

The Journal of the Section of Litigation

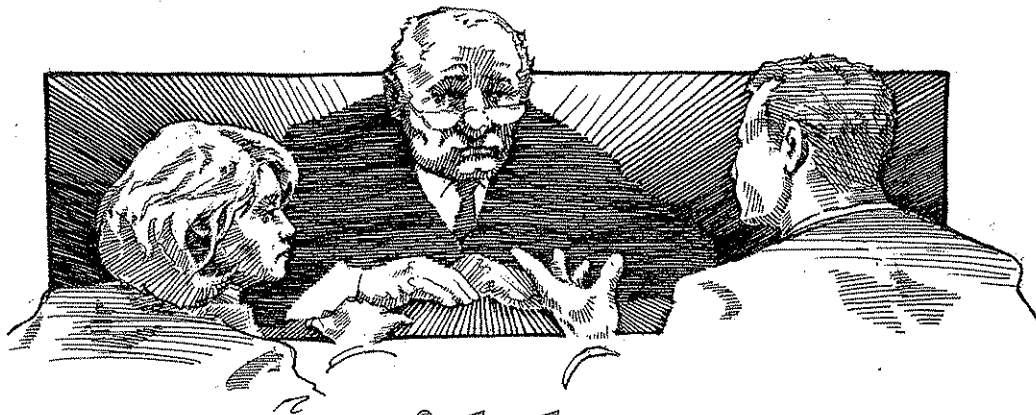
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Evidence



Sidebar

To Young Lawyers

A few years ago when my son was considering law school, a number of good and valued friends didn't hesitate to bark, "You're not gonna let him go, are you?" "Can't you talk him outta it?" And they were lawyers.

Now my daughter's started as well. Which made me feel pretty good until the two youngest laughed the what-are-you-nuts laugh when asked if they had any interest in law. Having kids as lawyers makes even a guy like me pause and reflect, something I loathe. As my youngest wrote in a college application essay, "my Dad's Irish, so he doesn't talk about his feelings or emotions." And, by the way, I try not to think about them either. But kids always force you to do what you don't want. So despite my ingrained stereotypical philosophy, I actually paused and thought about my 30-odd years of practice and what I learned. Okay, I didn't spend days or weeks or anything like that (if you really must know, it was at halftime of a Giants game, but I did have the sound off).

Have fun. I know it's work. Demanding, stressful, exhausting, and sometimes dull as a World Cup soccer match. But you're not patrolling a crack-infested housing project for a salary so meager you need a second job. Or picking up lice-infested garbage in 90-degree heat. Your office is carpeted, your clothes are expensive. And some people still admire attorneys. So try to enjoy your job.

by **Kenneth P. Nolan**
Senior Editor

Choose a practice that you like or, at least, don't hate. Coming out of law school, I had no idea what I liked. I knew I despised tax and corporate and the dry stuff about commercial transactions and the UCC, whatever that is. Because I could talk since age three, and knew a sentence needed a subject and verb, I gravitated to litigation. And I've actually liked my work. Not always, of course. You run into the occasional scoundrel who stands in court and calmly lies to the judge, over and again. And why can't the judge just see through the façade? Drives me bonkers.

Or the Miami lawyer who blamed me for his inability to obtain the doctor's records of my Colombian client. "Mr. Nolan is deliberately hiding records," he would proclaim with sincerity. "He can easily obtain them but refuses to do so. Dismiss his case, Your Honor." Which the Magistrate Judge did even though my adversary knew I had given him every authorization, every scrap of paper I could touch. Lost plenty of sleep before the Judge restored the case, but only after a tongue lashing akin to when I was 12 and was caught smoking.

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Despite these occasional hiccups, I still treasure not only my work but also colleagues, even adversaries. Most are fine professionals who are bright and courteous with flashes of humor. Recently a young lawyer came and complained about her firm, her repetitious and somewhat ethically challenged work. She had a master's in urban planning and was considering leaving the law to work in planning using her legal education but not really practicing. She knew what she wanted to do, of course, and only needed confirmation from me. Today she's happy and productive.

Do the same. If you don't like your work, your firm, the arrogant partner—leave. You have options. You're smart, diligent, personable. Thousands of immigrants have settled in my Bay Ridge neighborhood in the past ten years—Palestinians, Russians, Mexicans, Chinese—and they all survive and some prosper. "And where are you from, Mrs. Nolan?" my wife's second-graders ask. "America." "Only America?" they ask incredulously. "And how many languages do you speak?" "One." "Only one?" they laugh. These kids and their families will make it. If they can, certainly you will with your marvelous education and straight teeth. There's always need for a hard working, thorough person. Cherish your career. If you don't, find another. Follow your heart as well as your brain.

