

LAWYER

ALERT

Stopping Medical Injustice

The Scariest Day of My Life

June 2nd, 2010. One of the scariest days of my life.

On this day, I got the news that rocked me. During a routine day at my law firm, I was called into a meeting with the senior partners. The meeting began with small talk, and then one senior partner looked me squarely in the eyes and calmly said, “John, it’s time we part ways.”

This would be the beginning of the end of my dream job. On this day, I was shown the door after almost 14 years of working at the only job I ever wanted. With a wife and 3 little children at home depending on me, I had no idea what I was going to do. For the first time in my professional life, I was scared.

Suddenly, I was at a crossroads in my career. I did the only thing I could think of doing: I met with my clients to convey my gratitude for their trust and asked whether they would join me at my new law firm. One by one, I got an answer that I didn’t take for granted: “Of course, we will come with you. We wouldn’t consider anything else.” This was the beginning of my new professional life.

My Lifetime of Failure

I have to confess that I’ve failed miserably many times throughout my life.

- I was fired at my first job as a lawyer after only 3 weeks and 2 days on the job. The senior partner told me, “This isn’t your bailiwick.” (I agreed with him).
- My former partners laughed when I told them about my plan to write a book (“The Power of a System”) about law firm marketing and management. They questioned why I would give away all of the secrets (because no one else did).
- When my new law firm opened, I was on the losing end of 3 consecutive defense verdicts (including a loss of more than \$200k in case related expenses).
- My new law firm lost \$72k in our first year of operations.
- Friends laughed when I told them about my wife’s plan to run a campaign for Supreme Court Justice in New York (a member of her political party had not won a contested election in our judicial district in 18 years).

It seems that everyone puts on a façade of perfection. No matter how things are really going, you hear people say that “everything could not be better.” Blah, blah, blah. Let’s face it, everyone struggles. And even when we think everything is going well, life surprises us with hardship and challenges that can seem insurmountable.

3 Proven Tips for Overcoming Failure

My personal and professional life has been filled with one failure after the next. Each time I face failure, I question whether I am doing the right thing and sometimes question whether I should keep going. But even when I feel defeated and ready to give up, I try to keep moving forward.

Tip #1: Never Give Up

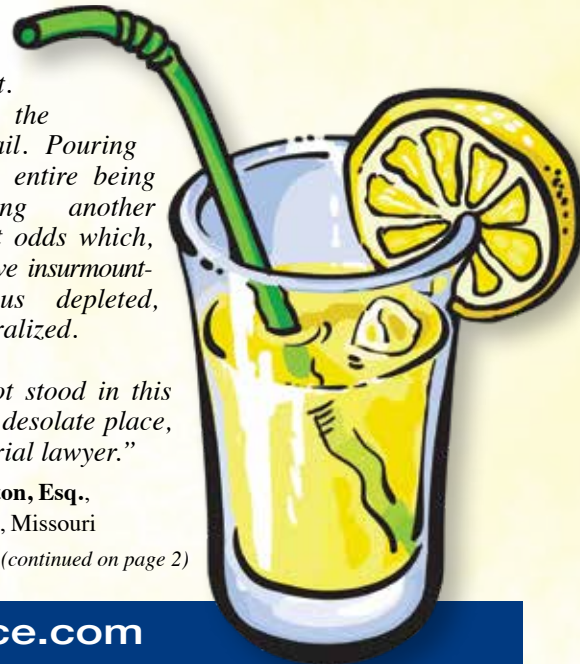
Thomas Edison, inventor of the light bulb, was once asked how many times he failed. Edison responded, “I have not failed 10,000 times—I’ve successfully found 10,000 ways that will not work.” Turns out, Edison had more than his share of failures, but no one heard about Edison’s failures, because he refused to dwell on them. Instead, Edison kept trying and never gave up.

“There are times we come up short. Times when the best efforts fail. Pouring our time, life, entire being into benefiting another human against odds which, ultimately, prove insurmountable leaves us depleted, drained, demoralized.”

If you have not stood in this isolated, dark, desolate place, you are not a trial lawyer.”

Lee Patton, Esq.,
St. Louis, Missouri

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When you doubt yourself and want to give up, NEVER QUIT. Success might be right around the corner.

Tip #2: Live in Day-Tight Compartments

Dale Carnegie, author of the classic 1944 book, *“How to Stop Worrying & Start Living”*, teaches us to “live in day-tight compartments”. This means living for today. Don’t worry about what might happen tomorrow or down the road—only focus on the things that are within your control today.

“It is not our goal to see what lies dimly in the distance but to do what clearly lies at hand.”

Thomas Carlisle

When I am in trial, I try not to worry

about the outcome. Why? Because I don’t control the outcome, a small group of 6 jurors decide who wins the trial. It isn’t productive to worry about something that I don’t control. I try not to worry about any aspect of the trial other than what I am doing that day.

