All I Really Need to Know I Learned As a New Associate

by Ronald M. Sandgrund

This column is sponsored by the Young Lawyers Division of the CBA and is designed to provide educational and professional information to younger and newer members of the CBA. The column is published four times per year.

One would have to be "crazy" to agree to try to summarize in a few pages what every young lawyer needs to know to succeed. Fortunately, Ron Sandgrund was available.

In his best-selling book, *All I Really Need to Know I Learned in Kindergarten*,[1] Robert Fulghum urges that all the important lessons in life are taught to us as children. Maybe so, but nothing we learned in kindergarten prepares us for life as a lawyer. In fact, nothing we learned in law school prepares us for the practice, nay, the "business," of law.

I was taught many important lessons during my first years as an associate. These lessons sometimes come to mind when I start to drift away because I am tired of (choose one or more):

- waiting for the next *Westlaw* prompt (Hallelujah—now I can do legal research from the comfort of my home on a Sunday morning)
- the loyal opposition (who, apparently, never sleeps)
- the client ("How can you charge me for sitting in the courtroom for two hours waiting for my case to be called?" "Why didn't you bring something else to work on?" "What do you mean my case got continued?").

Following, in no particular order, are seven lessons I learned during my first years as an associate—or should have.

Lesson 1: There is no substitute for experience.

Classrooms, books, and pushing paper around a desk are no substitute for experience. My time as an associate made me a good "mechanic." I learned to fix a lot of legal problems and steer the old Dodge safely into the driveway. But trying to become a good lawyer was much harder.

As a second-year associate, what did I gain by preparing a first-rate motion for summary judgment, only to "file" it in the Clerk and Recorder's Office for the City and County of Denver? After submitting my $42 reimbursement slip, the partners gently pointed out that I should not have to pay by the page to file papers in court.[2] How empty it felt to put together a masterful first draft of an opening brief for the Court of Appeals, only to find that the senior associate overseeing my work had crafted it the next morning into a Native American headdress because I had emblazoned across the title page the words "BRIEF IN CHIEF."

My first jury trial was supposed to be a George Tenet-like "slam dunk."[3] There I was, second-year *attorney* Ron Sandgrund, retained by one of our country's largest casualty insurers to represent a multi-national Fortune 500 company against the frivolous product liability claims of an ambulance-chasing, "dirtbag" plaintiff's *lawyer* who advertised on TV. He had conducted no discovery and had failed to endorse any liability experts for trial. His client had testified in deposition that the elevator she was rid-

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ing in had free-fallen three stories. Little did his client or he know that it was physically impossible for the elevator to have done this, as my technical expert would explain smoothly at trial.[4]

Things unraveled quickly. My expert was stricken (improperly, from my vantage point) following an oral motion *in limine* made just before the trial began. Stirred, but not shaken, I readied for my opening. The evidence hardly mattered, for I saw the smirks on the jurors' faces when plaintiff's counsel was introduced—they knew what kind of firm he worked for. The quiet before *voir dire* was broken as opposing counsel said (I paraphrase), "Good morning. I am that ambulance-chasing, dirt-bag lawyer whose ads you see on TV all the time. Regardless of what you think of me, you wouldn't hold that against my client and deprive her of a just result, if that's what you believed was fair based on the facts, would you?" I watched in disbelief as twelve nodding heads smiled. Great, I thought, he just cut out the heart of my defense. Apparently, he was going to rely on the facts, not sympathy. I was not prepared for this turn of events.

Soon, I was transfixed, as plaintiff's counsel wove an eloquent opening about an elderly widow who was working the graveyard shift in a lonely Seventeenth Street glass tower. She was standing quietly in the elevator with her vacuum cleaner when the elevator started to fall—or at least it seemed to her like it was falling—then abruptly stopped, throwing her to the floor and tearing the rotator cuff in her right shoulder. She was no longer able to lift her right arm—her dominant arm—above her waist. She now faces an uncertain future, mounting health care bills, and enduring pain and suffering. All of this came about because a machine that my client built and certified to be safe, was not safe.

