

Scott E Mollen of Herrick Feinstein On The 5 Things You Need To Become A Top Lawyer In Your Specific Field of Law

An Interview With Chere Estrin



Empathy. As a lawyer, it is vitally important that you put yourself in the shoes of your client and offer them the best advice for the path forward. Being able to truly understand the client's problems and how such problems can be addressed is critical to success. I remember one situation where the single solution would seem to be a public apology. But since the client wanted to be elected to a particular position, a public apology was unacceptable to the client. The client believed that he has acted properly and was willing to apologize privately as long as the other party also apologized. An acceptable solution could not be crafted without understanding the client's future plans.

. . .

The legal field is known to be extremely competitive. Lawyers are often smart, ambitious, and highly educated. That being said, what does it take to stand out and become a “Top Lawyer” in your specific field of law? In this interview series called “5 Things You Need To Become A Top Lawyer In Your Specific Field of Law”, we are talking to top lawyers who share what it takes to excel and stand out in your industry.

As a part of this interview series, I had the pleasure of interviewing Scott E. Mollen.

A commercial litigator for Herrick, Feinstein LLP, Scott Mollen provides clients with a wealth of knowledge and a lifetime of experience in high stakes legal matters. His clients have included banks, large corporations, private equity firms, government agencies, as well as some of the largest developers in New York City. He has helped screen candidates for judgeships and was appointed by three NYC Mayors to public service positions. The prestigious Chambers & Partners legal rating organization described Scott as a “strategic thinker who gets results for his clients” and quoted a source as stating that “he has an incredibly wide range of knowledge.” For more than 30 years, he has authored a weekly column for the New York Law Journal called Realty Law Digest. We sat down to discuss his career path, professional highlights, tips for young lawyers and much more!

. . .

Thank you so much for joining us in this interview series. Before we dig in, our readers would love to get to know you a bit more. What is the “backstory” that brought you to this particular career path in Law? Did you want to be an attorney “when you grew up”?

I had an uncle who was a doctor, and he and my mother tried their best to inspire me to become a doctor. They bought me a toy chemistry set in the hope that I would develop an interest in science, but I didn’t. Meanwhile, my father was a lawyer who placed no pressure on me to go into law. I clearly did not gravitate toward the sciences. However, I always found it gratifying to help others. I found that law provided me with an opportunity to help people. I couldn’t help them with their health issues, but as a lawyer, I could at least help people with their legal problems. Moreover, a legal background often enhances a

person's ability to become involved in a broad array of areas, such as public service, education, philanthropy, business and investing. Legal training can open the door to many opportunities to achieve professional success by helping many people.

Can you tell us a bit about the nature of your practice and what you focus on?

I handle real estate, corporate and employment litigation, government relations, construction and development matters, government investigations, and a variety of other matters. Recently, I defended approximately \$2 billion dollars of real estate developments, including a prominent hotel and condominium development adjacent to the Brooklyn Bridge, from land use challenges brought by certain anti-development NIMBY (Not in My Back Yard) opponents.

I was very privileged to be involved in one of the most important separation of Church and State cases in New York. A recently published book entitled *American Shtetl*, published by Princeton University Press, explained that my winning early strategic motions in the case was "fatal" to a dissident faction's efforts to win control of the largest Hasidic organization in the world, the Satmar community in Williamsburg, Brooklyn. The authors stated that the battle over governance and voting issues were similar in certain ways to the "Bush" vs. "Gore" litigation.

I also helped lead the fight in New York to get legislation against "hate crimes" enacted. At the time, there was great resistance to enacting this legislation because certain very conservative legislators were opposed to legislation that included protections for the gay and transgender community. I helped lead the lobbying efforts for the Anti-Defamation League (ADL) in New York. The ADL honored me with its Human Rights award for my efforts. I am grateful for the ADL having given me that opportunity to provide an important public service.

You are a successful attorney. Which three-character traits do you think were most instrumental to your success? What unique qualities do you have that others may not? Can you please share a story or example for each?

This country has many very superb attorneys and they achieved profound success for a plethora of reasons. In my case, I have a deep sense of empathy for my clients. My strong desire is to help others, and I think that it is important for clients to know that their matter is truly important to me. I want to understand my clients' problems as best as I can so I can effectively advocate for them and make their priorities my priorities.

I've also found that it's very important to be objective. One of the worst things you could do is fail to explain to a client that they're wrong. You must be able to look them in the eye and be candid with them. If you are a "yes person," you will cause your client to make personal and business decisions based on incorrect information. However, you should not identify a problem without trying to also provide a possible solution. A client once said I was not merely playing the role of a devil's advocate and that I was in fact the devil because of my citing so many problems with his position. However, I also provided solutions which saved the client millions of dollars. He remained a client for more than a decade (until his company was sold).