Tip #3: Focus on Your Circle of Influence

Try not to worry about things that you don’t control. Stephen R. Covey, author of the classic book, *“7 Habits of Highly Effective People”*, teaches us that there are 2 circles, namely, the CIRCLE OF CONCERN and the CIRCLE OF INFLUENCE. The Circle of Concern are those problems over which you have no influence, e.g., nuclear war, famine, while the Circle of Influence consists of a much smaller subset of the issues over which you control, e.g., your health, fitness, faith.

“The place to begin building any relationship is inside ourselves, inside our circle of influence, our own character.”

Stephen R. Covey

Why waste time watching the news and worrying about world-wide events over which you have no control? This is a waste of your time. Instead, focus on the things that you control, e.g., read 5 pages of a book, spend 5 minutes alone in prayer, learn meditation or yoga, or go for a jog. Don’t worry about crazy dictators in

foreign countries; instead, stop watching TV and get to work improving yourself, even in small ways.

Failure Can Lead to Surprising Results

Fast forward to a chance encounter with a defense lawyer in an elevator following a deposition. I had worked against this defense lawyer for more than 15 years and we knew each other well. Out of the blue, the defense lawyer bluntly said, “There’s something I have to tell you. I’ve never seen you this happy.” For the first time, I

...the scariest day of my life was also one of the best...

realized that the scariest day of my life (10 years earlier) was also one of the best.

I have had more than my share of tough days, doubts and defense verdicts. Life as a self-employed law firm owner is hard and I never stopped second guessing myself, but the security and stability of a job was nothing more than playing it safe. While I had no idea at the time, I discovered over time that it is far more rewarding to work for my family. It just feels better.

Is it easy overcoming hardship, doubt and struggle? Hell, no. But who ever said life is easy.

THE
MASTERMIND
EXPERIENCE

CURACAO



(left to right) Our **Mastermind** would not be the same without these two: Bill “The Law Man” Umansky, Esq. and our fearless leader, Seth Price, Esq. • Who said we can’t have some fun at a mastermind? • A fun day riding ATVs along the coastline at the Curacao **Mastermind**. • Lily and Danielle getting a surprise in Curacao.



Secrets to Winning Your Next Malpractice Case

The statistics are scary.

Only 23% of jury verdicts favor the plaintiff in New York in medical malpractice cases. And it's not hard to imagine why: the public is exposed to an endless barrage of media stories about frivolous lawsuits. The media doesn't care about the truth—their only concern is bold headlines that grab attention. Unfortunately, by the time members of the public arrive for jury duty, their minds have been heavily influenced against those who bring a malpractice lawsuit.

So, what can you do? Simple, win your next malpractice case before you enter the courtroom. With the right tactics, you can expose the wrongdoing and even force the hospital/physician to admit their mistakes. There are tried and proven tactics for exposing medical negligence that will win your next case before you walk into the courtroom.

Secret #1: Preserve the Surveillance Video

A picture is worth a thousand words and there are surveillance cameras everywhere at a hospital (Albany Medical Center has 1,100 surveillance cameras).

The surveillance video will often tell a different story from the defendants' version of what occurred. The emergency medicine physician may claim that they performed a thorough physical examination, but the surveillance video will show they never laid a hand on the patient (and you may have a claim for insurance fraud and punitive damages). This is why surveillance video may be the most important evidence in your case.

Here's the problem: the security departments of many hospitals will erase/overwrite surveillance video automatically every 30 days. If you don't act quick to preserve the surveillance video, it will be gone forever.

As soon as you are retained, send a preservation notice for surveillance video to the hospital via certified mail, return receipt requested. The preservation notice should specify the date, time and ideally, the location of the surveillance video. The preservation notice requires the hospital to preserve the surveillance video and if they

ignore it, you'll have a strong basis for a motion for spoliation of evidence.

Secret #2: Get the Audit Trail

The audit trail is a snapshot of every entry in the electronic medical records that shows: the identity of the person making the entry, when the entry was made, the location where the entry was made and the substance of any change (deletion or addition to the records).

The audit trail may be indispensable to your case. You might use the audit trail to show that the attending physician made changes to the electronic medical records 19 days after the patient died. The audit trail gives you the proof that you need to prove that the electronic medical records were altered after the date of treatment.

The defense will try to avoid disclosing the audit trail, but don't let them get away with this. You have the absolute right to an unredacted audit trail, pursuant to HIPAA, and you should insist on nothing less.

Secret #3: Conduct a Site Inspection

For some crazy reason, plaintiff's lawyers rarely conduct site inspections in malpractice cases. Big mistake!

