ESSAY

“AND BAD MISTAKES? I’VE MADE A FEW”: SHARING MISTAKES TO MENTOR NEW LAWYERS

Stephen D. Easton & Julie A. Oseid*

“Good judgment comes from experience. Experience comes from bad judgment.”

1 The phrase “and bad mistakes, I’ve made a few” included in the title of this Essay is borrowed from the lyrics of the song We Are the Champions, written by Freddie Mercury and performed by Queen. QUEEN, We Are the Champions, on NEWS OF THE WORLD (EMI 1977). The song begins:

I’ve paid my dues—time after time—I’ve done my sentence but committed no crime. And bad mistakes I’ve made a few. I’ve had my share of sand kicked in my face, but I’ve come through. We are the champions, my friends, and we’ll keep on fighting till the end. We are the champions, we are the champions, no time for losers ‘cause we are the champions—of the world.

Id.

* After graduating from Stanford Law School and clerking for the late Judge Joseph T. Sneed of the Ninth Circuit, Steve Easton enjoyed a decade and a half of experience as a trial lawyer with the Pearce & Durick firm in Bismarck, North Dakota, and as United States Attorney for the District of North Dakota. He then spent a decade teaching at the University of Missouri School of Law. He is now a member of the faculty, after four years as dean, at the University of Wyoming College of Law.

Julie A. Oseid is Professor of Law at the University of St. Thomas School of Law in Minneapolis, Minnesota. Oseid worked during law school in the Criminal Division at the Hennepin County Attorney’s Office in Minneapolis. Oseid served as Ninth Circuit Judge John T. Noonan, Jr.’s first law clerk. After law school and her clerkship, Oseid practiced law for five years in the areas of professional malpractice, business law, and products liability at Oppenheimer, Wolff & Donnelly (Minneapolis). She then spent thirteen years raising her children. Oseid joined the faculty at the University of St. Thomas School of Law in 2004 where she is currently a Professor of Law.

Oseid and Easton are also siblings. The lessons and stories in this article come from the collective experiences of Oseid and Easton, and the authors certify the authenticity of the mistakes and mentoring lessons herein.

The authors thank the Marquette University Law School faculty and participants at the second biennial International Applied Storytelling Conference for their helpful suggestions about the ideas presented in this article. The authors also thank Keri Vanderwarker and the other members of the Albany Law Review for their excellent editing.

2 This quote, sometimes in slightly different language, has been attributed to several persons, including Rita Mae Brown, Will Rogers, Barry LePatner, Oscar Wilde, and Senator Bob Packwood. E.g., Fred Tannenbaum, The Second Half of Smart: How to Temper Your Intelligence and Become a More Effective Lawyer, 52 PRAC. LAW. 25, 30 (2006) (attributing the quote to Oscar Wilde).
Dear Young Star:

There is no sense in trying to hide it. I heard about it. Because you are a human being, it hurts. Because you are from a generation that (thanks to the mistaken efforts of our generation that wanted to save you some of the pain we experienced as kids) grew up being shielded from failure, it hurts even more than it did for me. In fact, this might be the first time in your life you have failed, at least this dramatically and this publicly.

Until this moment, everything was going so well. You breezed through your undergraduate education and aced the LSAT. Law school was tough, but you persevered. In fact, you did quite well. Some of your buddies struggled with the bar exam, but you passed on your first attempt. Here at the firm, you have been the apple of many a partner’s eye: cranking out thorough memos, propounding and answering discovery requests, taking and defending depositions, even filing motions with dynamite briefs. You have had the occasional minor setback from time to time, but nothing of this magnitude.

In fact, you were starting to feel pretty proud of yourself. That is not a bad thing. Lawyers need confidence. I was glad to see yours growing. We partners were starting to get a lot of confidence in you too, which is also a good thing. In fact, we were becoming so confident in you that we decided to let you handle that trial. But you lost.

So what are you going to do about it? That is the key question.

I am writing this note to give you some unrequested advice about answering that question—and to congratulate you.

Seriously. It takes guts to take on the risk of winning and losing. You have faced that risk. In the wonderful words of Theodore Roosevelt, you tried for “the triumph of high achievement,” and failed to get it, but at least you failed “while daring greatly, so that [your] place shall never be with those cold and timid souls who neither know victory nor defeat.”

It takes guts to try a case. Far

---

3 Theodore Roosevelt, The Man in the Arena: Citizenship in a Republic. Address at the Sorbonne, Paris (Apr. 23, 1910), in THEODORE ROOSEVELT: LETTERS AND SPEECHES 782 (Louis Auchincloss ed. 2004). The most famous part of Roosevelt’s speech follows:

It is not the critic who counts; not the man who points out how the strong man stumbles, or where the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly; who errs, who comes short again and again, because there is no effort without error and shortcoming; but who does actually strive to do the deeds; who
too few lawyers these days have those guts. You do. Be proud of that.

Of course, you were shooting for “the triumph of high achievement,” but you ended up with failure. There is a part of you thinking those “cold and timid souls” might be the smart ones.

Perish that thought right now.

Yes, you feel awful. Good. That means you care, and caring—really caring—not just about trials but about pursuing effective motions, cutting good deals, writing effective briefs, and even the mundane aspects of discovery requests and responses, is the key to effective lawyering. Whenever you make mistakes, in any of those aspects of our practice, it should hurt. Caring about mistakes and failure is critical to your improvement.

The most important thing is to learn from your failure. Use that excruciating pain you are feeling right now to motivate you to be an even better lawyer the next time.

You see, you are at the key moment of your career as a lawyer. The inevitable has happened. Some combination of your mistakes, bad breaks, and the big snakes (in the form of opposing attorneys, adverse expert witnesses, or judges) has caused you to lose. Because the stakes were high, it hurts. You don’t have control over bad breaks or the big snakes, but your mistakes? That is something you can work on.

The first step is to own them. You cannot learn from your mistakes until you first identify them. If you are convinced that you did nothing wrong or that you only made little, inconsequential mistakes, there is no point in reading this letter. I have nothing to teach you, if you are not willing to identify and admit own your mistakes. If you are not able to identify the mistakes that contributed to your loss, simply toss this letter in the trash.

Oh yeah. One more thing. After you toss the letter in the trash, walk out the door. Don’t bother coming back. It has been nice to have you here, but there is no point in having you here anymore. If you cannot learn from your mistakes, you cannot improve. If you cannot improve, there is no point in practicing law.

You made mistakes. Even if you had won the case (or, to note

knows great enthusiasms, the great devotions; who spends himself in a worthy cause; who at the best knows in the end the triumph of high achievement, and who at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who know neither victory nor defeat.

Id. at 781–82.
other contexts: prevailed in the motion, closed the deal, or won the appeal), you would have made mistakes. Nobody can do anything of consequence in the practice of law without making mistakes. Every day you practice law you make mistakes. In fact, make that every hour—or almost every hour. Our profession is so complicated, so much “art” instead of “science,” that we all make mistakes, even though we try our best to avoid them. I have made some doozies, and so has every single lawyer I respect.

Own your mistakes. You cannot learn from them unless you identify them. Think back to key decisions that you made that turned out to be the wrong decisions. You now have the benefit of 20/20 hindsight. Use it. Be brutally honest with yourself. Get out a piece of paper and write down your mistakes.

Have you done that? Do you have a sheet or two (or maybe five or ten) of your mistakes? Don’t read the rest of this letter until you have that list. Put this letter in your desk and work on your list. Don’t come back to this letter until you have a brutally honest, thorough list of all the mistakes you made that might have contributed to your loss.

You are back. Good. That means you have your list of mistakes.

Now you can start to turn those mistakes into opportunities to do better the next time. That is the key to this exercise. After you have your list, don’t stew on your mistakes. Own your mistakes, but don’t dwell on them in some exercise of self-flagellation. Remember that you cannot change the past.

But the wonderful thing about life is that you can change the future. Turn your mistakes into ways to learn to do better in the future. That is the point of this note.

**WHY I AM WRITING THIS NOTE TO YOU**

You may be wondering why I am bothering you with this letter, now, of all times. You might also be wondering why I bothered to write it. Don’t I have better things to do?

No. You represent the future of our firm and the future of the practice of law.\(^4\) It is our profession’s grand tradition to try to pass

---

\(^4\) Justice Sandra Day O’Connor urged law schools to include an integrated and complete approach to preparing the future generation of lawyers for legal practice, but her comments are just as helpful for mentors:
on the benefit of our experience to new lawyers. To put it another
way, I like you. I care about you. I think you are a promising new
attorney who could become a great lawyer. Like it or not, I think of
myself as a mentor to you.

Not just you, though. Because I have been in the legal profession
for quite a while, I have noticed that you are not the first new
lawyer to face a crisis of confidence brought on by mistakes you
made that led to a painful result. And you are not going to be the
last one facing that reality. So I figured it was worth a bit of time
and effort to put some thoughts about mistakes on paper. You are
the first new lawyer to get this letter, but you won’t be the last.
Your mistakes were in the context of a trial. Others will make
equally costly mistakes in negotiating, drafting, arguing, mediating,
or doing all of the other things we do as lawyers. I hope this letter
will be helpful, regardless of the context of the mistake.

GENERATIONAL DIFFERENCES REGARDING MISTAKES

As with everything you see in the practice of law, and, for that
matter, in your life outside the law, you should consider the source
carefully as you decide whether my mentoring is of any potential
value to you. Like most of the other experienced lawyers in our
firm, I am a member of the Baby Boomer generation, those born
between 1946 and 1964.5 We Baby Boomers are often described as

To be sure, the first obligation of a law school is to teach students the substantive law
and how to analyze and incorporate sufficient practical training to equip the graduate
with the essential skills required for the practice of law.

But law schools must do even more than that. They need to instill a consciousness of
the moral and social responsibilities to the lawyer’s clients, to the courts in which the
lawyer appears, to the attorneys and clients on the other side of an issue, and to others
who are affected by the lawyer’s conduct.

