



25 YEARS
IN THE ARENA

IT IS NOT THE CRITIC WHO COUNTS...
THE CREDIT BELONGS TO THE MAN
WHO IS ACTUALLY IN THE ARENA,

whose face is marred by dust and sweat and blood; who strives valiantly; who errs, who comes short again and again, because there is no effort without error and shortcoming; but who does actually strive to do the deeds; who knows great enthusiasms, the great devotions; who spends himself in a worthy cause; who at the best knows in the end the triumph of high achievement, and who at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who neither know victory nor defeat.

THEODORE ROOSEVELT

Looking back over 25 years, the lessons we learned in the arena have shaped us as lawyers and as people. The hard-knock lessons, especially the losses, have made us better attorneys and given us a deeper appreciation for the art of practicing law. Founding partner Jere White said it best: "There is no perfect major league pitch. Like baseball, the law is best practiced over and over again. It can't be perfected but it is a perfectly satisfying profession."





SAM FRANKLIN

> ON IMPEACHMENT

It was in the first six or seven years of my practice; I had been in enough trials to see a plaintiff exposed on the witness stand by his prior inconsistent deposition testimony and thought “I hope I can do that every time.”

Sometime later I was trying a small lawsuit over a \$14,000 contractor’s bill that had gone unpaid. The plaintiff took the stand and gave his testimony on direct. Then it was my turn to cross. I nailed him with four blatant inconsistencies between his deposition and trial testimony. Very proud, I returned to my seat, thinking the case was won. I lose, walk out of the small county courthouse with my tail between my legs and see about three of the jurors chatting. I went up, they were happy to chat, and I said, “I just don’t understand, we caught the plaintiff changing his testimony four times.” One of them looked at me and said, “Hell, you lawyers are tricky, you can always trip somebody up.”

I never forgot those words. I hoped I would never have to impeach another witness. Of course, that feeling didn’t last long. The lesson I learned is that when a witness does change his story, you must approach him with extreme caution—making a good faith effort to show the jury that you are giving the witness every opportunity to get it right. Impeachment can be a powerful tool in the hands of a skilled trial lawyer. But sometimes knowing when not to use it is just as important.

> ON SIMPLIFYING A DEFENSE

The trial was in rural Mississippi. The plaintiff was burned in a flash fire when she opened her oven door to retrieve some homemade biscuits. One of the volunteer EMTs at the site mentioned seeing tools on the shelf of a nearby propane furnace, as well as some matches and a homemade lighter. The EMT also told our investigator that the plaintiff had said that her husband was fiddling with the furnace that morning, a fact the plaintiff later denied.

When we tested the furnace's gas control valve, the valve stuck open and leaked—not because of a defect in the valve, but because of a nest built in the valve by Mississippi mud daubers. The plaintiff's expert had stored this valuable piece of evidence in an open shed. The obvious defense was spoliation after the accident by the plaintiff's expert and the lack of any evidence of a defect.

Even though we were armed with a good defense, we could not resist arguing that the plaintiff's husband caused the gas leak, so we called the EMT as a witness. Little did we know, the EMT was the plaintiff's neighbor and had been sued by the plaintiff because her pet goats had repeatedly feasted in the plaintiff's yard, leading to a neighborly feud rivaling the Hatfields and McCoy's. Unfortunately, as a result, the plaintiff's counsel successfully made our star witness out to be vindictive rather than credible.

From that day forward, I've prepared my cases by asking myself, "Do I really need to go after those tools, or do I risk becoming a goat by 'biting off more than I can chew'?"



MELODY EAGAN



MIKE BELL

> ON MILDRED'S MANNERS

I'd been practicing law for a little more than two years. It was 1991. I was trying a case with Sam Franklin. A star witness for our side of the case was an older beautician from a small town outside of Birmingham.

I called her to the stand. Mildred was her first name. Such a sweet, compelling witness. She smiled at me, the judge and the jury as she told her story. I asked her the key questions, and smiled to myself as we put an end to the other side's case. My opposition stood to start his cross examination. As he started his questions, this sweet, compelling witness morphed from blue hair sweetness to blue steel anger. She really gave the opposition a piece of her mind. As this played out, I smiled to myself.

