

Oregon State Bar Bulletin, "Piloting Your Practice," September 2001

On December 12, 1953, sound-barrier-breaker Chuck Yeager was testing the X-1A, an experimental supersonic rocket. Dropped from a bomber at 13,000 feet, Yeager's rocket soared to over 80,000 feet and then began to dive. When he exceeded the previous speed record of 2.0 mach, Yeager accelerated even more to test the limits of the craft. When he reached 2.4 mach the nose yawed to the left and then the aircraft began careening, snapping, rolling and pitching like a giant frisbee hurling toward the earth.¹

Yeager later recalled that in the next few fearful moments he called upon every experience he had ever had in thousands of hours of flying. He doubted he would have survived if he had flown even one half hour less.

Like Yeager's aircraft, our accelerated lives may on occasion seem to spin widely out of control. At such times we must apply all we have ever learned to stabilize and continue our flight.

Over the years I have made a studied observation of those attorneys who seem to be in control of their practices and those who are not. I wonder at the enormous gulf between the most and the least productive attorneys. From my observation of others and examination of myself I have distilled fourteen principles I believe are essential to the productive practice of law.

1. Be Selective in the Cases Your Accept.

An old attorney in Klamath Falls once observed that “you make money on the cases you don’t take.” One may master every principle of the efficient use of time and still be ineffective, if he doesn’t separate the wheat from the chaff. In the late 1960’s and early 1970’s “speed reading” was touted as the way to get ahead. During my first year of college I paid hundreds of dollars to enroll in a privately sponsored speed reading course. By the time the ten-week course was completed, I could sweep my fingers over the pages of a book with enough energy and zeal to make one believe my elbow had been plugged into an electric socket and 120 volts were coming out my fingertips. But I really couldn’t comprehend the details at a pace of 2500 to 5000 words per minute. I soon realized that the course did not match its promises, and I settled back into regular reading and comprehension.

Some years later I read of a business guru who claimed he could teach anyone to read 10,000 words per minute or higher. Piqued by his claim - - and sensing a scam - - I read on. He asserted that the only way to truly increase one’s reading speed was to rule out books and magazines not worth reading, so that the worthy remainder could be savored and enjoyed. He proposed that before any book be read, its Table of Contents be perused and a few pages carefully studied. Then, if the book was not as valuable as the time it would take to read it, simply set it aside. By being more selective in what one chooses to read, a person’s practical reading speed can be enormously increased.

The same may be said of cases. Like a good meal, a good case should be savored and digested unhurriedly. The most precious resource of time should not

¹ Yeager, Bantam Books, 1985 pp. 198-202.

be squandered upon unworthy cases. Be very careful taking cases with bad facts. Even be careful taking cases having good facts owned by bad clients.

2. When Working on a Case, Do Everything Then Possible to Advance the Case to Closure.

A young man contemplating entering the practice of law wrote Abraham Lincoln for advice. In a few hundred words, which ought to be read often by all attorneys, Lincoln offered sage advice, including the counsel to be diligent:

“Leave nothing for tomorrow that which can be done today. Never let your correspondence fall behind. Whatever piece of business you have in hand, before stopping, do all the labor pertaining to it which can then be done... This course has a triple advantage; it avoids omission and neglect; saves you labor, when once done; performs the labor out of court when you have leisure, rather than in court, when you have not.”²

When a new case comes into the office involving a tort claim against a public body, why not immediately dictate the statutory tort claim notice, rather than putting the matter on a “to do” list, as though it will be easier done later than now? If a case involves a complicated fact pattern, spend the time and mental energy to fully comprehend the details now rather than later and then immediately dictate a file memo to preserve the understanding; at the same time dictate letters and instructions to staff on what needs to be done next. When a pleading is moved against, do the research and dictate the reply when the motion is in hand, rather than setting it aside and waiting until the deadline. Whatever needs to be done, so far as possible, do it now.

² Abraham Lincoln: *Speeches and Writings 1832 – 1858*, The Library of America, 1989, pp 245-246.

I like to think of work in vertical and horizontal paradigms. If I am working vertically, I may work on only a few cases in a day, but I will accomplish enormous things to advance those cases toward closure. If I am working horizontally, I will consider it a good day if I have cleaned my desk and kept up with the flow of paper. An attorney must work with both paradigms, but the great time sapper and leach on productive output is the horizontal paradigm. One may work ever so feverishly keeping a desk clean and keeping paperwork flowing, and yet not advance a case toward resolution because one is responding rather than acting.

