



TO THE "YUTES" FROM AN OLD LAWYER

*A few things
I wish I had known straight
out of law school.*

BY JACK E. FIELDS

AS I APPROACH THE TWILIGHT OF A LONG AND (OCCASIONALLY) REWARDING CAREER, I have been reflecting on a few things. One is that a lawyer does a heck of a lot of work over 35 years. Another is that there are many things that one learns only by doing. As a result, one often learns the hard way. The following are some collected thoughts on what I wish someone had told me when I walked out of law school (beaming with a diploma in hand) and into a law firm that hitherto had treated me like a king (during the clerkship process) and now actually expected me to work hard without whimpering or complaining, Tiny Tim-like. May these reflections serve you well.

Understand the Bargaining Position of the Parties

If you represent a tenant that is leasing a small space in a shopping center, do not mark up the lease as if you were representing the anchor tenant in a shopping center with no other tenants. This just wastes everyone's time, unnecessarily increases legal fees for both sides, and makes people angry.

Understand What the Other Side Must Have to Do the Deal

1. Do not take advantage of your bargaining position to such an extent that you blow the deal. Try to understand what the other side needs in order to do the transaction.
2. Put yourself in the other lawyer's shoes. You will have represented sellers, buyers, debtors, lenders, landlords, and tenants before. Do not ask for things that you yourself would not accept. This is especially true in opinion practice.

Politeness

1. After a transaction is concluded, send the other lawyers and business people (yes, even brokers) an email noting that you enjoyed working with them. You never know when your paths may cross again, and you want to leave a pleasant impression.
2. The other party is a potential future client. One of the highest compliments you can receive is being asked to represent a previously opposing party on a new transaction.
3. Just because you may know more about a particular subject or area of the law, try not to embarrass the opposing lawyer, especially in front of his or her client. Not only is it the right thing to do (Atticus Finch-like), but you may encounter the same lawyer in another transaction where the tables are reversed.
4. Be nice to your support staff. This goes for everyone from the mailroom staff, the coffee bar servers, secre-

taries, and word processing staff to legal assistants, librarians, and everyone else who makes it possible for us to do our jobs. Not only is it the right thing to do (again, like Atticus Finch), but at some point, you will need to ask for their help above and beyond the call of duty; you are more likely to get the help you need if you have consistently treated these folks with courtesy and respect.

Billing 101

1. Practice good time entry. Poor example: Attention to File (7.0 hours). Good example: Review of seller's comments to initial draft of purchase and sale agreement; call to client to discuss seller's comments; revising draft of purchase and sale agreement to incorporate certain seller's comments; sending revised purchase and sale agreement to all parties with an explanation of remaining open issues (6.3 hours).
2. Avoid entering the wrong kind of detail in a time entry. Never assume that time entries are privileged. Example: Researching criminal penalties for client's insider trading practices (2.2 hours).
3. Complete time entries in a timely manner. It's easy to slip into the habit of writing down your time after days (or even weeks) have passed—especially when you are very busy. This never works well. You either forget to bill for certain things that you did or you have to guess at the tasks performed and the time it took to perform them. Even worse is when you do not turn in your time soon enough to get captured on a monthly bill to the client. The client is then surprised and unhappy when he or she sees it appear the following month. Be a Marine about your billing—do your duty each day.

Tips:

- Put yourself in the client's shoes—you would want to understand what you are being billed for/paying for.
- Do not bill in exact hour increments—it just looks like a plug number.
- Proofread your time entries.

Pet Peeves (Less Important, But Just Saying)

1. Do not say "to be honest with you" or "to tell you the truth." These lines make it sound like you were not previously honest or truthful.
2. Underscore or italicize defined terms in any legal document that you prepare. There should be a penalty of death by drawing and quartering for failing to do this in a document of more than 10 pages. Why do litigators almost never do this?

3. Refer to clients you represent as "our client" or "the firm's client whom I represent"—not "my client." You joined a law firm for a reason; be a team player.
4. Answer the phone by saying, "John Smith," not "Hello," "Yes," etc. Let the other party know immediately whether they have reached the right person.

Thou Must Respond

1. Return calls as quickly as possible (within the hour is ideal) or send an email noting when you will be able to respond.
2. If an issue is "hanging fire" because a response is needed from a third party (such as the opposing counsel, his/her client, a governmental official, etc.), give your client an end-of-the-day report (or a report at some appropriate periodic interval). The report may be that you have not heard back from the third party, but you will send a follow-up email or make a follow-up phone call. Respond in some manner. Clients do not like being left in the dark on how their deal is progressing.