... One of the functions of a law school is to teach lawyers to be always mindful of the
moral and social aspects of their powers and their position as officers of the court.
Sandra Day O’Connor, Legal Education and Social Responsibility, 53 FORDHAM L. REV. 659,
660 (1985) (demonstrating that over twenty years before publication of the Carnegie Report,
Justice O’Connor presciently urged law schools to adopt the three apprenticeships of
analytical training, experience, and professional development).

5 LYNNE C. LANCASTER & DAVID STILLMAN, THE M-FACTOR: HOW THE MILLENNIAL
GENERATION IS ROCKING THE WORKPLACE 5 (2010). The birth dates of Baby Boomers,
Generation Xers, and Millennials vary depending on the source. See, e.g., WILLIAM STRAUSS
& NEIL HOWE, GENERATIONS: THE HISTORY OF AMERICA’S FUTURE, 1584 TO 2069, at 84 (1991)
(listing Baby Boomers as born between 1943–1960, Thirteenth Generation or Generation Xers
as born between 1961–1981, and Millennials as born between 1982–unknown date); Melissa
H. Weresh, I’ll Start Walking your Way, You Start Walking Mine: Sociological Perspectives on
Professional Identity Development and Influence of Generational Differences, 61 S.C. L. REV.
“individualistic and hardworking.” A few of the other new lawyers in our firm come from Generation X, those born between 1965 and 1981. Generation Xers are described as skeptical of authority, egalitarian, and fun loving. You are one of the Millennials, those born between 1982 and 2000. Millennials are described as team-oriented, confident, and entitled.

So, you might be wondering, is there a point? I think there is. This note celebrates that transformative power of making, and learning from, mistakes. Although there are, of course, always exceptions, people in different generations treat mistakes differently. There are fundamental differences in generational attitudes toward making mistakes. By no means does this make one generation “better” than another. Just different.

Our parents encouraged we Baby Boomers to try to become anything we wanted to be, but with the realization that pursuing goals would involve sinking or swimming on our own initiative. And sinking was a definite possibility. More than a possibility—a reality. Thus, it was okay if we “learned the hard way by being dropped into the deep end.” As a result, we Baby Boomers tend to make a lot of mistakes, but we also tend to recognize them, accept responsibility for them, and learn from them. Most importantly, we have come to embrace the importance of mistakes in becoming a professional. It is not that we like making mistakes or failing to reach our goals. But we tend to accept mistakes and failure, at least to some degree, as inevitable to life, including life in the law.

We did not pass this attitude on to our children, though. Perhaps we were not that accepting of mistakes, and the failure that results

6 Weresh, supra note 5, at 359.
7 LANCASTER & STILLMAN, supra note 5, at 5.
8 Weresh, supra note 5, at 359–60.
9 LANCASTER & STILLMAN, supra note 5, at 4–5.
10 Weresh, supra note 5, at 368.
11 “Every generation has its own strengths and weaknesses, its own potential for triumph and tragedy.” NEIL HOWE & WILLIAM STRAUSS, MILLENNIALS GO TO COLLEGE 213 (2d ed. 2007).
12 LANCASTER & STILLMAN, supra note 5, at 21.
13 For an interesting article about the five aspects of forming a professional identity (continuing to grow in conscience throughout a career, agreeing to comply with the ethics of duty, striving to realize the ethics of aspiration, agreeing to hold other lawyers accountable, and agreeing to act as a fiduciary for the client and the public good in the area of justice), see Neil Hamilton, Assessing Professionalism: Measuring Progress in the Formation of an Ethical Professional Identity, 5 U. ST. THOMAS L.J. 470, 482–83 (2008).
Sharing Mistakes to Mentor New Lawyers

from them, as we like to think we are. If we fully accepted those
concepts, why did we work so hard to protect you—our children—
from the rough reality of mistakes and failure?

Indeed, we hovering parents tried to protect you from mistakes
and failure. We raised you to believe that you would always be
rewarded for effort, even effort laced with mistakes. In an effort to
boost your self-esteem, we raised you to believe that mistakes,
criticism, and failure should be avoided at all costs. If you struck
out in tee ball, we told you to go to first base anyway. At the end of
the season, everybody got a trophy, not just the league champions.14

Experts have noted that you and your contemporaries “have been
praised to the skies by parents trying to help [you] feel good about
[your]selves.”15 The current system of grading has changed so
dramatically that an “A” is no longer a standard for achievement,
but is instead awarded to everyone who tries.16 We have shielded
you from criticism and failure and, therefore, from your mistakes.

A brief illustration may help explain the mindset we created in
your generation, through no fault of you or your contemporaries.
My Millennial son’s second grade teacher had a daily tradition of
writing one “Question of the Day” on the blackboard and then
requiring each student to write the answer on a sheet of paper.
About halfway through the year my son returned home from school
one day informing us that the “Question of the Day” was “which was
invented first—trains or cars?” He also reported, with confidence,
that he had correctly written “cars” as his answer. When I told him
that he was wrong, he looked surprised. But he recovered quickly
from the inconceivable concept that he was wrong. He decided that
the question must have been, “which do you feel was invented
first—trains or cars?” He was pleased to have answered that
question correctly. I was astonished to learn that at age eight he
had discovered how to phrase a question so that no one could get it
wrong.

My son is representative of his generation and the manner in
which we raised you. With decreasing family size, parents in the

14 Managers note that employees in Generation Y are difficult to manage. “They think
everybody is going to get a trophy in the real world, just like they did growing up.” BRUCE
TULGAN, NOT EVERYONE GETS A TROPHY: HOW TO MANAGE GENERATION Y 3 (2009) (internal
quotation marks omitted).
15 LANCASTER & STILLMAN, supra note 5, at 59.
16 Id. at 62. “[R]esearchers at the University of California, Irvine, found that a third of
students surveyed . . . expected Bs just for attending lectures, and 40 percent said they
deserved a B for completing the required reading.” Id.
last thirty years have been able to focus their attention on fewer children. As children, most of you and your contemporaries were wanted, protected, and worthy. As children, you were a primary focus for us Baby Boomer parents. Generational experts have noted, “not since the . . . dawn of the twentieth century, has America greeted the arrival of a new generation with such a dramatic rise in adult attention to the needs of children.” These are not bad developments, per se. Indeed, we Baby Boomers went down this road with the best of intentions. Remember though, that Baby Boomers try to recognize mistakes. Some of us now think we made the mistake of going a bit overboard by protecting you from making mistakes. Like any other generation, you and your contemporaries are the product of the social structure that we Baby Boomers provided. You Millennials are described as entitled, sheltered, confident, team-oriented, and achieving. For purposes of the topic currently on the table, the main traits that can inhibit you and other younger lawyers from embracing mistakes are your sense of entitlement and your confidence. These characteristics have positive aspects that will help you in the practice of law. But they do interfere with your ability to recognize your mistakes and use them as opportunities for growth.

WHY IT IS HARD FOR YOU TO ADMIT MISTAKES

In part, you and other young lawyers are resistant to talking about mistakes because we raised you to believe that you never made mistakes. We encouraged you to believe that you would (not

---

17 Id. at 21.
18 Neil Howe & William Strauss, Millennials Rising: The Next Great Generation 31–32 (2000) (explaining that Baby Boomers wanted children after delaying parenthood, protected their children from the rising fear of injury and abduction, and believed their children to be worthy when the “well-being of children began to dominate the national debate over most family issues”).
19 Howe and Strauss noted that the “Baby Boomer cultural elite rewrote the rules” for the Millennial Generation. Id. at 33. “Starting as babies, kids were now to be desperately desired, to be in need of endless love and sacrifice and care—and to be regarded by parents as the highest form of self-discovery.” Id.
20 Id. at 32.
21 See id. at 43–44 (listing the seven distinguishing traits of Millennials as special, sheltered, confident, team-oriented, achieving, pressured, and conventional); see also Lancaster & Stillman, supra note 5, at 6–8 (noting the seven trends for the Millennial generation as parenting, entitlement, meaning, great expectations, the need for speed, social networking, and collaboration).
could—would—and there is a difference) be anything you wanted to be, then shielded you from the hard knocks of mistakes, criticism, and failure. One coach lamented, “Because of this sheltering [by parents, safety standards, and societal norms], many [Millennials] are crushed when they receive less than an ‘A’ for a grade, get cut from teams, and receive negative feedback. It’s as if they don’t know how to handle it.” Although we Baby Boomers sometimes express frustration from your difficulties with mistakes, criticism, and failure, it was we who made this an almost inevitable reality for your generation.

Your upbringing, which we provided, is not the only reason it is difficult for you to admit mistakes. In addition, you are experiencing tough economic times in the early years of your careers. A February 9, 2012 study released by the Pew Research Center found that these are very difficult times for American youth. Most Americans believe that young adults are the hardest hit by the recent economic downturn. Understandably, you and your fellow young lawyers are scared to make mistakes. You fear that doing so might limit your job and career prospects in a difficult economy. You wonder if your career can afford the luxury of mistakes, especially big ones.

---

23 Young people attracted to the legal profession may have even more difficulty with mistakes because they are usually bright and accustomed to success. See Alison Barnes, The Speech—“Good Students Who Will Be Good Lawyers and Are Good People Often Get Bad Grades”, in TECHNIQUES FOR TEACHING LAW 323 (1999).
26 The Report notes:
A plurality of the public (41%) believes young adults, rather than middle-aged or older adults, are having the toughest time in today’s economy. An analysis of government economic data suggests that this perception is correct. The recent indicators on the nation’s labor market show a decline in the unemployment rate. Nonetheless, since 2010, the share of young adults ages 18 to 24 currently employed (54%) has been its lowest since the government began collecting these data in 1948. And the gap in employment between the young and all working-age adults—roughly 15 percentage points—is the widest in recorded history. In addition, young adults employed full time have experienced a greater drop in weekly earnings (down 6%) than any other age group over the past four years.
Id. at 1 (footnote omitted).
Times have changed in other ways, too. As a relatively new lawyer, you do not have the same opportunities my fellow Baby Boomers and I had to make mistakes in small cases with relatively low stakes. As Oliver Wendell Holmes, Jr. famously noted, “[t]he life of the law has not been logic: it has been experience.”