As I approached the podium (absent-mindedly leaving all my notes at counsel table), I realized that lawsuits aren't about lawyers. They are about the people whom the lawyers represent and the events that cause their paths to cross. My abbreviated, hyperventilated opening (*sans* notes) consisted of a single, stammering sentence: "What ails this woman was not my client's fault." I could read the senior partner's mind as I returned to my chair: *"Idiot!"*

Opposing counsel called the gentle widow as his first witness. I can relate what happened next only because the senior partner observed it. At the time, I was hunched over my cross-examination notes, crossing out the part that began, "So you're claiming this elevator free-fell, correct?"

As the bailiff stood over the plaintiff, she smiled sweetly, and comfortably raised her *right* arm to the sky and swore to tell the truth, the whole truth and nothing but the truth. The jurors were agape. When the senior partner relayed all this to me during the first break following my reasonably effective cross-examination, I could read his mind: *"Lucky Idiot!"*[5]

Lesson 2: Never forget your sense of humor.

I learned not to lose my sense of humor early on as a third-year law student interviewing for "the job that will decide the course of the rest of your life." At the time, I was sitting in a conference room at the prestigious Weller, Friedrich, Hichisch & Hazlitt firm, surrounded by (I kid you not) *all* its fifteen partners and associates. The gray-haired, gray-suited, gray-faced partner *emeritus* solemnly asked, "Where do you see yourself in twenty years?" After an appropriate, thoughtful pause I said, "Well, I'd like to think I would have made partner by then."

The stifled snickers from the associates in the back of an otherwise dead-silent room informed me of two important truths. First, the job was not mine. More important, the job was not for me. (Weller, Friedrich, Hichisch & Hazlitt is long gone, although its talented associates—now partners in their own firms—regularly punish me in court.)

Lesson 3: Your client often has something important to say.

I wish I could say that the uncomfortable laughter that echoed following my infamous job interview eventually died out, but it did not. Over time, it actually became a comforting friend: Samwise, Merry, and Pippin rolled into one.[6] What was to be my first jury trial (I know, you think I already told you about my first jury trial, but read on) was in county court and involved a negligently repaired transmission. I spent much of the morning preparing my client on how to present himself to the jury—how to dress, how to act, and what to say—despite the fact the only jury I had ever seen was on television. As my grandmother would later remark, "Such a waste, all that preparation!"

My first words to the judge were, "Present, Your Honor, and ready to 'vore dier' the panel." The judge smiled and said, "You mean '*voir dire*.' In any event, Mr. Sandgrund, there will be no *voir dire* because there is no jury demand in your complaint."

"Yes there is, Your Honor, let me show you."

"Ahh, I see, counsel. Well, you did not file your jury instructions a week before the trial date, so we did not know we would need to empanel a jury today."

Clutching my *Denver Local Rules*, I said sheepishly, "But Your Honor, there is nothing in the local rules requiring us to file such instructions."

"I meant the local rules of *this* courtroom, sir."

"But Your Honor, the Supreme Court just adopted its own Statewide Local Rules that take precedence over any 'local' local court rules to the contrary," I said, this time gently waving my *Colorado Rules of Civil Procedure*.

"Well, Mr. Sandgrund, I wish you had brought all of this to my attention earlier, because we simply do not schedule jury trials for Fridays."

"But, Your Honor, today is Wednesday." (This exchange really occurred!)

As the blood drained from my head, and I pondered returning to scrubbing conicals in the clam and oyster hatchery in which I had worked for many years, the judge offered, "Well, unless you are willing to waive your jury demand and try this case to the court, we are going to need to continue this matter to another date."

Given my hourly rate and exhaustive pretrial "preparation," my client sagely counseled that we should go ahead and try the case to the court, which we did, despite my reservations and oral disclaimer. The judge, a former race car driver, rendered a generous judgment in favor of my client, who testified cogently, persuasively, and passionately about his abused transmission.

