How Do You Stop Monday Morning Quarterbacking?

All: I just left a very contentious guardianship proceeding. I was well prepared, I spent hours preparing outlines for witnesses, etc., had all my exhibits ready etc. I think I am relatively good at thinking on my feet and crossing witnesses, but I cannot help beating myself up after hearings with all the things I think of after the hearing that I should have said or questions I should have asked, etc. The judge did not rule and took it under advisement, which always makes me feel like I didn't present my case well enough or something. I do this all the time, and I hate it. I am just wondering what others do to keep from doing this... or does everyone do it?

The best litigators think of things they should have said/could have said better EVERY time. You are not experiencing anything abnormal.

Shell Bleiweiss, Illinois

I agree with Shell. Even when I win a hearing/argument/trial, I always think about things I could have/should have done differently. I think it is normal. I just won a hearing two weeks ago and the judge's order included something I had not considered despite a ton of time and energy on the file and running it by some really smart people. It was so simple that no one had considered it.

Heck, I don't think it is unique to the practice of law either.

After every soccer game I ever played, at least the ones that counted, I would think about things I could have done differently. I would talk to my dad about it. I know several guys who play in various professional sports and they do it too, even when they win.

It is a desire to keep getting better. You should be happy that you always want to get better.

Jonathan Stein, California

Reflect, learn, adjust

Sometimes you just ruminate because you didn't think of something and then you add it to your list for next time. Sometimes you ruminate and just try to figure out what you could have said or done that would have gotten the result you wanted.

And sometimes you don't come up with anything and sometimes you do.

Erin M. Schmidt, Ohio

I just remind myself that the many attorneys would have taken the fee & phoned it in. So, if you put your due diligence into it and still lost, would your client have been better off with any of those other attorneys?

Your client at least had an attorney who cared and I am sure he or she recognizes it.

Jason Komninos, New Jersey

A limited review is important, solely for you to consider what, if anything, you could do better next time. The answer may be nothing, or there may be something you would like to try next time. Don't go too far into the weeds, as you are making decisions on the fly during the hearing.

The more important skill is to move on after the limited review and go on to the next one. Beating yourself up afterwards mentally is what you need to avoid. Give yourself a reasonable time limit and shut it down so you can move forward.

Darrell G. Stewart, Texas

Certain amount of review is good; that's what you learn from. Nonetheless having had dozens, scores, of trials and hearings and having written probably hundreds of motions and briefs and answers and replies and responses and memorandums of law, there's always something you think of you wish you had done differently (not necessarily better but differently).

Ronald Jones, Florida

Agree with Darrell, Shell, and Jonathan.

I always try to do some reflection/debriefing after every hearing/trial that goes poorly or at least not as well as I had reasonably anticipated. I try to figure out why and what I could have done differently. I am trying to start doing that with my successful ones, too, as I suspect there is also some value in that. You just have to do it objectively and move on, hoping you apply the lessons you've learned in the future, and not beat yourself up unnecessarily over any missteps.

Hopefully, even if the judge's eventual ruling isn't what you had hoped for, the client will know you still did a good job and didn't just "take the fee and phone it in" as someone else put it. I had a hearing a few months ago where I didn't think my client was going to get all that he was asking for, but I did think he would get what mattered most to him on the contested issues. Instead, he got a severely adverse ruling that shocked both me and, frankly, opposing counsel. Although he was pissed at the ruling, my client still tells me he thought I did a great job and "wiped the floor" with the other attorney, had better arguments and responses to judge's questions, etc. Even though I know I could have done some things differently, my client clearly saw that I wasn't just phoning it in, and that is reassuring to me.

Ryan Phillips

I never do it, because I always know that I've done everything that any mere mortal could do, and then some.

If you believe that, I have a bridge that might interest you.

James S. Tyre, California

After my first trial -- which went well by the way but I felt blah
after it -- an attorney told me there are 3 kinds of trials:

1. The one you planned to conduct
2. The one you did conduct
3. The one you meant to conduct.

Any relationship between the 3 is purely coincidental. Prepare as best

you can, do the best job you can, reflect afterwards for a period, the move on. I use the 24-hour rule (when possible, if I have something the next day the time is shortened) -- win or lose, you get 24 hours to celebrate or be upset. Then it's on to the next one.

Elizabeth Pugliese, Maryland

I generally take it as a good sign when the judge takes it under advisement. After all, if I'd clearly blown it, she would have ruled for the other party on the spot, no?

As a true solo, there is rarely anyone I can tap for feedback on my hearings (I have done bench trials, but no jury trials yet). For that reason, I try to remember to take my little pocket digital voice recorder to record arguments. In addition to allowing me to listen to my own argument after the fact (and lament the shortcomings after I get past hearing my own voice), it has proven useful more than once when I draft a proposed Order at the judge's request, and opposing counsel rejects it, suggesting we go back to the judge to clarify (read: re-argue) it. I just play back the judge's own words spoken from the bench, and we're good to go.

I see it as closely related to what a cross-country coach in high school used to tell us: If you're not at least a little bit nervous before the race, you probably haven't considered that you could lose. If you're not concerned with where the other runners are during the race, you probably don't care whether you win or lose. After the race, you can't change the race, but you can change yourself for the next race.