Thus, the most powerful way for you and any other new lawyer to become fully effective members of our profession is to acquire your own set of experiences.

Unfortunately though, some aspects of actual lawyer experience are becoming harder and harder for you and other young lawyers to obtain. Clinical education, while of high value, is also expensive, so students at many law schools have few or no opportunities to participate in clinics. Even after you entered the profession, you have limited opportunities to gather the real world experiences that some of us older hands took for granted.

Trials, for example, are an increasingly rare phenomenon. My own first trial was a simple case involving a couple thousand dollars of property damage. The trial lasted less than a day, but it was still long enough for me to experience the thrill of walking into a courthouse to try my very own trial—and to make several mistakes in the endeavor! These days, that case does not even get to a law firm, because it is settled by an insurance claims adjuster without outside counsel. The vast majority of the larger cases that do get to us do not go to trial.

On the rare occasions when trials happen, we senior lawyers—ourselves hungry for trial experience—often gobble up the chance to return to the courtroom. That is why it took you so

---

27 Oliver Wendell Holmes, Jr., The Common Law 1 (1923).
28 A law student or new lawyer performing legal work for a real client who is supervised by an experienced lawyer will make tremendous strides in professional development. A practicum system requires a new professional to work with an experienced professional who reviews the new professional’s decisions and actions. This practicum system is used to train doctors and architects in our American professional schools. Richard K. Neumann, Jr., Donald Schön: The Reflective Practitioner, and the Comparative Failures of Legal Education, 6 Clinical L. Rev. 401, 414–15 (1999). The practicum system is also used in law school clinics, where law students, under the supervision of clinical faculty, help real clients solve problems. See Margaret Martin Barry et al., Clinical Education for This Millennium: The Third Wave, 7 Clinical L. Rev. 1, 38 (2000).
long to get to your first major defeat, even though we think of you as one of our best young lawyers.

As a firm and as a profession, we need to reverse these trends. Soon enough, we will turn both the firm and the profession over to you and your contemporaries. If we want the firm and the profession to be in capable hands, we need to get you the high stakes experiences that will provide you the opportunity to shine—and to make mistakes. We took a small step in that direction by sending you to trial. You did some shining, and you made some mistakes. By owning those mistakes and committing to learning from them, you are making key steps toward improving your lawyering skills.

RECOGNIZING THE POSITIVE POWER OF MISTAKES

Although we experienced lawyers should work toward providing trial and other critical practice opportunities for you and our other younger lawyers, all of us need to realize that these opportunities are likely to be limited, despite our best efforts to provide them. We need to do more to help you improve.

What more can we do? Most importantly, we can help to convince you and your colleagues that mistakes are inevitable for all of us flawed human beings, including the most caring and skilled of lawyers. We need to convince you that recovering and learning from your mistakes will help new lawyers develop into professionals. Mistakes then, are not something to be avoided at all costs, but something to embrace when they happen despite our best human efforts to avoid them. They are career-boosters, not career-killers.

A hiring attorney at one of our competitor law firms told me

---

31 The Millennial Generation “and its influence on history—will stretch far into the Twenty-First Century.” HOWE & STRAUSS, supra note 11, at 213.
32 The law changes rapidly, so lawyers need “to learn from their experiences and mistakes and where to look when they need more help.” Carrie Sperling & Susan Shapcott, Fixing Students’ Fixed Mindsets: Paving the Way for Meaningful Assessment, 18 J. LEGAL WRITING INST. 39, 53–54 (2012). Law students need to understand that they will not have all the necessary skills when they leave law school, but they should also be confident that they can develop additional skills as they enter the legal profession. Id. at 54.
33 A professor and college administrator recently noted, “[n]o one teaches us the value of failure when we’re in graduate school. We are encouraged . . . to improve our work. But that’s not the same thing as learning from our failures.” Paula M. Krebs, Next Time, Fail Better, CHRON. HIGHER EDUC. (May 6, 2012), http://chronicle.com/article/Next-Time-Fail-Better/131790/. Krebs also pointed out that computer-science students are not devastated by failure, but instead “look at what went wrong and figure out how to learn from it.” Id.
recently that they have started to look for a new quality when they hire—the ability to positively handle mistakes and disappointments. This law firm invested financial resources into training a few attorneys in a new technique that was designed to help the firm determine which candidates could handle mistakes, disappointments, and criticism. These attorneys look for signs of prior experience with personal mistakes or disappointments both on resumes and during face-to-face interviews. The candidates who can explain prior mistakes and their learning experience from those mistakes are the candidates who are hired. The hiring attorney noted, “We have determined that it is the best indicator of the candidate’s long-term success at our firm. You simply can’t succeed in the law without acknowledging, accepting, and learning from mistakes and disappointments.”

HELPING YOU LEARN FROM MY MISTAKES

You and other new lawyers must have some way to learn what is expected in the profession, including the knowledge and skills required to be a lawyer, but also the acceptable behavior and ethical conduct of lawyers.34 You want and need help from those who have already traveled the path.35 Like beginners in other human endeavors, you will survive only if you can gather information. “Acquiring information firsthand can be costly, inefficient, and downright risky. . . . One way around these constraints is to take advantage of others’ experience and acquire information at second hand.”36

I plan to mentor you in two ways: by allowing you to look over my shoulder while I am working and by sharing some stories about the mistakes I have made. Real-time mentoring allows you to learn the

34 See Weresh, supra note 5, at 345–46.
35 Professor Anita Bernstein points out that specifics matter, using a sports analogy to make her point:

[T]alking to students about contingencies ahead in the practice of law gives them a boost of vigor and optimism, in the way that athletes planning for a marathon or long bicycle ride seek out and relish any advance information they can get about the hill, the stretch of potholes, or the bad neighborhood on their route. Specifics matter. “You’ll have a rotten time; the road is awful” is not a pitfalls message, especially when it hovers unspoken in the air. “Look out for X, Y, and Z when you take off,” by contrast, anticipates a satisfying journey.

2013/2014] Sharing Mistakes to Mentor New Lawyers

legal profession by being right by my side while I practice law. This type of learning, labeled an “apprenticeship” in the early days of educating lawyers, long ago vanished as the predominant method of teaching people how to become lawyers. Despite this change, many groups of lawyers are making strides to revive formal mentoring including the American Inns of Court, law firms, and some state bar associations. Informal lawyer mentoring has continued, but the economic realities of law practice usually preclude intensive mentoring where an

37 This intense interaction with a more experienced professional is how mentoring is traditionally defined. A mentor is a “wise and trusted teacher and advisor.” IDA O. ABBOTT, THE LAWYER’S GUIDE TO MENTORING 3 (2000). The concept of a mentor is found throughout the world’s folklore and literature. Id.

38 By 1970 the current legal education model requiring a four-year college degree followed by three years of full-time law school became the norm. ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S, at 299 (1983). There is a dispute about whether the apprenticeship model of legal education was a positive way to learn the law. Compare Charles Francis Adams et al., Diary of John Quincy Adams: Some Extracts from an Autobiography, in 36 PROCEEDINGS OF THE MASSACHUSETTS HISTORICAL SOCIETY 291, 351 (1902) (lauding his mentor and the advantage of the apprenticeship system), with Letter from Thomas Jefferson to Thomas Turpin (Feb. 5, 1769), in 1 THE PAPERS OF THOMAS JEFFERSON 1760-1776, at 23–25 (Julian P. Boyd ed., 1950) (“I always was of opinion that the placing a youth to study with an attorney was rather a prejudice than a help.”).

39 See General Information, AM. INNS CT., http://www.innsofcourt.org/content/default.aspx?Id=2 (last visited Jan. 10, 2014) (stating each American Inn of Court is a group of lawyers and judges, and sometimes law professors and law students, who meet monthly “to hold programs and discussions on matters of ethics, skills and professionalism”).


42 See STATE BAR OF GA. & THE COMM’N ON CONTINUING LAWYER COMPETENCY, TRANSITION INTO LAW PRACTICE PROGRAM EXECUTIVE SUMMARY 1–2 (2005), http://www.gabar.org/membership/tilpp/upload/7-G.pdf (showing the program matches new lawyers with experienced mentor lawyers appointed by the Georgia Supreme Court for the new lawyer’s first year of practice). Florida is developing a similar program. See Weresh, supra note 5, at 373–74. The Hispanic Bar Association of Washington D.C., with the help of Arnold & Porter, also developed a mentoring program. Id. at 374.

43 The current economic realities facing the legal profession make the apprenticeship model difficult. An experienced lawyer may have to let work languish to supervise another lawyer. Savvy clients are refusing to pay the high hourly rates charged for work by brand new law school graduates. See Chris Mondies, As Clients Call Shots, Law Firms Cutting Jobs, PHILLY.COM (Mar. 22, 2009), http://articles.philly.com/2009-03-22/business/2484056_1_law-firms-lawyers-and-other-staff-young-lawyers. Some large law firms are meeting this challenge by not billing the new associates’ work to clients. Instead, the associates are paid reduced salaries, bill only part of their hours, and participate in training programs or volunteer clinics where they learn critical legal skills. See Jeff Jeffrey, Apprentice Programs Give First-Years Extra Training; Business of Law Trying to Undo the ‘Old Model’, BROWARD DAILY BUS. REV., July 2, 2009, at A3 (describing a program where new
experienced lawyer is able to show all aspects of lawyering to a new lawyer.\textsuperscript{44}

If we more experienced hands have an obligation to help you learn the positive power of mistakes, we can make a wonderful start to this learning process by a second kind of mentoring which is our willingness to share stories about our own mistakes.\textsuperscript{45} If you are willing to learn from these stories, you can take a big step toward advancing your professional career.\textsuperscript{46} You and other new lawyers might not have the opportunity to make all of your own mistakes through trial and error, but hearing about our mistakes might help you avoid some mistakes, and it requires minimal energy expenditure, it is not personally risky, and it does not take as much time as personal experience would require.\textsuperscript{47}

Mentoring by sharing our personal mistakes also will help to socialize you and other new lawyers into the legal community.\textsuperscript{48} Our experiences will help you understand that mistakes can not only be survived but eventually cherished as opportunities for growth. Perhaps most importantly, you need to know that it is okay

associates will “spend a good portion of their time attending classes with partners and shadowing them on client matters” for two years).