I pondered why the case went in my client's favor. Was it my powerful closing argument? Or was it my scathing cross-examination of the poor transmission mechanic, in the midst of which I slipped into a nearly indecipherable, adrenaline-fed "LonGisland" accent?[7] Perhaps it was my tireless preparation?

Clearly, it was none of the above. My client should have sent me a bill for his time.

Lesson 4: You will never penetrate the mysterious workings of the mind of the "finder of fact."

Additional trials followed, with more lessons learned, including a few "jury" trials that actually had juries. In one case, after being stone-walled by the defense with a meaningless $5,000 settlement offer in response to our $30,000 demand, I obtained a $35,000 verdict (in 1987 dollars!) for something a little worse than a sprained hand but not as bad as a broken finger. Opposing counsel was a partner from one of Denver's premier firms, with nearly 100 jury trials under his belt.[8] *Note:* I asked for $125,000 in my closing argument, which suggestion was greeted with a muffled guffaw by one of the jurors. Moreover, the verdict's luster paled a bit some years later when that same lawyer murdered two people and then put a bullet through his own head.[9]

My ego pumped up by this magnanimous $35,000 verdict, I took the arrogant position at my next jury trial that my client's employee, a three-time ex-con, acted with reasonable care when he backed his snow plow over a 74-year-old grandmother who had "darted" behind him on Denver's Sixteenth Street Mall. To my dismay, the employee failed to show up at trial (in retrospect, probably the best thing that could have happened), and we were forced to admit liability.

I earnestly argued that $15,000 would be more than a fair verdict: $10,000 for her medical bills and $5,000 for her pain and suffering. Actually, I never said "her"; I cleverly referred to the injured grandmother only as "the plaintiff" throughout trial, believing I was reducing her to an "object" in the jury's mind.

During deliberations, the jury passed a note requesting a calculator. Despite my relative inexperience, I sensed this was not a good sign. Plaintiff's counsel offered his gold-plated, thin-as-a-credit-card calculator. An hour later, the jury returned an $8,000 verdict. Shortly afterward, one of the jurors walked off with the calculator as a souvenir.[10]

I ran into a member of the jury in the parking lot (this was before post-trial juror contacts were discouraged) and learned that the calculator was needed to figure out how much of the plaintiff's medical bills had been paid for by Medicaid so an appropriate deduction could be made, despite the judge's instructions to the contrary. "Collateral source, schlamateral source," as Grandma Sandgrund would say.[11]

Lesson 5: Humility is a more effective teacher than humiliation.

Although a lawyer's arrogance can cause a bad stumble, a little arrogance (let's use the more palatable term "self-confidence") is a necessary tool of the trade. I was called to task by a partner for failing to alert the Tenth Circuit Court to pertinent authority in a brief—authority the Tenth Circuit cited to and relied on in its opinion. I dutifully dug out of the files the fourth of nine drafts of the brief, which proved that I had discussed the line of cases at issue but that the partner (in his own hand) had crossed out the entire discussion.

My smug joy evaporated when the partner said sharply, "It was *your* job to make sure that discussion stayed in the brief." *Sure*, I thought, a third-year associate is going to overrule one of Colorado's preeminent trial attorneys. But the partner had a legitimate point. I should have fought harder for what I believed was right. Still, the lesson would have been better received if the partner presented the matter as an example of an unfortunate breakdown in our "team" effort rather than as a failure by any one individual.

Lesson 6: Do your very best and use your common sense.

In handling both large and small cases, the best lawyers I have known teach the same lessons over and over in different ways:

- Do the best job you can every time.
- Become an expert on whatever the case involves.
- Do not check your common sense at the door.

There are simply no short-cuts in meeting these reachable goals. Common sense tells you that you do not necessarily want to be perceived as the smartest or smoothest lawyer in the courtroom but, simply, as the fairest.

