



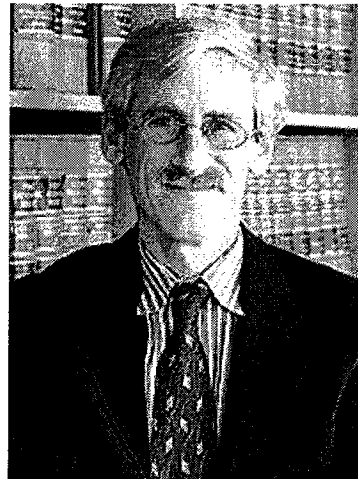
The Art of Appellate Advocacy - Taking a step back

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Today's column was inspired by words of advice that one of the founding members of my firm recently offered following a somewhat challenging appellate argument I had. After I whined to this senior partner about the difficulty I encountered in trying to advance an argument that was key to the case, he responded that sometimes it's necessary to take a step back and consider the big picture.

At the time he gave this advice, I privately thought, considering the grilling I had received in the argument we were discussing, taking a step back would have done me about as much good as it would have helped Joan of Arc at the stake. Instinct nevertheless told me to overcome my normal lack of impulse control and not to offer my thoughts to this partner after whom my firm is partially named, and so I kept them to myself. Until here, that is, where I exercise very little impulse control but figure I am pretty safe because he never reads this column.



Or hardly ever, which is why I will quickly add, as a general rule, taking a step back is pretty good advice to follow. All rules have their exceptions, of course — rock climbing and trying to outrun the bulls of Pamplona are two that immediately come to mind — but I'm done with those activities for today and so I've decided instead, for the purpose of writing this article, to heed my learned colleague's recommendation by taking a step back to consider the big picture.

Public and private

One year ago this month, I left the Maryland attorney general's office, where I had been happily employed for over 18 years, to enter a new phase in my legal career:

the private practice of law. It might be more accurate to use the word “re-enter” in light of a brief association I had with a small firm immediately after I graduated from law school, but, like one of those Las Vegas weddings that seemed like a really good idea at one o’clock in the morning, that marriage was annulled soon after the sun rose. If you had any idea what that experience was like — think Michael Jackson and Priscilla Presley and trust me when I say it just wasn’t right — then maybe you would forgive me for treating my current situation as my maiden voyage into private practice.

One observation that comes to mind on the first anniversary of beginning that voyage is one should never underestimate the power of the expectation theory. After years of being raised by a pessimistic Jewish mother, I have learned if you expect the worst, you cannot be disappointed.

Just to be clear, I was not expecting the worst when I left the Office of the Attorney General — to the contrary, I was very excited about my new job — but I also had limited expectations that I would ever work on anything remotely comparable to the type of interesting work I was leaving behind. My anticipation was dampened further when my now-former colleagues, upon being told about my plans to join a law firm, uniformly reacted as if I announced I had a rather unpleasant and contagious disease.

So, by the time I arrived at my new place of employment, I was prepared for anything, including reviewing a roomful of ERISA documents if that was what I would be asked to do. After spending a year in the private sector, I have yet to enter such a room. True, I’ve entered prison a few times to visit a client, which is definitely something I was not expecting to do, but those and many other experiences I’ve had over the past year have led me to realize something else I was not expecting when I left the attorney general’s office: while there are compensatory and anthropological differences between private practice and working in the public sector, there is little dissimilarity, if any at all, in the actual practice of law.

Upon further reflection, this should not be surprising. After all, just to point to one illustrative example, the briefs that I’ve worked on since joining my firm, like the many I authored while working for the state of Maryland, are still briefs. Nothing about the process of producing them has changed, whether that process involves reviewing trial transcripts, exhibits and arguments; conducting legal research; or engaging in the physical process of writing and editing the brief. Sure, the parties I now represent are different — in a few cases, the party I represented for almost two decades is now an adversary rather than a client — but that is an inconsequential distinction. I’m still on the side of truth and justice.

I’ve also learned first-hand that change is good, regardless of your job satisfaction. There is obvious value in leaving a bad job behind. I don’t think Bob Dylan was singing about job dissatisfaction when he said, “when ya’ ain’t got nothin’, ya’ got nothin’ to lose,” but he may as well have been: I quit my first job with no offers, leads or prospects on the horizon — I mean nothin’ — and I still get warm fuzzies thinking back to how good that change of employment felt.

Break from Nirvana

But as I also learned from my most recent job switch, change can be good even when all appears to be well with the world. My last position had important responsibilities and regular contact with people I liked being around. It’s almost inevitable, however, that no matter how much you enjoy your job — and I truly

loved mine — even Nirvana can become a place where you unconsciously allow routine to take over, habits to form that act as shackles, and politics and personalities to converge in ways that you'd rather avoid than experience.

I did not have much awareness of any of this until I changed jobs, when it slowly dawned on me at my new place of employment that I had no routine or habits and was oblivious to firm politics and personalities. All had disappeared with my change of location. So did the countless working friendships I had made over the years, but change often involves some pain, which in my case has taken a back seat to the many possibilities that accompany the type of mid-career change I've made.

That's enough stepping back. It's time to move forward.

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