement agreement in case the matter settles and an appreciation of your authority and possible settlement ranges. All this takes time. A month out from mediation, start checking all these boxes.

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At mediation, you have to go in knowing how much of your hand you plan on showing. If you feel reasonably secure the case can settle, you may want to show all your cards to get a number with which your client will be happy. If it's not likely to settle, you may want to conceal some, if not most of your case theories and themes, so you can continue with discovery on your terms. It's hard to say whether a case will settle or not until you're in the heart of mediation. In light of this, you may want to keep your opening statement at mediation brief and supply additional information with each round of settlement discussions, depending on how much progress the parties are making. This is a strategic decision, and there is no right answer, but it deserves thought before mediation starts.

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As lawyers, mediation affords us the opportunity to look the opposing party in the eye and explain why we win and he loses. Up until then, he has heard

what his attorney has wanted to tell him. At mediation, you get to tell him the unadulterated other side of the equation and explain why if he chooses not to settle, why he'll lose at trial. Sitting across from someone and telling them all the weaknesses in their case can be quite eye opening and can force the other side to settle on terms favorable to your client. Always make the most of that opening statement to speak directly to the other party and have him see things your way.





## Trial Practice

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We lawyers are storytellers, and storytellers show, we don't tell. We convey a theme by painting pictures and conveying images and scenes where the audience can see it, hear it, touch it, smell it, and on occasion, even taste it. Connect with the listener's senses. Don't lecture them. Tell them a story.

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When you put a witness on the stand at trial understand that an imaginary stop watch goes off the moment they're sworn in and say their name. The jury wants you to get to the point as quickly as possible in the most compelling way possible. Digress, meander, and repeat yourself at the risk of losing the jury's attention.

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Index cards. A trial lawyer's friend. Have them handy, write down topics or questions for witnesses as they occur to you during trial and rely on them for direct, cross or redirect. You can write down all your variant ideas and shuffle them in order before taking the podium and asking questions of the witness.

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I study television journalists to hone my cross exam skills. A few (each cable news station has at least one) are dogged in getting answers to their questions from politicians who don't want to answer them. Find one or more of your favorites and study how they corner their interviewees to answer tough questions.

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For trial, prepare a trial notebook with the operative version of the Complaint and Answer, your Opening and proposed Closing, all Directs and Crosses, the few key documents and several blank pages for notes. Keeping these in one place for quick reference will help you focus on the big picture and themes of your case.

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Don't rely on others at trial to know where your exhibits are. If you're like me, you have several bankers boxes with multiple copies of each exhibit. Sit with the boxes for an hour or two and flip through the exhibit file folders one by one until you feel comfortable knowing what exhibits you have and where they are physically located in your boxes. This will avoid undue stress at trial.

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Calling yourself a trial attorney having never tried a case is calling yourself a surgeon having never performed a surgery. If you want to be a trial lawyer you want to try cases and you have to seek out trials. Many lawyers are relieved when their cases settle. You want to feel disappointed. You want to ask yourself "what if I had gone to trial?" Don't be afraid of trying cases. Don't be afraid at losing at trial. Don't be afraid of picking a jury, or cross examining an expert or making a closing argument. Seek out opportunities to do these things, do your best, be prepared to fail and learn from it all whether you win, lose or draw. Yep, it's a lot of work. Sure, it's risky. But it's challenging, it's rewarding and it's just plain fun.

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Everyone agrees you shouldn't read your closing argument but I recommend you write it out, including every bit of evidence you plan on referring to in closing. By doing so, you see every piece of evidence you need to get before the jury. I write my closing argument before trial, knowing it will change as trial progresses, but I do so to help me focus my themes and to list all the evidence I need to get into evidence to shore up my trial themes. At the end of each trial day, I revisit the closing argument and revise it so by the time I have to do my closing, it's ready to go and I've reviewed and revised it enough to know it by heart.

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When cross examining a witness at trial, not only do I want him to answer "yes" to my questions, I want to pose as many questions as I can that require a "yes," answer, which means I try to break up my questions to the atomic level, parceling out as little as I can in each question to still make it a question to secure a "yes" response before going onto to the next one-fact question and securing another "yes." The jury will remember that an adverse witness agreed with me 50, 100, even 150 times, and if they agreed with me that much, I must be right, and by extension, my client must be right.

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Your direct examination outlines for trial should not be too detailed. Include enough information for yourself to direct the witness through her story but do not spell out every question, which will make you come across as robotic and will cause you to miss interacting with the witness and playing off her testimony. Remember, on direct, the witness is testifying, not you.

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During the course of your litigation cases, have your legal assistant prepare electronic file folders for each witness, and include the witness's deposition with exhibits, the witness's background materials and all documents sent to or received by the witness or prepared by the witness. Trust me, you will find this resource invaluable when preparing trial examinations the weeks and days before trial.

