

From Obstacle to Opportunity: Strategies to Enhance Happiness in the Practice of Law

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Introduction

THE PRACTICE OF LAW IS HARD. The workload, long hours, demanding clients, competition—all hard. Being a judge is not quite as hard, yet it has its challenges too: vexatious litigants, extreme isolation, courthouse politics, and the ethical mandate to act with dignity and courtesy *at all times*—a feat achievable only by superheroes, in my opinion. The time when dissatisfied family law litigants initiated a recall campaign against me—that was a rough patch. And yet, after forty-two years in the law, I am still energized and excited by my chosen career. I love teaching Civil Procedure¹ to my first-year law students at the University of San Francisco School of Law—and discovering every semester that there is more to learn (the elusive Erie Doctrine, the confounding collateral estoppel rules).² As a Neutral,³ each mediation challenges me to search for the unique key that will unlock settlement. The

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1. Civil Procedure is part of the required first-year Juris Doctor curriculum at law schools approved by the American Bar Association. See *JD, Full Time*, UNIV. OF S.F. SCH. OF L., <https://www.usfca.edu/law/programs/jd/full-time> [<https://perma.cc/2MZN-PC6F>]. The course is a study of the mechanics of civil litigation and the rules that govern enforcement of rights and duties. See *Course Descriptions, Civil Procedure I*, MYUSF, <https://myusf.usfca.edu/law/registration/course-descriptions> [<https://perma.cc/6Z25-VQRW>].

2. See, e.g., *Erie Doctrine*, CORNELL L. SCH. LEGAL INFO. INST. (May 2021), https://www.law.cornell.edu/wex/erie_doctrine [<https://perma.cc/V9XQ-J2K2>]; see, e.g., *Collateral Estoppel*, CORNELL L. SCH. LEGAL INFO INST. (July 2022), https://www.law.cornell.edu/wex/collateral_estoppel [<https://perma.cc/N5MD-KUJW>].

3. A “Neutral” is a “neutral arbitrator” who is subject to standards of impartiality in an arbitration proceeding. See *Ethics Standards for Neutral Arbitrators in Contractual Arbitration*, CAL. R. CT. Standard 2(a) (2022).

heated moments in discovery battles bring me face-to-face with how I continue to fall short of the dream version of myself: the one who can be patient and detached; the one who doesn't interrupt or talk when she should be listening. Lifetime learning—that's the promise of the practice of law. And yet, many lawyers become disheartened by the hard things. They grow discouraged by their career or leave it altogether. Below, I describe ten simple things lawyers and judges can do to turn obstacles into opportunities for professional growth and job satisfaction.

1. Do One Thing at a Time

Writing cogent decisions about messy multi-day arbitrations⁴ is hard. But attempting a big writing project while returning calls and responding to emails is even harder. One of the most rewarding things about practicing law is the opportunity for deep thinking. As an arbitrator, I take great pleasure in setting aside a full day upon the conclusion of the case to write the ruling. I surround myself with briefs, exhibits, and notes; I dedicate time and space to think about nothing other than the case. I remove all distractions and clutter from my desk. Armed with Post-it notes and highlighters, I immerse myself in the facts, the law, and the writing. My phone, emails, and notifications are turned off. Not silenced—off. If I randomly think of something I must “urgently” do, I jot a quick note to myself but do not leave the desk. In this way, a writing project that at first may have seemed unwieldy becomes relaxing and gratifying. The writing eventually flows naturally and easily. I feel satisfied by my work product.

I haven't always been this way. When I was on the bench, I was a frantic multi-tasker, sometimes signing orders or compiling jury instructions while “listening” to testimony. I learned the hard way the truth of the adage that “multitasking is the opportunity to make two mistakes at once.”⁵ Multitasking—or more accurately described as “task switching”⁶—left me feeling

4. Arbitration is an alternative dispute resolution where the opposing parties agree to have their case heard by an arbitrator out of court. *Arbitration*, CORNELL L. SCH. LEGAL INFO. INST. (June 2022), <https://www.law.cornell.edu/wex/arbitration> [<https://perma.cc/7ZBY-FLMS>]. The decision is binding, just like a court case. *Id.*

5. See *Steve Uzzell: Quotes*, GOODREADS, https://www.goodreads.com/author/quotes/7232507.Steve_Uzzell [<https://perma.cc/842P-H46B>] (paraphrasing a quote by Steve Uzzell). Multitasking is the performance of multiple tasks at one time. *Multitasking*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/multitasking> [<https://perma.cc/2HWX-C9XC>].

