





at first you don't succeed, you're normal

BY KENNETH R. WALLENTINE | *The following speech was given to the lawyering skills class at the J. Reuben Clark Law School on March 23, 1998.*

They didn't have this class when I was in law school. Or maybe they did, and I slept through it. I've been asked to talk with you about research and writing skills. I guess that I'm an example of what happens when hours of computer time produce nothing but glazed eyes, and endless page-turning results in near total blood loss through paper cuts.

[Illustration by Vivienne Flesher]

There is not much that I can tell you about how to research the law, other than to pay attention to Gary Hill. Then I'm supposed to tell you about writing and about life as a lawyer.

There are several ways to get a great clerkship or summer job. The best way is to bear the surname Rehnquist, Hinckley, or Zimmerman, or to be dating someone with such a name. Another way is to have a season ticket to law review. I also once heard of someone winning the Florida lottery and buying her own law firm just to get a summer clerkship. None of these methods worked for me. Let me tell you about landing my first summer clerkship.

A friend and I both discovered in February—coincidentally just after first-semester grades came out—that we would not be in the elite eight who would score prime clerkships. We discovered that the elite eight was selected by narrowing the sweet 16 of the top 10 percent down to the students who had palatable personalities and enviable golf handicaps. So we decided to create our own future.

I invested several dollars in a box of good linen bond paper. I toiled over my 8086 AT&T wonder computer and cranked out a very attractive résumé. I consulted with career services. They gently told me that the résumé looked nice, but it lacked any real substance. I could not understand why I should leave out the part about hanging out in a bar and public parks for the summer when I was assigned to buy drugs and hook up with prostitutes as part of my police job. Did not that uniquely qualify me for work in a big firm? I could be the token former cop. I had dreams of a television pilot and eventual series. Besides, I had a beard, and a beard license from the McDonald Health Center. Now show me one person in the top 10 percent who sported a beard, had arrested deviant panderers in parks, and could buy a quarter-gram of cocaine in the first hour of being in the local tavern!

After succumbing to threats of a compulsory chat with Dean Hafen, I trimmed the fat from my résumé and opened my own publishing house. I discovered a substantial savings in printing 5,000 copies of

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a résumé at the same time. As I wallowed through draft after draft, I became quite friendly with the print shop staff.

Résumés in hand, and smiles worthy of missionaries serving in outer Mongolia, simultaneously afflicted with colitis and a migraine (years before, while on my mission, I knew I was practicing for some later life experience), my buddy and I plopped our \$1.25 fare on the UTA bus and headed for the big city. We had this crazy idea that we could visit the major law firms and bully our way into the office of each recruiting committee chairperson to personally deliver our fine linen bond résumés.

We picked a day during the worst storm of the winter of 1987. What the heck. The alternative was torts and civil procedure. I was relying solely on my silver tongue. Only a year before, I had faced a crazed immigrant waving a razor-sharp meat cleaver in my face while I pointed a gun at his forehead. I'd persuaded him that it would be in our mutual best interest for him to put the meat cleaver down. He did, and without me shooting him. I figured if I could do that, I could get past a law firm receptionist. (Actually, the truth is that some time later I discovered that this particular man spoke no English. He had surrendered because he had to visit the bathroom.)

I was buoyed up because my friend was much smarter than me, yet his grades weren't any better. We'd be together in this foolhardy endeavor. Or so I thought, until I discovered that his sister-in-law was a partner at Jones, Waldo, Holbrook and McDonough. Not to be outdone, I called on my father's high school debate partner at Jones-Waldo. He graciously invited me into his office and sat me in a chair that he'd had since knowing my dad in high school. The combination of the rickety chair and being placed by a window with a six-inch-high ledge 15 stories above State Street led to severe nausea and an abbreviated interview. I did not hear back from Jones-Waldo.

