

KEEP BALANCE

*Keys to good
law firm economics*



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*By Kelly Andersen
OTLA Guardian*

As lawyers we have four precious resources — our time, skills, finances and judgment. Remove any one of these components and our practice will become unstable or collapse, just as a table missing one of its legs.

Time

Abraham Lincoln said a “lawyer’s time and advice are his stock in trade.” Some problems take careful, ponderous, precious time and effort to think through and resolve. Near the end of the Civil War one of Lincoln’s associates noted that it took Lincoln five hours of “intense mental activity” to compose the following paragraph:

“It has been intimated to me that the gentlemen who have acted as the

legislature of Virginia in support of the rebellion may now desire to assemble at Richmond and take measures to withdraw the Virginia troops and other support from resistance to the general government. If they attempt it, give them permission and protection until, if at all, they attempt some action hostile to the United States, in which case you will notify them, give them reasonable time to leave, and at the end of which time arrest any who remain. Allow Judge Campbell to see this, but do not make it public.”

Lincoln weighed, balanced, and intensely thought through the likely effect as well as endless other possible side effects of each word. At issue was a deep legal question which four bloody years of war had still not settled — whether the elected representatives of a state in rebellion against the national government had authority to legally act for and on behalf of the state. Had Lincoln recognized the right of the legislature to withdraw the Virginia troops, he would also have admitted their legality to act in other matters, thus dooming an attempt to reconstruct governments in rebellious states.

On the other hand, southern troops would not recognize the authority of any but the state legislature that had acted during the war. Thinking through all the possible consequences that could flow from the exact wording of the message,

Lincoln eventually referred to “the gentlemen who have acted as the legislature of Virginia,” later explaining — when his letter was in fact misconstrued as he feared it would be — that he “did this on purpose to exclude the assumption that I was recognizing them as a rightful body. I have dealt with them as men having power de facto to do a specific thing.”

We deceive ourselves if we dare think we are so brilliant that we can solve complex legal problems without the sweat equity of time.

Skills

But we can accomplish more routine work if we improve our skills. It takes a sacrifice of immediate cash to enhance our skills (no work can be done while the saw is being sharpened). But with increased skills we can then do much more, much better and in less time. Increased skill profoundly increases the bottom line.

The proper use of time and skill divides into two categories — what to do and what not to do.

Many time management techniques teach us what to do. Those techniques include calendar systems, “tickler” systems, “to do” lists, case management software and trial preparation software. Efficiency techniques, such as handling paper only once (where possible), can also increase our ability to get things

done.

But even the best management skills cannot solve the problem of what not to do — of moving in the wrong direction, even if we are doing so efficiently. A story of two intoxicated deer hunters illustrates the point. They have shot a deer and are now dragging it by its hind legs toward their distant truck. An old hunter chances upon them and says, "Boys, use the natural handles that God has provided just for this purpose — the antlers."

After spending hours studying medical or employment records, take a little extra time to prepare a memo describing what you have discovered, both good and bad, and what you still need to discover.

Heeding that advice, the boys make much better time dragging the deer by the antlers. "This is much easier," says one. "Yes," replies the other, "but we are getting farther and farther from the truck."

All the latest electronic planners and computer organizers will only help us if we are moving in the right direction — that is, toward the truck. For trial attorneys that truck is always the upcoming trial — the final forum that will resolve our case.

The trial is ultimately simple in its components. Everything admissible comes down to three things: witness testimony, exhibits, and jury instructions (pleadings, voir dire, opening statements, and closing arguments all arise out the bedrock of witness testimony, exhibits, and jury instructions). So, unless our efforts inform us of what the witnesses will say and what the exhibits and jury instructions will be, we are chasing secondary rather than primary goals. This is so even if we are working efficiently (using the antlers instead of the legs). It

is that simple.

Ugly motion fights that end in personality brawls (which disgust judges), aimless depositions that whack at capillaries instead of jugulars, long-winded pleadings, and anything else that magnifies time without magnifying results is wasted energy. Come back first, last, and always to the three things that are important at trial — witness testimony, admissible exhibits and jury instructions.

Finances

Some years ago a study of California law firms handling major personal injury cases revealed that most of these firms carried a huge "line of credit" at their banks. Why, I wondered, did these lawyers not realize that it is better to save than to borrow? Had they not heard the adage that "those who understand interest collect it; while those who don't, pay it?" While there are rare and heroic exceptions when gallant lawyers have borrowed heavily — even mortgaged

their homes — to keep a case alive, the idea of routinely borrowing to finance cases makes no sense at all. Instead of borrowing and incurring interest charges and the stress of debt, keep a healthy reserve for unforeseen needs.

To further cover unforeseen needs, insure against catastrophic losses — disability insurance to shield against an illness or injury that could prematurely end our careers, and life insurance to protect our loved ones if we die.