6. See Julia Martins, *Multitasking Doesn't Work—Here's What Does*, ASANA (Dec. 15, 2022), <https://asana.com/resources/multitasking> [<https://perma.cc/XX9E-249T>] (“When we think we're multitasking, we're actually switching between two tasks really quickly. . . . Context switching (otherwise known as task switching or switch tasks) is what you're doing while multitasking:

depleted and dissatisfied because I never fully settled into a project. I have learned that rather than do two things poorly, it is more efficient to give one thing my full attention. In this way, my work product is superior, and at the end of the day, I feel accomplished and satisfied, rather than drained and frazzled. It takes discipline and focus to do one thing at a time, but the satisfaction of deep work makes it well worth the effort. Plus, it saves our future selves from having to clean up second-rate work downstream.

I was fortunate to practice law before the widespread acceptance of email. Lawyers are now bombarded all day with distracting pings and urgent messages. I imagine that some lawyers pass their whole day responding to emails—without ever having a moment to address the items on their growing to-do lists. In my generation, lawyers spent the day on the phone or writing letters. But rather than accepting every call, we were advised to make and return calls during assigned times. In that way, we could do our deep work without distraction or interruption.

Doing one thing at a time (or as we say in my family, #OTAT) makes the task easier, delivers a superior work product, and leaves me feeling more satisfied.

2. Do the Hard Thing First—and Find a Way to Make It Not as Hard

One of the ways that lawyers and judges create stress for themselves is by procrastination: The case is too big to start today; the opposing lawyer is too nasty to call; the ruling is too complicated to write. Rather than tackle the hard thing, they busy themselves with other necessary tasks, but the unfinished one looms large. The work is not any easier the following day, but the dread of it has increased. At a law practice management seminar years ago, I was given two valuable pieces of advice: First, do not touch a file unless you intend to work on it (see “Do One Thing at a Time” above); second, do the hard thing first.⁷ As a result, I developed the habit of starting every day with a to-do list. I do the hardest task when I’m powered by coffee and full of energy. Once I’ve done the hard thing, I feel accomplished and upbeat, and the rest of the day is a piece of cake—at least most of the time.

Pro tip: Don’t know what the hard thing is? It’s that thing you most do

switching between one task and another.”).

7. See *California (CA) Law Practice Management CLE Course Catalog*, ALM LAW.COM CLE CTR., <https://www.clecenter.com/online-course-catalog/state-california-ca/practice-area-law-practice-management-23/> [https://perma.cc/N3SF-336J]. Author is referring to a California Law Practice Management seminar for Continuing Legal Education, presented circa 1982. *Id.*

not want to do.

If the hard task seems overwhelming, I use strategies to make it doable. For example, if I have a lengthy ruling to write, I might say to myself, “You don’t have to do all thirty pages today. Just finish the section on wrongful termination.” Or, “Set a timer and write for one hour.” Or, “You don’t have to write anything good, just write a first draft.” Inevitably, once I start the hard task, it becomes less formidable and more interesting.

Tackling the hard thing first is not only a way to get the job done; it is also a way to build competence and confidence. If you do the hard thing first, you become a person who can do hard things, and a person who can do hard things is one who will reach for the next-level hard thing, and thus grow in competence and ability. In the words of Marcus Aurelius, “What stands in the way becomes the way.”⁸

3. Find Something to Love

Let’s say you have an assignment that you hate. It’s boring, isolating, and pointless. Is there anything you can do, other than quit your job and sell beaded pouches on Etsy?⁹ As a judge, this is not an uncommon predicament. I was in a criminal assignment trying DUI after DUI.¹⁰ The first twenty or thirty cases were engaging, but after another thirty or forty, I hit the wall. What could I do? I still had eighteen years left of my judicial career. At the time, my court had a staggering backlog of criminal cases. I realized that I could continue trying DUI cases for the rest of my career and our court would still have a backlog—but I would have a nervous breakdown. Something had to change. I got approval from the presiding judge to set up a misdemeanor settlement department. Once a week, I held settlement conferences for twenty-five cases. In that way, my court eliminated the backlog in eighteen months; I got relief from trying case after case; and I developed expertise in settling cases. The thing that was my nightmare became my pride and joy (and ultimately, my next career after retiring from the bench).

