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Decades into practice, past president still has his eye toward the future

By MIKE CAMPBELL

A few short years ago I walked into Schapprizzi Attorneys at Law in St. Louis and watched Don Schlapprizzi stride into the law firm library, pull a book off the shelf, and begin taking hand-written notes on a legal pad. Don wasn't asking a law clerk, paralegal, or associate to grab the book for him or to research the issue for him — he was rolling up his sleeves and doing it the old-fashioned way. Don doesn't have any secret formula to his success - it's just hard work and keeping up with the law that drives him every day. He doesn't just understand case law, he understands how it evolved and the foundations of current legal theory.

Why trial law?

I'd say it was divine intervention: One day, I had just gotten rejected by another firm and I was running back to my car because it was raining. I happened to duck under an overhead and I looked up at the address. Well, the previous weekend a friend had given me the name of Jim Jeans, a friend of his. My friend said Jim may help— so I looked in while I was standing under the overhead and it was Jim's address. I thought, "well, I got nothing else to do," so I went upstairs and, long story short, after an interview or two I got hired by Charlie Gray (of "Gray, Ritter & Graham"). Charlie Gray and Jim Jeans were remarkable. Two other fellows, Don Summers and Cleo Barnhart in that firm were really great lawyers as well. All of them were great trial lawyers. Not only lawyers that could try cases but they were wonderful book lawyers and understood theory — they had the whole ball of wax.

So, I was in heaven and I began to see what they did and how they handled people and how they helped people. That's how I just became kind of in love with the law practice. And, through 60 years of doing this, I had opportunities to not only represent injured people but I defended insurance companies and represented a lot of defendants. For instance, I tried murder cases, I tried a patent infringement case, and also represented some doctors — so I really had a real smattering, if you will, of all the features of the injury work but I landed on this side because I feel closer to it. That's what we do.

What changes in the law have you seen develop that are important to our clients and what we do as trial lawyers?

Well, for one, on the products' side of things strict liability has developed. The Keener (*Keener v. Dayton Elec. Mfg. Co., 445 S.W.2d 362 Mo. Sep 08, 1969*) case for one, and then the restatement of the 402A was adopted and it changed the landscape in product cases altogether.

For years in medical malpractice there was nobody that would offer an opinion against the healthcare provider. A lot of good reasons, a lot of bad reasons for that, but then ultimately in the mid-70s and on there were people who would speak up for what was being done wrongfully to patients and there was probably 20 years of evolution on that. And then the powers that be and the big money — the hospital associations and the insurance carriers — showed up and they made it very, very difficult. And now with limitations and caps and all the other things that go with it makes those cases more and more limited. All those things have happened and some things were good, some things were bad. Also, when I started practicing there was no such thing as comparative fault. If your client may have done something wrong, the old contributory negligence threw you out automatically.

I'm sure you've seen may changes in the law practice as well…

In some respect, we are losing sight a little bit of what it is we're doing and with the advent of advertising I believe some of the focus has shifted to getting the biggest billboard, getting on television and on radio. And that has really damaged presentation of our cases. I think trial lawyers may be a diminishing breed because trials are hard, they're tough and they're expensive. It's hard work to try a case and to do it correctly. We see now when we go into courts to impanel a jury, just everybody knows one of the big questions, "are you advertising?" Because the jurors generally dislike the money aspect of it. I know we're all in a profession to make a living, but we should remember we do so because we represent people who have lost loved ones and who have been grievously injured.

You practice with your children Craig and Toni - both of whom are tremendous trial lawyers - tell me about that.

It's terrific. They've been here now a decade in practice, but they were here long before that. They worked during law

See SCHLAPPRIZZI, Page 30

SCHLAPPRIZZI (con't from Page 9)

school and even during undergrad they would work here during the summers. I'd send them out on investigative missions where they really learned about the practice. For instance, one case involved a defective tree stand. So Craig had to go down to Texas county, way out into the woods to find this defective tree stand. When they were younger, they would go to factories and other places to see where injuries happened and they learned about the practice before they had their license.

Also, when we work with your children, sometimes there's a rescue mentality. For instance, you see somebody with experience trying to push them around you want to step in and stop it. But I'm reminded of an old John Wayne movie where the commanding officer wanted to help the young officer and his colleague said, "look, he has to learn to cross the river under fire himself and you can't do it for him." And so, I've tried to use that philosophy and help with what I could, but they've really taken to it. They love what they do. And there was no emphasis by me to do it.

It's good to have a legacy.
Yeah, I just don't want one day to come and have them say, "dad, it's two to one, I'm sorry, but we've changed our thinking." (audibly laughs).

I bet that won't happen. You guys seem pretty close.
Yeah, we have been doing very well, they've been doing just lights out actually. So, it's been great.