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When preparing for trial, write down on a post-it your trial theme(s) and what you anticipate your opponents' trial theme(s) will be and keep them posted on your computer screen or on your desk to keep them at the forefront of your mind when preparing your opening statement and witness examinations.

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Had the privilege of judging three rounds of the Pretrial Competition at Stetson. The students were great. A few takeaways:

- When answering a yes or no question from a judge, first say yes or no and then explain.
- Judges may take you off track. Always return to your themes.
- Know what you can get from a witness on cross and don't go for more. You run the risk of having your cross go off the rails if you do.
- Don't argue with a witness.
- When impeaching a witness, make sure they lied. You're calling them liars when you're impeaching witnesses. You better have the goods.

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I had the pleasure of judging a closing argument competition today of young lawyers at FIU law school. I enjoy judging such competitions because I learn something new each time I do it. The following were the most repeated suggestions:

- Own your space in the courtroom.
- Start and end with your theme.
- Loop your theme and catch phrases throughout closing.
- Walk the jury through the verdict form.
- Paint pictures with your words.
- Tell a story and cast your client as the protagonist.
- Create the right tone and stick to it.

- Don't rely on notes. You know the case. Trust yourself.
- Presenting to a jury is part performance. Develop your public speaking skills outside the courtroom through Toastmasters, improv classes and the like.
- Be yourself.

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We often see what we want to see. We seek out patterns and profiles based on our predilections, experiences and exposures. We often do not delve deep into trying to fit evidence into our predetermined world views and understandings. Facts that don't fit don't test our world view. They are made to fit or are discarded. There are patterns to pursue and facts that don't fit the pattern are anachronisms to be avoided or ignored. This may sound lazy but it's necessary for our self-survival. Questioning everything, analyzing everything, over thinking everything, that's what Hamlet did. It was his tragic flaw and dragged him down into madness. We can't question everything. As lawyers, we have to plug our facts and the law into the world views of our juries so they aren't discarded and ignored. I'm not suggesting buying into prejudices. I'm suggesting presenting the evidence through the prism of their common sense, common experiences and their views on how the world works and how we all should work in this world.

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For the right case and the right witness, you may want to consider hiring a consultant to help you prepare the witness for his deposition. Jury consultants are experts in witness preparation and sometimes you need an outsider to help convince a witness that he needs significant help and without it, he will sink the case at deposition.

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Your client's website, mission statement and values are a great source for developing case and trial theme. Conversely, opposing counsel will try to use all of them against your client when developing their themes.

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When cross examining a witness at deposition or trial, get in the habit of asking one fact per question, and include throw away questions where everyone would answer "yes." You want to train the witness to say "yes," you want to train the jury to hear "yes," you want the jury to hear that the witness is agreeing with you, and you want to create a cadence—question, yes, question, yes, question, yes. For example, let's say you're defending a case where the Plaintiff was trapped in a stairwell during a fire in a high-rise and you're deposing Plaintiff's expert:

There was a fire at 69 W. Washington Avenue.

Yes.

On a Friday.

Yes.

Shortly after 5.

Yes.

It started in a closet.

Yes.

On the 12th floor.

Yes.

And the Plaintiff, Mr. Smith, was on the 18th floor.

Yes.

The fire was on the 12th floor.

Yes.

And the Plaintiff was 6 stories above.

Yes.

The expert instinctively wants to say “no.” There’s no way to say “no” to these questions. Everyone in the courtroom gets used to the expert saying yes. So when the questions broach the heart of the case, and he says “no,” or at least tries to, he’s broken this understanding you’ve created for him to say “yes.” The jury may look at him and say to themselves, “what a jerk. He should have said ‘yes’ to that question.”

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One of The most important persons in your case is your judge. Learn everything you can about her. Nothing beats speaking with attorneys who have practiced before her and tried cases before her to tell you everything you need to know. Everyone is human, including judges, and you need to know her judicial slant, pet peeves, proclivities, etc., to best represent your client before her.

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In addition to developing your case themes early in litigation, test them on an audience early on. Test them on staff, family and friends. Discuss your themes with regular folk, not lawyers. Consider buying lunch for your staff in the conference room and run through trial themes. Perhaps throw a dinner party for friends and test your themes on them. Yes, no one wants to be that guy or gal who always talks about work, but friends and family will likely take the time to listen and share their opinions. If your themes are going to fall flat, better to know as soon as possible.

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Every trial boils down to credibility. Does the jury believe my client or theirs? Does it believe my witnesses or theirs? In light of that, your discovery should be focused on tearing down their witnesses’ credibility, including showing

their bias and misstatements, and bolstering your witnesses' credibility. Long before you get to trial, you should know who the jury is going to believe.

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Don't wait until the eve of trial, or a week before, or even a month before to start thinking of trial themes. Start thinking about them the day the case comes through the door.

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