\textsuperscript{44} The exception to this rule occurs at law school clinics, where law students are supervised by licensed attorneys as they “engage the complex issues that confront people who seek legal assistance and the lawyer’s role in addressing these issues].” Barry et al., supra note 28, at 50. Plus, successful mentoring depends on the development of a close relationship between the mentor and mentee, so the mentor’s wisdom generally can only be shared with one mentee. \textit{See, e.g.}, Abbott, supra note 37, at 83 (stating young lawyers should use initiative in choosing a mentor and in maintaining a relationship with a mentor); Patrick J. Schiltz, Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Formation of the Novice Attorney, 82 Minn. L. Rev. 705, 737–38 (1998) (noting that lawyers learn to practice ethically by watching how a mentor practices law).

\textsuperscript{45} See Alvin I. Frederick, Litigator or Trial Lawyer?, Md. B.J., July–Aug. 2004, at 53, 56 (“The key to a good war story is to hear it from a good warrior; i.e., someone who will accurately recount what happened, even (especially) if it is not flattering to the reporter.”).

\textsuperscript{46} Some anthropologists suggest that storytelling is such an important part of the human experience that people who could tell and process stories had a reproductive advantage over others lacking this skill. \textit{See} Sugiyama, supra note 36, at 235. Sugiyama opines, “[t]he universality of narrative suggests that those individuals who were able (or better able) to tell and process stories enjoyed a reproductive advantage over those who were less skilled or incapable of doing so, thereby passing on this ability to subsequent generations.” \textit{Id}.

\textsuperscript{47} See id. at 238–39.

\textsuperscript{48} See W. Bradley Wendel, Value Pluralism in Legal Ethics, 78 Wash. U. L.Q. 113, 175 (2000) (“These central cultural norms seldom take the form of rules. Maxims and rough rules of thumb, perhaps, and certainly stories that are meant to illustrate some aspect of the culture’s self-understanding, but not rules in the formalized sense familiar to lawyers. . . . Lawyers are, in many cases, more likely to be influenced by professional lore or war stories—precatory tales told by more experienced practitioners—than by reading rules, disciplinary cases, or bar association opinions.”).
Sharing Mistakes to Mentor New Lawyers

We have stories that demonstrate our own moral weakness—occasions when we acted without the virtue that we aspire to have. . . . All of us make mistakes—we are flawed and imperfect. Inquiry into how professionals live with and learn from their failures and imperfections has an important role in the teaching of legal ethics.

While we are on the topic of not wanting to be thought of as a braggart, allow me to confess that my interest is not purely


50 HOWE & STRAUSS, supra note 18, at 366. Howe and Strauss note:
In today's America, one hears much praise for what the G.I. Generation built, but no one ever asks: Who built the G.I. Generation? The answer is, the generation of Roosevelt and Truman—elders who provided young people with principled leadership, challenges to character, ambitious national goals, and solid foundations for long-term achievement.

Id.

If a professor only tells stories about his moments of glory, the students may learn, but they'll probably also learn not to like the storyteller very much. Nothing is more powerful in terms of preserving humility, humanity, and credibility in front of the classroom than using illustrations from practice in which you made a mistake—small, large, or in-between. Indeed, the saying goes that we learn the most from our mistakes; a corollary is that others can learn a lot from our mistakes as well.

Id. Also, admitting your mistakes will increase your reputation as an honest and credible lawyer. Stephen D. Easton, My Last Lecture: Unsolicited Advice for Future and Current Lawyers, 56 S.C.L. REV. 229, 248 (2004) ("A lawyer's single most important asset is his or her reputation.").

altruistic. Admitting mistakes—especially admitting them out loud by telling the stories of those mistakes to you—also can be a powerful way to further my own individual development.  

And while we are on the topic of confessions, let me make another. In the stories I will share with you, I will try to be as honest as possible. I say “as possible,” because sometimes I have to change a detail or two to protect the confidentiality that I owe to clients and others. In addition, I will be relying upon my memory of the events surrounding my mistakes. As any experienced lawyer understands after hearing hundreds of stories from clients, witnesses, and others, the human memory is an imperfect source of information. Consciously or subconsciously, we may embellish certain parts of a story when we tell it, particularly the details that are likely to make us look like the hero of the story. The value of mentoring by telling about our mistakes does not depend upon a precisely accurate recollection of every last detail but instead upon a basically accurate recollection of important facts and the tensions and emotions experienced by the lawyer.

It seems safe to assume—at least for the sake of argument—that pretty much every story about our mistakes might contain at least a bit of exaggeration. When we recount our mistakes, the story is

53 Telling a war story about mistakes will also help the storyteller reflect on shortcomings and take responsibility for those mistakes. See Chenise S. Kanemoto, Bushido in the Courtroom: A Case for Virtue-Oriented Lawyering, 57 S.C. L. Rev. 357, 378 (2005). Many attribute a growth in moral philosophy to a growth in moral experience, so “when we see what we do to ourselves and other people there are some things we realize we should not have done, and these realizations enter into how we behave in the future.” Robert E. Rodes, Jr., On Lawyers and Moral Discernment, 46 J. Cath. Legal Stud. 259, 263 (2007); see also Betty J. Luke, The Ethos and Pathos of Ethics and Law Students: A Clinician’s Perspective, 45 S. Tex. L. Rev. 843, 844 (2004) (“I am also a ‘work in progress.’”).

54 The “story” of an event, as it is told, replaces the actual event, and becomes the memory. See JEROME BRUNER, ACTS OF MEANING 56 (1990) (explaining the work of Jean Mandler as showing that anything that is not structured narratively “suffers loss in memory”).

55 Human beings make sense of events depending on their life experiences, values, and attitudes. Thus, truth is not objective, fixed, and unchanging, but relative, relational, and interpretive. See JEROME BRUNER, MAKING STORIES: LAW, LITERATURE, LIFE 5–6 (2002) (“Stories are surely not innocent: they always have a message, most often so well concealed that even the teller knows not what ax he may be grinding.”).

56 Friedrich Nietzsche explained how our mind works when we tell our own stories: “I have done that,” says my memory. ‘I cannot have done that,’ says my pride, and remains inexorable. Eventually—memory yields.” FRIEDRICH NIETZSCHE, BEYOND GOOD AND EVII 80 (Walter Kaufmann trans., 1966). L. H. LaRue notes, “[T]he most powerful of all human illusions is self-deception. We all believe that our actions are more honorable than they really are. We all tell stories about our lives in which we cut a somewhat grander figure than an objective observer would perceive.” L. H. LaRue, Speaking Outdoors, 19 Ga. St. U. L. Rev. 1135, 1156 (2003).

57 See Stephen Gillers, Teaching Legal Ethics: Improving the Required Ethics Course, 58
distorted by our unreliable memories, our human tendency to tell stories so that our own actions appear admirable, and our decision to focus on certain facts.\textsuperscript{58} Despite these natural foibles, the revelation of our less than finest moments, true in every detail or not, still can teach professionalism to new lawyers.\textsuperscript{59}

Finally, I hope that by sharing my mistakes we’ll have some fun together.\textsuperscript{60} My plan is to build a common bond with you based on trust, dignity, and vulnerability.\textsuperscript{61} I want my mistakes to help as you navigate your way through the sometimes difficult path of being a good human and a good lawyer.\textsuperscript{62}

\textbf{(SOME OF) MY MISTAKES}

The time has come for me to get to it—to tell you the stories of my own mistakes in the practice of law. As you will soon see, I have made some doozies. In every single instance, I was doing my best to avoid making mistakes. After all, it is not a “mistake” if it was intentional. Just like you in your recent trial, I cared and I tried. Just like you, I blew it in some significant way. I hope you can
learn from my mistakes. Due to the limitations of time and memory, I have only touched upon a tiny fraction of the many serious mistakes I have made in the practice of law. Some of my doozies, which do tend to stick out in my memory, are included here. But I have also included a couple of less important mistakes, simply because they help me make valuable points.

In addition to noticing my own errors, I have also seen other lawyers—good lawyers—make mistakes. While most of the stories I am going to tell here feature my own mistakes, in a few instances my stories recount mistakes made by other lawyers in cases that I worked on. They, too, were doing their best to avoid mistakes.

So, you will soon see, mistakes are very much inevitable. This is true in all human endeavors, but it is especially true in a human endeavor as complicated, and therefore as thrilling, as the practice of law.

MISSING THE FOREST FOR THE TREES, AND THE TREES FOR THE FOREST

One of the most difficult realities of the practice of law is that it almost always takes place on multiple levels at the same time. A given legal matter involves an application of legal principles outlined in statutes and, sometimes, in common law that developed over centuries, so a lawyer must know the relevant law and its intricacies. Often that same legal matter involves substantial policy issues, so an understanding of public policy and even philosophy is sometimes also important.

But a given legal dispute also involves a specific factual situation. Said more correctly, a legal dispute almost always involves some disputes about “the facts,” as one party believes the relevant historical or present facts to be different from what the opposing party perceives them to be. If those factual issues are substantial enough, each attorney must consider the available evidence to prove her version—and disprove the opponent’s version—of the facts. Often that evidence consists of a large quantity of witness recollections, documents (in both traditional and electronic formats), photographs, charts, maps, and so forth. It can be difficult for an attorney to keep a solid grasp of the important evidence, but doing so is critical for an advocate.
My first criminal trial was a bank robbery case. It was not a typical bank robbery trial because the two young men who went into the small town bank to rob it had confessed and pleaded guilty. The trial was against the two young women who waited in the car while the men went into the bank. They said they had no idea their friends were robbing the bank. We believed they knew exactly what was happening and that they were serving as lookouts in the getaway car during the robbery and were, therefore, accomplices to bank robbery.