I knew I was onto something and took this experience to the next level.

8. MARCUS AURELIUS, 5.20 MEDITATIONS: A NEW TRANSLATION (Gregory Hays trans., Random House Publ’g Grp. 2003) (n.d.).

9. Etsy is an online marketplace. ETSY, <https://www.etsy.com> [<https://perma.cc/PDW2-K6YG>].

10. DUI is an acronym for Driving Under the Influence, which is a criminal offense that occurs when a driver of a motor vehicle is found driving with alcohol or other substances in their system. See *Driving Under the Influence (DUI)*, STATE OF CAL. DMV, <https://www.dmv.ca.gov/portal/driver-education-and-safety/dmv-safety-guidelines-actions/driving-under-the-influence/> [<https://perma.cc/U5CB-MB5W>].

I developed a class for judges called “My only love sprung from my only hate!”¹¹ The class challenged judicial officers to find the silver lining in a dreaded task or assignment and to find one aspect of their work that sparked passion. The class was fresh and fun; it was an example of how the hard thing became the basis for an inspiring great thing.

Similarly, when I was in the family law assignment, I presided over many high-conflict cases involving litigants with personality disorders. These “frequent filers”¹² were often angry and unreasonable. The cases were stressful ones for the judicial officers and they consumed a lot of court time and resources. A family law lawyer gave me a book on personality disorders,¹³ and the book was enlightening. I learned that borderlines and narcissists act in predictable ways (e.g., they present as indignant, articulate, blaming, victimized; their emotion is disproportionate to the perceived wrong; they can never see their contribution to the problem) and—amazingly!—that we respond to them in predictable ways (we feel confused, alarmed; our fight-or-flight reflex is triggered). I discovered that while the high-conflict family law case is one of the most difficult ones in the courthouse, it is far from being a one-off; its progression is right out of a playbook. I eagerly dug into the study of personality disorders.¹⁴ I learned that these litigants need special care but that there are ways of managing their cases so that they don’t all expand into a ten-year War of the Roses.¹⁵ I turned my learning into a course I now teach to judges on identifying and managing these litigants. Once again, I found something to love in a difficult situation, and my solution became a source of professional accomplishment.

11. WILLIAM SHAKESPEARE, *ROMEO & JULIET* act I, sc. 5, l. 152 (referencing what young Juliet says after meeting masked Romeo at a ball and then learning he is a Montague, the arch enemy of her family, the Capulets).

12. See *Managing High Conflict People in Court: Description*, HIGH CONFLICT INST., <https://www.highconflictinstitute.com/bookstores/managing-high-conflict-people-in-court> [https://perma.cc/3HPE-MPQN] (stating that judicial officers often refer to people with “High-Conflict Personalities” as “frequent filers’ who can’t let go of the litigation process”).

13. Bill Eddy, *High Conflict People in Legal Disputes* (2d ed. 2016).

14. See, e.g., *Personality Disorders*, MAYO CLINIC (Sept. 23, 2016), <https://www.mayoclinic.org/diseases-conditions/personality-disorders/symptoms-causes/syc-20354463> [https://perma.cc/Z2FR-5GNX].

15. War of the Roses (1455–1485) was a series of dynastic civil wars in England. *War of the Roses*, BRITANNICA (Jan. 5, 2023), <https://www.britannica.com/event/Wars-of-the-Roses> [https://perma.cc/BD9P-BK6Q]; see also *The War of the Roses*, IMDB, https://www.imdb.com/title/tt0098621/?ref_=fn_al_tt_1 [https://perma.cc/KHQ8-9KJR] (“A married couple tries everything to drive each other out of the house in a vicious divorce battle.”).

