

Entre Nous

Ten Hard-Earned Lessons about Life and Law Or, Growing Balder and Wiser

by Claude Ducloux

My father was nearly 40 when I was born, so my earliest memories of him occur when he was in his mid-40's. As I gently progress down the relentless sewer of acquired physical insult we call "aging," I'm amazed at how much I resemble him. When I drag myself out of bed and turn on the light in the bathroom, I can't help but be startled at the old guy looking back at me.

"Dad?" I often inquire, "What are you doing here?"

Now, it's not that I really mind aging, as I joke about my relentless loss of natural head covering along with my friends. Heck, balding can happen early. It's not the test. The hardest thing is the cruel trick reality plays on



your self-image. Y'see, I still think I'm about 29. But the mirror mocks me. Damn you, mirror! And take your stupid scale with you!

The truth is, right around the time you're reading this, I'm having a big, mind-boggling birthday. It portends middle-age, Metamucil and the veritable certainty of eventual male plumbing problems requiring indignities I'm told are too horrifying to mention in mixed company. I hear myself saying, "I beg your pardon, sir! Is that entirely necessary?" Procedures that make the atrocities of the Spanish Inquisition look like a manicure.

Life apparently will soon become focused upon (ahem) "keeping things moving," and sensitive toothpastes, and having dermatologists regularly remove chunks of unhealthy skin the size of muffins. Oh yeah. I can't wait. But when things really get saggy, I'm gonna go in and get touched-up. As far as I'm concerned, looking like a blood hound is for, .. er, well, ... the dogs. Besides, I'm aging way faster than my wife, and I'd like to keep her somewhat interested. On second thought, at this rate, in a few years I can tell people she's my "trophy wife." That way, I won't have to admit that I have only been able to afford one marriage.

At any rate, I really thought about this big change, and decided to focus on the positive. Those "psycho-babblists" tell us mid-life

is a time to reflect on the past, photograph the present, and plan for the future. Have you done what you wanted to do so far? How do you like what you are now? What haven't you done yet that's important to you?

Now, I hate listening to psycho-babble, as my experience makes me suspect that too many of the counselors I've seen testify aren't fit to recommend life-decisions more consequential than "try de-caf." (Have you ever noticed how many people who make a living telling other folks how to run their lives have enough personal problems to make Dennis Rodman look like a role-model?) Yeah, okay, there are undoubtedly great counselors out there. But their "...voice mailbox is full. Try again later."

So anyway, probably like most of you, I'm proud of most things, embarrassed by some, and surely convinced that you must pursue some activity outside the law to stay sane. Mine happens to be performing, which I still enjoy with great zeal. And if anything I've written in these quarterly Entre Nous columns over the past ten years has made you laugh, that's very cool. And I'll bet we all want about the same in the future: to travel, to work less than 6 days per week, and generally to avoid urologists.

But the best we lawyers can do is pass on the hard-earned wisdom we have acquired, either through personal experience and observation. We do this for two reasons: first, for the younger lawyers, we all conceitedly suspect your life would not be complete unless we pass this wisdom on; and second, so the older lawyers reading this will nod their heads in agreement and realize that "I am not alone." So here are my top 10 lessons from the practice of law.

1. The Client's story never gets better than the first time you hear it.

As a private practitioner and a reputed "softy" for being taken-in by sob stories, (I swear, they must leave a mark on my door, like the old hobos would leave on homes where a warm meal might be expected) I often hear from citizens who, in their attempts to attract first rate legal talent (ahem, like yours truly), report the greatest legal claim since the Titanic began taking on a little water. The reason their story is so good is because they have rehearsed it on the first seven lawyers interviewed. By the time you hear it, the truth has been hidden somewhere like one of those "find the hidden objects in this" puzzle. You're sucker-punched into a totally different case. This leads to telephone calls like: "Yeah, Mr. Snodinger, why didn't you tell me you signed a release of claims and have already received settlement?" Or: "Yes, despite your stated willingness to work with them, they



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still need at least a few of the 81 payments you've missed... Yes, I realize you think that's unreasonable... I realize you replaced the float valve in the toilet... That's apparently not good enough."

In short, don't believe everything you hear.

2. Every once in a while, your destiny will be totally controlled by a complete jerk.

This starts with that lavatory monitor in third grade (who won't let you in to pee despite your obvious pain) and continues for life. It can be a disgruntled DPS employee who won't renew your license because he didn't watch you sign the form (because he turned his head at that moment). Or the District Clerk in Darkdirt County who refuses to file the suit because the check you mailed is \$2 over the filing fee. Or it could be a judge having a bad day. You can't fight this. Arguing with these people is like moving too fast in quicksand. You just sink faster. What do you do? Listen: Do what they want. Unless it's a major consequence, just move on. Buying into the unhappiness of others leaves you both infected. And "egging" the lavatory monitor's house on Halloween didn't make me feel better. Well, maybe a little.

3. If it doesn't involve blood, it ain't an emergency.

Clients have an amazing sense of urgency when it comes to their business. Lawyers are all too often treated like doctors, and each case involves hundreds of mini-crises. One of the sad benefits of age is the realization that life changes in a moment. It comes without warning, and turns your world upside down. It makes you realize that real life crises involve physical danger, serious illness or death of loved ones, and puts this all in perspective. You can get an extension on that stupid brief. Those judges won't read it anyway. You can usually get a continuance, and if you can't, see number 2 above. Keep perspective.

