Meet and Confer

HARD HEADS, SOFT SKILLS: TWO TRAITS TO SURVIVE AS A YOUNG LITIGATOR

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One weekday afternoon in the mid-1990s, my mother flipped on a San Diego radio station and was startled when she heard my voice crackling through the dashboard speakers. At home finishing my schoolwork, I had dialed into the station to dispute the DJ's opinion about which rock band was the greatest of all time. This on-air combativeness aside, I've never felt I was born to be a trial lawyer. I didn't join a debate team in high school, nor did I relish arguing with my friends about politics or sports. And no exasperated adults ever told me with a sigh, "You should be a lawyer," after I had pestered them into seeing things my way.

Instead, as a military brat who attended 10 different schools before college, I lived a transient life that force-fed me a diet of self-sufficiency, resilience, and an ability to find my way in new situations. Of course, at the time, none of those attributes seemed noteworthy, much less skills that would help me in a professional setting. Only now—years later as a partner at a Dallas trial firm—do I see that those under-the-radar traits can be just as valuable, if not more so, than the lawyerly stereotypes of brashness and belligerence.

Lately I've thought a lot about what makes a good trial lawyer. Besides serving on the hiring committee for my 45-lawyer firm, I was recently tasked with retooling our associate review process. Facing pandemic-laced challenges, I wanted to make sure my firm taught our young lawyers both the technical advocacy skills necessary to thrive as trial lawyers and those mercurial "soft skills" that are often as opaque as they are essential. As I cycled through iterations, trying to target what these associates needed most, two concepts stood out: taking ownership and developing resilience.

Taking Ownership

To take ownership of cases and clients, young lawyers must chart the path to victory by proactively pushing each case toward the final goal. Taking ownership means keeping track of deadlines, anticipating legal roadblocks, peering around corners for factual land mines, and attending to the sometimes-unpleasant details of discovery disputes—all without being asked. Taking ownership also means being creative and clever by, for example, coming up with an idea that the partner or client hasn't thought of yet but that moves the matter forward. Finally, taking ownership means operating under the assumption that, no matter your experience level, the work product you generate will be the final result, the last version ready for judicial review.

These various forms of taking ownership began to coalesce for me professionally as a new associate at a large white-shoe New York firm. Early on, I was told to create an outline that a partner could use to prepare himself for a crucial upcoming deposition. Of course, as a first-year associate, I had never seen a deposition, much less taken one. And I knew enough to assume that I had no clue what really mattered. So I cobbled together a rough outline identifying a few key facts and sent it up the chain, thinking that what I offered was good enough for my experience level. As I clicked "Send," I rested easy knowing that some senior associate would surely read my work, fill in the gaps, and pass the polished version along to the partner. To my horror, that didn't happen. Instead, just five minutes after hitting send—as I was packing up to head home for the night—the senior partner called my office to explain how my work was not up to standards. To be honest, I don't remember what he said on that call. But I do remember staying at the office almost all night to renovate my shoddy work. I also remember feeling sufficiently humiliated that I resolved never

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to circulate "good enough" work product or to assume that someone else up the line would fix my mistakes.

Developing Resilience

Developing resilience is equally crucial to surviving as a litigator. As a young lawyer, no matter how much ownership you take, you will quickly learn that you can't control everything. Despite your best efforts, you will lose motions, hearings, and even trials. You will inherit a fact pattern or case law that is, for all practical purposes, carved in stone. Of course, you can try to minimize (or, better, favorably reframe) bad facts. And, of course, you can try to concoct clever arguments to distinguish unfavorable precedent. But sometimes the judge or jury simply won't go along with you. When that happens, you need to know how to bounce back.

This is not some abstract principle to me. I've felt the gut punch of losing a case I poured everything into—a case I was convinced I would win. Shortly after leaving New York for a Texas trial boutique, I found myself as the senior associate managing the defense of a roughly $100 million antitrust case. Throughout discovery and dispositive motions, I worked with the partner to develop a defense strategy that accounted for what were objectively bad facts. Not only that, when we got to trial, I helped execute that strategy by cross-examining four witnesses, including the plaintiffs' key expert, from whom I extracted what I thought was a devastating admission. Despite our dogged creativity, the jury wasn't convinced. It awarded the plaintiffs their full damages.

Although it was not his client and he wasn't on the trial team, Mike Lynn—my firm's founding partner—followed the trial closely from afar. Every evening, he would pester the team for updates in terse emails that no associate dared ignore. I will confess that, at times, I secretly wished Mike would leave us alone so we could just concentrate on the trial. But a few days after the verdict—as the grief and shock of the loss were only beginning to wane—Mike emailed me some advice that bolsters me to this day:

> I know you are exhausted and gave it your all. Please accept a hug from me. I have lost more than you can ever lose so I know a bit about losing and coming back. Then take some time off. Play with your kids. Hug and be hugged by your wife. Sleep a lot. . . . And in two weeks make a point of getting down to a hearing or taking a deposition relatively soon upon coming back. You have got to get back on the horse and ride it. It will hurt and you will have flashbacks but it is key to coming back. . . . There are no easy cases and you cannot be in this business just to win or you will lose your mind. . . . My view is that you aren't a real trial lawyer until you've lost $100 million.

With Mike's words blasting away my self-pity, the team alchemized our failure into creativity, crafting a post-trial motion to vacate the verdict based on a flaw in the plaintiffs' damages model. That motion won, a new trial was ordered, and the parties settled before the rematch took place. But none of that would have happened if, instead of hearing Mike's timely advice, I kept listening to the demons that whispered to me that we had lost because I wasn't good enough.

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Being a trial lawyer is not easy, especially at first. When you are facing the day-to-day onslaught of life as a young litigator, it is sometimes all you can do to keep your head above water. Still, as you are growing your technical advocacy skills, it is worth stepping back from the brief that needs to be filed tonight or the deposition you must take tomorrow to develop those under-the-radar traits such as resilience and accountability. And, for those litigators who have reached a point where life is becoming more manageable, it is worth remembering that, for young lawyers to succeed, it is not enough to teach them technical skills; it is just as important to mentor them on these (and other) less concrete, but equally essential, soft skills. ■

Illustration by A. Richard Allen