During one of my hyper-aggressive periods as a second-year associate, I argued to a trial judge that to try the question of my client's liability without bifurcating the plaintiff's damages claim was inherently prejudicial. According to my argument, which was supported by a detailed affidavit from an eminent psychology professor, because the well-documented "halo" effect causes people to "want to help" a badly injured person, my client would be robbed of a fair trial on the question of liability.

The judge smiled and complimented me on my "creative" argument. He then pointed out that if he accepted my argument, he would have to bifurcate every case involving serious injuries. Further, he concluded dryly, the plaintiff was in a wheelchair, and still would be in one by the trial date. Motion denied.

More recently, I was preparing for an argument in support of a $4.5 million class action settlement.[12] At the last minute, just before leaving home for court, I created a helpful chart in my garage so that the judge could more easily track the convoluted Rule 23 class settlement approval process. At the hearing, I drew on my considerable experience as class counsel in eight earlier class actions and outlined the complicated, but necessary, conditions that had been met to warrant approval of the class settlement. The judge applauded not my presentation, but my creative use of paint mixing sticks and duct tape to hold together the back of my chart. Motion granted. (*See* Lesson 2, "Never forget your sense of humor.")

Lesson 7: Remember your kindergarten lessons.

Fortunately, my legal career survived the many mishaps described above, and more. Space limitations prevent a full accounting here; however, I am hoping *The Colorado Lawyer* will consider dedicating an entire issue to Part II of this article, devoted to a complete, unvarnished rendering.

In sum, the simple lessons learned during our first years as associates can be valuable in the years ahead. But what about the lessons learned even earlier, in kindergarten? In retrospect, author Robert Fulghum got it exactly right. In the legal field, the lessons learned in kindergarten also serve us well:

Share everything.[13] Share research strategies with your fellow associates. As you become an owner in a law firm, share the profits with everyone whose labors helped create those profits.

Play fair.[14] Do more than the letter of the rules requires. Conduct yourself in accordance with the spirit of the rules. Do what is right, not what you can get away with.

Don't hit people.[15] Do not act on your anger. It is counter-productive to hate your adversary in order to motivate yourself to do your best work.

Put things back where you found them.[16] Return, in as good or better condition as you were given them, court records, library books, borrowed briefs, client documents, and office files.

Clean up your own mess.[17] Be accountable. Never blame a subordinate, especially to the court.

Don't take things that aren't yours.[18] Share credit for a job well done with everyone on whose shoulders you have stood or who gave you a helping hand.

Say you're sorry when you hurt somebody.[19] Acknowledge and take personal responsibility for mistakes. Recognize and respect your co-workers' feelings, even after they accidentally set a three-week trial over your long-awaited European vacation. When problems arise, assume they are misunderstandings instead of presuming the other person has bad intentions. Everyone, including the lawyer across the table, deserves the benefit of the doubt.

Wash your hands before you eat.[20] Respect other people's space and place.

Flush.[21] Do not be afraid to throw things out or away. Professor Richard Walter, chairman of the graduate screenwriting program at the UCLA film school, teaches that you should "kill your darlings."[22] This means that when you get so enamored of a turn of the phrase that you simply must find a place to stick it in your brief, this is the first hint that you must remove it. You need to "kill your darlings" because you are attaching too much importance to the "dressing" and not enough to the substance of what you have to say.

Warm cookies and cold milk are good for you.[23] Eat well and exercise.

Live a balanced life—learn some and think some and draw and paint and sing and dance and play and work every day some.[24] Be well-rounded. The law and work are not everything. Add value to your community. Enrich your mind, your personal life, and the lives of those around you—friends and family alike. Strive for a eulogy that begins, "He was a great person," not "He was a great lawyer."[25]

Take a nap every afternoon.[26] Get enough sleep. Being well-rested is a precious commodity among lawyers. Can anyone seriously argue that they do their best work when tired?

When you go out into the world, watch for traffic, hold hands and stick together.[27] Trust your mentors, your judges, your clients, and, at some level, your opposition—but still watch for traffic. *Doveryay, no proveryay.*[28]

Be aware of wonder.[29] Appreciate the mystery underlying every jury verdict, and the enigma of a flawed, but earnest, legal system that allows us to peacefully resolve most of our disputes. Compliment your fellow lawyers for a job well done—and do so before the motion is ruled on, the appeal disposed of, or the verdict returned.

