Always Take the High Road
By Roger A. Stetter

Every lawyer should master the art of writing a really good brief. Here are some pointers I hope you will find helpful in mentoring younger lawyers or in your own practice:

A brief should be brief. Judges are busy people who have neither the time nor inclination to read long or rambling briefs. Do everything possible to keep your brief short and to the point.

Always take the high road. Personal attacks on litigants or opposing counsel irritate judges (and their law clerks) and undermine credibility — the most important asset a lawyer has in any litigation. Even if you are on the receiving end of such Rambo tactics, it is never proper to respond in kind.

Let the judge decide. Lawyers often tell judges what they must do or write in a condescending manner, implying that the judge is not very intelligent. The best brief is one that provides the judge with sufficient facts and law to decide the matter at hand with a minimum of effort and in a manner that is fair and just. Always remember that the judge is the decision-maker, not you.

Don’t overplay your hand. Lawyers have a tendency to go beyond what is necessary to win a legal argument, thereby running the risk of raising false hurdles to success. They also sometimes press their advantage too far by exaggeration and redundancy. A strong piece of evidence does not need any embellishment or exaggeration. A low-key approach in which the judge sees that your client deserves to win is best.

Act in haste, repent at leisure. The most important part of effective written advocacy is careful preparation. Do the research, read and re-read your opponent’s brief, and prepare a conceptual outline of what needs to be said before you begin to write the brief. Give your legal training time to do its work before you organize and then write the first draft of your brief. This is truly the most productive and enjoyable part of writing a good brief. When done well, it makes the writing much easier and results in a very effective presentation. A hastily conceived brief, without sufficient research and reflection, will often miss the mark and waste a lot of time for all concerned.

Do not repeat your opponent’s argument. While it is essential to fully understand opposing argument — and to read all cases cited in opponent’s brief — it is hardly necessary or appropriate to repeat that argument in detail. Rather, the crux of the opposing argument should be summarized accurately in no more than a few sentences to frame the issues for decision by the judge. Then you want to move swiftly into your argument after a concise statement of relevant facts if needed.
In sum, a good brief should be a pleasure to read and make it easy for the judge to rule in your favor. The best briefs are seemingly unlabored and precisely what is needed for the judge to reach a just result — no more and no less.

Effective written advocacy has probably never been so important as it is today, an era of crowded dockets and over-burdened judges, a time when the pen is indubitably mightier than the sword. Our job as trial and appellate lawyers is to zealously represent our clients and win their cases by advancing clear and concise arguments that assist judges in reaching just outcomes. We can do this by focusing on what needs to be written and writing it briefly and well.

FOOTNOTE

1. Cases cited in opponent’s brief are often not on point and may even support your position.

Roger A. Stetter, a graduate of Cornell and UVA Law School, is a trial lawyer in New Orleans and former member of the Louisiana State University Paul M. Hebert Law Center faculty. His books include Louisiana Civil Appellate Procedure; In Our Own Words: Reflections on Professionalism in the Law; and Louisiana Environmental Compliance.
(rastetter@bellsouth.net; Ste. 1435, 228 St. Charles Ave., New Orleans, LA 70130)
But I don't want blood. All I want is the whole turnip.

"Your honor, it's true you can't get blood from a turnip,"

The Wisdom of the Senior Lawyer
How Long is Too Long?
By Leslie J. Schiff

I begin my 56th year of active law practice in January 2015. The inevitable question that each of us “old-timers” must face is how long is too long. This requires some serious analysis and soul-searching. Several basic, and often tough, questions must be asked and answered honestly and with the utmost candor. For me, the questions include:

1. What is my physical health?
2. What is my mental health and alertness?
3. Are there any known impediments to my continued practice?
4. Is my level of competence diminished in any respect?
5. Do I enjoy my work?
6. Am I able to retire from a psychological standpoint and from a financial standpoint?
7. What would I do if I retire?

Your list may vary somewhat but my suspicions are that most of us must confront the same considerations at some point during our careers.

Who are the sources that we should consult to make such a heavy decision?

My list of folks who might provide input to assist my decision-making process includes family, friends, physicians, clients, partners, colleagues, judges and office personnel. To a greater or lesser extent, these are the people who know us best. Some, of course, are more observant than others. There is likely a natural reluctance on the part of those close to us to share such information or views. The next obvious question is: What do we ask these folks who might assist us in answering the questions that need to be answered to make the critical retirement versus continuation of practice decision?

The conversation should go something like this:

“I have been in the practice of law since January 1960. I like what I do. I have great partners and great family and office support. I have gained the confidence of clients, colleagues, judges and friends. I want to keep their confidence. I don’t want to hang around beyond the time that I have the capability of being able to deliver competent legal services to my clients. I would ask a favor of you and a frank and honest answer to this question. If, at any time, in any of our dealings, you see me slipping and not up to my historical standard, please pull me aside and have a frank and open conversation with me alerting me to your concerns. I realize that this is a painful exercise. It is very important to me that I don’t hang around too long. Hopefully, I will last forever. I realize that that is not the case. Do me a favor. When you perceive that it is time for me to step down, don’t hesitate to tell me. I would consider it a cementing time in our relationship.”