I moved on down the street to Watkiss and Campbell, where I had real hope. I had put my research skills to good use and discovered the name of the chair of the hiring committee. I'd then perused the

Salt Lake newspapers and discovered that the man kept bees for a hobby. My wife was interested in apiary science. A connection! I quickly digested several magazine articles about beekeeping. Arriving at the Watkiss and Campbell lobby, I boldly told the receptionist I was here to see Mr. So-and-so. (The names have been cleverly changed to protect the gullible.) It seems that my boldness worked. She assumed that I had an appointment and telephoned a confused Mr. So-and-so. Mr. So-and-so appeared in the lobby with a bewildered look. He ushered me into a palatial office, and we set about discussing bees. About three minutes into the conversation, he bluntly asked: "Did we have an appointment?" I confessed that we did not, produced a lovely résumé, and gracefully retreated.

Two weeks later, I received a call asking for a writing sample. I later learned that Mr. So-and-so had resigned from the hiring committee, but he told someone to interview me and to see if I could write. I interviewed. I wrote. I was hired. After I was hired, they asked if they could see my grades. Sure, no problem. After all, didn't we have an enforceable contract? No one ever really commented on the grades, other than to note, "That's not how they do it at the U."

The first summer did not lead to a guarantee of a second summer, somewhat to my dismay. In my second year, the better paying clerkships seemed just as scarce. With four kids to feed and a mortgage, money was a real issue. I wrote a paper to enter a natural resources writing contest sponsored by the American Bar Association. I made no great pretense about the reason. First prize was \$1,000 cash. To my amazement, I won the prize, besting a law review editor from Harvard Law School. That cemented a second-year clerkship and convinced me that legal writing could pay dividends.

I next turned my attention to writing a law review article about a hot topic in criminal law. The law review article later became a state statute through the plagiarism of one of my fellow students. The article also led to one of my most stimulating and engaging interviews ever and a clerkship at the Utah Court of Appeals.

Having a third article accepted for publication by graduation helped me get a clerkship with one of the nation's top federal appellate judges. In turn, that clerkship opened many more doors at fine firms. I returned to Utah to join the state's finest firm.

I'M NOT A PARTICULARLY BRIGHT guy, even today. I have passion for my work. I have passion for what I write. I follow a few very simple rules for writing. Maybe they will help you.

First, be prepared to stumble and fall. The best lesson I ever learned was in a bar fight. I got knocked down hard and I bled. Getting hit hurts, but not nearly as bad as lying on a smelly floor wallowing in the stench of failure. Failure is nauseating. Getting back up felt great; I was energized by my own blood loss. I hit back, got hit, hit back, and ultimately the other guy stayed on the floor. Writing requires the same willingness to stumble and get back up. Do not despair when a law review editor bleeds an entire red pen barrel on your "final" draft.

Here's my second suggestion. After that bar fight, I took a few fighting lessons from an amateur boxer. He taught me about wasted energy and useless motion. Wasted energy also clutters writing.

"Omit needless words! Omit needless words! Omit needless words!" E. B. White, author of the great book *Charlotte's Web*, said that to each new English class when he taught at Harvard. I have found that counsel invaluable. Yet I also recognize the truth spoken by my friend and legal mentor Rex E. Lee, when he noted: "There is nothing quite so painful as an undelivered speech." As I've seen editors bleed red ink all over my writing, I have learned that the same pain applies to a deleted paragraph.

There will always be a tug-of-war between the need for clarity and brevity and the wish to expound on the mysteries of the universe as developed in all the cases your research uncovered. Anyone who doubts that clarity and brevity deserve to win the war of the words ought to reread the Gettysburg Address or the Ten Commandments. Omit needless words!



The third suggestion that I offer for developing your writing skills is to write. Writing is easy. All you do is stare at a blank piece of paper until drops of blood form on your forehead. And then you tear up the paper and start over. Soon you create something important. Write, write, write. Edit, and write some more.

I have a friend that I have sent to prison twice. He did not become my friend until after he got out on parole for the second time. During his last term in prison, when he was pushing 50 years of age, he decided to become a painter. He is covered from ear to toe in tattoos, mostly

of his own design. He began painting. He painted and painted and painted some more. When he got out, he painted a picture for me. He gave several paintings to my office staff. He gave away more than 2,000 paintings, and many others ended up in the discard heap. Recently, he came to see me. He had just sold one of his watercolors for \$250 and had been given a commission to do several more. He became a painter by painting. One becomes a writer by writing, even if one writes only briefs and memoranda.