3. Have a Passion for Closure.

I am convinced that many cases exceed their useful life expectancy. They continue to exist because opposing attorneys have traded paper, danced in depositions, and hacked at each other's capillaries, yet no one has grabbed the facts by the throat and given a life or death grip. Some attorneys almost seem paralyzed to make a decision until they have routinely covered points A to Z, not realizing that the opportunity for resolution is sometimes better at point A than at point Z, and that resolution sooner than later saves time and money and is less stressful for clients.

If we are not careful we may find ourselves moving paper and working hard, but not really advancing the case to closure. At every step of a case it is appropriate to ask: what thing can I do now to justly close this case? Is there a document missing, which once obtained will bring the case to a conclusion? Can a demand letter be done and thus initiate settlement discussions? Are negotiations

getting nowhere, such that it is best to file the case, and thus move it a step closer to closure? Can a trial date be set? Can depositions be set?

Before handling a document, making a call, or dictating a letter, ask whether what is being done is actually advancing the case to closure. If not, is it worth doing? In World War II General Douglas McArthur brilliantly out-thought the Japanese military leaders by not attacking every Pacific Island held by the Japanese. Instead, he carefully decided which islands he really needed in order to reach Japan itself. He by-passed the rest. This course saved thousands of lives and conserved allied strength for those few islands that were essential. In many of our cases there are islands upon which battles could be fought, but they are not necessary to achieve the ultimate objective. We save time and money when we wisely by-pass the many unnecessary islands that abound in all cases.

4. Become a Dictator.

Not a tyrant, but one who speaks and written words appear. Before becoming Prime Minister of Great Britain, Winston Churchill endured some financial hardships because he lived lavishly. To cover his enormous monthly expenses, he dictated a vast number of newspaper and magazine articles, and more than a few books. He later jested that he had survived these tough financial times “by living from mouth to hand.” Churchill found that he was far more productive, and could think better, if he dictated rather than writing by hand. Although typing skills are wonderful in this computer age, for most pleadings and correspondence dictation is still leaps and bounds ahead of longhand writing or even computer typing.

5. Be Decisive.

During the Civil War a colonel in the quarter master's department approached General Ulysses S. Grant with a requisition authorizing large expenditures. General Grant studied the request a few moments and then approved it, surprising the colonel. "Are you sure?" the colonel ventured. "No, I am not," Grant responded, "but in war anything is better than indecision. We must decide. If I am wrong, we shall soon find it out and can do the other thing. But not to decide wastes both time and money, and may ruin everything."³ While all of us hope that all of our decisions are right, sometimes the inability to make a decision is the worst possible defacto decision of all. Indecision is generally the root cause of procrastination in people who otherwise have a good work ethic.

6. Handle Paper Only Once.

When faced with the daily avalanche of onrushing paper, take it one piece at a time and handle it only once. If the paper calls for a decision, study and weigh the matter and try to make the decision then and there. If it is necessary to call the client, do so right now. If it is necessary to do some research or to review the file, do it immediately. Then, once the file is in hand, do whatever else can then be done on that case to advance it to closure before moving on to something else. Do not put the incoming paper down until the action it requires has been completed.

³ Ulysses S. Grant, Triumph Over Adversity, 1822 – 1865, Houghton Mifflin Company, 2000, p. 249.

The obvious exception, of course, is when the action required will take substantial blocks of time, or when a major decision must be weighed and pondered and balanced over a maturing period of time.

7. Leave Tracks.

Much time is wasted if an attorney picks up a file, and has to go through a significant portion of it to determine what was last done, and what is next to do. Whenever work is done, make a brief summary of what has been done and, if it is not already apparent, what needs to be done next. A summary, dictated moments after a deposition, will save significant time later on when the content of the deposition must be recalled. The same is true when voluminous records have been studied. While the facts are fresh, dictate a memo to the file summarizing the good and bad points, noting what is missing, and simultaneously dictate letters requesting what is still needed. It is also an excellent time to dictate a status letter to the client, and do whatever else can then be done to advance the case as far as then possible toward resolution.

8. Organize Files.

Twenty years ago I was familiar with a small law firm with a general litigation practice. Each of its files was a chaotic mess. Pleadings went on the left side and correspondence on the right side of a two-sided manila file. An attorney at that firm might search for several minutes just to find the client's address and telephone number.