One of the best uses of money is to invest in our continuing legal education. At one time I begrudgingly attended CLE conferences or listened to cassette tapes mainly to satisfy MCLE requirements. Eventually I decided to attend a five day ATLA (now AAJ) conference in San Francisco. I returned enthused, renewed and filled with fresh insights. Applying the principles just learned, shortly after the conference I tried a challenging case to a very successful verdict. The fee more than paid for cost

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of attending the ATLA conference, including the cost of lost revenue in being away from the office. The verdict would not have been likely without the knowledge gained at the conference.

Renewed by the ATLA conference and the trial result that immediately followed, I began to attend more and more multi-day conferences, and each time experienced a similar lift in knowledge and results. I now happily attend many conferences, and also listen to enlightening Internet seminars ("Webinars") via the computer. I have also begun to devour books written by some of the best trial lawyers in the nation.

When I look at the bookkeeper's annual numbers and see what I have spent for CLE conferences, Webinars, books and CDs, I always feel that the money has been well spent — extremely well spent. Some really good borrowed

ideas can redeem a particular case and, like a rising tide, can lift all our cases.

Another wise use of money is to invest in our client's worthy cause — to help fund the case when the client is unable to do so. I still recall with shame my turning away a battered woman with a worthy case many years ago because she could not afford my retainer. If I had been willing to help her with my money as well as with my time, she would have been compensated for a clear wrong, and I would have gotten my money back and would have earned a fee. I doubt she went to another attorney. I regret not having helped her.

Judgment

Judgment is a combination of knowledge, experience, wisdom, memory, intuition, grace, humility and much more. Without good judgment we will waste our money and time pursuing secondary goals and pushing too much paper. Judgment affects everything—who

we hire, how much we pay, whether to take a case, whether to file suit or keep negotiating, whether to settle or go to trial, who to call as witnesses, what documents to offer — the list is endless. Every decision we make is infused with our good or bad judgment. And each decision ultimately affects our economics.

When time, skill, finances and judgment are in happy play, I have learned that the following principles lead to client satisfaction and attorney prosperity:

1. Case selection

A most important and almost daily recurring decision is whether or not to accept a case. Some cases require hundreds of hours and tens of thousands of dollars to prepare. Unless there is a good probability of success, our time and money will be lost.

While we should not shirk from the



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novel case that cries for justice or from seeking to expand the law to cover a clear wrong, there is no excuse for taking a weak case that could have been culled from the herd if the lawyer had used better judgment. More than 30 years ago a veteran attorney in Klamath Falls observed that "you make money on the cases you don't take." At first his statement appears a little odd, but after a little reflection the good sense comes through.

In the movie *Dumb and Dumber*, Jim Carrey says to Lauren Holly: "What are the chances of a *guy* like you and a *girl* like me ending up together? One in a hundred?" She replies: "Um, more like one in a million." In side-splitting reflection Jim Carrey gradually comprehends the possibilities and says: "So you're saying there's a chance!"

Don't take any Jim Carrey cases. Just say no.

2. Leave tracks

Leave a record of what you have last done and what is next to do. After meeting with a new client, especially if the facts or legal issues are novel, take the extra time to prepare a succinct memo describing the facts, your impressions of the client and the legal issues that need to be researched. That memo will later save many hours of labor, and will preserve precious memories of crucial facts. Likewise, after spending hours studying medical or employment records, take a little extra time to prepare a memo describing what you have discovered, both good and bad, and what you still need to discover.

After conducting depositions, take the extra time to summarize the important points, and to describe what still needs to be done.

Consistently creating such memos improves the quality of representation and later saves many, many hours of time. You will never know the facts as well as you know them right after you have spent hours studying a file or conducting

depositions. Preserve in writing what you have learned. It will pay big dividends later.

3. Advance the case to closure

As Abraham Lincoln said, "Leave nothing for tomorrow that can be done today. Never let your correspondence fall behind. Whatever piece of business you have in hand, before stopping, do all the labor pertaining to it which can then be done. This course has a triple advantage: it avoids omission and neglect; saves you labor, when once done; [and] performs the labor out of court when you have leisure, rather in court, when you have not."

We can continually put that wise advice to good use. For example, immediately after depositions — at the same time we do a brief summary of the depositions — we can also send a letter to opposing counsel describing why, based on the information learned in depositions, we are going to prevail, and why the opposing party should pay the claim now. Even if the case doesn't immediately settle — it usually won't — the private memo will be priceless when we prepare for trial or resume negotiations. And the advocacy letter will make its way upstream to the insurance bosses and yield big returns in due course.