Richard J. Rutledge, Jr., North Carolina

I had the privilege of attending a small group presentation last Friday by Professor Imwinkelried, the father of Evidentiary Foundations. He said something that I have never heard anyone articulate before. He talked about the thing he thinks law schools really fail at when it comes to training new attorneys. It is preparing them for the emotional component.
It is how to take an adverse (and incorrect) ruling, swallow it and move forward without being shaken. I think this applies in a multitude of scenarios and can certainly work in reverse. How not to let the high of the morning's victory cause you to lose focus on the next case that afternoon. To the extent that we can learn from our wins and losses, it never hurts to review what went well and what you will remember to do

next time. To the extent that you are beating yourself up for something you cannot change, that's where you have to force yourself to focus on something else.

Being able to harness one's emotions is always a work-in-progress. Just before Christmas I did a jury trial. While we were waiting for the jury to come back, the court asked me if I would arraign an alleged heroin dealer that just got picked up on a warrant. As I was about to make my bail argument, the judge came out and said the jury is back and told my heroin dealer to take a seat, that she wanted to release the jury and would do the arraignment afterwards. It was "not guilty." With my heart still in my throat and wanting to collapse in relief, the judge then called the case of the alleged heroin dealer and I had to stuff all that emotion and make a coherent bail argument to try to keep him out of jail. It took all the strength I could muster to be "in the moment" for the arraignment and bail argument.

I don't know that I will do this long enough to ever manage that with ease. You just try to do the best you can and recognize when those thoughts are no longer productive, then kick yourself in the butt and move on to your next target.

Michelle Kainen, Vermont

Everybody does it, and that's how you learn. Remember, it's called PRACTICING law!

Here's my rules:

1) If I lose, I beat myself up for 24 hours, go over the mistakes, and remember them. Then, I move on.

2) If I win, I congratulate myself on a great job for 48 hours, remember any mistakes/good things, and move on.

Good luck.

Russ Carmichael

I can also tell you that the things I think of to do differently or try to improve are always things no one else notices. I have interviewed jurors and had informal discussions with judges, all of whose insights are generally not what I might identify.

After practicing for 25 years, and many of those years 30 trials a year, I recall one bone-headed move that mattered (resting my case before putting on one more thing) and some strategic issues. Anything else is small-ball stuff that probably matters more to me than anyone else.

Never forget that yours is only one of many perspectives in the courtroom. What you see varies from what opposing counsel sees, and both vary from what the judge or jury picks up on. Asking for other perspectives, good or bad, can give you ideas for the future.

Darrell G. Stewart

See if you can attend an intensive trial advocacy workshop.

We had one several years ago where bankruptcy judges and attorneys from across the country came in and critiqued us. It was great! We got to go up, give a 3 minute speech that was recorded, then immediately go into another room and get a critique with someone we will probably never see again. It's easier than getting critiqued by one of your local judges (although one of ours did participate too).

Things like body posture, objecting, and responding to objections were things most of us didn't think about.

That said - write down concrete things you can change, anything you need to get in to supplement the record, or things you need to remind yourself to do in subsequent cases. Then, let it go. Not your monkeys. Not your circus.

Corrine Bielejeski, California

This thread has been very useful and informative. Thanks to those who have contributed. I have heard some outstanding trial lawyers say that everyone loses sometimes and you can't let it bother you. Just learn from any mistakes you can identify and move on to the next one, so that the losses don't impact you negatively. Some say "don't get too high, don't get too low." I'm not so sure about the "don't get too high" part of that advice.

These days I'm focusing on the big five personality traits, OCEAN. Openness to new experiences. Conscientiousness. Extroversion. Agreeableness. Neuroticism (minimize

it). The original post in this thread relates to the last trait. Minimize it by not obsessing over the negative. Boost the first four.

Roger M. Rosen, California

Thanks EVERYONE for the great advice. Like I said in my OP, the judge took under advisement and no ruling yet. I must have done a much better job than I thought, because I was contacted in the afternoon, the other side wants to come to an agreement.... perhaps they are doing some Monday morning quarterbacking themselves! Thanks again!

Kimberly Vereb, Indiana

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1. Proposed disposition on issues.

2. Draft order.

1. It may be judge dependent but if your judge likes this or your think he/she will like this/be receptive, I speak of a list of "Proposed Disposition on Issues."

If family law, I like to put my list on blue paper for a male client and pink for a female. Colored paper on the bench helps the court keep track. (Whatever the type of case, colored paper helps the judge and witnesses and court reporter refer to documents faster.)

The list will have some blank rows for me to add entries in pen-and-ink at the last minute or during the hearing. I always have copies for opposing counsel and the court reporter.

('Court reporter' reminds me. At a bench-bar a week ago a longtime court reporter sent some of her observations along with 'her judge.' Her most memorable comment was that the court reporter sits at zipper/fly level and sees 'oversights.')

2. For many hearings it is possible to prepare a draft order to take into the hearing. Judges vary on when to mention you have a draft. I think most really appreciate being able to sign an order on the spot. It depends on the case but in your draft order you might include some blank lines for interlineations. Again, the judges like it if an order can get signed at the end of the hearing. If the judge has one or more draft orders at

the start of the hearing, he/she may be marking-up one of them as the hearing progresses.

3. I thought of something else. Depending on your case you might want to have a request for findings of fact and conclusions of law and a proposed findings and conclusions.

And getting back to Monday morning quarterbacking. We will always think later of things we forgot or wish we had drafted differently.

This happens, too. The hearing goes well and later client remarks that he/she could have done that himself/herself.

Rob V. Robertson, Texas