Valuable attorney time is saved if staff carefully organize every file into sections, and then subcategorize the sections. In our office, for example, all files

are in six section expandable folders. Pleadings are in the first section, and are numerically tabbed and indexed. Correspondence is in the second section in chronological order. The third section is pre-indexed to cover such things as police reports, depositions summaries, wage loss information, and other documentary evidence. The fourth section is reserved for memos to the file. The fifth section is reserved for medical bills, and the sixth section is for medical records, all carefully tabbed and indexed. Any staff member can open a file and find whatever is needed within a few seconds.

9. Set Aside Chunks of Uninterrupted Time.

In the movie “A Civil Action” (based on the book of the same name) an aged defense attorney is shown working alone in the basement of his law firm. A young associate carries a special delivery package to him, believing that he would want it immediately. “If I were a young attorney,” the old man muses, “I would set aside at least an hour each day of uninterrupted time.” Sensing his intrusion upon the deep train of the old man’s thought, the new associate apologizes and retreats, stung by the rebuke.

Chunks of undisturbed time are vitally needed to be creative and to feed opportunities. If we sacrifice these golden hours and entangle ourselves too much in the consuming web of wheeling and dealing, we will soon be dealing in shadows instead of substance.

But just as there is a need for some uninterrupted time, there is also a balanced need for periods of complete availability, when we take as many phone calls as necessary, meet impromptu with staff, and deal quickly and decisively with

an invading host of miscellaneous matters. But these baths in total availability must be tempered and seasoned by creative solitude. Otherwise we are only responding to problems, rather than creating opportunities – we are working horizontally and not vertically.

10. Think Carefully Before You File, But Don't Think Too Long.

Filing a lawsuit dramatically increases the cost of resolving a dispute. Document production can become a nightmare. Depositions consume valuable time. Motion practice (even though today most experienced attorneys file very few motions) can drain resources.

Yet all too often these and other steps of litigation really do not change the essential nature of a case: they only consume time and add costs. Therefore, instead of rushing to file a lawsuit, ask whether some informal discovery can now be done to resolve the case, before costs mount. If the other side wants a document, why not produce it, especially since its production can be compelled later on. If the other side wants a recorded statement, and is willing to make a fair exchange for such cooperation, why not allow it, since a deposition can be compelled later on? Worried about inconsistencies between the informally recorded statement and a deposition? This can be avoided by stipulating that pre-filing statements may not be used in court. (They can still be used to evaluate facts and can be invaluable in understanding the other side's case, even if the statements are inadmissible in court.)

While not filing a lawsuit often increases case efficiency, it is not always so. If matters are not moving informally, or if the case is unlikely ever to resolve without

substantial formal discovery, then the most efficient step is to by-pass informal discovery entirely. Under these circumstances filing a lawsuit will get the matter on a clock ticking toward resolution and will save time.

Distinguishing when not to file and when to file is one of the marks of a seasoned, skilled attorney.

11. “Stick to the Knitting.”

In 1982 Thomas Peters and Robert Waterman published their best selling corporate handbook, *In Search of Excellence*. In 12 chapters they outlined what they had discovered by carefully studying the most successful American companies. One quality of the best companies was that they “stick to the knitting,” meaning they master a niche and essentially stay within that niche, rather than diversifying too much and losing their edge. “Organizations that branch out somewhat, yet still stick very close to their central skill, outperform all others.”⁴ While Peters and Waterman do not advocate doing only one thing, they do caution that successful businesses stay close to their core skills, and “not test new waters with both feet.”⁵

12. Invest in Technology.

Software now readily available allows attorneys and staff to enter notes, telephone numbers, addresses, claim numbers, deadlines, and warnings of deadlines with just a few keystrokes. Once entered, the information is instantly available without having to retrieve a file. This convenience saves perhaps only a

⁴ Peters and Waterman, *In Search of Excellence*, Harper and Row, 1982 p. 295.

⁵ *Ibid*, p. 299

moment here and a moment there, but over weeks and months the cumulative effect of time saved is staggering.

