

Contents

Part 1 Managing Clients and Creating Collaborative Relationships	1
Your Clients Need a Problem Solver, Not a “Trial Lawyer”	2
“Efficient Lawyers Starve to Death”	4
Early Case Evaluation and Collaboration Makes for Happy Clients.	8
The Importance of Trust and Creating Value in Client Relationships	12
Align Your Tactics with Your Client’s Objectives.	14
What Metrics Are Clients Using to Measure Your Performance?	18
Three Commonalities between Potty Training and Client Management	22
How to Obtain Client Case Evaluation Feedback	25
The Value of Aggressively Pursuing Information	27
Evaluating Cases from a Personal Injury Lawyer’s Perspective	30
Part 2 Practical Considerations for Your Practice	35
Apply Lessons from a Chainsaw to Your Law Practice.	36
Practical Tips for Getting Paid by Clients	40
Build Touch Points into Your Case Management Processes.	44

An Unannounced Visit to a Client’s (Trailer) Home
 Is a Bad Idea 48

Never Take a Witness at His Word . . . Ever 50

Losing Control of a Client During a Deposition 53

On the Importance of Showing Up to Court 55

Know When to Stop Arguing Your Point 58

When Is It Wise to Argue with a Judge? 60

So Your Client Accused the Judge of Being a Thief 65

Use Mediation to Let Clients Have Their “Day in Court” . . . 67

Part 3 Improving Your Skills and Managing Your

Caseload. 71

Play to Your Strengths, Improve Your Weaknesses 72

Choose Your Next Words Carefully 74

How to Write Like Stephen King, and Why You Should. . . . 78

Intentionally Improve Your Legal Writing. 81

Cognitive Space Is Precious—Recycle Rather
 Than Reinvent 84

Should Lawyers Use Google for Legal Research? 87

Why Storytelling Is Essential for Trial Lawyers. 89

Goals and Tactics When You Voir Dire a Jury. 93

Get What You Want Out of Closing Arguments. 98

Three Ways to Be a Good Second Chair at Trial 101

Don’t Handle Your Case Like the Writers of *Lost* 104

Implement After Action Reviews in Your Processes. 107

Part 4 Developing Yourself and Your Practice 111

Three Steps to Becoming a Better Lawyer 112

Be Prepared for an Unexpected Opportunity 116

Go Ahead, Let Someone Else Own Your Web Presence 118

(Why) Should a Lawyer Have a Blog? 121

Marketing for Introverts 125

“. . . The Job Can Absolutely Destroy You” 128

Cultivate an Atmosphere for Success 130

Treating Your Staff Poorly Can Have Disastrous Results. . . . 134

Feedback and Words of Encouragement Really
Do Matter 138

Four Ways Your Law Practice Should Be
Like Chick-Fil-A. 141

“There Are No Days Off . . . Only Days You
Aren’t Billing” 144

The Importance of Having a Reputation for Integrity 147

Why Fly Fishing Will Make You a Better Lawyer 149

Preface

In the same way good pastors exhort not only their congregations but also themselves, I am writing this book for both you and me. I aspire to be a better lawyer tomorrow than I am today. I want to work with good lawyers, but not entirely for altruistic reasons. I do believe our profession is best served when more of us deliberately improve our craft, but selfishly my job is made easier when opposing counsel are good at their job too.

To be a good lawyer, you have to put in the time and energy to continually improve your craft. You might be under the misconception that “good lawyers” encompasses the bulk of practicing attorneys, but that is just not the case. Think about average lawyers—they are not very good, and half are worse than that.

Not much is required of you to rise above the threshold of “average.” You will need some inherent ability, but more importantly, you will need to care. Your willingness to read a book like this is evidence that you’re on the path to being a better-than-average lawyer. My goal is to propel you a little farther down that path. To that end, I have written about four general topics:

- Managing Clients and Creating Collaborative Relationships
- Practical Considerations for Your Practice
- Improving Your Skills and Managing Your Caseload
- Developing Yourself and Your Practice

Knowing how precious lawyers’ time is, I have written this in a “daily reading” format. I recommend that you read one topic per day. Each day’s reading should take about five minutes or so. Over the course of about seven weeks, at the time cost of about 0.1 hours per day, you will have collected dozens of practical strategies for developing an efficient and

collaborative practice that will set the foundation for good relationships with your clients.

Not everything that happens in the course of a practice is heady and intense. Sometimes things happen that are just downright amusing. To that end, I want to start you off with a trial story. Try to enjoy it because it may be the only anecdote that isn't a parable.

On Monday mornings at the outset of trial, the lawyers and judge need to accomplish many things outside the hearing of the jury panel. Much of this happens before the panel is seated in the courtroom, but potential jurors often are stuck with some downtime while the lawyers and court handle procedural issues.