Finally, read great literature. I believe that a truly great lawyer will know

Shakespeare—or at least *Hamlet*—and certainly the Bible and perhaps even the *Autobiography of an Ex-Colored Man*. If you learn great stories and poems, they will return to you as metaphors, comforts, and even closing arguments.

Recently, a prosecutor was faced with the plausible argument that a particular piece of glassware could not legally constitute drug paraphernalia, since the drug residue from smoking was so thoroughly burned that the crime laboratory could not test the substance. In closing argument, the prosecutor recited the story of Elijah and the priests of Baal, recounted

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in the 18th chapter of First Kings. He reminded the court that Elijah had built a large altar, topped with wood and a sacrificial bullock. Elijah then poured four barrels of water over the altar. He called down fire from heaven. The bullock, the wood, and even the stones of the altar were fully consumed in the fire. The story connected. The judge understood that the methamphetamine residue was fully consumed by the flame. The defendant was convicted. People are persuaded by what they understand. A good writer makes use of the familiar when exploring new territory.

THAT'S ENOUGH ABOUT WRITING. I have gathered a few ideas over the years about being a lawyer. Maybe a few of my observations will be useful to you. As you listen, remember this: Not long ago I spoke at a youth fireside. After my presentation, a woman approached me and gushed marvelous praises for my speech. I reminded her that I could preach more gospel in 45 minutes than I could live in 45 years.

Some may see a legal education as a ticket to a fine income. It is. But don't think that the only place to make money is in a large and prosperous firm. Of course, there is money in big-firm prac-

tice, and some may find satisfaction there. I certainly did, although I practiced in a uniquely wonderful large firm.

Money is where you want it to be. Money is what you get when you help another person solve a problem. Money is your time, your talent, and your commitment to your clients. Money is a tool to accomplish your needs and wants. It is not a treasure to accumulate. Money will come to you. Remember Paul's advice to the wealthy: "Charge them that are rich in this world, that they be not high-minded, nor trust in uncertain riches, but in the living God, who giveth richly all

things to enjoy” (1 Timothy 6:14). Paul also warned: “The *love* of money is the root of all evil” (1 Timothy 6:10; author’s italics). If money is your professional objective, you will discover that the “eyes of man are never satisfied.”

To build a prosperous practice, carefully study the New Testament. About one-fifth of Jesus’ words deal with money. The best financial advice that I’ve ever found is recorded in Luke, chapter 6: “Give, and it shall be given unto you; good measure, pressed down, and shaken together and running over, shall men give into your bosom. For with the same measure that ye mete withal it shall be measured to you again.” Read the first 11 verses of the fifth chapter of Luke, and you’ll learn that Jesus told people where and how to find all the money that they needed.

I’d also like to suggest that you regularly schedule time for fun. This past month and the next two months are incredibly busy for me. I have many days of speeches and lectures scheduled from Seattle, Washington, to Washington, D.C. This week I have an armed robbery jury trial, 3,000 miles of travel, two speeches, and a stake youth activity, and I am coordinating an election campaign in a couple of dozen neighborhood caucuses. I planned my week carefully, and I prepared for the week.

I prepared by spending Saturday afternoon, all of it, on a lake fishing for wide-mouthed bass. I caught a few fish. My friends and I talked up a storm, and we spent a fair time in silence with each other. Saturday night I spent with my wife. Last week was just as crazy, but I’d prepared by watching my son win all of his high school tennis matches and by going out to eat with the kids.

God worked six days and took a day to rest. After the apostles had been about preaching and healing, Jesus commanded them to retreat. “Come ye yourselves apart into a desert place, and rest a while” (Mark 6:31). Put the skids to your frantic rush toward success. Resting is rebuilding.

The greatest key to any success that I’ve ever achieved has been to surround myself with wise mentors, friends, and counselors. I well remember several of

my law school experiences because I shared my progress and achievement with wonderful men and women. Like John, I can do nothing of myself (see John 8:28; John 15:5).

You ought also to find a mentor or two. I do not mean just someone to show you how to be a lawyer. In fact, I think that your personal mentors should not be lawyers. Find some friends who are plumbers, teachers, or accountants. I’m talking about someone who will counsel with you, someone you trust implicitly. Show me your mentors, and I can tell you your future. Polonius told his son: “The friends thou hast, and their adoption tried, grapple them to thy soul with hoops of steel.” Solomon cautioned: “Where no counsel is, the people fall: but in the multitude of counsellors there is safety” (Proverbs 11:14). My life has been rich and full because of my friends.