The site inspection may reveal things that you never imagined existed. A site inspection may reveal the existence of surveillance cameras in a part of the hospital that you were told did not have cameras. The site inspection will show the equipment available in certain parts of the hospital, such as portable heart monitors in a heart attack case. The availability of such equipment might make or break your case.

Secret #4: Original Chart Review

The certification on a medical record is essentially worthless. Never trust a certification form for a medical record (if you do, be ready for a big surprise).

The only way to guarantee that you have all of the medical records is

an original chart review. The original chart review is your chance to inspect the original records (electronic or paper) and compare what you possess to the hospital's records.

In most cases, you will be surprised to find out that there are significant parts of the medical records that were not disclosed by the hospital or defense counsel. Radiology and billing departments may have a different set of records, including requisition slips and interdepartmental email.

Rule of thumb: do not do a deposition without first conducting an original chart review.

Secret #5: Get the Defendants Pointing Fingers at Each Other

The ideal scenario in a malpractice case is to get the defendants to blame each other. How do you do this? Hypothetical questions.

You might ask a defendant physician, "If you had known X [patient was coughing up blood], would that have changed your plan of treatment for Mr. Jones?" Ideally, the defendant will respond, "Yes, it would have changed everything." Then you only need to say, "Please share with us."

If the defendant responds, "No, that would not have changed anything", then they look silly for refusing to acknowledge what should be an obvious concession. For example, "If you knew that the physician's assistant wasn't testing PSA [prostate specific antigen is a blood test to rule out prostate cancer] for Mr. Jones, would you have done anything about it?" If the defendant responds, "no", they are essentially conceding that they too are guilty of malpractice.

Once a defendant blames another physician, you should stop asking questions. You've won your case.



JOHN H. FISHER, P.C.

278 Wall Street • Kingston, New York 12401
Phone 845-802-0047 • Cell Phone 518-265-9131
Fax 845-802-0052 • Toll Free 866-889-6882

Email: jfisher@fishermalpracticelaw.com

YOUR SPECIAL INVITATION TO LEARN FROM 2 MASTERS ON THE BUSINESS OF LAW

What is the single most important factor for the success of your law firm? Simply put, you must run your law firm like a business.

You are the CEO of a business and as such, every department of your law firm must be highly systematized and function consistently when you're not there. If your systems don't function while you're not present, you don't have a law firm—you've got a job--and your law firm won't be profitable.

There is no better businessperson among lawyers than Andrew Finkelstein, Esq., managing partner of Finkelstein & Partners, LLP, a powerhouse plaintiff's law firm in New York and one of the most successful plaintiff's law firms in the country. The systems at Finkelstein & Partners, LLP are the best that exist among plaintiff's law firms.

THE ULTIMATE SYSTEM FOR GROWING YOUR LAW FIRM

Andrew Finkelstein, Esq. has agreed to share his best systems and policies for growing and managing a highly successfully plaintiff's firm at the Mastermind Experience in New York City on April 8th.

System #1: Hiring and Firing

- What are the best systems for hiring and firing?
- When is the right time to hire new employees?
- What are the best systems for onboarding new team members?

System #2: Measuring Client Satisfaction

- What are the best systems for measuring client satisfaction?
- What should you do when a client is unhappy?
- If you could only measure one thing about client satisfaction, what should it be?
- How frequently should you measure client satisfaction during a lawsuit?

System #3: Case Management

- How should you decide whether a case should go to trial?
- What is the best system to ensure that your "A" cases are progressing through discovery?
- What is the best software for communicating with your team about a specific case?

You will absolutely love this. In a confidential setting, Andrew will share his best systems with you and you will have a golden opportunity to learn from a master businessman. These systems will change how your law firm operates. You won't want to miss this.

Practice Limited to the Representation of Seriously or Catastrophically Injured Persons



THE STRATEGIC PLAN FOR YOUR LAW FIRM...THAT CAN'T FAIL

There is no one better at strategic planning for lawyers than Michael Smith, CEO of Point Northeast.

Michael Smith's executive management and business consulting career spans over 40 years. Michael is a nationally recognized expert in organizational assessment, strategic planning, addressing challenging partnership issues, and facilitating complex business consolidations. Michael's depth of experience, sage advice and range of strategic thinking and wisdom make him the ideal "yoda" for our mastermind.

At the Mastermind Experience in New York City on April 8th, Michael Smith will share the secrets that he's discovered for strategic planning for law firms in 2 special presentations.

CREATING THE IDEAL STRATEGIC LIFE PLAN

A process and guide for creating and achieving meaningful results in all aspects of your life.

REENGINEERING YOUR LAW FIRM FOR A PROMISING AND SUCCESSFUL FUTURE

This presentation includes the keys to developing a solid and well-defined strategic plan, building the best organizational structure and leadership team, while creating accountability and producing incredible results year after year.

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