4. Switch It Up

When you're new to the bar or bench, everything is exciting. A deposition, a client interview, a default hearing! But at some point, these once-thrilling events become routine. And then they become boring. Boredom is not good. It depletes your enthusiasm for your job and life. After eight or ten years as a trial judge, I realized that trials bored me. It felt like *Groundhog Day*,¹⁶ the same trial over and over again, but without the Sonny & Cher soundtrack.¹⁷ I had to shake things up, do something different, but what? I got off the bench—literally. Instead of sitting on the bench when the prospective jurors entered the courtroom, I stood at the door and welcomed them to my department (my poor bailiff freaked out). Instead of reciting the same old introductory script that I'd been repeating since Judicial College,¹⁸ I challenged myself to say something fresh and heartfelt about jury service. Instead of reading the jury instructions from a book, I stood in front of the jury, like a teacher, and explained the process and the law. I was doing the same thing, but in a different way, and it made the trial more dynamic for me.

These days, if I feel my attention stray during a day of testimony, I post encouraging reminders to myself about the importance of my work and my ability to handle it, such as: "Parties have waited two years for this trial," "This is hard work and you can do it," "You are patient and professional," or when testimony is moving at a snail's pace: "Fifteen minutes to lunch!" It pivots my focus from "I'm feeling bored" to "I want to do a good job even though it takes more patience than I have to do it."

5. Develop Negative Capacity

I learned this concept from my friend, Dr. Stephen Sulmeyer, a psychologist, mediator, and writer.¹⁹ "Develop negative capacity" means expanding your ability to tolerate hard things, so that you can hear it and not

16. GROUNDHOG DAY (Columbia Pictures 1993). "A narcissistic, self-centered weatherman finds himself in a time loop on Groundhog Day, and the day keeps repeating until he gets it right." *Groundhog Day*, IMDB, <https://www.imdb.com/title/tt0107048/> [<https://perma.cc/N4BK-QKRZ>].

17. Sonny & Cher were a musical group that released the 1967 song *The Beat Goes On*, which contains the lyric "[d]rums keep pounding a rhythm to the brain" implying a continuous repetition of events. SONNY & CHER, *The Beat Goes On*, on IN CASE YOU'RE IN LOVE (ATCO Records 1967); see also *The Beat Goes On Lyrics*, GENIUS, <https://genius.com/Sonny-and-cher-the-beat-goes-on-lyrics> [<https://perma.cc/HX7H-N6C6>].

18. See *B.E. Witkin Judicial College of CA*, CAL. CTS.: THE JUD. BRANCH OF CAL., <https://www.courts.ca.gov/23944.htm> [<https://perma.cc/BW9V-T6AD>].

19. See *Stephen H. Sulmeyer, J.D., Ph.D.*, SULMEYER MEDIATION, <http://sulumeyermediation.com/> [<https://perma.cc/AT5B-DE5W>].

run from it.²⁰ For example, when I was a judge, there was an irate self-represented lawyer who appeared weekly on my Law and Motion calendar.²¹ When it was her turn for argument, she would yell at me for thirty minutes. She was rude, insulting, disrespectful—and gleefully so. I dreaded it. Dr. Sulmeyer advised me to connect with my body during these stressful arguments, to breathe deeply, and to tell myself, “You are fine, you are safe, you can handle this. You are just listening to an argument. There is no need to react, no need to be upset. This is a litigant who is suffering. You are big enough and competent enough to hear this.” This self-talk worked in wonderful ways. Not only did it calm me down and stop me from feeling upset or impatient, but it mysteriously changed something about my demeanor so that the irate lawyer began to dial down her diatribe. I never grew to love her weekly appearances, but I came to tolerate them. I developed the capacity to withstand them and became a better judge in the process.

These days, I regularly work on expanding my negative capacity. Meditation is often an emotional, intense process. One of the first emotions I often see from parties is anger—my least favorite emotion. Yet, I want the participant to give me their emotional response. I have learned to tell myself, “You can hear the anger without feeling threatened. You are developing your negative capacity.” This helps me focus on something constructive, like learning to tolerate unpleasant emotions, instead of feeling as if I’m under attack.

In this way, the hard becomes bearable. It teaches me patience and helps me become a bigger person.

6. Ask for Help

This one has you bristling, right? Lawyers and judges resist asking for help. Perhaps they see it as a sign of weakness or as a personal shortcoming. It is exactly the opposite. Whatever hardship you face, someone else has faced it and has wisdom to share—if you are but brave enough to ask. When I was a new lawyer with my own shop, I frequently called on experienced attorneys for advice, and they were always generous and helpful with pointing me to secondary sources, sample motions, and sophisticated suggestions for strategies.