Remember the little seed in the Styrofoam cup. The roots go down and the plant goes up and nobody really knows how or why, but they are all like that.[30] Every day decisions are rendered and verdicts are returned; someone is almost always disappointed, and sometimes, miracles happen. However, judges and juries regularly decide cases with an eye toward a fair and just result, often for reasons not apparent in the blinding light that guides our advocacy.

Goldfish and hamsters and white mice and even the little seed in the Styrofoam cup—they all die. So do we.[31] Leave a legacy of which you can be proud. The spring of 1995 should stand out in my mind for the two very successful appellate opinions that issued on behalf of my insurance company client within about a month of one another.[32] Instead, I remember more clearly that no one from the carrier ever called me with a word regarding either case, which work saved more than $3 million for the company—since bought out, merged, and digested twice over by global insurance conglomerates.[33] I also remember clearly, however, receiving a beautiful, from-the-heart, handwritten note that same spring from a Jefferson County homeowner, thanking me for saving her $478 through my efforts (fee subsequently waived).

A digression: Legacies are funny things. I have co-authored a book, a chapter in another book, and many related articles in *The Colorado Lawyer* concerning Colorado construction law. By the time they were published and I proudly forwarded these writings to my Dad, his Parkinson's disease had progressed to the point where he could no longer still his eyes enough to read. I wish I could say I became his eyes and read the material to him, but he was already suffering enough. So, we talked of the many important things that an 86-year-old father and his 45-year-old son should share before they run out of time to talk, and not about the "law" that was cluttering my mind.

I did, however, enjoy sharing my writings with my legal mentor, who took me, the son of a poor sharecropper from the hinterlands of New York City, in against

the cold winds of the winter of 1982. This man gave me a sound education in the law, and later humbled me with an invitation to join him as his partner. He seemed duly impressed with my authorship. However, his enthusiasm did not compare to his excitement when his son, Eric Vanatta, a Fort Collins public defender, filed the now-seminal legal paper, "Motion to Dismiss: The Constitutionality of F---, F---er and F---ing F-g."[34] (The unexpurgated version hung in our copy room for several months.)

Despite the "eight billion hours" I spent researching and writing the book and the chapter that were to become part of my "legacy," I am still waiting for phone calls from the Today Show, Bill O'Reilly, *Playboy Magazine*, and a dozen other media outlets, asking to interview me as they interviewed Eric Vanatta, author of the famous "Motion to Dismiss." Once invited, I am sure the first question to me will be, "So when little Eric Vanatta sat in your lap at the firm's 1980 holiday party, did you realize then he was destined for greatness?"

Author Fulghum gently cautions in his book, "*And then remember Dick-and-Jane books and the first word you learned—the biggest word of all: LOOK!*"[35] I would add: LISTEN! And remember, listening is not hearing; looking is not seeing; talking is not communicating.

According to Fulghum, "Think of what a better world it would be if we all—the whole world—had cookies and milk about three o'clock every afternoon and then lay down with our blankies for a nap."[36] Okay, maybe this one is horse-hockey. But it is kind of fun to imagine the biggest *juris jerkus* you have to deal with as a four-year-old, with a Dutch-boy haircut, flower-covered shorts, gum stuck on the shoe, and a nose that needs to be wiped, curling up in the corner with his or her "blanky," crumbling chocolate chip cookies in one hand, half-pint of whole milk in the other, for a three o'clock nap. Cherish the vision.

And remember Lesson 2: *Never forget your sense of humor.*

NOTES

1. Fulghum, *All I Really Need to Know I Learned in Kindergarten* (New York, NY: Ballantine Books, 1993).

2. With e-filing, even this has changed.

3. Bob Woodward reports in his book, *Plan of Attack* (New York, NY: Simon & Schuster, 2004) at 247-49, that CIA head George Tenet assured President George W. Bush that accumulating proof of the presence of weapons of mass destruction in Iraq was a "slam dunk."