The men testified that the women knew the plan, because they discussed it at length during the car trip to the small town. They also testified that they had taken the handgun used in the robbery out of the trunk of the car when they stopped at a rest stop a couple hundred miles before they got to the small town where the bank was robbed. They said they took the gun and its holster to a wooded area, where they test fired the gun by shooting at a tree.

A small town is actually a really bad place to rob a bank. Many people in town saw the car as it was driving around town, while the robbers were planning their getaway route. Shortly after the robbery, the townsfolk came to the bank’s rescue—they reported the out-of-state car and its unusual appearance to law enforcement authorities. It only took about twenty minutes for them to stop the car and arrest all four occupants.

When the arresting officers testified, the defense attorneys made a big point out of the fact that they did not see a holster in the trunk of the car (or anywhere else, for that matter) when they inspected the car after the arrest. Both defense attorneys hammered away at the officers about the missing holster during cross-examination.

The FBI agent who was the lead case agent for the robbery was also the lead case agent for another case being tried, so he was 200 miles away, in another courthouse, while our case was being tried. I turned to the law enforcement officer who assisted in the investigation, to ask him what happened to the holster. He

---

63 Where necessary to protect confidentiality of clients and others, the authors have changed the identities and other details in these stories. “A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).” MODEL RULES OF PROF’L CONDUCT R. 1.6(a) (2013). Note that paragraph (b) does not apply to stories about mistakes a lawyer made. See id. 1.6(b).
indicated that he had no idea.

I decided we would just have to make the case without the holster. It is inevitable that there is always some piece of evidence missing, no matter how thorough the investigation. In this case, it was the holster.

Both defense attorneys did their best to turn that missing holster into reasonable doubt during their final arguments. Both claimed that the missing holster established that the men were lying. If they lied about something like a holster, surely they could be lying about the women knowing about the bank robbery plan, they argued.

In my rebuttal closing, I explained that often there is a piece or two of the puzzle missing. Despite that missing piece of the puzzle, the rest of the puzzle pieces were there. Those pieces, I argued, pointed to a clear picture—that the women knew what the men were doing inside the bank and they were, therefore, accomplices.

The jury got the case at about 10:30 or so in the morning. All afternoon and evening, they deliberated. Finally, I went home and tried to get some sleep. At about two o’clock in the morning, the clerk’s office called to let me know that the jury had reached a verdict. I got to the courthouse a short time later to hear that I had lost my first criminal trial. An acquittal. In a bank robbery case.

That Sunday, I returned to my office to pack up the files from the trial. Starting the next morning, I would have to move on to other things and try somehow to rebuild (or was it build?) my credibility. As I tossed assorted items into the box, I came across a series of a dozen or so photos. A few were pictures of the car taken shortly after the arrest. I had seen them before, of course, but I quickly thumbed through them again for some reason. The first few showed nothing of significance—just an open trunk jammed full of assorted items one would expect from a cross-country trip. Then I noticed another picture of the trunk that I had seen before, from a different angle. Then I saw it.

A holster.

Clear as day, though it only showed up in one picture. There was no missing holster. It was there when the four defendants were arrested.

I probably stared at that picture for an hour. At least, it seemed like that long. How could I be so stupid? So incompetent? So careless? It was my job to prove our case and to shore up any alleged weaknesses in it. I could have shut down all of the noise the
defense attorneys made about the “missing” holster simply by getting that picture introduced into evidence. I had the evidence, but did not even use it. We lost, and it was my fault.

Eventually, I realized that, while I had made a huge mistake, that one mistake might not have turned the tide in the trial. If I had proven the presence of the holster, the defense attorneys probably would have found some other hole in our case. They might have been successful. Maybe. We will never know.

That Sunday evening was the first time I ever made my own list of mistakes. Eventually I filled up that legal pad with page after page of my many blunders. There was a lot to learn from those mistakes.

To this day, it kills me that I made those mistakes. To this day, I am embarrassed about that holster. To this day, I wish I had won that trial. But I also know that I learned more from that trial and its (for me) awful result than from any other case I have tried.

You try your best. You make mistakes anyway. Then you own them and try to learn from them.

MAKING INCORRECT ASSUMPTIONS

As the previous section establishes, the practice of law requires an attorney to collect evidence and facts, in a wide variety of contexts. Any person who is compiling factual information will inevitably make a variety of assumptions. Although assumptions cannot be avoided, they are dangerous. An incorrect factual assumption can lead to what Oprah Winfrey has called “Aha! Moments.” A mistaken factual assumption reminds us to be careful about our assumptions.

DRESS FOR SUCCESS

In that same bank robbery trial, I called the two law enforcement officers who made the arrest to the stand. Both testified that there was no expression of shock by the women in the car about being arrested. We thought this helped to establish that the women knew what was happening in the bank. If they knew nothing about the robbery, as they claimed, we thought it would have been logical for

64 Oprah Winfrey uses the phrase “Aha! Moments” to describe a moment of revelation in someone’s life. For examples of some of these revelations see Aha! Moments, OPRAH.COM, http://www.oprah.com/packages/aha-moments.html (last visited Jan. 11, 2014).
them to ask their male friends what was happening as they were being handcuffed and loaded into police cruisers.

One of the arresting officers was the chief of police in a small town. The other was a deputy sheriff. Together, they drove the 175 miles from their hometown to the courthouse where the trial was held. They showed up ready to testify at 8:00 a.m., just as we had asked, but in jeans and golf shirts (I think they literally golfed after they testified).

I had assumed that they would show up in their uniforms because they were being called to the stand to testify about something that happened on the job. Although I had discussed courtroom dress with other witnesses, it had never occurred to me that I should discuss this subject with two law enforcement officers. I guess I assumed that some course in the law enforcement academy had taught officers to show up for court in their uniforms.

Never again have I assumed that anyone would dress in a particular way for their appearance on the witness stand. If dress is important, I discuss it.

NOT DOING YOUR HOMEWORK

Real estate agents are fond of saying that the three most important things are location, location, and location. For lawyers, the equivalent is preparation, preparation, and preparation. In any endeavor in our profession, be it trial, negotiation, discovery, or appeals, the lawyer who invests the time and energy into preparing thoroughly has a critical advantage over her less prepared adversary.

WHAT YOU DO NOT KNOW MIGHT INDEED HURT YOU

Shortly after my law school graduation, I started working on a large case that was set for trial in five months. We represented the plaintiff company in a breach of contract action. This was a departure from the firm’s usual practice, which was primarily defense and corporate work for large companies. The firm was the third-largest in the state, with offices in the state’s largest city, but this case was set for trial in the plaintiff’s home town, population 8,000. The defendant was represented by a small firm, also located in the metropolitan area.

Jury selection started, and I was seated in the back of the courtroom, as expected. There were several other lawyers from our
firm, all significantly more experienced than me, who were also working on the plaintiff’s trial team.

The defense lawyer wanted to make the point that even though our firm represented the hometown company, we were a large firm from the big city. He began, “I want to ask about some of the plaintiff’s lawyers who have been involved with this case over the years. Does anyone know U.W.? Does anyone know C.G.? Does anyone know M.T.? Does anyone know M.W.? Does anyone know D.B.? Does anyone know L.G.? Does anyone know M.B.? Does anyone know R.K.?” All the jurors shook their heads “no.”

He wanted to play the “we are just a small firm fighting against a huge firm” card with all his might, so he went on: “Oh, and in the last three months there has been still another lawyer involved in this case. Does anyone know A.E.?" A.E., of course, was me, sitting in the back of the courtroom.

Much to his shock, about half the jurors raised their hands. Why? Because I graduated from that small town’s high school, attended college for two years in that small town, and married someone from that same small town. Jurors started making comments like, “My daughter graduated with A.E.,” “My husband works with A.E.’s dad,” “I know A.E.’s in-laws from church,” and “A.E., we heard you went to law school!” I felt sorry for the defense lawyer, but he should have checked out his strategy by reviewing Martindale-Hubbel’s list of lawyers to make sure there were no connections to that small town before he took that last shot at our firm.

I was moved to counsel’s table for the remainder of the trial, and I even examined a witness. And the jury found in favor of our client.

NOT CONSIDERING A NEW WAY OF LAWYERING

Like all of us in our profession, you learned a lot about critical legal analysis in law school. You have learned how to use logic to construct an argument, how to spot multiple legal issues in a

---


problem, and how to follow the theory of the law. That knowledge about both “the academic knowledge base” of law and “the habits of mind” of a lawyer are the foundation upon which you can build your skills as a lawyer. But a foundation is not a house. You also need to learn how to put those skills into practice in the wide variety of contexts we face as working lawyers. Again, stories about how my mistakes taught me how to better “think like a lawyer” can contribute to your own practice skills. Sometimes that lesson can take the form of shaking up certain long-held practices, like always writing a brief the same way.

SAY IT WITH GUSTO

I was working at a large litigation firm where I was asked to write the first draft of a response brief to a summary judgment motion. I followed all the legal writing rules that had worked for me in the past. I finished the brief and met with the two main partners assigned to the case. I thought I was a good brief writer, but I knew these two were the best writers in the firm.

They had read my brief, and I could tell from the first moments of the meeting that they were not impressed. To be blunt—as they eventually were—they thought the brief was a loser in the very literal sense that our client would lose the summary judgment motion if we submitted it as written.