Build your business. Years ago a neighbor's firm imploded when the

name partner left for a large firm and took 75 percent of the clients. My friend, who had his own clients, was searching for a new home. I saw him on the subway and jokingly asked how long into the interview did the new firm ask how much business he commanded. It was the first question, he noted with a shake of the head.

Yeah, you're bright, beautiful, and can shoot whiskey. But no one owes you a living. Millions, and I mean it, millions of great lawyers abound. Even those that charge \$1,000 an hour are most likely somewhat competent. To me their skill is not in their legal abilities, but that they've convinced someone they're worth all that moola. Why not you? Sure, you don't have the experience, the gravitas, the skills. Not yet anyway. So what? I've never been in awe of any lawyer. Some can inspire like Jack Kennedy, some write superb briefs, some make the complex simple, while others have terrific people skills and extraordinary common sense. So do you. Maybe not all these, but at least one and maybe more.

Yes, experience is essential, and no one's going to let you try a bet-the-company case in your first years in practice. Eventually you will earn that expertise. In the meantime, network, volunteer, and join organizations, even the ABA. Do the little stuff. Make friends with

clients and other lawyers not only throughout this country, but the world. It's a small place. I'm constantly asked, "My cousin's sister-in-law's brother's wife was injured in Danville, Kentucky. Can you help her find someone there?" You make a few calls, connect the dots, and you're a hero. It's a pain sometimes, sitting in a cramped kitchen with the huge black Lab slobbering all over your just pressed pinstripe suit, listening to a lawyer's black sheep relative cry a specious tale of woe. You listen carefully, take notes, and gently tell them you can't help. You provide a name or two, and they're grateful—as is the attorney who asked the favor. She owes you and, hopefully, she'll remember when she needs local counsel. As one classmate told me years ago, "I don't send you cases because of the way you handle those you take, but because of the way you reject those you don't want."

I joined this magazine in 1982, less than five years after I was admitted. Not only have I been referred some business but, more importantly, I've made many close and life-long friends. True, I've joined other groups that have not been as much fun or as beneficial. Even if you don't land GE as a client, you might meet a kind, funny person or two. And if you're involved with a nonprofit, you may do good. Just a word of caution for the guys out there. If you volunteer as an ump to call balls and strikes behind the plate even for eight, nine, ten year olds and you forget your cup, return home and get it.

Do not be dependent on others for your livelihood. Become active, speak at seminars, write an article occasionally. It's no longer enough to perform your work professionally and expertly. Develop relationships with clients so that if the firm disbands or merges, you will be able to feed and clothe the little ones who wake you early every weekend morn. Too many brilliant lawyers have been shown the door because they can be replaced by a younger, less expensive alternative. One Shelter Island friend told me that his corporation was trying to encourage his retirement. "They can get two kids to replace me. They're half as cheap and twice as smart."

For years, every Sunday night I would lie awake worrying about the headaches a new week would bring. But these were manageable fears for I knew if I was tossed in the gutter, I had enough cases of my own to survive.

Be honest. I tell people what they don't want to hear. And these people for the most part are my clients. It's not easy, and it's often agonizing. Clients believe they were wronged horribly, yet the law provides limited remedies—primarily monetary. As I write this, Roger Clemens is denying under oath that he ever took steroids and all that other garbage that makes you Superman. Who knows if he's telling the truth, but did his lawyers sit him down and advise him to shut up? Did they tell him that he could go to jail if found lying? Did they scream and yell and then talk to his wife, his children, and his close friends? I hope so, but it appears from a distance that some of those advising him seem to relish the microphones and cameras a bit too much.

It's easy to be a Yes Man. No problem. It's a slam dunk. We're gonna kick some butt in that courtroom. What's hard is to look your client in the eye and tell him he's fulla bull. Even if you're most honorable, the jury won't like you. Did the lawyers for James Dolan, the owner of Madison Square Garden, have the guts to tell this seemingly stubborn, spoiled son of the owner of Cablevision, that he should wear a tie when his videotaped deposition was taken in the sex discrimination case that he eventually lost? And not to slouch in the chair? If my mother was there, she would've immediately ordered: "Sit up straight. You'll get curvature of the spine." Did Dolan's legal team have the guts to warn him, "I don't care if you didn't discriminate against this mother of three, you're going down the tubes cause no likes you or Isiah Thomas"? I trust they did. I trust they told him to settle the case.

This is what you have to do. Not only with your clients but in your dealings with your adversaries. If you don't keep your word, everyone will know and treat you accordingly. It's painful to read an e-mail between mature lawyers where one writes, "Please put all your proposals in writing. I will respond in writing. I will not be a party to any oral agreements." Yet I understand. And when you see that dishonest lawyer on another case, you'll slide over to his adversary and whisper, "Don't trust that guy. Get everything in writing. He's a piece of . . ."

