Concepts for Evolving Your Law Practice

Charles Darwin stated, "It is not the strongest of the species that survive, nor the most intelligent, but the one most responsive to change."

Background

As lawyers our response to change must become quicker than ever before because the pace of change in the practice of law has itself quickened. Over the last 40 years, and especially during the last decade, there has been a monumental and swift evolution in how we practice law. Law offices are going paperless with closed files going from being physically stored in basements, attics, and off-premises warehouses to residing in seemingly amorphous storage rooms in the clouds. Cloud storage and word-processing technological advances have freed office space and eliminated many of the tasks for assistants and paralegals, allowing them to become more efficient at performing fewer tasks. The need for a law office to be located in a brick-and-mortar building and have a large library, individual offices, and an expensive conference room is giving way to locations in collaborative shared spaces, even here in Tuscaloosa. Traditional style law libraries are beginning to collect dust—a recent study revealed that as much as 90% of legal research is taking place online. When a large Birmingham defense firm announced it was moving from its location within walking distance of the courthouse to a location requiring a 20-30 minute drive, I wondered how they could pull that off without running a shuttle to and from the courthouse. After all, case-related documents had to be physically hand-filed in the District or Circuit Clerk's office. The big firm saw change coming—I didn't. Ironically, the location of my current office requires 20-30 minutes to drive to the courthouse, find a parking place, and get to the court room with enough time to unpack and organize the file

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April 26, 2019

contents from my *briefcase*. I know, you non-baby boomers are saying, "What? He doesn't use an iPad or laptop in court?"

Pleadings are now e-filed, discovery is exchanged via drop box, flash drive, or by a third-party vendor, and depositions can be taken remotely by using Zoom or Skype. This week I deposed a corporate representative who was physically located in Phoenix, Arizona, I was behind my desk in Tuscaloosa, and the defense lawyer was behind his in Birmingham. Since technology changes seem to occur at the speed of light, I suppose I just doomed this paper to obsolescence by using brand names of third-party video applications.

It is almost impossible for lawyers under fifty to imagine how common it was for lawyers, jurors, and even judges to smoke in the courtroom *during a trial*, and it was not until 1966 that women could be jurors in Alabama. In 1975 when I started practicing law, when a brief or pleading was prepared, the lawyer first dictated the text either by conveying it to the secretary who was sitting nearby converting the lawyer's words into short-hand, or if you were lucky, the lawyer used a Dictaphone (shaped like a land-line phone) which transferred the spoken word onto a cassette tape which your secretary played in order to type the draft. Spell check was done by an independent set of eyes (2 people if possible) and worst of all, any mistake in spelling, punctuation, or spacing necessitated the entire page being re-typed. Should the need arise to add a sentence or paragraph on page 10 of a 20-page document, it required all pages from 10 forward to be re-typed. Should an error be made on page 12 during the re-typing, every page after 12 had to again be re-typed. You get the picture. It was essential for any secretarial applicant to take and pass a typing test that was judged on speed and *accuracy.* When our firm invested in a

"new" IBM Mag Card typewriter,[1] the frustration level within our law firm dropped exponentially. Of course, those large, bulky machines are currently considered to be products of the iron-age compared to the current auto-correct software utilized in Microsoft's Outlook for Office 365. The latest version of Outlook allows that same "dictation" to be spoken directly to it. Is it just me or do advances in law office technology seem to be increasing at an increasing rate?

When told I had to *earn* my position as a Pillar of the Bar by filling a speaker's slot on today's program, I asked what the topic should be since I was a speaker in December. I was told I should speak on "How you got to where you are," and "You always seemed to have a plan," and in the process for me to "throw in some career tips." Here goes:

How I Got Where I Am (wherever that is)

1970's

- During law school at UA (70-74, Army-6 months active duty) I clerked for E.D. McDuffie and Norma Holcomb. After graduating, I worked for a defense firm in Fort Lauderdale while I studied and passed the Alabama and Florida bar exams.
- In January 1975, I opened an office in the Downtown Plaza as a sole practitioner. I accepted any case that walked in the door (literally)—personal injury, family law, deeds,

[1] **Magnetic card typewriter-IBM Website.** In October, 1969, the IBM Mag Card "Selectric" Typewriter was announced. The first magnetic typing device of its kind, it operated on a unique principle enabling the secretary to capture each page of typing on Mylar-based magnetic cards identical in size to the familiar punched cards widely in use today. Those cards had a capacity of 5,000 typed characters, which was equivalent to more than a full page of copy. Changes in text could be made without manually retyping the entire page. If the secretary made a mistake while typing, all that needed to be done was backspace and type over the error with the correct letter or word and continue typing. The recording on the card was automatically corrected.

wills, and appointed criminal cases—all equally proportioned. I went to other lawyers and told them if a case was too small for them, it was just right for me. I also signed all state and federal court-appointed lawyer lists.