Desperate, I said, “I can reorganize a few things, tighten up a few sections, and submit another draft tomorrow.” One partner agreed that I needed to write a new brief by the next day, but he had a very different idea of how I could improve the brief. “Don’t reorganize this. Don’t tighten up any sections. Your research is fine, but that is the only thing you can keep. You know the law is subject to two

---

67 This requires the lawyer to “recognize and draw distinctions” and “advocate either side of an issue logically and persuasively.” Wizner, supra note 65, at 587.

68 SULLIVAN, ET. AL., supra note 49, at 28.

69 Id. Stories are not a replacement for theory, but instead are one way to bring theory to life. Some law school professors are concerned that war stories told in the law school classroom will waste time, replace hard thinking, and take the place of both theory and substance. Schitz, supra note 44, at 781–82; see also Marcia Gelpe, Professional Training, Diversity in Legal Education, and Cost Control: Selection, Training and Peer Review for Adjunct Professors, 25 WM. MITCHELL L. REV. 193, 220 (1999) (“Probably the greatest objection to using adjuncts as teachers is that they will just tell war stories.”); David A. Lander, Are Adjuncts a Benefit or Detriment?, 33 U. DAYTON L. REV. 285, 290 (2008) (“[A]djusts’ practical expertise can infuse and enrich theory in a way that enhances learning.”).
interpretations, so add some passion. Your job is to persuade this judge to rule for our client. You haven’t even persuaded me, and I am biased in favor of our client. Start from scratch.”

So I rewrote virtually every single word in that brief during the next twenty-four hours. My new brief was so full of passion and persuasion that it practically glowed. From that painful experience, I learned that you really do improve when you are challenged to try doing something in a new way.

FORGETTING THE OBVIOUS

Lawyers operate on many different levels, often simultaneously. We often have to think lofty thoughts about the theory of the law while we are also minding the minute details related to the task at hand. Let’s be honest. Lofty thoughts are more fun, at least to those of us drawn to an intellectual pursuit like the practice of law. But there is a danger in focusing on the theoretical plane because too much focus there can cause us to lose sight of the more mundane details. Sometimes those mundane details are critical.

YOU HAVE A POINT

If it was not the most boring trial in human history, it was certainly a contender for that honor. I was trying an alleged drug dealer and money launderer. As in many modern drug cases that actually go to trial, the case was built on financial evidence. I attempted to establish that the defendant, whom I will call Ken Dahl, had spent hundreds of thousands of dollars over a period of a few years, despite the fact that his tax returns showed income of only a few thousand dollars a year. Under my theory, the difference between Dahl’s official tax return income and the hundreds of thousands of dollars he spent was explained by the fact that he made those hundreds of thousands of dollars selling drugs.

I called about three dozen witnesses to the stand. Each testified that Ken Dahl had spent several thousand dollars at his or her jewelry store, car dealership, lumber yard, or other business. Trials are usually pretty exciting, but there is nothing exciting about hearing the thirty-second witness testify to essentially the same thing you have already heard time and time again. By the end of this dull parade, we had established that Ken Dahl had spent hundreds of thousands of dollars. We rested.

The defense attorney immediately moved to dismiss the case.
Nothing exciting about that either. That motion happens in pretty much every criminal trial, after the prosecution rests. But then the defense attorney stated the basis for his motion. “Your Honor, there is no proof of identity. Every witness called by the prosecution talked about a ‘Ken Dahl,’ but not a single one of them pointed to my client and said that he was the Ken Dahl they were talking about.”

At that moment that trial went from boring to awfully darned exciting, though not in a good way. How could I be so foolish? Every single one of those witnesses could have pointed to Ken Dahl, if I had simply thought to ask him or her to do so. My heart was pounding as I stood to address the court with our response. At first, the best I could come up with was, “Your Honor, identity has never been an issue in this case.” Not much of a start, but it was something.

Then it came to me. For some reason, I remembered the sole exciting moment of the last week and a half. “The court undoubtedly recalls the testimony of Mr. Dahl’s mother.” It was a pretty memorable testimony. After all, while mothers testify fairly often in criminal trials, they are usually called to the stand by the defendant. We had called Mrs. Dahl because we had records that, we thought, showed that Mr. Dahl had given her several thousand dollars. “After my co-counsel asked her to state her name, she responded by saying that we ought to be ashamed of ourselves for calling her to the stand. As I recall it, she said something like, ‘Do you see that boy sitting over there? He is my son. My own flesh and blood. How dare you call me to testify against my own son. Don’t you have a mother?’” The judge apparently agreed that this was sufficient because he denied the motion to dismiss.

But I had to spend several anxious moments sweating out the motion first. All of that could have been avoided if I had somehow reminded myself to get a witness or two to identify the defendant. From that point forward, I have never gone to trial without a “Pre-Resting Checklist.” On that checklist, I have an entry for every element of the case, plus entries for items like “Identify defendant” and “Move for admission of all exhibits.” Now I do not rest until there is a checkmark next to every item on the checklist.

The same principle applies to drafting a complaint, a motion, or a brief. Early in the process, make a list of everything you need to do. When you think you are done, go through the checklist, to make sure nothing is missing.
Know the Territory

Sometimes we make mistakes simply because we do not know the expectations of a more senior lawyer, or the general habits of the lawyers in the relevant geographic or specialty area. You will be especially prone to this particular mistake in your early years in practice because you do not yet “know the territory.”

Once again, the experiences of senior lawyers, including their mistakes, can be quite valuable. Anthropologists and psychologists recognize the value of storytelling to help community members understand particular ways to solve problems in a local habitat. In other words, every culture has similar challenges in surviving, but “the means to solving them varies depending upon local conditions.” Likewise, all lawyers face similar challenges, but the solutions to those challenges may vary depending on the type of law, the geographic location of the legal community, or the size of the legal community. Even though the Model Rules of Professional Conduct in some iteration govern almost all lawyers, lawyers in different legal communities often follow different traditions. Our stories about stumbles can convey the written and unwritten rules for a particular legal community.

Hand Delivery Preferred

Most of my practice has taken place in the largest metropolitan area in the state. There are several other large metropolitan areas in my home state, but a large part of the state is rural, with small county seats and courthouses. In the metropolitan areas, a lawyer would not dream of hand delivering any document to the court. Instead, delivery is made to the clerk of court or to the judge’s clerk.

I was working on a case in one of the rural areas. I needed to

---

70 In the musical “The Music Man” the traveling salesmen claim that Harold Hill is “a fake” and “he doesn’t know the territory.” MEREDITH WILLSON, THE MUSIC MAN act 1, sc. 1 (1958).
71 See Sugiyama, supra note 36, at 238.
72 Id. at 242.
73 See Schiltz, supra note 44, at 718 (suggesting that each legal community develops its own culture with “posted” and “real” rules for sanctioning unethical conduct which are similar to the “posted” and “real” speed limits in each community).
74 Leslie C. Levin, The Ethical World of Solo and Small Law Firm Practitioners, 41 Hous. L. Rev. 309, 316 (2004) (“Efforts to study the ethical decision-making of solo and small firm practitioners must also consider the growing evidence that solo and small firm lawyers work in communities of practice that define professional norms . . . .”).
submit a pretrial brief to the court, so I planned to hire a courier to make the delivery. Luckily, a senior partner intervened and recommended that I deliver the pretrial brief myself. This required both a plane trip and a rental car. But it was well worth the effort. I arrived at the judge’s chambers on a Friday afternoon where I briefly chatted with all the court personnel and the judge. We did not talk specifically about the case because the other party was not present, but I did learn about the court’s concerns, such as how long the trial would likely last and how large a jury pool should be called. This gave me insight into the trial from the judge’s perspective. This was a near mistake, but I learned the lesson that it is critical to understand the local practices.

**TAKING YOURSELF TOO SERIOUSLY**

As you have already discovered, the practice of law is serious business. We have our clients’ lives and fortunes in our hands. We need to approach our work with the utmost seriousness. Still, we have to be careful not to take ourselves too seriously. Fortunately, both life and the subset of it called “the practice of law” have a way of knocking us down to size when we start to think too much of ourselves.

**MY “ATTICUS FINCH” CASE**

Every lawyer deserves to have at least one Atticus Finch moment, that time when you have a chance to make a difference for the underdog. Like Atticus Finch, you do it not because you think you have a great chance of winning the case, but because it is the right thing to do.

---

75 Carl L. Solomon, President of the South Carolina Bar Association, aptly noted, “We must remember that the practice of law is an honor and a privilege, one that carries great responsibility to your clients, your associates, partners, opposing counsel and society.” Carl L. Solomon, President’s Message: Civility and the Image of the Profession, SC LAW., May 2011, at 5, 5.

76 “The best lawyers have a higher purpose and feel a sense of pride and honor in the duty to help others.” Glenn R. Braun, That Thing You Do, J. KAN. B. ASS’N, April 2011, at 6, 6 (mentioning Judge John M. Roll as an example of a lawyer who carried out his duty by placing himself in harm’s way to protect others).

77 Atticus Finch is the hero in *To Kill a Mockingbird*. HARPER LEE, *TO KILL A MOCKINGBIRD* 227–28 (1960) (describing Atticus as someone who makes the world a safer place by taking on an unpleasant job).

78 Atticus represented Tom Robinson when Mayella Ewell accused Robinson of rape. See *id.* at 83, 192. The white Alabama jury found Robinson guilty, but all the African-Americans
My chance came when I was prosecuting a really difficult rape case. In the hours before the rape, the teenage victim had been drinking and smoking marijuana at a party the adult defendant also attended. The defendant claimed the victim, who had misrepresented the party activities to police when she first reported the rape, had consented.

Lots of folks told me that our office should not take the case. It had all the signs of a losing case: a victim who had broken the law by drinking and smoking marijuana, then got into the defendant’s vehicle voluntarily; a victim who had misrepresented her activities to police; a defendant who had a track record of beating the rap on previous occasions, largely because he was a likeable man who tended to charm jurors.

But the victim adamantly and repeatedly stated that she had not consented. She admitted that she had made several mistakes in drinking, smoking, and then minimizing her activities when she talked to police. But, she insisted, she did not consent. She had been raped.