You're not just a mentor to them, though. You've helped a number of attorneys out. For instance, your nephew Chris (Finney) and a number of other up and coming trial lawyers in the state. One of the things I know from these guys and gals is that you emphasize knowing the law, knowing the instructions, and knowing the background to how our case law developed.
Yeah. The background to Restatement 402 is a great example. When it was adopted into the substantive law it allowed for recovery for an injury if you establish that whatever the instrumentality was, as it was placed into and for sale in the stream of commerce, had a defect in it that ultimately caused injury while the person was using it as it was reasonably anticipated to be used. You can recover by showing those elements. You don't have to show that there was privity of contract, and it used to be we had to have a privity of contract. Years ago before the adoption of 402A we represented a lady who was injured when a bottle exploded and lacerated her Achilles — a horrible thing. Our case was against the bottling company that had delivered the bottle to the retailer. Back then, if you prove your case against the bottling company, you eliminate your case against the retailer. You prove your case against the retailer and because of the elements you lose against the bottling company. But we chose to go against the bottling company and it was affirmed on appeal. But today you don't have to choose. You could submit your case against both whether it's negligence against one and strict liability against the other.

So, it's good to understand what the theory is and how it enables you in those cases where there's no way in the world you can find out what they did back at the plant in Detroit or Las Vegas, or wherever the product was made. If you can establish that it was a bad product, that it had the capability of causing injury because of its inherent structure, component parts, or whatever, then you don't have to prove that somehow I was in a contractual privity relationship with you.

A great example is the Giberson (*Giberson v Ford Motor Co.*, 504 SW 2d Mo 1974) case that extended the strict liability theory to a bystander. That one involved a vehicle occupant injured when a defective car engine exploded. The plaintiff was not riding in the defective car, but now he's got a strict liability case against Ford on whether it was a bad engine and he didn't have to have any special relationship with Ford. He was injured by the product and this injury was reasonably foreseeable to occur. As we know it today, you don't have to show the exact way the injury occurred, just that it was a reasonably foreseeable injury and an injury that occurred. Understanding the development of this law is good for all new lawyers because its expansion gave injured people the ability to make a recovery.

So, it sounds like that you could go in and argue a motion in front of a judge on this specific issue without

even having to do any briefing on it.
I don't do any work? Really, I'd like to see that one.

You served on the Instructions Committee for years. Why is it important to know jury instructions inside and out?
I was on that committee for 16 years. It was a wonderful experience because I served with some great great lawyers on both sides with open minds who were really intent upon creating the right language for the instructions and to make them as neutral as possible. And by knowing the instructions, you can go into Court and honestly state that the Supreme Court ruled that you have a right to submit on this theory and the Court can't change that theory. If it's refused, then that's an appealable situation. Also, some people overlook a definition or overlook our burden of proof. There's just so many things that a lawyer who understands instructions can do when it comes to submitting instructions to the Court. The whole idea behind instructions is to allow the evidence to be argued by the lawyer instead of the instruction providing the argument for the lawyer. And that was one of the initial reasons that they wanted to go to pattern instructions versus aberrations that are horrible. We now have instructions that are three or four paragraphs and that's it. Clear, clean, move on and if you want to argue you argue it, you don't have an instruction that has all the argument in it.

Similar to the "rear-end" instruction, which has really cleaned things up.
The rear-end collision doctrine goes back 60 to 80 years. The court determined that when the front of a vehicle overtakes and collides with a vehicle – ipso facto — that's wrong. So, you don't have to say any more than that. You can also argue the defendant driver was following too close, or was going too fast, or wasn't watching where he was going. But, it's a general submission. There's no way around it. Some have argued for years that it's too open and gives the plaintiff, the injured individual, an advantage. But, look at all the advantages defendants have. For instance, they argue, "well, it's only $300 in bumper damage or it's dimple in the rear," and "how can you be hurt?" That's all argument. You can argue all you want to, but the unwritten law in the state of Missouri is that if the front of your car runs into the rear of the other car, you are negligent, unless there are other circumstances.

I know I get really busy doing many other things, but just listening to you talk about the background to the law and the instructions really emphasizes that I'm never too busy to keep up with how our case law is developing.
Yes— I think all lawyers, new and experienced, have to read the law, to read new cases and stay up to date, stay on the cutting edge because every week, we see even in Missouri last week, or some weeks, major changes are engrafting a bit of a nuance to a theory. And if you don't read the law or read the cases and stay up, then you're going to fall behind. But reading the case law, reading the statutes, and understanding what they're trying to convey, I mean that goes a long way and not every Tom, Dick, and Harry and Jane, Joan and Frances can walk into a courtroom and try a case effectively. But, when you sit down and learn, and take a couple dozen cracks at it you get more confident It's not just going through the motions — it's substantive and I just think there are so many creative ways to approach a case.

And you haven't stopped doing this yourself…
I was just looking at the instructions for a recent case. For instance, I've got a rough draft prepared and have been really thinking about the language in a specific pattern instruction. There're some things we overlook that we could use to formulate some ritualistic rules right off the bat and then go into the heat of the argument. Some of these pattern instructions have some language in them that will grab the guy off the street. And there are three or four of these, I call them boilerplate instructions, to go on every case and you can pick out a phrase or two and then you can really focus the jury's attention on them. You can say, "hey, let's not get involved in some nuance over here or some excuse that has nothing to do with what we're talking about here." And so, it's worth exploring and that's one thought. It may be a lousy one, but in certain cases you can utilize that to springboard yourself into where you really want to go with your argument.