During one such session, in which the lawyers for both sides were conferring with the judge in a rural county in eastern Alabama, a potential juror popped out of his seat and began walking toward the back doors of the courtroom. The judge piped up, "Son, what are you doing?"

The fellow paused and, partially turning, replied, "Judge, I have to pee" and continued his exit. When he had walked out of the courtroom, the surprised judge smirked and announced, "Let the record reflect the gentleman has to pee," eliciting nervous laughter from the other panel members.

Shortly afterward, we recommenced jury selection and then broke for lunch at noon. Most of the jurors exited the room, but our audacious prospective juror approached the front and laid his "Juror" badge in front of the court reporter. The judge inquired, "Why did you lay that down?"

"I'm not coming back."

"Excuse me?"

"I don't have time for this. I got things to do."

"Did you tell the other judge that when he was excusing jurors?"

"Yeah."

"Did he excuse you?"

"Nope."

At this point, I was thoroughly impressed with the judge's disposition. There are many things a judge will abide, but disrespect is not among them. The four lawyers in the room were just watching the scene unfold, astonished and disbelieving.

"Well, then, you're not excused, and we'll see you after lunch."

The belligerent juror turned to walk out without retrieving his badge. For his benefit, the court addressed him one more time.

“Son, I want to be real clear with you—if we come back from lunch and you’re not back here sitting in the third row, I’m going to send the sheriff to your house to pick you up.”

The potential juror continued his retreat.

When we returned from lunch, the juror badge was no longer on the court reporter’s table, and our potential juror was seated meekly in row number three. Unbeknownst to him, both sides had agreed during lunch to strike him. He wasn’t going to be good for anyone’s cause.

Part 1

Managing Clients and Creating Collaborative Relationships

Like it or not, clients are the most important part of any business. Without clients, you are just a lawyer without any means or opportunity to practice your craft. Once you have clients, you're going to find it preferable to meet their needs and expectations so that they remain your clients. This section is designed to identify the needs your clients will have, the importance of collaborating with them while managing their cases, and the value of working within parameters necessary to resolve your clients' problems without sending them to the poorhouse.

Your Clients Need a Problem Solver, Not a “Trial Lawyer”

I’m a litigator, and I like thinking of myself as such. I participate in written discovery, review and assess thousands of pages of documents, take and defend depositions, and try cases. I’ve learned that every aspect of a case should be conducted in furtherance of preparing the matter for trial. Interrogatory responses, site inspections, party depositions—none of them happen in a vacuum. Everything that happens in a case is (or should be) in anticipation of putting your client in the best position for final resolution.

Tunnel Vision for Litigators

As a trial lawyer, when I catch a scent—the plaintiff has a preexisting injury she didn’t disclose, he went rock climbing after he allegedly tore his rotator cuff in the accident, or she has been in three subsequent accidents and has a different lawyer for each—I can be kind of like a hound dog. Everything else goes dark, and there is only where the scent is leading. I am not alone in this tunnel vision. Frank Ramos of Clarke Silverglate recently commented:

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

Then, in the distance, I hear a fainting, echoing voice. The world around me becomes illuminated again, and the voice is my client, who wants to position the case for settlement, if we can do so reasonably. This is hugely disappointing. I was already envisioning the plaintiff’s expres-

sion as I impeach him in front of the jury and the lawyer's abject horror as her case falls apart in front of her eyes. It was going to be glorious.

Unless it wasn't. Trial is expensive and uncertain. The judge can keep out evidence that you believe is due to come in, even that incredible evidence that was going to cause you to be revered with the likes of Williams Jennings Bryan and Thurgood Marshall. And then there are juries, which are . . . well, juries. Juries are an unknowable creature, an entity unto themselves, unlike any other. These are the things that keep clients from sleeping well at night.

Be the Problem Solver Your Client Needs

The best way for you to advocate for your clients is to understand their goals and objections, which may not include trying the case. Clients may need to get a case positioned for reasonable settlement. They may want to salvage a business relationship at the conclusion of the case. Most important, your clients need you to understand there are things to consider other than storing up armaments and making battle plans in preparation for war. Your clients don't need you to be a *trial lawyer*. They need you to be a *problem solver*, which sometimes involves trying cases.

“Efficient Lawyers Starve to Death”

Some time ago I was involved in a Twitter conversation that arose from an article I wrote about corporate clients tracking performance metrics for their lawyers. One of the major points I was espousing was that the day of the bloated bill with redundant time entries and unnecessary expenses is largely a bygone era. Yet some of that culture remains for an older generation of lawyers. A friend of mine prodded me with this statement, “Efficient lawyers starve to death.” I immediately began ruminating on whether the statement had any merit.

Do Efficient Lawyers Starve to Death?