To get some guidance about what we should do, I consulted the other attorneys in the office. After discussing the case at length, we took two informal votes. First, did she consent? It was unanimous. Everyone believed that she did not. Second, should we take the case? That vote was split, but the majority voted “no.” If we took the case, we were probably going to lose. Why go through the trouble and the pain of a trial for the victim?

But there was the nagging problem of all of us believing she did not consent. If that was the case, she was the victim of a horrible crime. Against the advice of the majority of my colleagues, all good people, with a whole lot more experience than I had, I decided to take the case to the grand jury. In my view, if we believed her, we had an obligation to take the case, even if we were going to lose. But I thought it was only right for me to serve as lead counsel, so none of the other attorneys would have to take primary responsibility for the loss we were likely to face. If we were going to lose, I should be the one to lose.

Not surprisingly, the grand jury indicted. I asked the best trial attorney in the office to help me try the case. He did not duck the
responsibility. Indeed, he even took on the difficult tasks of working with the victim to prepare her for trial and conducting her direct examination, while I concentrated on the cross-examination of the defendant and other tasks.

It was a gut-wrenching one week trial. After a fairly lengthy deliberation, the jury found the defendant guilty of aggravated sexual assault. I have never been, and I will never be, prouder of anything I have done as an attorney. If I live long enough to forget everything I have done as an attorney that case will be the very last thing to go.

A week or so after the trial, a letter arrived at the office. It was from the victim, in her own handwriting. It was addressed to my co-counsel and said:

Dear Mr. _____:

Thank you so much for all you did in my case. It meant a lot to me that you believed in me. I will never forget everything you did for me.

Sincerely,

_____.

PS: Oh, yeah. I almost forgot. Please tell that other lawyer thanks, too.

Coming, as it did, after what I thought of as my big Atticus Finch moment, that was a wonderful reminder that I was not as important as I was starting to think I was. You may think you are important, but you might just be “that other lawyer” to the people who really matter.

NOT TAKING YOURSELF SERIOUSLY ENOUGH

Still, it is important to remember that the work we do is important. We hold the keys to the greatest system of justice ever implemented. It is a flawed system, but it is the best human beings have ever created. If we do our jobs, justice can be done. And justice is important to our clients. We should never give them anything less than the very best we can do for them.

WE DID IT!

I have had the good fortune of working on dozens of very complicated, high risk cases in my career. But I want to tell you about the simplest thing I have ever done as a lawyer. One day relatively early in my career a senior partner in our firm asked me
if I could cover for him in court. A client’s name change hearing was set. The senior partner planned to represent him in court, but something came up at the last minute that made that impossible. The partner had done all the paperwork. He just needed someone to show up in court with the client.

As I met with our middle-aged client at the last minute before the hearing, I could see that he was very nervous. He explained that his parents had divorced when he was quite young. When his mother remarried, his name was changed to match his stepfather’s name. That was fine because his stepfather was a good man. But he maintained a strong relationship with his father, and it always bothered him a little that they did not share the same last name.

Recently, his stepfather had died. Now, he wanted to change his last name back to his original name, to match his still-living father’s name. Did I think the judge would grant his request? I have a policy of never promising any result of litigation, so I made no guarantees.

But I did note that I thought our chances were pretty good.

The judge gaveled the hearing to order. I stood up and asked the judge to grant the name change. The judge said one word, “granted,” then gaveled the proceedings to a close and walked back into chambers. I turned to my client and said, “Congratulations, Mr. ________,” using his new name. With tears in his eyes, he grabbed me in the only bear hug I have ever received from a client. “Thank you, thank you, thank you,” he said. “You will never know how much this means to me.”

I have worked on hundreds, if not thousands of matters since then. I have never again had a client who was so pleased with my work. That was a good reminder to me that, regardless of where a particular matter ranks on a busy lawyer’s list of priorities, it is important to someone. We should never forget that the things we do—even the little things—are very important to our clients.79

FINISH THE JOB

One of the toughest aspects of practicing law is knowing when to stop doing whatever you are doing. Pretty much everything a lawyer does can be improved by adding a bit more time and effort.

79 Mother Teresa encouraged others to “do[ ] little things with great love.” MOTHER TERESA, A SIMPLE PATH xxxii (Lucinda Varday ed., 1995) (internal quotation marks omitted).
But the law of diminishing returns applies to the practice of law. You will eventually come to understand when you have done enough, and usually at least a bit more, to do a solid job for your client. At that point, you can do more for that client, and your other clients, by turning to other tasks on your to-do list.

Be careful though. Before you put that job to rest, make sure you have truly finished it. For example, after you believe you have finished drafting a document give it one last hard proofread to eliminate any possible errors.

**Clean It Up**

In my first year of practice I was part of a six-person team writing an appellate brief to our state supreme court. The case had lasted for almost seven years, and after an unfavorable jury verdict our opponents had appealed. We divided all the arguments and laboriously worked to convince the court to uphold the jury verdict.

On the first couple of drafts I noticed that one of the early sections of the brief included footnote seven, which read: “add some b.s. about state contract law.” I was the most junior member of the team, so I didn’t feel like it was my place to suggest that we choose a different placeholder for that footnote.

You can guess the rest of the story. After another two weeks of solid work, plus a couple of sleepless nights, we submitted the fifty-page brief. And yes, footnote seven was never changed. We were horrified. The case settled, so the only consolation was that the supreme court justices did not have the opportunity to ask us about footnote seven.

I think footnote seven was perhaps an attempt at humor that ended up not being so funny. But I also suspect that it may have resulted from a tired, overworked lawyer feeling overwhelmed. That mistake taught me to never forget that we are privileged to be able to practice law, so we must treat that practice with dignity and respect.

**Treat Everyone with Civility and Respect**

There is a growing trend to recognize civility as a unique obligation of professional responsibility, separate from the
obligation to follow rules of legal ethics. To date, lawyers in at least forty-three states and the District of Colombia are governed by civility codes. The ten common concepts among the civility codes are the obligations to:

1. recognize the importance of keeping commitments and of seeking agreement and accommodation with regard to scheduling and extensions;
2. be respectful and act in a courteous, cordial, and civil manner;
3. be prompt, punctual, and prepared;
4. maintain honesty and personal integrity;
5. communicate with opposing counsel;
6. avoid actions taken merely to delay or harass;
7. ensure proper conduct before the court;
8. act with dignity and cooperation in pre-trial proceedings;
9. act as a role model to the client and public and as a mentor to young lawyers; and
10. utilize the court system in an efficient and fair manner.

Importantly, more experienced lawyers should act as role models and mentors to less experienced lawyers “who may not know the contours of the obligation of civility that a lawyer assumes.”

WHO ARE YOU?

In my early days of practice I was young and inexperienced, but to make matters even worse I looked more like a high school kid than a young lawyer. One day I attended a deposition where I represented a minor third-party defendant. About eight lawyers took places around a table at the start of the deposition, but a ninth lawyer entered thirty minutes late. He was the most famous plaintiff’s lawyer in the city. His name and face were familiar to everyone in the legal community, and to most every person in the entire state. Every lawyer in the room sat up straighter and nodded in his direction as he took the only remaining seat at the table.

---

80 Donald E. Campbell, *Raise Your Right Hand and Swear to Be Civil: Defining Civility as an Obligation of Professional Responsibility*, 47 GONZ. L. REV. 99, 143 (2011). Professor Campbell’s article is an excellent analysis of the obligations of civility and how civility is distinct from other professional obligations.

81 Although the titles of these codes vary, most of the codes relate to civility and were adopted between 1986 and 2007. *Professionalism Codes*, ABA CTR. FOR PROF. RESP., http://www.americanbar.org/groups/professional_responsibility/resources/professionalism/professionalism_codes.html (last updated Aug. 2012). Many of the codes were adopted by state bar associations, but some have been adopted by local bar associations, state supreme courts, or commissions. *Id.*

82 Campbell, *supra* note 80, at 109.

83 *Id.* at 127.
As it happened, that was in the chair next to me. He listened to a few questions. Then he took my legal pad and wrote, “who are you?” and slid the legal pad back to me. I wrote down my name and the name of the party I was representing. But I added one more thing before sliding the legal pad back to him; I wrote, “who are you?” He was in complete shock and looked as though something somewhere inside him might burst. I gave him a small smile. He wrote his name with a flourish and gave me back the pad.

The lawyer was not impolite to me, but I knew his message was that he was experienced and I should have given him deference. I think Ulysses S. Grant had a better view: that he was equal to other men. Michael Korda elaborates: “The Grants may not have thought themselves better than anyone, but they certainly thought themselves as good as anyone—a very American attitude.”

I kept that piece of paper in my desk drawer for years as a reminder that all of us are equal.

DON'T GET CARRIED AWAY

You have been with our firm long enough to know that I am a passionate person. Although many lawyers believe attorneys need to keep their emotions out of their work, that has never worked for me. In my view, anything worth doing is worth doing with passion.

But you have to be careful with passion. You have to control it, at least to some extent, lest it control you. Be careful about getting on a roll, because that roll can lead you to decisions you should not be making.

FOLLOW THE WISDOM OF THE AGES

A couple of years ago, I agreed to serve as a volunteer Special Assistant Attorney General in a sexually violent predator case. In a sexually violent predator case, the state must prove that the respondent suffers from a serious mental disease that makes it more likely than not that he will commit another crime of sexual violence in the future, unless he is committed to a secure mental health facility. The cases look and feel a bit like criminal trials, but they are actually civil trials. One difference from a criminal trial is the admissibility of the respondent’s prior sexual misconduct. In a

---

criminal trial, Rule 404 of the Rules of Evidence would usually exclude this evidence. In a sexually violent predator trial, this evidence is relevant and admissible because it can help the jury decide whether the respondent is likely to commit another crime of sexual violence in the future.