20. See Lynn Duryee & Stephen Sulmeyer, *[Podcast] Reflecting on the Emotional and Psychological Dimensions of Alternative Dispute Resolution*, JDSUPRA (Mar. 15, 2022), <https://www.jdsupra.com/legalnews/podcast-reflecting-on-the-emotional-and-4557455/> [<https://perma.cc/EQ2B-YBFS>] (defining negative capacity as “the ability to tolerate the intolerable”).

21. See, e.g., *Law and Motion Calendar*, CORNELL L. SCH. LEGAL INFO. INST. (June 2020), https://www.law.cornell.edu/wex/law_and_motion_calendar [<https://perma.cc/AH9F-AS3R>].

Sometimes we don't need help in terms of content, but we do in terms of mindset. One of the most profound moments of my judicial career was confiding in a trusted friend about how weary I felt about my work and asking his advice. He shocked me by saying, "You need to retire. You're not happy." It hit me in the gut. I thought I *was* happy. The last thing I wanted to be was one of those crabby old judges who was just phoning it in. My friend helped me see something in myself I couldn't see.

Asking for help is a way for us to identify our struggles and expand our possibilities. When you think about it, unless we can see that we don't know everything, we can't really learn anything.

7. Learn from Your Experience

Unless we want to keep doing the same thoughtless, routine thing, again and again, we need to develop a practice where we can learn from our experience. But reflection takes time, patience, and discipline. It's easy to put it off because who has the time, especially when more pressing matters are demanding your immediate attention? As my friend Justice Mark B. Simons²² instructs trial judges on evidence, "Don't keep making the same mistake. Make some new ones."²³

My methodology is to keep a journal. At the end of every mediation, I write a summary of the session: what went well, what surprised me, what blew up in my face, how the case settled. If the case didn't settle, what's my plan going forward? What might I try next? The journal is useful as a reflection tool, and it is also a resource when I'm asked to write or teach on the subject of mediation.

When I was on the bench, I wrote a quarterly column for a judge's magazine.²⁴ I was always searching for topics. When I made a dumb ruling or faced a pesky problem, I would make a note of the event in my writing folder. When my column was due, I would open the file and use that misstep or challenge as a basis for my column. It was like *What Not to Wear* for

22. See *Mark B. Simons*, CAL. CTS.: THE JUD. BRANCH OF CAL., <https://www.courts.ca.gov/7667.htm> [<https://perma.cc/5PKK-ZZPR>].

23. Justice Simons made this statement to the author and other judicial officers attending a seminar on Evidence sponsored by the Center for Judicial Education and Research. See Minimum Education Requirements and Expectations for Trial Court Judges and Subordinate Judicial Officers, CAL. R. CT. 10.462(d) (2022).

24. See, e.g., Lynn Duryee, *The Third Act: The Book of Judicial Wisdom*, 56 THE BENCH: OFF. J. CAL. JUDGES ASS'N 5 (2016); see also *The Bench*, CAL. JUDGES ASS'N, <https://www.caljudges.org/bench.asp> [<https://perma.cc/53PP-BJY3>].

judges.²⁵

If you don't like writing in a journal, you might consider forming a reflection group: meeting regularly with one or two peers and talking about your successes and challenges.

Whatever method you choose, be deliberate about reflecting on, and learning from, your experience so you can avoid repeating past mistakes.

8. Practice Gratitude

It helps to practice gratitude, to remember how lucky you are to have a good job, abundant health, a family who loves you, and, if you're super lucky, a dog waiting for you when you get home. Keep a list. Add to it often. Post it prominently. Practice it daily. Share it with others. When I find myself feeling low, I can almost always identify a lack of exercise and of gratitude. Practicing both with all my heart gets me out of my head and back on track.

9. Be a Person for Others

Most lawyers enter the profession because they want to make the world a better place. They want to help others, and they become disillusioned when the work does not seem meaningful. During those hard times, it can be helpful to remember the bigger picture of what you're doing and why. If my inbox at school is filled with emails from students who want to discuss their midterms one-on-one, I can bristle (why don't students come to office hours as instructed?), or I can remember that I love to teach and want to be a good teacher for my students, that email is now part of the professor's life, and that there is a way for me to handle students' needs while still honoring my own limitations (respond quickly and invite the students to office hours!).