If you want success, there is only one path: Serve. As a young associate in a large firm, I had the unusual opportunity of trying a major case with another lawyer. My client was at risk for \$6.25 million. We won the case. We received praise and a bonus. My classmates were ferociously jealous that I had actually been to trial. That happens infrequently for junior associates in big firms. That bonus was nothing compared to a bonus that I’ll receive in about a month.

A day after Christmas, I received an unexpected telephone call. A young mother with some mental and physical ailments was tired of her children—tired, truly tired. She had been considering giving away her children for some time. The father was nowhere to be found. Her family could not help her. So she had turned to her church. Her pastor had been on a jury panel before me on some old case. He remembered me and had asked for my help. I had spoken with his parishioner, counseled her on getting help with her children, and had helped her obtain some job skill training and some further health care. All of this had preceded the surprise phone call.

I took her two beautiful, but neglected children. I placed them with a wonderful couple, struggling financially, but eternally yoked together in a tremendous mar-

riage. They had spent a small fortune on medical care in an effort to have children. In a month or so, I’ll be before the court to finalize their adoption. I’m being paid in cookies. They have no idea of the legal fees for an adoption. They had to scrimp for the filing fee. I have no intention that they should ever know the usual fee. I’d have paid them to experience the joy I’ve received. No one but a lawyer could have accomplished this task. In a couple of years, you will be competent lawyers, and you will be able to serve in this fashion.

Always practice in a partnership, even if you choose to hang out your own shingle. In my office I handle a special category of crimes alone. I handle all sex crimes against children. But I have a partner. He’s the greatest researcher, investigator, and oral advocate. He knows all.

Let me tell you about a collaboration. A couple of years ago, a woman lost custody of her children to her ex-husband. The woman was a hard-core drug addict and criminal. The father was, and is, a drug dealer. He left his nine-year-old daughter with one of his drug clients for a few days while he went on a trip. He likely went away to purchase a quantity of drugs.

The babysitter, a man in his 20s, pinned the young girl down and sexually tormented her. After she could escape, she ran to a hospital a block away and reported what had happened. The trial approached. The father was nowhere to be found, having gone off again. There was minimal extended family support. They had tired of dealing with the law from their previous experiences.

The defendant was quite smooth and intelligent. His I.Q. measured off the charts. He told the jury about reading the *Wall Street Journal* front to back every day. He had a friend who gave a solid alibi. The jury was the ideal jury for a handsome, bright young man. It was composed of seven women, mostly young and single, and one single middle-aged man who’d never married.

I knew that I would not likely win this trial. It is always difficult when it is the word of a little child, especially one from a pretty dysfunctional family, against

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an adult with a good story. Then there was the alibi. The defense suggested that if the girl was abused, her father did it in a drug-induced haze. The defense also had been able to twist the state's expert witness into stating that kids often are mistaken about facts in these types of cases.

The second morning of the trial, I went into the courtroom early and consulted with my Senior Partner on my knees. I told him that I knew this little girl was his daughter, and it seemed that only he and I cared about her. I believed her, and I knew in my heart that the defendant had abused her in the most devious way. If I was to win this trial and protect this child, I needed some quick help.

The defendant took the stand. I wondered if my Senior Partner would come through. I knew that I would lose this trial and that this man would move on to another young girl. About five minutes before I was to cross-examine the defendant, one of my investigators came into the courtroom. He handed me a stack of documents showing that the defendant had three different identities. I'd never seen this material. I questioned the defendant about having other names. Naturally, he denied that he had any other identities. I cemented his denials with repeated questions.

Through all this, his attorney was confused and objected on the grounds of relevancy and surprise. Despite the defense attorney's protests, I was able to introduce the driver's licenses and applications with the defendant's photograph and different names. I accused him of molesting the victim in a single question and sat down. The jury was out for 11 minutes, from walking out to walking in. They had one vote to elect a foreperson and one vote to convict. I did not win that trial—my Senior Partner did. He did it for one of his children.

That's what being a lawyer is all about: service and being blessed.

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