You get the foundation in place and then you sort of...
Build on it.

And you can be creative because now you know what the foundation is.
Right. Imagination and creativity are watchwords for me in terms of every case— just figure out a way. Because it's not just, "this is a rear-ender" — they're all a little different. They all have their pluses and minuses and nuances that you have to address. And so, try to imagine and create something in your own mind about whether there is a better way to do this, or how you can creatively finesse a particular issue. Importantly, when you do these things you have to make yourself vulnerable for perhaps criticism or ridicule. In the movie As Good As It Gets, Jack Nicholson is sitting there with a woman and she says, "say something, say something." He's all nervous and he says, "you make me want to be a better man." And he was entirely vulnerable because he said what he was afraid of – and so to some extent what we do in trials is very similar: We expose ourselves to potentially somebody asking "why did you do that?" or ridicule or criticism or whatever. But you do have to be creative and you embark upon a certain concept that you are arguing.

See SCHLAPPRIZZI, Page 32

Don't be afraid to ask for help. We as lawyers network and if it's your first rodeo, or one of the first, and you're concerned about whether you have a good enough instruction or are on the right track - ask somebody. I know I've done that.

SCHLAPPRIZZI (con't from Page 31)

And there's some fear associated with it. Right?
Yeah. But you have to do what you think is in the best interest of your client. You argue and you persist, even though some people might say, "well, that's not the way it should be or it's a poor effort." You have to make yourself vulnerable, you've got to be willing to let go what your feelings are about that case, be sincere, because the jury can sense when you're a phony, and they do. So, sometimes you just have to do something or say something, or offer a theory of argument or presentation that makes you vulnerable.

So, how do you tackle or dance with fear?
Experience helps. But once the game starts, so to speak, once you got the ball you are able to roll with the punches much better. During a jury trial the judge says, "we have finally reached our last instruction, Mr. Campbell, you may proceed," you get to a point to where you've heard that enough and you just get up and start going and you force yourself into the fray, so to speak. It's always good to have a couple of thoughts before you stand up at any time to say something to get yourself under control. But, anybody who has tried a case, whether it's a small case or a big one, you want your client to win, you want to do the best job you can for him or her and you've really planned or you have prepared, knows that you can't control the result. John Wooden would always say, "prepare prepare prepare prepare prepare, you can't control the result." You can't. In a jury trial how can you control the result? If you've done everything you could possibly do, the best you can as creatively as you can do it, then that's all you can do.

You're on the clock and you have a closing coming up. The jury is seated and all eyes are on you. What points do you emphasize to the jurors?
There are a couple things. You want to emphasize duty. If there is comparative fault, you want to emphasize contributory factors and the language of the instructions which give you that avenue. I think there is always the need to challenge the jury that they don't make light of the power they have to control the case. Jurors have real power — and there's no place in the world like the American legal system where jurors have that power and strength to have a voice. So, it's all dependent on your case, but I do think that you should always hit duty and hit the power of the jury.

I'm guilty of not really digging into the instructions outside of trial preparation of keeping up with case law until I have a case I need research. What other things would you tell a new lawyer like me to do?
Don't be afraid to ask for help. We as lawyers network and if it's your first rodeo, or one of the first, and you're concerned about whether you have a good enough instruction or or on the right track — ask somebody. I know I've done that. I've talked to – even at this stage in my career — I call others who I think maybe have a better slant on or to give me some confidence that I'm going in the right direction. So, I think new lawyers should never be afraid to ask questions – and to know that we're all still learning. We learn every day of our lives.

And these are things you're suggesting especially like reading the restatements, reading the rules of evidence, reading the instructions…these are not things that require any special talent?
No. You went to law school and got a JD. I always tell a lot of young lawyers I see that they're just as smart as anybody else. Yeah, you are short on the years of experience but don't put that down. You got an idea, stick with it. It could be right, it could be wrong, but think for yourself, reach out, step out, and do the best you can. And just because you don't have as many years or stripes on your sleeve doesn't mean that you're not just as smart and just as capable. It just takes you a little longer to get acclimated to all the processes.

If someone were to walk in here and ask, "Don, I really want to give the best closing statement I can. What can I do to really nail this thing?"
Well, certainly you have to know your case and be yourself. The Mike Campbells of the world are different from Don Schlapprizzis or different from the Toni Schlapprizzis, from the Mary Coffeys, from the Dave Zevans and John Simons. So, I'd say listen to recordings of great closing arguments, listen to all these lawyers who had great imagination and creativity and were people who could talk to an individual. You can't talk down as you have to talk "with." It's a mentality.

What I'm hearing from you is that we can learn from great trial lawyers, but we don't need to imitate them. One of the great things that I think that makes certain trial lawyers great is that they do have a technique, but more importantly they are themselves.
That's right. You got it, you got it. Just know you have the ability and trust yourself — have confidence in yourself and trust your intuition.