

What I Wish I Knew Then: Judith Livingston

By Steve Cohen

What I Wish I Knew Then is a series of interviews with smart, successful attorneys about the lessons they wish they had learned earlier in their career. Or, put another way, what they want their associates to know now.

Judith Livingston is a senior partner at Kramer, Dillof, Livingston & Moore. It is the only firm she has ever worked at; and she joined the firm as an assistant to the office manager immediately after her graduation from Hofstra Law School. Judy has been called "A Legal Legend" by Law Dragon and named one of "The 50 most influential women lawyers in America" by New York magazine. She has won 35 trials with verdicts in excess of \$1 million, and has negotiated hundreds of settlements that have resulted in payments to her clients totaling almost half a billion dollars. She was the first woman, and youngest person, to be admitted to the Inner Circle of Advocates, an invitation-only group limited to 100 of the best plaintiff lawyers in the United States. Her toughest challenge may have been as Steve's first boss after he became an attorney.

I always knew I wanted to be a trial lawyer. I don't think I really understood completely what that entailed. And I didn't know what area—that I'd be doing 100% personal injury, and probably about 60 to 65% medical malpractice of that personal injury. And I don't know that I knew specifically an area. I knew I didn't like criminal law. And I knew I love, for some reason, being in the courtroom. I don't know why. I never thought I was a great speaker, and I didn't think I was particularly persuasive. Yet I just had this attraction to the courtroom.

I became a trial lawyer in steps, but they were rather rapid steps. From when I started, I would say, I tried my first case about two and a half years later, which is a pretty short period of time. I just expressed constant interest in expanding what I was doing, and in anything regarding the courtroom. My recollection of those early cases is they were all, if you'll pardon the expression, dogs. The ones that nobody wants to try. They are the ones that, every once in a while, law firms mistakenly take. They take in what they initially think is a good case, and it turns, and it



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kind of evaporates on them. So those were those cases. And that was fine. Because I would suggest to any young lawyer who wants to be a trial lawyer: You have to be willing to take on the hardest of the hard cases. You have to be willing to fail. Because you learn so much from that.

Watching good trial lawyers in the courtroom is invaluable for anybody who wants to learn to become a trial lawyer. Before I ever met Tom [Moore, her partner and husband], I had to rush to the Brooklyn courthouse to pick up a transcript of a summation Tom had just given. I think there was an immediate motion that had to be made. He was in

court constantly, rushing from trial to trial, and I had been in the office for several months, but still had not met him. I picked up the transcript, and was on the subway taking it back to the office, reading it. And I'm reading the transcript, and I say to myself, as I'm reading it, that this is a brilliant trial lawyer. It was his summation, and it was such a flow of thoughts; and yet there were all these sentences that weren't completed. Now, when he was delivering it, I'm sure it was perfect and brilliant. But when I read it, I was like, "Oh, I could do that." I don't have to finish my sentences either. Transcripts don't pick up the flow, the eloquence, the message that may be missing a word but which the mind hears. So yes, I did spend a lot of time—any minute I could get—to go to court and watch.

One of the lessons that we've spoken about often, you and I, is that you can never know your case well enough. There's always more to learn. You think you know everything, and then you go back and you read the records again. And maybe it's the fifth time, maybe it's the 10th time, could even be the 20th time. And that's not exaggerating. You go back in on the 20th time you read it, you're reading it, you're saying, "How did I never see this before?" Because it's not that you didn't see it. What happens is cases evolve, things change.

When a case starts out, you think there are certain things

that are important. And as you work more and learn more, you do different things because they take on greater import. A great, great lesson is: Never stop reading your file and reading your case, because you'll constantly learn more things. I've been doing it all these years, my entire career. And I still say to myself, like halfway through a trial: Dummy, how did you miss this all along? Because—maybe because I was being a dummy, and I missed it—but maybe because the trials have a flow. They're ever-evolving. And what wasn't important early, all of a sudden becomes important. So that's a great lesson.

Another example is the tried-and-true example that all of us lawyers hear, from sometime in law school going forward. And that's to be yourself. Always, any opportunity you get to watch great lawyers, you should do that. We said that already. But it doesn't mean you just copy what they do. Because that's not going to work for everybody. It's surely not going to work for me, as a woman trying cases, to copy certain men. But you learn from what they do, and you take it and adapt it. Adapt the great skills that you see to yourself as a person, and stay yourself all the time.