Critical to any of my successful litigation efforts has been the significant contributions of my very dedicated and talented litigation colleagues. I have been fortunate to work with many excellent lawyers. You don't win large, significant cases by yourself.

Another thing I would say is, I know my expertise and where I lack expertise. As a lawyer, it's important to be prepared, do your research, but then also be willing to refer the matter to a specialist if necessary. Not every lawyer is the right lawyer for every situation.

Do you think you have had luck in your success? Can you explain what you mean?

Without question! I was fortunate enough to have some excellent mentors in my career who guided me at different stages. Perhaps I was lucky that I did poorly in science because that pushed me into law. I was also lucky to have some excellent professors in law school who encouraged my work and enabled me to gain strong academic credentials in law school, which opened doors to employment at an excellent large law firm. That job taught me the importance of thorough research and being a careful writer. I also benefitted from

having a terrific “tutor,” my father. He was an amazing person—he was one of America’s first radar navigators, his B24 bomber plane was shot down over occupied France, he was wounded, captured, and thereafter escaped. He was a leading NYC public official, a trial and senior appellate judge, an NYC Deputy Mayor, and he investigated the NYC Police Department for corruption. He also opened the New York office of the largest for-profit alternative dispute resolution firm in the country. I was incredibly lucky to have him as a mentor.

Do you think where you went to school has any bearing on your success? How important is it for a lawyer to go to a top-tier school?

Yes, I majored in management as an undergraduate at NYU Stern School of Business. That increased my knowledge about dealing with people. I think going to a local law school (St. John’s University School of Law), rather than an Ivy League school, instilled in me a strong desire to demonstrate the quality of my work and that I could compete with lawyers who came from the more prestigious Ivy League schools. My law school also gave me the opportunity to teach “Alternative Dispute Resolution” as an adjunct professor.

Based on the lessons you have learned, if you could go back in time and speak to your 20-year-old self, what would you say? Would you do anything differently?

When I look back, I don’t see decisions that I regret. I sometimes get asked “Did you regret turning down a State Senate nomination in a district where the Democratic nominee could only lose the election if they died?” I had just run part of Mario Cuomo’s campaign for Lt. Governor in New York and had helped run some other political campaigns. And my answer is “No.” I didn’t want to go to Albany, where I heard that divorce and unhappy marriages were common. I also didn’t want to beg people for political contributions. I was also concerned about having to take positions that I didn’t believe in so that I could win an election. To me, home life has always been a top priority. I married right after I finished the bar exam, and my marriage is very important to me. I have two daughters and being able to participate in their lives was more important to me than having a title of State Senator. I wanted to be there for school and other activities and to be able to say goodnight to them. My wife and I have been married 49 years, my

daughters are now in their 40s and we are extremely close with them and our three grandchildren. My decision to invest more time in family than in politics is a decision I do not regret.

This is not easy work. What is your primary motivation and drive behind the work that you do?

As I noted, I enjoy helping people and for that reason, I try to be the best lawyer that I am capable of being. It requires significant work. I wake up every morning and I read *the New York Law Journal* and *Law 360* online, in addition to *Wall Street Journal* and other publications. I do this to stay abreast of the current events so I can give my clients the best and most timely advice possible. I'm also very involved in committee work in connection with the court system in New York. I serve on committees that help screen lawyers for judgeships, that help draft rules for the Commercial Parts of the New York Supreme Court, and which address the conduct of lawyers who engage in improper conduct. But the driving force behind all my work is my motivation to help people as best I can. If I help others, I will do fine.

What are some of the most interesting or exciting projects you are working on now?

Right now, I am working on a white-collar criminal investigation in the telecommunications industry, and a government investigation into alleged violations of “prevailing wage” laws by a major real estate company. I'm also involved with one of the highest profile building construction defect litigations in New York City—involving 432 Park Avenue—(one of those “billionaire” buildings). I am also involved with a construction defect case for another Manhattan luxury condominium building. Additionally, I am advising on disputes between family members involving significant business and real estate assets. I just finished a trial involving construction defects where we represented a highly respected class action law firm with respect to their multi-floor office installation. We prevailed and our client received a significant award on liability damages and was also awarded reimbursement for its significant legal fees.

Additionally, we just obtained an award for a landlord against a well-known billion-dollar international retail tenant. The recovery is expected to exceed \$30 million dollars. The retail tenant had tried to

escape its lease obligations by blaming the landlord for problems it encountered in trying to obtain a Certificate of Occupancy. The court held that the lease required the tenant to obtain all permits, the tenant took the space “as is” and the landlord had made no representations.