Your reputation is most important and will precede you in all you do. Even in New York City, with its tons of obnox-

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Sidebar

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ious lawyers, you can learn about your adversary in ten minutes. Make a call or two, send an e-mail, surf the net, and, bingo, she's a stand up gal, tough, shows no mercy, whatever. A pain but a straight shooter. If so, nothing else matters. Hey if she kicks my butt, that's okay as long as it's done fair and square. It's easy to cut corners. Don't do it.

Take chances. As a father, I do all in my power to prevent my children from being disappointed, never mind experiencing failure. We baby boomers are desperate to have our kids succeed, so we buy the best equipment, hire tutors, arrange for prom dates, and involve ourselves in every aspect of their lives to protect them from the misery of defeat. Unlike my upbringing, when getting your butt kicked, not making the basketball team, or being reminded you were a dope was considered an essential part of character building. Tough world out there; you better get used to it.

Too many young lawyers fear failure. They don't want to take the tough depo or read the riot act to the client, or try a case. Just do it. Force yourself. I used to be nervous when I spoke to a crowd from a podium. I wasn't when I selected a jury or tried a case, but, for some reason, I was nervous at a podium. So I became a lector at church, where every other Sunday I had to do the readings from the pulpit. Eventually I relaxed and overcame my fear.

If you prepare, you can do it. It's really not that hard. Sure the legal tabloids make a few lions of the bar seem like Gulliver among the Lilliputians. But that's just public relations baloney. Some are terrific lawyers whose advice and skills and connections are paramount. But that doesn't mean they always speak in perfect sentences. They fumble and stumble and you hear the "ums," "ers," and such. The idea that their trial or oral skills can't be duplicated is absurd. One such lion was defending a product liability case years ago and the word in the lawyer's lounge was that he was formidable arguing a motion but a stiff in front of a jury.

If you know the facts and the law and don't puke on your Tod's, you'll do fine. And once you do it a few times, you'll realize you're as good as anyone. Sure you'll be nervous. Almost everyone is. So have a go while you're young, make mis-

takes. But don't dwell on them. Learn from your errors, your inexperience. And then move on.

Don't be arrogant. A firefighter from my neighborhood died recently in a tragic and avoidable fire. He was young and handsome, with a lovely wife and two small kids. As usual, the estate can bring an action against the owner of the building—which, months later, the family did. They hired a friend who hired a trial lawyer who reportedly talked to the press, which the family did not want. So they fired this trial lawyer, who inexplicably sued the widow and her two children, ages four and one, for \$50,000 in legal fees. He didn't file a simple lien letter, claiming payment for work performed. He didn't politely walk away, realizing his faux pas. Even if wronged, he didn't consider the emotional state of a grieving family who suddenly lost a husband and father.

I see all too much of this same behavior. Lawyers full of themselves. Pompous bullies tossing lawsuits about, hoping that some desperate reporter will spell their name correctly. I try not to denigrate anyone's skills, but we're lawyers, facilitators. Not one of us is finding a cure for cancer. Sure, we help people often in dreadful situations. But there's no reason for an end zone dance. Win your case; put your papers in your briefcase. Shake hands or, if you're from Brooklyn, kiss cheeks. Thank the judge, the staff, and the clerk. Walk quietly out of the courthouse. Have an extra glass of wine or two. And the next day, pick up another file and begin again.

No grandstanding. Quiet confidence is most effective. Keep your ego in your pocket. Sure, you're smarter and better than everyone else. Try not to show it all the time. Allow others a word on conference calls. Every leap year admit that another attorney's thoughts have value. Please. Include your victory on the website and in the materials that sit in your reception area. But don't let success and money change you. Be gracious. Have class. You're not as wonderful as your firm's propaganda attests. Ask your wife, your sister, your college roomie. They know.

Have a life. I really can't tell you much about this one. I probably worked too hard and sacrificed family for career. Yet I was there for birthdays, indoor soccer, Girl Scouts, and the like. I justify whatever I missed—like most dinners—by telling myself that I had to and it was worth it. Which I believe it was. But, of course, I

really don't know. It's especially tough if you're a woman, because women still do most of the child rearing. Ask Michelle Obama.

So consider family whenever a work decision looms. Then make an intelligent choice based on what's best for you and your family. Ignore the sermons broadcasted in the ever-so-trendy media or the pressures published on some yuppie neighborhood blog. Children are wonderful; they bring wonder and purpose to often mundane lives. Yet they are demanding, expensive and frustrating.

And when I reflect on my career, I take pride in my accomplishments. But it is my family, my children, which bring me joy. ☐