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Specific Matters for Real Estate Lawyers

1. Prepare a comprehensive closing binder at the end of the transaction. Clients love having everything organized and summarized concisely. You will love having everything organized and summarized concisely when you need to refer back to some aspect of the transaction three years later. Organization is key to a long-term successful practice.

Tip: You (or someone who worked on the transaction in a significant role) need to prepare the index for the closing binder.

2. Proof the final title insurance policy. You have gone to great lengths to negotiate the final form of it and have written an escrow closing instruction letter outlining in detail what the final title insurance policy may and may not contain. It is tempting not to proof the final title policy since it is often not issued by the title company until weeks after the transaction has closed. Imagine finding mistakes a year or years later when your client needs to make a claim against it.

3. When you send an escrow closing instruction letter to a title company/escrow agent, include a condition that requires your final confirmation to authorize the title company/escrow agent to close. You are well served to have one last look and an opportunity to confirm that "all is well" before the 21-gun salute occurs.

Email and Voicemail

1. Adhere to the wise practice of Abraham Lincoln. Write the letter (email) first as you feel it should be sent to the knucklehead who deserves to receive it. But, do not send the letter (email) until at least 12 hours have passed. I can almost guarantee that you will amend and tone down the first version.

2. Reply *all* only when appropriate. Reply all can be a very mischievous button; use it with forethought.

3. Proofread the list of recipient email addresses. It is easy to include the wrong party that then gets stuck in your transaction as others forward and reply to your email. Making this error can be more than just embarrassing; clients have been lost over it.

4. It is easy and tempting to toss off an answer or advice in an email without proper qualifiers. Try to be just as circumspect in emails as you would be in writing a letter. In a worst-case scenario, your email could be construed as a "legal opinion" without the normal assumptions and qualifications that should accompany a legal opinion.

5. Double check the "subject" of the email. Is there one? Is it appropriate?

6. When leaving voicemails, speak slowly, loudly, and clearly, and always repeat your call-back number at least twice.

7. Avoid long-winded voicemails whenever possible. If not possible, at least warn the listener first. Think of a recipient who is at an airport rushing to catch a flight.

Give the Transaction Some Independent Thought

1. It is relatively easy to review a drafted document that someone else has prepared and give your comments on what is within the four corners of the document.

2. It is more difficult—and often more important—to think of what issues are omitted. It is a good practice to look through numerous samples of drafting precedent of complicated documents—for example, a ranch purchase agreement, co-owners agreement, performance deed of trust, ground lease, etc.—to ensure that you consider all relevant issues.

Trickle Down Changes

1. You have negotiated a long agreement over a long period of time. The day before closing, the other side requests a change, and your client agrees to it. Be careful not to make the change without thinking about and reading through the balance of the document and any ancillary documents. Make sure that the change does not affect language and concepts. An obvious example would be a purchaser changing or correcting its exact legal name as reflected in the document. You need to change the opening line of the document and the address section, and perhaps the assignment section, the signature line, and certain exhibits to the document.

2. If you are in control of the transaction documents (and that is a great advantage), be careful to *mark all changes* no matter how minor. Failure to do so is very unprofessional and, when caught (and you likely will be caught), is not only embarrassing, but it can also undercut bargaining leverage and credibility. Conversely, if you are not in control of the documents, and unless you have confidence in the integrity of the lawyer you are dealing with, you must be alert to any changes not marked.

When the Transaction Is Done

The transaction is not really concluded until a closing occurs (or falls through), and the client (hopefully a

contented one) pays the bill. Make it a practice to copy the client on all emails and other correspondence simply to let the client know everything that you are doing. This helps keep the client from being shocked by the legal bill. Additionally, if you encounter unforeseen tasks or difficulties, advise the client early on.

Give the Public (and Our Profession) a Break

Try to be (somewhat) in the real world. I once read the default section of a very lengthy loan agreement. Default number 33 began, "In the event of a nuclear attack . . ." It is not hard to understand why so many people roll their eyes at the mention of the word "lawyer."

All Things in Moderation

1. You are involved in a marathon, not a sprint.
2. Don't take yourself too seriously—the world will not end if you die tomorrow.
3. You are only as productive as your health will allow.
4. Make time for family, friends, exercise, healthy eating, worship (if you choose), regular doctor exams, etc.
5. The legal profession has a high incidence of emotional issues, including alcoholism and suicide. Keep your perspective. It is commendable to work hard and serve your clients well, but you can get too wrapped up in doing that if you let your work crowd out all else in your life.

Mistakes

When (not if) you make a mistake, confess it quickly and without excuses. Most will be more forgiving than you think, and it makes you more credible and likable. Unconfessed mistakes will almost always fester and be disclosed by someone else, much to your discomfort.