Another important lesson is to be patient with the process. For lawyers starting out, you graduate—you did all this work in law school, you've studied for the bar, you learned so much—and you

think you should know it all. And then you realize you don't. And you realize that there is a long learning curve to probably every area of law, and you have to be patient with the process on yourself. You're not going to be as great on year one as you're going to be on year five. And then you're going to think in year five, "Wow you really know what you're doing." And then you're going to look back in year 10, you're going to say, "Wow I was such a novice." And so be patient with the process. Go easy on yourself.

I'm not going to talk about the lawyers in my firm, because I think they're all terrific. But in general, I think young lawyers have to work harder. It's hard work doing what we do and doing it well. And I think working harder is really important. I also say put down the phones. Unfortunately, with all the great aspects of cell phones, I think they're a great distraction to young lawyers working, because they constantly get interrupted by this very important text from their friend, about whatever. And I actually think in order to really concentrate you can't have those interruptions. And I think that interferes with the quality of their work.

I think the skill, the ability, to listen is huge. And not everyone has the ability to listen. You have to work on that. Because if you really listen to what people are saying, you get unbelievable clues and cues on how to proceed. It could be a juror, and in voir dire there's

just what might seem to others as a random thrown-out-there comment that really is key to who they are and how they might vote. It could be a witness on the witness stand. Sometimes they give answers that they shouldn't have given. So many lawyers, particularly when they're younger, ask the question—and they're not really listening to the answer. That's because they're preparing the next question in their mind. You really have to listen to witnesses' answers, because they're, they're golden. There is gold in those answers. But if you're not listening, if you're just thinking, "Okay, I'm going to ask this question, and then I'm going to ask that question, and then this question." But sometimes you never get to question two and three, because the answer is such a gift. It's a gift to cross examine them and destroy what they said. But if you're not listening, you miss that gift. You have to listen.

I approach voir dire in a medical malpractice case—well, particularly in a medical malpractice case—knowing that there are a percentage of people who do not believe in medical malpractice. They would blame a patient almost all the time for whatever happened to him or her. Some think that their own health care is affected by medical malpractice lawsuits. And that it's only the bad doctors and the bad hospitals that commit malpractice. So if you have a decent hospital, and a decent doctor, you lose. But

all of those are very real beliefs that people have and bring into the jury room. And I also think that you can't—and should not try to—change people's minds in those beliefs. I think that if they've lived their lifetime, and they come into this courtroom, and you think you're going to change their minds in the course of voir dire, or the next week, it's not going to happen. So you have to realize that, and therefore you have to, again, listen to what they say.

During voir dire, get as much insight into who they are and what their background is—because generalizations work. There's a reason there are generalizations. They're not fair to everybody, but people in the medical profession often side with doctors, easily. People who are married to doctors are going to have that subtle feeling, potentially, that, these poor doctors, they're just being attacked from all sides. You've got to listen and look for kinder people, people who care. Show an interest. It's not just reading from a list of questions. Talk to people, show a real interest in them and who they are.

I'm tough in the courtroom. You've seen that, right? I'm not a shrinking violet by any means. And I'm fair, but I'm tough, I think. I try. But you want jurors to see your human side, and understand it, in jury selection. You want to alert them to the fact that you will be tough during trial, that cross examination is not going to be a walk in the park. You're going to

have to take on what people say. So when you show that hard side, then they understand that, well, that's doing what you have to do. So, it's not a bad idea to be kind and gracious, always, to people in jury selection; and, of course, in the courtroom, too.

The best advice I ever got actually comes from my husband. And he taught this to me long, long ago in an early trial, probably, and then had to reinforce it many times. And that's this: Good lawyers, good trial lawyers, they have the skills, right? They know how to stand up. They know how to cross examine. They know how to elicit certain information. And that makes them very good. Workable. Both work-man and work-woman type trial lawyers in the courtroom. But great lawyers, they have a passion for what they're doing. They have a belief, they have an empathy for their client that they bring with them into the courtroom. And I do believe that to be a really top lawyer, you need both of those things. One without the other, it doesn't make for a great lawyer.

See a video of Judy Livingston's interview [here](#).

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