# Finding Good Writing Mentors

By Bryan A. Garner

Early in your career, find some way of working with the best lawyers and the finest writers that you're able to. That's what I did, but more by luck and instinct than by design.

When I received my first permanent job offer many years ago from the Dallas firm of Carrington Coleman Sloman & Blumenthal, I marched directly to Marvin Sloman's office. He was a famous appellate lawyer renowned for his meticulous writing. A thin man of medium height, he had white hair, a furrowed brow, an aquiline nose that looked as if it had been broken several times, and a ready, broad smile. He wore bowties and seersucker suits. He could intimidate. Here's what I said to him: "Mr. Sloman, the firm has just made me an offer, and I'm overjoyed. I know I could learn a lot from you—especially about brief-writing. If I could possibly be assigned to be your associate, I'd accept right now."

"Of course! Done."

And so the first two years of my law practice were mapped out: I'd be working with Marvin. I would soon come to learn that he answered almost every question either "Of course!" or "Of course not!" I'd try to predict which answer I'd elicit, but I soon learned that this was virtually impossible to do. Sometimes two or three of us associates would put our heads together to predict what Marvin's answer might be to some simple question—but we could never tell with any reliability whether it would be "Of course!" or "Of course not!"

Marvin was a painstaking writer. He believed that every word mattered and that there was a right word for every place on the page. Even with his most trusted colleagues—in a firm full of careful legal writers—he would ponder the critical sentences in a brief and change a word or two that could make a tremendous difference. He would change "weak" to "feeble," "insistent" to "adamant," "questionable" to "discredited," and "go back on" to "renege." He habitually tightened and brightened the texts he would edit. No detail escaped his eye.

One of my favorite stories about Marvin's lawyering predated my two-year apprenticeship with him. It illustrates the creativity and persistence required of a first-rate lawyer.

Here's the scenario. Marvin and his partner Jim Coleman represent RCA, a Fortune 100 company, in an East Texas lawsuit filed by Fredonia, a local start-up television station that failed. Fredonia blames RCA's equipment for its business failure and alleges fraud. The well-known trial judge is William Wayne Justice, a former plaintiffs' lawyer who seems to despise corporate defendants. The judge's law clerk, who sits through the two-week trial and helps Judge Justice draft all his orders, exudes a similar attitude. Fredonia's lawyer is Joe Jamail, the fabled plaintiffs' lawyer. All the rulings go Jamail's way, and RCA loses—big-time.

On appeal, Marvin argues that the plaintiff didn't offer any proof at all (1) that the equipment was defective or (2) that RCA misrepresented any facts about the equipment. Marvin writes two powerful briefs to the Fifth Circuit. His reply brief opens this way: "Fredonia's brief has essentially failed to meet the issues in this case. Fredonia has responded to RCA's 'no evidence' points with harangues of argument such as were made to the jury in the trial court, but not with anything from the record. It has left unanswered many of the legal issues discussed in RCA's brief. It has answered those issues to which it purports to respond only with a confused jumble of doctrines and authorities that we will show are not relevant, not appropriate, and not applicable."

The Fifth Circuit soon agrees, reverses the judgment, and remands the case for a new trial. We're back in Judge Justice's court again.

The trial date arrives, and sitting with Joe Jamail at Fredonia's table is Judge Justice's erstwhile law clerk—the one who had worked on the case the previous year. To Marvin and Jim, along with their associate Earl Hale, the scene is surreal.

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Though Marvin died two years ago, not a day passes when I'm not conscious that I'm doing something I learned from him. That's what it means to have a great mentor.

Marvin promptly stands to object: "May it please the Court. We have just learned that the Court's former law clerk is now associated with my friend Mr. Jamail. Because the clerk participated in the first trial of this case, we ask you either to disqualify Fredonia's counsel or to recuse yourself. There is a very clear appearance of impropriety, and the former law clerk's participation now gives a very distinct advantage to Fredonia."

Judge Justice denies the motion, declaring that his recusal "would not serve any purpose," and insists on proceeding with the trial. He then rules that Fredonia will have three full days to put on its case-in-chief and that RCA will have just three hours, at night, to put on its case-in-chief.

Once again all the rulings go to Jamail, and RCA loses—big-time.

It's all outrageous, of course. But Marvin doesn't call it outrageous. He writes an exceedingly restrained brief on appeal to the Fifth Circuit (a second appeal), stating: "We hardly need to burden this Court with obvious testimonials of the duty of a judge to scrupulously avoid even the appearances of impropriety which so concerned RCA below; but Justice Frankfurter's statement of recusal in *Public Utilities Commission v Pollak* is so sterling and so apposite that it merits quotation…."

Chastely appended to the brief are 18 letters from federal clerks of court stating that the judges of those courts would disallow, as one letter said, "a law clerk to practice before the judge for whom he was a law clerk when the case in litigation is one on which the attorney worked while a law clerk."

Jamail's brief responds that the extent to which his associate, the law clerk, worked on the first trial "is not of record," calling Marvin's brief "full of outrageous insinuations charging a federal judge with misfeasance."

Marvin is at his best in the reply brief. His lead paragraph: "Fredonia's brief is absolutely void of even a shred of authority that would justify the trial judge's failure to disqualify Fredonia's counsel or to recuse himself from the case. Not one single case, scholar, rule, or authoritative suggestion is proffered to excuse the tainted relationship that RCA sincerely sought to sever."

And then the factual undercutting, again with Slomanesque calm: "Before discussing Fredonia's lame 'policy' arguments, we must unfortunately consume space correcting Fredonia's desperate misrepresentation of the record. Fredonia now insinuates that the former law clerk might not have really worked on the first trial of this case. Yet the trial judge expressly acknowledged that the clerk 'worked on the case when it was tried the first time.' [citing record] The record of the first trial itself records in several places the law clerk's involvement."

The Fifth Circuit agreed and once again handed Marvin a reversal. Judge Tjoflat wrote: "[W]e think it clear that the propriety of continuing the proceedings before this district judge had been irrevocably tainted, and the impartiality of the judge had been reasonably questioned."[1]

Before the third trial, at long last, the parties settled.

Marvin would always say, "We do things the *right* way." His colleagues remember him with adjectives such as fastidious and punctilious. Occasionally he'd call me into his office so that I could synchronize my watch with his, strictly by Greenwich Mean Time (the precise stroke of 12 being played on his speakerphone). The first time, my second hand was off by 20 seconds after the syncing. That was one of the few times I ever saw him lose his cool. From that point on our second hands stayed together.

Though Marvin died two years ago, not a day passes when I'm not conscious that I'm doing something I learned from him. That's what it means to have a great mentor.

Don't just luck into one. Go find one. ■

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*Bryan A. Garner (@BryanAGarner) is the president of LawProse Inc. (www.lawprose.org). He is the author of many widely used books, including* Making Your Case: The Art of Persuading Judges *(with Justice Antonin Scalia) and* Garner's Modern American Usage. *He is the editor in chief of all current editions of* Black's Law Dictionary.

## FOOTNOTE

1. *Fredonia Broadcasting Corp v RCA Corp*, 569 F2d 251, 255 (CA 5, 1978).