Where do you go from here? Where do you aim to be in the next chapter of your career?

I told my firm that my retirement plan, subject to my health, is to probably stop sometime when I get to be in my 90s. As long as that telephone keeps ringing and people want my assistance, I’m happy to keep going. Since I have several “no” people around me, I am confident that I will have help in determining when I can no longer effectively practice law. I also expect to continue my writing and lecturing.

Without sharing anything confidential, can you please share your most successful war story? Can you share the funniest?

One of my most interesting stories involves the 9/11 tragedy. After 9/11, there were public allegations that Motorola had supplied defective two-way radios to the City of New York that impeded the emergency response. I defended Motorola. The NYC Corporation counsel agreed that Motorola had done nothing wrong. The fire fighters’ union and the NYC comptroller finally conceded that the radios worked as intended and the problem was not the equipment, but it was the failure of the Fire Department to implement proper training with the rollout of the new equipment. The radios had both analog and digital capabilities. Digital was “state of the art.” However, the firefighters were used to analog radios. We ended up getting Motorola paid 100%. That story has never been told before.

We had a victory in one of the highest profile land use cases in the country involving a 52-story building located at 200 Amsterdam Ave in Manhattan. Certain community opponents obtained a court order which possibly required the removal of more than 20 stories of an already “topped out” new residential high-rise building. We, together with excellent co-counsel, obtained a reversal of that decision. The clients, Mitsui Fudosan America, Inc. and SJP Properties had invested approximately \$700 million dollars in the development. Sales are now going very well and the anticipated sell out will be approximately \$1 billion dollars.

One of the most challenging matters of my career, from a professional and personal perspective, was to represent one of my closest personal friends, a former president of a billion-dollar company, when he was indicted by a federal grand jury and facing up to 20 years in prison for crimes involving alleged bribery of public officials. My wife and I viewed him, his wife and children as part of our family, having spent approximately 40 years traveling together, visiting each other's homes, attending cultural events together and countless dinners together. The allegations did not make sense to me. They were completely inconsistent with the friend that I knew. I assembled a team of criminal lawyers to help fight the federal prosecution.

After some preliminary motion practice, the government acknowledged that he should not have been indicted and agreed to a dismissal of all charges. There was no "side deal" or agreement to cooperate against the other defendants. The government has misinterpreted several actions and wrongfully assumed that my friend, like the other seven defendants in the case, engaged in illegal conduct. Every alleged "suspicious" action had a perfectly lawful explanation. Criminal defense lawyers told me that maybe once a decade, federal prosecutors will acknowledge such error, after a grand jury has already voted to indict. While extremely upset and angry about this terrible situation, we were grateful that the prosecutors had the integrity to acknowledge this error.

Even the judge was highly surprised when he learned that the government had moved to dismiss its own case. He required the prosecutors to explain their actions. The personal stress and harm to my friend and his family was enormous.

Because of our personal relationship, achieving a complete dismissal of every charge was certainly one of my most important legal victories. As with all my significant "wins," much credit goes to the members of my legal team. To win a significant case, I truly believe "it takes a village."

Let's now shift to discussing some advice for aspiring lawyers. Do you work remotely? Onsite? Or hybrid? What do you think will be the future of how law offices operate? What do you prefer? Can you please explain what you mean?

I work both remotely and onsite. I believe that highly experienced trial lawyers know that it is important to be present in the same room with the witness and the judge. However, during COVID, court facilities have not been available to the same extent as they usually are. But the courts have done a terrific job of using virtual technology and New York has been at the forefront of that.

I've done a trial virtually; I've argued motions virtually and it works. However, most experienced lawyers will never buy into the idea that it's the same thing. It works and it will do when you don't have an alternative, and it can also be very efficient and cost-effective when you have parties and/or witnesses coming from out of state or out of the country. There are so many disputes where witnesses are from all over the country or the world. With uncertain weather conditions and the expense of airfare, hotels and meals, using virtual technology can be very advantageous. I think that there will be both virtual and in-person trials going forward. I also note that it is easier to do a virtual trial when it is a non-jury trial. The logistics of conducting a virtual jury trial are far more challenging. In fact, during Covid, there were only an extremely small number of virtual jury trials held in the United States. Some lawyers have raised institutional and other objections to a completely virtual criminal trial.

How has the legal world changed since COVID? How do you think it might change in the near future?