4. A modern hoist elevator has multiple steel cables attached to its top that run over a giant wheel or "shieve" that sits at the apex of the elevator shaft. These cables then loop down and connect to huge counter-weights that run parallel to, but in the opposite direction of, the elevator car. Short of the cables being sliced in half (it happened once when a plane flew into the Empire State Building), if the many redundant, fail-safe protective mechanisms on this elevator were to stop working, the car would free-fall "up" not "down" because the counter-weights weigh so much more than the car.

5. No thanks to me, the jury returned a verdict in my client's favor. *Smith v. Otis Elevator Co.*, No. 83-CV-7400 (Denver Dist.Ct. Aug. 15, 1984).

6. From Tolkien, *Lord of the Rings* trilogy (New York, NY: Ballantine-Del Rey, 1986).

7. *I.e.*, Long Island accent.

8. *Tussy v. Ambassador House Fund, Ltd. et al.*, No. 86-CV-2799 (Denver Dist.Ct. Dec. 17, 1987).

9. *See* news story at http://wildcat.arizona.edu//papers/89/144/03_2_m.html. When I heard the news, for the first time, I thought of my former adversary as a person rather than as some sort of caricature of an "insurance defense counsel," whose suffering demons I mistook for bravado. Since then, when I observe lawyers wrestling with their demons, I put aside my briefcase and try to extend a hand or some hope.

10. *Romios v. Artisan Services, Inc. et al.*, No. 84-CV-4211 (Denver Dist.Ct. Sept. 26, 1985).

11. In Colorado, an injured plaintiff's damages generally must be reduced by third-party payments made for such damages, unless the source of funding was paid for by the plaintiff, such as where the plaintiff paid the premiums for health insurance benefits. *See, e.g.*, CRS § 13-21-111.6. The collateral source rule is discussed in this issue in Viorst, "Recovery of Medical Expenses by Insured Medical Malpractice Victims," 33 *The Colorado Lawyer* 113 (July 2004).

12. *Rowe et al. v. Oldach Windows et al.*, Civil Action No. 99-CV-324 (Douglas Cty. Dist.Ct. Dec. 7, 2003).

13. Fulghum, *supra*, note 1 at 4.

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. This phrase originally was coined by William Faulkner. Samuel Johnson similarly said: "Read over your compositions, and wherever you meet with a passage which you think is particularly fine, strike it out."

23. Fulghum, *supra*, note 1 at 4.

24. *Id.*

25. The author knows that "he" does not include "she" in current usage, but invites readers to suggest a gender-neutral rewrite of this sentence that equally captures the sentiment.

26. Fulghum, *supra*, note 1 at 5.

27. *Id.*

28. This Russian proverb, "Trust but verify," was often recited by President Ronald Reagan during disarmament talks with the former Soviet Union.

29. Fulghum, *supra*, note 1 at 5.

30. *Id.*

31. *Id.*

32. *See Browder v. U.S. Fidelity & Guar. Co.*, 893 P.2d 132 (Colo. 1995); *Leadville Corp. v. U.S. Fidelity and Guar. Co.*, 55 F.3d 537 (10th Cir. 1995).

33. These mergers are discussed in http://www.bizjournals.com/baltimore/stories/1998/04/20/daily12.html?jst=s_rs_hl and http://twincities.bizjournals.com/twincities/stories/2003/11/17/daily1.html. Soon, there may be just one insurance company serving all our insurance needs.

34. *See In re Interest of C.L., a Child* (Larimer Cty. Dist.Ct. July 1, 2003). Motion reprinted at http://www.thesmokinggun.com/archive/fword1.html. The motion won the 2003 Legal Document of the Year award from *The Smoking Gun*, a wry observer of the legal profession.

35. Fulghum, *supra*, note 1 at 5.

36. *Id.* ■