4. Handle paper only once

Some experts say that if you can do what the paper requires in less than two minutes, then do it at once; if more than two minutes, then set it aside for when you have more time. I personally think ten or fifteen minutes is a better turning point. It depends, of course, on what other pressures are competing for our time at the moment. The point, regardless of the cut-off time, is to do what is required as soon as possible and thus advance the case to closure. Shuffling papers from one side of the desk to the other, day after day, accomplishes nothing.

5. Keep files organized

Believe it or not, some attorneys have only a manila file folder that could double as a trash can (I have seen this first hand serving as Bar Counsel in ethics cases). These "files" have no summaries of client or witness interviews or of documents and depositions. Correspondence is disheveled and disorganized, pleadings are rumpled and scattered, no action items are listed, and no place has been set aside to intelligently keep legal research. Just a smudged folder and a jumble of papers stuffed inside.

Aside from the malpractice risk, consider how much precious time is wasted just trying to find something in such a mess. Even locating the client's phone number and address could take several minutes each time the information is needed. It is far better to uniformly organize and tab files so that information can be easily located. Electronic data should be kept just as well organized.

6. Invest in technology

Few attorneys today would think of practicing without a computer, and almost none having two computers would admit not having a "network" connecting all computers to one database. But some of us do resist helpful technologies, including various types of case management software. At a cost of a few hundred dollars a year, such software can save tens of thousands of dollars in time.

But remember that technology is only a tool — it will not rescue an attorney from poor judgment or lack of diligence. And the latest technology is not always the best.

7. Use good judgment when filing suit

Some cases, including six and seven figure cases, can be resolved without filing a lawsuit — if various factors align properly — while some five thousand dollar cases cannot be resolved without filing a lawsuit.

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Distinguishing when to file and when not to file is one of the distinguishing marks of a seasoned attorney who has good judgment. This important decision involves too many factors to discuss here, but the point is this: never file without carefully weighing the risks and alternatives.

8. "Stick to the knitting"

In 1982, Thomas Peters and Robert Waterman advised "stick to the knitting" in their best selling corporate handbook, *In Search of Excellence*. The authors observed that the most successful corporations master a niche and stay within it, rather than diversifying too much and losing their edge. "Organizations that branch out somewhat, yet still stick very close to their central skill, outperform all others." Attorneys can apply this wisdom in mastering a particular area of law, and then referring cases outside that area to others.

9. Plan your work, work your plan

In practicing law it is impossible to predict the many turns each day will bring. But we can write down four or five projects we hope to accomplish each day. We may not get all of them done, but if we stay focused we will manage to get the most important things done. While it is important to plan, it is just as important not to over plan. We must

remain flexible so that we can go inspect a site on a new case, meet an unexpected new client, or respond to an unexpected new offer.

10. Hire competent help and pay well

We embrace a false economy if we think we can hire on the cheap. I was filled with eager enthusiasm when I arrived at my first job after taking the bar examination. The law firm had just hired a new secretary to work mainly for me. She was a high school dropout, but never mind, the government would pay half her salary. What better deal, the senior attorney must have reasoned, than a secretary for half the minimum wage?

Knowing this was her first job and that she might not understand legal style, I flexed my knuckles, leaned back in my chair, and began to slowly dictate my first letter as a newly minted attorney. I inserted instructions and punctuation so that it would all be perfectly clear.

I gave the dictation tape to her and she lifted off to her cruising altitude of about 15 words per minute. Later that day she brought me a typed yellow page, without any indentations or setoffs to mark dates, addresses, salutations, or paragraphs. Beginning in the upper left hand corner and running across the width of the page and then continuing down the page in one long running paragraph, I read:

Nancy this will bee a leter to Curl Jones attornee et law hiss address is

fifty five south eighth Street in klamath Falls Oregon the zap code is 97601 the leter is regarding thats r e colon Beckman vezus Rake Constiction Company deer Curl colen wen I relised the defendent wuz endeaded in the amount of twelve thousand dollars thats a dollar sign followed by one two comma three zeroes.

She was a Jim Carrey secretary—there was no hope. Hiring her was a costly mistake. Day after day I slaved over multiple drafts of her letters as I corrected spelling, punctuation and styling errors. Eventually I persuaded the senior partner that she was needlessly consuming my time and thus wasting more money than her small wage was saving.

What a contrast from that experience is my now happy state, surrounded by an incredibly capable staff who correct my errors, offer suggestions on my work, remind me of things undone, and in countless ways transform me from a slack-jawed yokel to a real life attorney. I cannot say enough good about them. I hope I pay them fairly, and it thrills me when I am able to distribute quarterly profit sharing bonuses.

Summary

So there you have it. The attorney must place three things upon the altar of a trial — witness testimony, admissible exhibits and jury instructions. When that altar is firmly supported by four study legs — the lawyer's time, skill, finances and good judgment — the client's worthy cause will succeed and the attorney will too.

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