The respondent called a psychologist to the witness stand. He testified that, in his expert opinion, the defendant was not likely to commit a future crime of sexual violence. Obviously, this testimony was not helpful to my case on behalf of the state, so I engaged in a rather extensive cross-examination.

A part of that cross went something like this:

Q: Are you aware of the fact that Miss __________ reported to police that the respondent raped her in March of 2002?
A: I know she said that when she first reported this to the police, but she later recanted this and said the sex was consensual.

That was not the way I remembered the file. But there was a problem. I had volunteered to try this case about ten days before the trial was set. There were thousands of documents. I had reviewed them the best I could in the nine days I had before trial, but we also took three expert depositions in those nine days, in three different cities hundreds of miles apart. Still, I was pretty sure there was no documentation of the victim withdrawing her claim that she was raped. So I continued:

Q: I am handing you Exhibit 246, a copy of the police report from the day of the March incident. Page three is a statement written by the victim. Please read along with me. The victim stated, “I did not want to have sex with him. I did not consent. He raped me.” Did I read that correctly?
A: Yes.

Q: I now hand you Exhibit 252, a copy of the police report from the day after the March incident. It contains another hand written statement from the victim, stating “I don’t care what he says. I did not consent. He raped me.” Did I read that correctly?
A: Yes.

Q: Here is Exhibit 258, a copy of the police report from three days after the incident. It again confirms that the victim stated that she was raped, right?
A: Yes.

That should have been the end of it. I was on solid ground on all three questions. I was following the most important rule of cross-examination: I knew the correct answer before I asked the
questions.

But I was pumped up. This expert claimed there was some sort of mysterious recantation by the victim. Worried that I had not done enough to convince the jury that there was no such recantation, I pressed on:

Q: Yet you claim that the victim withdrew this claim of rape?
A: Yes, she did. It is in the police file.

He said it again! Now I was really hot. What was he talking about? I had read that police file. Several times. I did not remember anything about a change in the story. I had to show the jury that he was wrong:

Q: Please show me the document from the police file that suggests that she ever changed her story.
A: Well, I don’t have it with me. But it is in there.

Even that was not good enough for me. He was still claiming something that, I was sure, did not exist. Nothing gets me hotter than an expert witness who makes a false claim while testifying. I decided to go for the jugular:

Q: Your Honor, I note that we are about at the point for our mid-morning break. I would like to ask the doctor to find this document from the police file during that break. Is that acceptable?

THE COURT: I suppose so.

Q: Doctor, during our break, please review the police file to find the document showing that the victim recanted her claim that she was raped. When we get back from the break, I will ask you to show it to us.

What a great way to make my point, I thought. When I asked that question, I was about 98 percent certain that no such document existed. When we got back from the break, I would turn the knife I had planted in the expert’s back.

It only took me about five seconds to walk from the podium to my counsel table as the judge said “we are in recess.” In those five seconds, though, my confidence level went down to about 60 percent.

A minute later, I realized what a fool I had been. In the first place, I had asked a cross-examination question where I thought I knew the answer, but I was not absolutely certain. Maybe I missed something in that file. All I received, after all, were thousands of unorganized photocopies. I had organized some of them into a file I labeled “Police File—March, 2002” but maybe I missed something.

Ten minutes later, I was devastated. How could I be so stupid? I
had not only asked a question with a (somewhat) uncertain answer. I had also asked the classic “one question too many” that has destroyed many an otherwise solid cross-examination. The break lasted forty-five minutes. It was perhaps the longest forty-five minutes I had ever spent in a courthouse.

When I walked back into court the first thing I saw was the expert, sitting on the witness stand, holding a piece of paper. That is one of the worst sights I have ever seen in a courtroom.

It was too late to back down now. The jury expected this little exchange to come to a conclusion:

Q: I see that you are holding a document. Is it from the police file?

A: Actually, it is not. I was mistaken. This is a letter written by the respondent’s uncle two years after the incident. He was the one who said it was not a rape, not the victim.

So I got away with it. But that does not change the fact that it was a mistake. I should have backed down much earlier, after reviewing the police file. My cute little demand that the expert find the item in the police file was way too big a risk for way too small a payoff.

You will make some mistakes that you will get away with. But that does not change the fact that you made a mistake. Try to learn from the harmless errors, as well as the killers.

AND I KEEP MAKING MISTAKES

As you have no doubt noticed, some of these stories involve mistakes I made years ago. But not all of them. I have made some doozies recently, and I expect to keep making them as long as I practice law. Not because I want to—indeed, I do my best to avoid making mistakes. But I have now come to realize that the practice of law is so pressure packed that mistakes are part of the deal, despite my best efforts to avoid them.

STILL AT IT

I’ve been a lawyer for twenty-five years, but I still make mistakes that force me to reflect on how I can continue to improve. As you know, I now have the joy and honor to teach a few courses at a law school. I recently made a mistake in estimating the amount of time it would take students to complete an assignment for my class.

The students asked how long it would take to write a memo. I did
a quick calculation in my head, doubled my estimate, and responded, “oh, maybe seven to ten hours.” In reality, my students reported that the project required about twenty-five hours of work. They were justifiably furious with me. I apologized, and learned to base my estimates not on how long it would take an experienced lawyer to finish the work, but on the time estimate reports of students faced with similar assignments.

When you answer a question as a lawyer, try to remember to answer it from the perspective of the person asking the question, not from your perspective. That person often does not have the benefit of the education you were blessed with, or your experience. That is true even of sophisticated audiences. When a judge asks you a question, she almost always has substantially less knowledge about the law, the facts, and the issues involved in your case, despite her vast knowledge and considerable experience.

LOSING YOUR BALANCE

You already know that it is not always easy for lawyers to keep the proper balance between work and life outside of work. The practice of law demands a lot from you. We demand a lot from you. We expect you to invest long hours, your best effort, and even a good part of your heart to our clients. We also know that Millennials value a proper work/life balance. Yours is the first generation to list “time and flexibility” as the most important factor to keep you loyal to your employers.85

It is probably tempting for you to think that keeping your life balanced will become easier with time. Surely, you might be thinking, this will get a lot easier once I understand more, once I get past the pressure of becoming partner, or once I accumulate enough billing hours to be in the safe zone.

Unfortunately, that is not the case. It might get a bit easier, but it never gets a lot easier. Every lawyer I know struggles with keeping her career balanced with her life. We don’t always get it right.

---

85 This survey was conducted by Spherion, a recruiting and staffing firm headquartered in Fort Lauderdale, Florida. Kathryn Tyler, The Tethered Generation, SOCY FOR HUM. RESOURCE MGMT. (May 1, 2007), http://www.shrm.org/Publications/hrmagazine/EditorialContent/Pages/0507cover.aspx.
BE A GREAT LAWYER, BUT BE A GREAT PERSON FIRST

About six or seven years ago, my best friend from college contacted me. It had been a while since we communicated, but it was one of those friendships where we picked up where we had left off pretty quickly. We started to plan a trip, but about six weeks before we were set to leave my friend said something had come up, so the trip was off. I was disappointed, and we kind of drifted apart again.

Then I moved and took a new law job. My college friend was now only about 150 miles away, so I figured I would visit soon. But you know how it is when you get busy. You just never get around to it.

About eighteen months ago, my friend’s dad e-mailed me to tell me that my friend was not doing very well. He wondered if I could try to cheer my friend up a bit. So I sent a pretty long e-mail bringing him up to date, saying we should get together. But I did not hear anything, and I never followed up.

That brings me to a year ago. That was the day I got another e-mail from my friend’s dad, “I am so sorry to have to tell you this . . . .” My friend was found dead.

The whole thing, like any death, but especially any suicide, is so stunningly sad. In the midst of all of the pain suffered by my friend’s family, my grief is inconsequential. This was my best college friend, and we had some great times together, but that was a long time ago. In recent years my friend has not been part of my day-to-day existence.

Still, this has hit me awfully hard. I’m confused and sad. I am also mad at myself. I am not blaming myself for my friend’s death, but I sure wish I would have tried harder.

I have always believed that, as long as one tries one’s best, one can live with whatever outcome results. That is a good attitude for a trial lawyer to have, because one never knows how a jury trial will end up. And I did not do my best here. There are lots of reasons for that, but this is the bottom line: I could have done more, and I should have done more.

As a lawyer, you are bound to get really busy. It is not all that unusual in our profession. There are so many things to do and so little time to do them. You will desperately want your “to-do” list to somehow get shorter.

But make sure it does not get shorter by taking “Contact
sometime soon” off of it, for the wrong reason. Get it off your “to-do” list the right way. Maybe even today.

CONCLUSION

Those are my mistakes, plus a couple made by others. Actually, just a few of my mistakes. While I hope you can learn from my mistakes and perhaps even avoid repeating some of them—that is only part of the point of this note. The more important matter is your mistakes.

Take out that list of mistakes you made in the trial you just lost. Compare them to the mistakes I hereby admit making. Even though my list is incomplete, I am sure that the partial list of my mistakes vastly outweighs your list, in both number and seriousness. The good news is that I have survived my many serious mistakes to have a successful career practicing law. Thus, it is highly unlikely that any of your mistakes will be fatal to your career.

Instead, your mistakes, like mine, are learning opportunities. Own them. Analyze them, to see how they can help you improve. But do not dwell on them. You cannot change the past, but you can use it to change the future.

Perfection is not the goal. That would be unrealistic because it is not possible in an enterprise as complex as the practice of law. The last day you practice law, you will still make mistakes. Perfection is unobtainable. Thank goodness. If it was possible to achieve it, you just might do it. And that would take all the fun out of it.

What can you achieve? Constant improvement. But that can come only from a constant willingness to identify and learn from your mistakes. That is a journey worth taking. We have the wonderful blessing to be in a profession that makes that possible, because perfection is unachievable.

Congratulations on having the guts to identify your mistakes and learn from them. Congratulations on taking that exciting journey through a legal career full of mistakes and, therefore, full of opportunities to keep improving. It is quite a ride.

Sincerely,

Your Mentor