Leslie J. Schiff is a partner in the Opelousas office of Schiff, Scheckman & White, L.L.P. He served as Louisiana State Bar Association president in 1989-90 and currently serves on several LSBA committees, including the Rules of Professional Conduct Committee, the Lawyers in Transition Committee and the Senior Lawyers Committee. He received the LSBA’s Professionalism Award in 2010. (leslie@sswethicslaw.com; P.O. Box 10, Opelousas, LA 70571-0010)
Birth of a Salesperson
By Stanley A. (Stan) Millan

Ever wonder about our changing legal profession? No, not just wonder about alternative fee arrangements, but about the new focus on selling. I’m not saying I agree that’s what all lawyers should become (salespeople), but it is a trend I see. I fear it’s a mainstay in the private sector. Though I am not an expert here, I have had recent discussions with some practicing lawyers and law students about this topic that I thought I would share.

Some law students just stare at me when asked about selling. Others ask what should legal selling be? One viewpoint is that selling should be interaction that is fun and makes clients come to you when they need your legal services.

An interesting observation by some lawyers is that law firms are in a service market that apparently does not differentiate between the service providers (lawyers) and sellers (marketers). Most other industries have a clearer division of labor between the service providers and sellers, e.g., the engineers at a car manufacturer normally do not write the company’s ads. Larger law firms seldom differentiate between the two.

Many larger law firms have marketing departments — people who help you advertise about yourself. That could be more rain-dancing than rainmaking, as they can help you only in the name recognition phase. That is not client development per se (or new legal work), which still requires the lawyers’ success to attract the business. For that, whatever help you can get is good, but it is still up to you to reach your contacts for work.

Smaller firms do not differentiate between the two realms that much either, but, in lieu of much double duty, they can hire a contract PR firm or can seriously advertise through the media. PR firms may charge a flat fee to distribute news to the media about a case. However, full television ads cost too much (hundreds of thousands to millions of dollars), suited only for some lawyers and specialties. There are many diverse legal fields that lawyers handle that require more subtle means of persuasion, through name recognition (seminars, webinars, articles, dinners, etc.) as pure solicitation is unethical.

A fear expressed is that concentrating on selling focuses too much attention on the competition and not enough on unique ways of delivering legal services. However, with ever increasing legal competition, many of us will be left behind without a mindset to draw more potential clients.

Many feel personality and luck are also keys to success in selling. You don’t want to be the best-kept secret in your profession — whether you “live” your client’s case or even for pro bono work. This attention varies from winning in a niche that explodes to claiming experience in a new, hot area of law.

I think more may be required to sell oneself. There are many ideas, but Neville Goddard (1905-72) had one. (His materials are available on the Internet, if anyone is interested.) That is, you must strongly imagine your success, too, not just its end results, but its reality (feeling the living experience of success in detail, e.g., retirement of a competitor, depositing a big fee, victory, praise and other rewards). This idea sounds like the power of positive thinking, but it has a magical ring to it, too. He says you must believe in your bright future now, be it otherwise near or far. This belief does not stop at mere thought because, if opportunity knocks, you must get up
to open the door. Nevertheless, Goddard maintains that the belief alone will immediately generate the result (your success).

I believe that idea is part of the entirety of selling — to believe in oneself. Belief may not always include painless choices, but, without belief, you only hurt yourself. Your choice may be to solely help people regardless of a fee. That creates a different work ethic, but for others who choose hard selling, they must strive to become like a “Houdini,” figuratively pulling clients out of a hat — the new rainmaker.

Stanley A. (Stan) Millan practices law in the New Orleans office of Jones Walker, L.L.P. He also is an adjunct law professor at Tulane and Loyola universities. This article reflects his view only. (smillan@joneswalker.com; P.O. Box 1201, Metairie, LA 70004)
Pumpkin Spice Latte Pancakes
Recipe & photograph by Lauren Zembron
healthyfoodforliving.com

The “Spicy” section is reserved for discussions of one of the state’s most “relished” topics: FOOD. If you have a great recipe to share or if you want to write a food-related article, email Editor Ed Walters at walters@lawbr.net.

Ingredients:

1/2 cup whole wheat pastry flour
1 tsp cane sugar
1 tsp brown sugar
1/2 tsp baking powder
1/4 tsp baking soda
tiny pinch salt
1/2 tsp pumpkin pie spice
1/4 tsp espresso powder
2 Tbsp buttermilk powder
1 egg white
tiny splash pure vanilla extract
1/4 cup brewed coffee or decaf, at room temperature
1/4 cup water
1/4 cup pure pumpkin puree

Directions:

1. In a medium mixing bowl, whisk together the flour, cane sugar, brown sugar, baking powder, baking soda, salt, pumpkin pie spice, espresso powder, and buttermilk powder.
2. In a large mixing bowl, whisk together the egg white, vanilla extract, coffee, water, and pumpkin puree.
3. Stir dry ingredients into the wet just until moistened. Set aside to rest.
4. Heat a large nonstick skillet or griddle over medium heat. Coat with cooking spray.
5. When hot, spoon the batter into the skillet by the 1/4 cupful.
6. When bubbles appear on the surface of the batter, (about 1-2 minutes), the pancakes are ready to be flipped.
7. Flip pancakes and let cook for another minute or so, or until golden brown.