- In 1976 I tried my first jury case in federal court before District Judge William McFadden with no second chair, secretary, or legal assistant. It was just me and my indigent client who had been charged with violating a liquor law by selling moonshine to an undercover FBI agent. I performed so poorly that after the guilty verdict was handed down Judge McFadden told me, "Don't come back to my courtroom until you know how to try a case." I didn't. I never had the privilege to be before him again, but I did learn how to try a case. I read everything about trial I could get my hands on and even went to Harvard for a hands-on ATLA seminar where every phase of a trial was work-shopped by nationally respected trial lawyers who instructed, critiqued, and graded us individually. Much like I do for UA law students.
- 1977-79 McDuffie, Holcomb and Prince. We had a general practice doing criminal defense, family law, and personal injury (and one frustrating loan closing).
- Mr. McDuffie and I tried Oscar Eugene Kent, Dudley Wayne Kyzer, and James Michael Hayes, aka "The supermarket strangler." All were murder cases; Kyzer was a capital murder case.
- The U.S. Supreme Court handed down a landmark decision permitting lawyer advertising.
- 1979 Prince & Land was formed at 2501 6th Street.

- I tried two novel-theory-for-the-time cases in 1978-79. One involved PCS (post concussive syndrome) and the other PTSD. One resulted in a verdict for $33,000 and the other was for $50,000. Both had virtually no medical expenses, both involved drivers being trapped in their vehicles, both plaintiffs escaped with no apparent physical injuries.

1980's

- In the early 80's two important things happened that greatly impacted the direction of my legal career: 1) George "Peaches" Taylor, who headed the trial advocacy program at UA's law school, called in the spring of 1982 and asked me if I would come and help critique his trial team as they prepared for their regional competition. That launched thirty-seven years of coaching UA's ATLA and AAJ trial teams. Clay Hornsby, daughter Grace, and I just finished coaching another team—regional champs—who just returned from a respectable showing at National's.
- The second important thing that impacted the course of my career was when Paul Conger called me in 1982 to ask me if I would help run his campaign for Domestic Relations Judge. I did; he won; our family law practice exploded.
- By the end of the 80's family law had replaced criminal law as the most common type of case we handled. We still did personal injury cases, but as those of you who practice family law know, divorce work is like kudzu, due to the attention divorce clients require, it chokes out other types of cases. I practiced with Bill McGuire, Scott Coogler, John Turner, Lisa Woods and Richard Nolen during the 80's.

- When I started practicing law my goal was to be the known as one of the best lawyers in town. I suppose I got close to achieving that goal in 1988, at least according to Bud Harvey of West End Christian School infamy.

1990's

- The Alabama Supreme Court flipped from Democratic to Republican. Significant verdicts dwindled with the release of their opinions every Friday.
- By the end of the 90's personal injury replaced family law as the most important type of case in our office. During that time, I practiced with Jerry Baird, Dell Cross, Irby Fischer, Sam Junkin, and Paul Patterson.

2000's

- 2006 marked the end of my divorce practice. It was also the year we began construction of our office on the river, and the year Law Call was launched.
- During 2003 Matt Glover joined the firm and in 2005 Josh Hayes did.
- Today we handle mainly personal injury, mass torts, and business litigation cases.

I Seemed to Always Have A Plan

It may have seemed to some that I had a plan for the cases I tried or that I planned the changes in the direction our firm was headed, but I don't necessarily see it that way. It's not that I don't believe in having a plan, I do. It's probably more accurate to say no matter what, I tried to make the best of a situation by looking to make something positive out of something that had the potential to be negative.

Along the way, with the help of partners and associates, I learned the best way to extricate myself from obsolescence was to avoid being there in the first place. That required us to watch for trends whether they occurred in appellate court decisions, jury verdicts, or different methods of practicing law. As my golfing friend said as he bought his third driver that year, "You have to be careful that technology doesn't pass you by." For instance, a "trend" that became obvious to our firm was the Alabama Supreme Court's attitude regarding the tort of bad faith—it took a nasty turn to the right. We were turning down those cases until Matt Glover analyzed the recent bad-faith opinions and concluded that although the cause of action might be headed for life support, we shouldn't pull the plug. Consequently, he was able to successfully thread the needle through the small opening left by the court and obtain good results on cases other lawyers were turning down.

I noticed early in my practice that juries were opposed to anyone interfering with a plaintiff's home life or the use and enjoyment of it. I was lucky enough to have a couple of jury verdicts far in excess of my highest estimates at times when decent offers were on the table. Those outcomes were not so much a product of being able to develop brilliant plans as they were about being observant of a "trend."

I *can* cite one example of having a longer-range plan. Long before I stopped, I realized I needed to quit taking divorce cases. I knew I had succeeded when I turned down a person of substantial means who wanted me to handle his divorce. I needed to stop in order to preserve my health and because I realized there is a ceiling on the hourly rate a lawyer can charge for handling a divorce case. There are only so many billable hours in a day and so much a lawyer can charge without flunking the test of "what the market will bear." An older lawyer once gave

me that rule for setting fees; I pass it on to you. Quitting divorce cases was a clear turn in the direction and focus of my practice and the type case our firm would handle.