The Billable Hour

Let’s talk about the billable hour for a minute. It is an outdated model that creates an uncomfortable tension between clients and their lawyers. For the relationship to continue to be functional (and this next part is true of every relationship), there has to be a significant measure of trust. The client should be able to trust that the lawyer is only doing work that is reasonable, necessary, and calculated to advance the case. The client must know that the lawyer is only billing for work that actually was performed and in increments of time that reflect the work done. The lawyer must be able to trust that the client is going to pay for the work that is done. If these levels of trust exist, the billable hour can be a manageable tension.

But here’s where things get wonky. Plenty of lawyers submit bills that reflect inordinate amounts of time spent on ordinary tasks, duplicative billing among partners and associates, and seemingly unnecessary expenses. These billing practices slowly grind away at the trust essential to the attorney–client relationship. Likewise, many corporate clients arbitrarily cut lawyers’ bills. Maybe something wasn’t worded just right on the invoice. Maybe work was done by a lawyer that, in the client’s estimation, could have been handled by a paralegal. Maybe the client just has

an arbitrary policy of cutting bills by 10 percent. On the lawyer's side, that's where things start to break down and a seed of animosity develops.

Alternative Billing Methods

Without getting too far afield from whether efficient lawyers starve to death, I feel compelled to address the topic of value-based billing structures. Alternative fee structures such as flat rates and budgeted fees with collars (wherein hourly fees are subject to a case budget and collar range; if the fees come in under the collar, there is a bonus, and if the fees are above the collar, the client receives a discount) certainly have a place in some types of practices. There are situations in which these structures work well and others in which one side benefits to the other's detriment.

Value-based billing structures are worth considering, but if you don't have a good handle on your business, you are likely to do yourself or your client a disservice with fee proposals. One of the best ways of keep up with your fees is to develop spreadsheets on which you can track costs and expenses. In this way you may be able to prepare alternative billing methods that are beneficial to both you and your clients.

Case Name	Hours Billed	Fees Billed	Litigation Costs	Total
Duck v. Mouse	320.3	\$42,699.00	\$2,346.44	\$45,045.44
Turtles v. Splinter	624.0	\$85,911.00	\$9,402.46	\$95,313.46
Skywalker v. Vader	350.4	\$47,214.00	\$4,960.96	\$52,174.96
Starling v. Lecter	444.1	\$59,953.50	\$4,265.12	\$64,218.62
Jordan v. Johnson	157.4	\$21,669.00	\$754.60	\$22,423.60
Brady v. Manning	76.2	\$10,107.00	\$215.67	\$10,322.67
Gates v. Jobs	547.2	\$75,141.00	\$7,937.83	\$83,078.83
Shakur v. Naz	308.1	\$42,384.00	\$3,340.48	\$45,724.48
Kent v. Wayne	676.6	\$94,063.50	\$6,927.86	\$100,991.36
Lennon v. McCartney	769.0	\$108,294.00	\$5,770.39	\$114,064.39
Cobain v. Love	39.8	\$5,469.00	\$193.89	\$5,662.89

If a client is interested in using a flat fee structure, you could use this table to determine your average billable fees on that type of case. You could then negotiate a fee that would allow you to remain profitable and keep your client from overpaying. Given enough volume, the numbers should work out appropriately, even though in individual cases one of you comes out ahead.

But Really, Do Efficient Lawyers Starve to Death?

We might have to revisit this in ten years to see if I'm malnourished, but I'm going to provide my clients with efficient representation for the time being. Before I go into my reasoning on this, let's revisit the tension: the more time I spend working on cases clients send me, the more money I make. For most lawyers, time is money, quite literally. But if my client has to pay me too much on a particular file, my client may begin to wonder if a substantially similar service and results may be available elsewhere at less cost.

Here are some other truths. It takes more money to develop and bring in new business than it takes to retain existing business. If your practice is a revolving door of clients who leave because their files are being over-billed, then even though you may be making more money on each file in the short term, you are not maximizing your earnings because you're having to spend too much time and money on client development and putting out the fires of broken relationships.

In addition, your relationships with individuals who are employed by your clients are going to suffer as well. For example, in the insurance industry, which is where most of my clients reside, there is a lot of movement among personnel, both vertically and horizontally. The adjusters with whom I interact on a daily basis move up the corporate ladder or move on to other insurance companies. If we have an effective relationship, there is a greater chance of them taking me with them wherever they go. But if I'm squeezing every last red cent out of a file, they may soon find someone else who will do the same work for less. And make no mistake, there is no shortage of lawyers who are lined up for their business, just waiting for me to give them an opportunity to pounce.

So my answer to the question of whether efficient lawyers starve to death is a resounding NO! Efficient lawyers may not make as much money on each individual case, but they are maximizing the trust relationship with clients and setting themselves up for a more stable and productive practice for the long haul.