4. Justice Prevails 4 times out of 7.

Although the right party comes out on top the majority of the time, the journey is fraught with peril. Judges make mistakes, jurors misunderstand or play favorites, witnesses lose control, and sometimes, the tightrope breaks. Control your own destiny: never pass up a settlement your client can live with. Sure you might do better in court. But if the settlement offer solves the dilemma, don't hold out for the possibility of punitives. Move on with your life. Some clients, of course, will insist on every ounce of flesh (but only "as a matter of principle,") which brings me to the next lesson.

5. No one appreciates you less, or bothers you more than someone getting your work for free.

No, don't think I'm against pro bono. I do plenty of it. However, I am reminded often during those cases of the words of Broadway producer Joe Papp who said, "Never do a show for free. The audience has to have some investment to appreciate the product."

I think this applies to legal work. Unless a "downside" exists for the client, the normal dynamics of settlement are absent. Why shouldn't they tell you to try the case. Nothing is invested. I told Judge McCown my most difficult mediations involve clients with no financial downside. We need to find a way to get all clients "invested" in the process, even if it involves a minimum fee, or a portion of recovery goes back to the pro bono agency referring the case. This may be heresy, but I'm convinced it's true.

6. Be extraordinarily careful when someone claims their decision is dictated by religious beliefs.

We've all heard it: "I'll have to go home and pray about this." Now, far be it from me to mock any sincere attempt at divine intervention. You're talking to a guy who ate tuna fish for lunch every Friday through Vatican II to avoid the eternal damnation that accompanied chicken noodle soup eaten before Friday midnight. Between you and me, I can't see those poor carnivores frying in hell. They appealed when they changed the law. I can hear 'em now: "Hey, it was a baloney sandwich! It was all there was after band practice. Can't I have my sentence commuted? Time-served?" Too bad they didn't have tofu back then.

We all need divine guidance. But, what's always amazing to me is how little, if you believe these clients, God knows about tort reform. Too many of these people report that God wants them to: a) get more money, or b) have the lawyer cut the attorney's fees. I suspect maybe they're praying to a very obscure god, the same one that tells people to get tattoos and dress their cats.

Years ago, I had a client who had created a deed to property he didn't own, on the basis that he'd invested money in it. I'd worked out a settlement which actually returned him money he had invested with no other bad effects, which he refused. When I asked him how we would explain his actions to the judge, he said: "Tell him Jesus commanded me to do it!" Explaining to him that Jesus was outside the subpoena power of the constable didn't help. He fired me, and went on to become a judgment debtor with the help of his new attorney.

7. Be nice to everyone. And don't expect everyone to reciprocate.

Be nice. Your life is easier that way. Angry people suck. And don't expect recognition for it. "I called him, so he should call me" is the wrong attitude.

That's expecting a dollar for every dollar you invest in friendship. Expect a more reasonable return, say 10 cents on the dollar, and you'll be much happier. Friendship is social insurance, and you never know when you'll need it.

8. Insurance companies are not here to help you.

It's really quite simple. It's a business. They make money by collecting premiums, not by paying claims. When they pay the claim, they've lost the bet. Got it?

9. Some of the smallest things you do will bring you the most happiness.

Now, I admit I don't have a great deal of personal perspective, in that I've yet to settle that multimillion dollar plaintiff's case. With that proviso, I do know that some of the most important cases I've ever handled weren't necessarily the largest. It was helping a widow win back her pension benefits. It was making sure a kid got to go to college. It was mediating to settlement a 10 year-old family dispute involving a familiar business. Outside the law, it has been Saturday breakfasts with Susan, practicing piano with my kids and watching them perform. It's running the summer swim league, and it's entertaining across the country with the Bar & Grill Singers. It may not be earth-shattering, but it makes me very happy to think about it. Think about what truly you cherish, and do more of it.

10. Finally, the client trilogy:

- Always tell the truth:* Hey, they can handle it. If you've blown a deadline, let 'em know. If you don't like their odds in the case, and, by the way, they suck as a witness, tell 'em. Besides, the truth has far less paperwork.
- Don't ever sue a client.* No matter how mad you are, just lie down until the urge passes. The same goes for predicting victory at trial.

Treat all your clients like they were going to live next-door to you the rest of your life. I really think about this. Would Mr. Duran appreciate how I handled his case? Could I look him in the eye every morning as I got my newspaper? If you can't do that, you're doing something wrong. Even if you withdraw because Duran is a nut, do it with dignity. Then move out of town.

I realize this list may be incomplete, but it's the best I could do on only 50 years' notice. Please send me your thoughts on others. • AL

Don't forget, Saturday November 17, 2001, we'll be doing our 10th Annual Bar & Grill Show at the Paramount Theatre, featuring what, in our twisted opinion, are the best acts and songs from years gone by. If you never seen Bar & Grill, don't miss it. If you have been to one before, we don't even need to tell you. Get your tickets early through the Travis County Bar. 472-0279.