Since 2000, mass torts have taken a prominent position in our firm's pending case inventory. Not so much in quantity, although that has tripled, but in time and money spent prosecuting them. They are usually of the toxic exposure variety, but not always. Caveat—they are not for everyone. The pros are they are less likely to be dismissed than are class actions, and in the end they offer a much greater reward than most injury cases. However, the cons are significant—they are very expensive and take longer to prosecute than regular cases.

Career Tips

While I can't impart any fool-proof plans guaranteed to make you rich, famous, or allow you to retire early, I can pass on certain tips, considerations, or maxims that have proven to be worthy of merit for me:

- Lawyers who try to be an expert in too many areas end up being an expert in none. Find a niche and strive to be the best.
- Have a mentor; be a mentor. As experienced lawyers, if we care about the direction and quality of justice that being dispensed in our community, we will help young lawyers avoid the same pitfalls we experienced, whether those lawyers are in your firm or not. If you are an inexperienced lawyer, seek out a more experienced lawyer for advice on how to do things. You may be surprised at how accommodating older lawyers are. Experienced lawyers, make yourself accessible to young lawyers. Those you mentor will normally pay it forward and help someone else. Failure to share experience's lessons makes us vulnerable to the adage: "Those who do not learn (from) history are doomed to

repeat it." Or as humorist and writer Mark Twain famously said, "History doesn't repeat itself, but it does rhyme."

- To gain a reputation as a successful lawyer who wins in court, try your winners and settle your losers. That is easy to say, but hard to do, especially since the other lawyer is trying to do the same thing.
- Show me someone who hasn't lost a case and I'll show you someone who doesn't try cases. Losses happen to all of us and when they do, they hurt. Try to learn at least one valuable lesson from each one.
- "Never represent the strong against the weak, anyone can do that." That saying sat on Mr. McDuffie's desk. At first, I thought it meant widows and orphans were "the weak." Now, I'm not so sure.
- A Plaintiff's biggest sin is overtrying the case. A Plaintiff's second biggest sin is forgetting that pigs get fat and hogs get slaughtered.
- Since everything is relative, it will benefit you greatly if you can keep expectations low without discouraging your client. I've found this rule is good for practically all aspects of life. If you can keep expectations dampened, you can keep surprising to the up-side.
- To gauge the success of your settlement or trial outcome, get the answer to this question: "Is my client satisfied?" After all, is there anything more important about your case?
- Studies show that clients want a lawyer who will fight for them over a lawyer they think can get results. That's a good rule for us to remember else we become too goal oriented and allow outcome to be the measure of our successes.

- Get *lucky* in court by being prepared when the opportunity comes. Most lawyers are about the same in intellectual ability. It's the one who is most prepared on the facts and law that usually prevails.
- A burned bridge cannot be crossed. There have been many heated exchanges with other lawyers that I later regretted. I finally realized that I might be winning the battle but losing the war.
- Recreation—its root word is *re-create*. Taking time off allows us to get perspective. It is essential in keeping us engaged and resourceful when handling our cases.

Courtroom tips

I feel more comfortable passing on some proven approaches to courtroom performances. I have listed one for each phase of the trial, but if you want the other elements of any phase just contact me. I am happy to share with you what I deduced from hearing hundreds of critiques given by trial lawyers from all over the nation to students after judging their mock trials.

- During **Voir Dire,** if you're doing most of the talking, you are making your opponent happy.
- During your **Opening Statement** *tell a story* in as much *first person* and *present tense* as possible.
- During your **Direct Examinations** *what, why, how* and *describe* are winning sentence starters.
- A **Cross-Examinations** can be lost if your ten-speed fan is set more than one setting higher than the witness.

- Make your **Closing Argument** *new* and *useful*.
- With **Objections**—less is more.
- Prepare and deliver your **Mediation presentation** as though it was a mini-trial and try to avoid assumptions re authority.

Things I would correct on a re-do (that's Arabic for Mistakes I've Made):

- Using too much credit to fund my business. In the early 80's interest rates went to 22%. I called clients to ask if they could pay something on their bill.
- Not doing enough relationship building with people.
- Re-defining my practice too many times.
- Underestimating the maxim: "The law is a jealous mistress."

Where is the practice of law going? (Who knows?)

- Fewer trials with more alternative dispute resolutions of conflicts.
- Brick and mortar housed law offices.
- Paperless.
- The use of third-party vendors for *everything*.
- Video conference trials.
- A smaller number of jurors.
- Professional jurors.
- Witnesses taking an oath; jurors evaluating the demeanor of witnesses to determine their truthfulness; AI will do that.

Thank you.

Respectfully submitted,

Bob Prince