Electronic legal research can be done in a fraction of the time written indexes and digests used to require. A case read months or even years ago can usually be retrieved, if only a few key words can be remembered. In doing computer research an attorney who happily stumbles onto cases or statutes that will be of use in another case, can easily copy and paste a relevant sentence or paragraph (and the case citation) into the appropriate client's electronic file, all without interrupting the primary research in progress. A few older attorneys claim they can research as fast using digests and books. I do not think it possible.

Another extremely worthwhile investment in technology is a phone system with both external and internal voice messaging. With this technology an attorney can leave instructions for staff while in the midst of a project, rather than having to wait until both staff and attorney are available.

13. “Plan Your Work, Then Work Your Plan”

For years I struggled to find a calendar system that would allow me to enter reminders of things that needed to be done. I eventually came upon Day-Timer and Day-Planner products. More recently I tried a Hewlett-Packard electronic palm computer and still later the famed Palm Pilot. But I still prefer paper and ink and a small binder with Day-Timer or Day-Planner pages for organizing each day. I write down several things I need to accomplish each day, and generally limit my tasks to no more than about six in one day. That allows me the flexibility to adjust to the changing terrain of the developing day, while still retaining an overall focus on

essential tasks. Without a central core agenda, the day can be dissipated on secondary goals or too much paper.

14. Hire Competent Help and Pay Well.

I've saved this for last because it is perhaps the most important of all. We must all be cost and overhead conscious, but a false economy may be encountered if we try to hire on the cheap. I arrived at my very first job after taking the bar examination filled with eager enthusiasm to get to work. The law firm I had hired on with had just hired a new secretary to work mainly for me. She was a high school drop-out, but never mind, the government would pay half her wage and what could be a better deal than a secretary for about \$1.50 per hour? (In 1979 minimum wage was about \$3.00 per hour.)

Knowing this was her first job and that she might not understand legal style, I flexed my knuckles, leaned back in my chair, and began to slowly dictate my first letter, inserting instructions and punctuation so that it would all be perfectly clear.

Later that day my very inexpensive secretary brought to me a typed yellow page, without any indentations or set-offs to mark dates, addresses, salutations, or paragraphs. Beginning in the upper left hand corner and running across the width of the page and then continuing down the page in one long running paragraph, I read:

"Nancy, this wil bee a leter to Curl Jones attornee et law hiss addres is fifety five south eighth Street in klamath Falls Oregon the zap code is 97601 the leter is regarding thats r e colon Beckman vezus Rake Constiction Company deer Curl colen wen I relised the defendent wuz endeaded in the amount of twelve thousand dollars thats a dollar sign followed by one two comma three zeroes..."⁶

⁶ I have forgotten some of the actual words and precise misspellings, but the above re-creation is essentially accurate and even charitable.

No amount of positive attitude or self-esteem enhancement would ever turn her into a Della Street. That she was a nice person I do not deny. That she may have had other skills, I can readily admit. But she was not a born legal talent, and the false economy in hiring her because she only required half of minimum wage was a costly mistake. Day after day I slaved over multiple drafts of her letters as I correcting spelling, punctuation, and styling errors.

What a contrast from that experience is my happy state now, surrounded by an incredibly capable staff who correct my errors, offer suggestions on my work, remind me of things undone, and in countless ways transform me from a slack jawed yokel to a real life attorney. I cannot say enough good about them. I hope I pay them fairly and it thrills me when I am able to distribute quarterly profit sharing bonuses.

Conclusion.

When these 14 principles are incorporated into a law practice the effects can be dramatic. But there must be balance. Some suggestions, taken to an extreme, can become counter productive. For example, as much as I believe in technology, I fear its overuse is as destructive as its under-utilization. I realize that a passion for closure must be balanced by the patience often needed to get the best result. I am aware that some decisions cannot be made instantly, that some careful writing cannot be dictated, that some papers have to be handled more than once, and that some interruptions on study time are unavoidable. I also realize that sometimes the

best laid plans of mice and men have to be set aside. Yet in the main each of the 14 principles when diligently applied is transforming. George Orwell, author of such classics as *1984* and *Animal Farm*, wrote 10 suggestions for young writers and then offered an 11th, which simply said “avoid any of the 10 rather than sound barbarous.” I offer my conclusions in that same spirit.

If Chuck Yeager could pull his supersonic frisbee out of a centrifugal black hole and live to fly another day, we too can stabilize our practices and learn to work another day, more effective than ever before. I hope a balanced and diligent application of these principles will aid other attorneys as much as they have aided me.