Learn to Take Yes for an Answer

When the other side concedes a point during negotiations, say "thanks" and move on promptly. Engaging in why that was an appropriate "give" by the other side or why that was an important point for your client may well lead to a lesser concession. Other things not to say at this juncture: "Really?!", or "You have got to be kidding!," etc.

Dumb Questions

You can (and probably should) learn something new

every day. Do not assume that a question is a dumb one, and do not be afraid to ask questions; they are not a sign of ignorance but of interest, inquisitiveness, and an ability to spot issues.

Quality of Work

Despite pressure to get it done quickly (and there will be lots of that kind of pressure), do not sacrifice the quality of your work. Doing so is a formula for having to make embarrassing corrections at least—and for perhaps malpractice at worst.

Look the Part

You want to be perceived as the most professional person in the room. Personal appearance counts. Even if you cannot suffer wearing a coat and tie in the month of August in Texas, "Never let them see you sweat." A calm, professional, and unflustered manner inspires confidence and trust, especially in high stress moments.

More Tips and Caveats

1. You will be called upon to juggle and keep abreast of lots of projects at the same time. Prepare daily lists. Engage in daily triage of those lists.



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2. Learn as much as you can about your client's business. The more you know, the better advice you will be able to offer. Ask your client about his or her business—people like to talk about themselves.
3. Don't use your law firm's letterhead in your personal business (e.g., the airline lost your luggage). Don't take positions adverse to important firm clients without first discussing with higher authority.
4. Start form files and research files early (both electronic and hardcopies), especially for esoteric documents and topics.
5. Pay it forward and make yourself available to help lawyers who are less experienced than you. You probably had (or will have) a mentor.
6. When in a conversation or a conference call and you have a brilliant idea, don't blurt it out until the current speaker has finished talking. If possible, and if you really want to make quick progress on negotiations, be in the room with your client and all advisers on the call. The advantage of being able to mute the line and discuss your position/response is great.
7. Don't be afraid to pick up the phone. A phone call is more personal than an email. Better yet, try visiting someone in person. Face-to-face interaction builds relationships in ways that emails and calls do not.
8. There are lots of good lawyers available, so why should a client select you? Go out of your way to make clients feel special and appreciated.
9. Do not represent a client who you know in your heart is "bad news." Your desire for more billable hours can sometimes cloud your judgment on this issue, but sometimes letting a client go (consistent with ethical rules) is the right thing to do.
10. You do not have to comment on every sentence that you see. If your change will not make any substantive difference, then let it go. To do otherwise adds to fees, does not truly serve your client well, and sets a bad tone with your opposing counsel.
11. Don't sit in your office waiting for the work to come to you; get out and ask for it, including from other resources in the firm.
12. Practice proper and courteous cellphone etiquette at meetings, luncheons, and dinners ... always!

Miscellaneous Items Listed in the Lawyer's "Little Red Book"

1. It does not matter whether the deal closes on time, as long as a delay is not *your* fault.
2. The only thing that really matters in a deal is the one thing you forgot.
3. A lawyer will agree to his or her own hanging, if possible, to put it off for three days.
3. Just about the time you really get good at what you are doing, you are pretty sick of doing it.
4. It does not matter how well you performed your assignment; it is how well your client *perceives* that you performed your assignment that matters.
6. If you always tell the truth, you will not have to try and remember what you said.
7. The essential elements in any deal are leverage and flexibility—if you don't have much of one, then you had better have lots of the other.
8. Be there (and every chance you get, be on time). About 50 percent of life consists of just showing up.

I do not claim to have practiced all of the foregoing advice, but I sure wish that I had. Give it a try. After all, "One's Reach Should Exceed One's Grasp ..." The good news is that after studying rigorously for three years and passing the daunting bar exam, you are a lawyer; the bad news is also that you are a lawyer. You have entered a tough and competitive profession. I believe that it gets tougher and more competitive with each passing year, as advancing technology increases client expectations for document creation and turnaround time, client loyalty to legal franchises shrinks, lawyers often become viewed as vendors rather than as counselors, and one's law practice necessarily must fit into a sensible business model. I hope that some of this will help you along the way.

Good luck Yutes!
Jack Fields

NOTES

1. See *My Cousin Vinny*.
2. Robert Browning.



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is a partner in the Houston office of Andrews Kurth, where he has practiced for more than 35 years. He has been recognized as a leading real estate lawyer by the US Legal 500, Chambers & Partners, Texas Super Lawyers, and the Best Lawyers in America. Fields is certified in Real Estate-Commercial and Real Estate-Farm and Ranch areas by the Texas Board of Legal Specialization.