COVID really opened the legal world up to many technological advances. Out of necessity, we had to dive into a virtual approach to practicing law. We moved from having breakfast, lunch and dinner meetings with existing and prospective clients and adversary lawyers to Zoom, Microsoft Teams and WebX meetings. We spend more time calling and emailing people. We work from home—often putting a work shirt and possibly a tie and jacket on, while wearing Nike warm-up pants. We have learned that our legal colleagues and staff can perform extremely well from home. However, we need to work at making sure that we train our young lawyers who now are missing out on the office interaction experiences. We also need to instill our firm culture through remote interactions. When people meet in person, they tend to have more extensive conversations. Those longer conversations often lead to new ideas and opportunities.

We often hear about the importance of networking and getting referrals. Is this still true today? Has the nature of networking changed or has its importance changed?

Networking and referrals remain very important. For young lawyers, I believe it's important that they "break out of the pack." They should become active in their communities. There is not only one successful path to follow. There are different ways, whether means joining a bar association committee or a professional association of some kind. Some people think you're better off being in an association of businesspeople because they are all potential clients, but bar associations can also be excellent sources of referrals. Many lawyers encounter conflicts of interests and have to refer matters to other lawyers. Most of these committees never meet more than once a month, so I always tell young lawyers that they can spare one night a month being away from their spouse or partner for a couple of hours to network and establish relationships. Your spouse or partner is probably already pre-sold—they will refer any opportunity they have to you. You need to interact with many other people.

There's also a difference between knowing people and being respected. Simply being somebody who knows many people is not enough. You must devote sufficient attention to establishing yourself an excellent lawyer. If you couple developing valuable expertise with knowing a lot of people, that is a formula for success.

Based on your experience, how can attorneys effectively leverage social media to build their practice?

The world is full of superb lawyers who no one knows about, because they don't do anything to let colleagues and potential clients know about their credentials. They're sitting in their offices waiting for clients to find them as if the client has a lawyer detection device, like a metal detector. If you want to be known in a field, you must be willing to acquire expertise and then take time to showcase your knowledge and abilities. That could involve writing articles, giving talks, or doing something as simple as using social media effectively.

Social media is like an injection of hormones to strengthen your ability to market yourself. If somebody is trying to build law practice, they

should not simply post about vacations or general praise about their law firm, but use the platform as an opportunity to show expertise in a particular area.

Some lawyers may look at the time I invest to write a full article every week and say that's an enormous burden. I agree, but I say they could get almost as much benefit by investing about five minutes to simply take someone else's article and post it with a short caption or by forwarding the article to a prospective client with a brief message. By doing this, you convey that you care about your client and you stay abreast of current events in areas of the law that your clients care about. It's okay that you didn't write the article—by sharing someone else's article, it shows that you read publications to stay on top of current developments. And it doesn't take much time! It takes more time to make a cup of coffee.

What are your “5 Things You Need To Become A Top Lawyer In Your Specific Field of Law?” Please share a story or an example for each.

1. **Expertise.** This is the most basic factor. You must not only get an education in your chosen area of law, but you must continue educating yourself throughout your career. Laws are constantly changing; society is constantly changing. It's important to stay current when it comes to your knowledge and expertise in the field. I have seen lawyers cite cases that have been overruled and statutes that have been amended.
2. **Judgment.** Knowledge of the law is only the beginning. It's crucial that the lawyer have the practical skills, judgment and wisdom to know how to best resolve the problem in a way that meets the client's needs. Is litigation the best route if the client can't afford the costs of litigation, can't wait 2 or 3 years for a result or will be damaged by publicity arising from a lawsuit?
3. **Communication.** It's important to be able to convey your knowledge and your views of the situation. You might have all the expertise in the world, but without the ability to effectively communicate that to your client, an adversary lawyer, a court or a government agency, it doesn't matter. Some lawyers emphasize the positives of a client's case to a client and fail to adequately

communicate the weaknesses of a client's position. Many lawyers do an excellent job of communicating the strengths and weaknesses of a client's case, but the client may suffer from "wishful hearing." They heard what they want to hear.

4. **Listening.** You don't learn anything when your lips are moving, and if you're always talking over a client, you might not realize that a client has certain particular needs. You might think they need expertise in one area, but if you really talk to them, you'll find out they really need other expertise. So, unless you can really listen to your client, you won't be able to really help them.
5. **Empathy.** As a lawyer, it is vitally important that you put yourself in the shoes of your client and offer them the best advice for the path forward. Being able to truly understand the client's problems and how such problems can be addressed is critical to success. I remember one situation where the simple solution seemed to be a public apology. But since the client wanted to be elected to a particular position, a public apology was unacceptable to the client. The client believed that he had acted properly but was willing to apologize privately as long as the other party also apologized. An acceptable solution could not be crafted without understanding the client's future plans.

This was very inspiring. Thank you so much for the time you spent with this. We wish you continued success and good health!