My smile got turned upside down when the jury knocked on the door and returned a verdict against our side. After talking to the jury about how in the world they could rule against the facts shared by Mildred, multiple jurors said something like this, "We just didn't like that lady. She was so nice to you when you asked your questions, but she was so mean to that other lawyer."

The lesson from 1991: witnesses need to be neutral, treating every lawyer with equal respect. I've been telling witnesses, since this case, about Mildred. It wasn't Mildred's fault. It was that young lawyer who prepared her for courtroom testimony. By the way, we tried this case a second time. Mildred smiled at everyone, which left our client smiling at the end.

> ON BEING BULLIED

It was a bad case in a bad place, and the judge was a bully. He made us make our Batson challenge in the jury's presence; he was overly solicitous of our opponent and his counsel. He told me to "hurry along" fifteen minutes into my opening statement. And he made us pay dearly for every objection by deriding both my client's position and me.

Jurors rolled their eyes at us as the judge continued to bear down. At the end of every trial day, the judge urged us to settle. Each morning we returned without having done so, he grew even more combative. After two weeks that felt like two months, we lost...big. Given our venue, our strategy had been to protect the appellate record at all costs. And I would have sworn we did so. But as I read the transcript I realized that as the trial had worn on, I had let the pain of being dressed down by the judge influence our mission to protect our client's appellate rights. And that, along with trying to force an unreasonable settlement, was precisely what the judge had intended by his tactics. Schoolyard lesson recalled. The misery of being bullied is temporary. The result of succumbing to the bully can be permanent.



CHRIS KING

TEN TRAITS OF A GREAT TRIAL LAWYER

BY JERE F. WHITE, JR.

JULY 2010

Great trial lawyers know the law. They don't rely solely on the younger lawyers in their firms. They know the law inside and out. And as good storytellers, they know how to present the law.

Great trial lawyers don't take matters personally and don't get personal. Their faith isn't shaken by someone's belief that they aren't capable of taking on a specific case. They don't lower their standards by taking cheap shots; they remain professional.

Great trial lawyers are curious and are prodigious readers. They are by nature nosy; they're gossips; they can't stand it when someone knows something they don't know. They read everything they can get their hands on, whether newspapers, magazines, novels or non-fiction; they have an insatiable curiosity for information.

Great trial lawyers have good work habits. They realize there are many demands on their time and that life can often be difficult. They realize that they must manage and learn what is and what is not important. They are able to set priorities.

Great trial lawyers learn from other great trial lawyers. They identify other great trial lawyers; they ask to be taken under another great trial lawyer's wing. They do what they can to learn from great trial lawyers.

Great trial lawyers have a passion for the practice of law. They enjoy what they do. Although the work is tough, they can't imagine what they'd do if they had to have a "real job." They have intensity, a fire-in-the-belly, without which, they'd be lost.

Great trial lawyers hate losing. It's not so much that they love winning, but great lawyers aren't afraid to step into the batter's box. A Hall of Famer with a .300 batting average loses 70% of the time.

Great trial lawyers take responsibility and ownership of their cases. They aren't so task- or assignment-oriented that they rely solely on a checklist. If it's their case, they remember that it's not against the rules to think; it's not against the rules to be creative.

Great trial lawyers possess integrity and credibility. They are honest, never misleading the judge, the jury or opposing counsel. Their names mean something. They possess total knowledge of their subject matter. They don't fake it. They are facilitators of the truth, and they present the truth in an honest, understandable and persuasive manner. They present information that assists the decision-maker. They do the right thing.

Great trial lawyers show empathy. They don't go through life with blinders on. They know that their side isn't the only side of a case. They try out the other side's case and from it, they often learn ways to answer and best deal with the issues. They work hard at showing respect for their adversaries, both inside and outside the courtroom.

 **LIGHTFOOT** Est. 1990

LIGHTFOOT FRANKLIN WHITE LLC
TRIAL & APPELLATE COUNSEL

lightfootlaw.com