I remember the exact moment when the joy of being a person for others came into focus for me. I had submitted an application for an appointment to the court of appeal, and every day I was hoping to hear from the governor.²⁶ Instead, I learned from a news release that the appointment had been filled by someone else. I was crushed. But I also was due to start my afternoon session of Juvenile Drug Court²⁷ in a few minutes. My twenty teens

25. *What Not to Wear*, IMDB, https://www.imdb.com/title/tt0393009/?ref_=fn_al_tt_1 [<https://perma.cc/Q5CM-7HG9>] (“Two fashion stylists and a team of hair and makeup advisors help revamp the look of individuals who have been nominated by their friends for makeovers due to their lamentable appearance . . .”).

26. See *How Appellate Court Justices Are Selected*, CAL. CTS.: THE JUD. BRANCH OF CAL., <https://www.courts.ca.gov/3162.htm> [<https://perma.cc/8G8N-K43H>].

27. See *Juvenile Drug Courts Overview*, CAL. CTS.: THE JUD. BRANCH OF CAL.,

needed an upbeat, inspiring, strong judge to guide them on their path to sobriety and healing. I told myself I could grieve later about my “dis-appointment,” but at the moment I needed to devote myself to my erstwhile delinquents. By the time I finished my afternoon session, I was heartened by the progress of my wild ones, reminded of how much they have suffered, and determined to make a difference in their lives. My own small career setback seemed unimportant.

Can you help out a friend in need? Provide pro bono assistance to someone facing an unfair termination at work or eviction? Being a person for others means sharing your knowledge and using it to help those in need. Being a person for others develops our compassion and gives our lives meaning. It makes our own troubles seem small in comparison. It focuses our attention on helping others, which is the essence of the practice of law.

10. But Take Care of Yourself

You know about the restorative powers of exercise, a good night’s sleep, meditation, a healthy diet, a sane balance of work and recreation—but are you meeting your goals? Don’t sacrifice yourself in your quest to help others. You need to take responsibility for your own self-care—your clients and colleagues are not going to do it for you, and they need you to be rested, fit, and clear-headed for you to perform your best work.

What can you do if you are handling an intense case and have no time? I recommend always having something to look forward to on your calendar. If I’m in a high-conflict trial with unprepared lawyers—a nightmare for a trial judge—I will calendar a yoga class or walk at lunch as a short-term fun thing and a getaway weekend when the case concludes. It cheers me up to see happy events in the near future and reminds me that while work is sometimes hard, it’s not my whole life. And also, when I’m giving everything I have to my work, I still have a plan to take care of myself.

Conclusion

In the 1992 movie *A League of Their Own*, Tom Hanks plays a washed-up baseball manager coaching a women’s team during World War II.²⁸ He is stunned when his star batter, played by Geena Davis, tells him she

<https://www.courts.ca.gov/5988.htm> [<https://perma.cc/M47P-3PPP>]; see generally LYNN DURYEE, HOOKED ON DRUG COURT (2010) (describing a fifteen-year-old girl’s experiences in Juvenile Drug Court).

28. A LEAGUE OF THEIR OWN (Parkway Productions 1992). “Two sisters join the first female professional baseball league and struggle to help it succeed amid their own growing rivalry.”

is quitting baseball because it got too hard. He famously says, “It’s supposed to be hard. If it wasn’t hard, everyone would do it. The hard is what makes it great.”²⁹ As is often the case, what is true about baseball is true about law. The hard parts are the ones that teach us the great lessons. If all my cases had been easy and all lawyers respectful, I wouldn’t have learned any of the most important lessons of my career: that while I can’t know everything, I can learn anything; that the confusing and messy evidence will ultimately result in a cohesive decision; that I am profoundly imperfect and must remain humble and curious. As Aurelius wrote over two thousand years ago, the obstacle is the way.³⁰ And so I say: Bring it on, and show me the way.

A League of Their Own, IMDB, https://www.imdb.com/title/tt0104694/?ref_=fn_al_tt_2 [https://perma.cc/BUX7-FUPZ].

29. *A League of Their Own: Tom Hanks: Jimmy Dougan*, IMDB, <https://www.imdb.com/title/tt0104694/characters/nm0000158> [https://perma.cc/QU2J-NQJL].

30. See AURELIUS, *supra* note 8.