



PHBF Member Presentation Transcript

Presentation Title: *Lawyer's Owning Law Firms – 5 Foundational Principals of Creation, Growth and Protection*

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Description: Mark C. Rossman, co-chair of the Privately Held Business Forum, and owner of Troy business law firm, Rossman, P.C., spoke at the Mecosta-Osceola Bar Association on the topic of lawyers owning law firms. In his presentation, Mark discusses tangible and concrete ways that law firm owners can manage the monumental and very unique aspects that go into law firm creation, growth and sustenance. Employing metaphor, analogy and various anecdotes from 20+ years in the business, he discusses 5 foundational principles which helped him build a successful business law firm in Southeast Michigan from the ground up.¹

Opening Remarks

“Thank you, everyone, so much for having me up here. I have been looking forward to this day since Steve invited me to speak. I was lucky enough to be able to time it with a hunting trip that my friend Greg, who is sitting over here, and I are going on after we get out of here. We're going down to Bronson to meet my son Connor and spend some time in the woods, so this works out just great. I can't think of anything more fun than some bow hunting and stopping in a courtroom along the way for an hour to talk with lawyers about one of my favorite subjects, forming and building a law firm. In preparing my remarks for today, I wanted to get away from kind of, though very helpful concepts, basic things that you already know, and really dig for the answer to the question of ‘how do we make a law firm?’ Those basics are things like, get insurance, run your payroll, get your Quickbooks going, hire the right person, track your taxes, the nuts and bolts parts of things, which are all certainly important, but as lawyers, we kind of get those

¹ The author has slightly edited the content of the presentation for ease of reading.

things, we know them, and we don't need to belabor them here. You can find that stuff in a technical manual.

Rather, I am going to focus on some of the more ephemeral concepts that aren't so 'nuts and bolts,' and aren't so obvious, and which I only learned through experience, and, in large part, by trial and error, which can be very costly. These concepts are double edged swords. They are both the keys to success, or, potentially, demise, if we don't play our cards right. That's what I want to talk about, and I hope that I can help you move your thinking forward on your practice and your business endeavors, in some small way by sharing some of these things I've learned over the last 10 years with my law firm that you can't really know until they happen . . . or someone tells you ahead of time, so you don't have to learn the hard way.

"The timing of this lecture is further *apropos*, in that I'm coming up on my firm's ten-year anniversary in April, and it's kind of . . . It's that it just kind of naturally got me thinking, what's up with the last ten years, and what do the next ten hold? In thinking that broad question through, I started to consider the juxtaposition of starting from scratch with a law firm versus building off of a foundation and a platform that you've created and just sort of broad and theoretically speaking, and I'm finding it remains as challenging today as it was 10 years ago, but in a myriad of different ways, the principal difference being that today I am building on a foundation that is greater than myself, whereas at the start, it was just me with a blank slate. Very different mind and skill sets required in each situation, so it's a constant evolution of thought and action. The building never ends when it comes to a law firm, or any successful business for that matter. That's one of the reasons it's, it's a bit tiring sometimes, I will admit. Ten years down, ten years to go. It can be an incredibly rewarding career and vocation, and I hope that some of what I share with you can stimulate your thinking in terms of how to create, build and protect the foundations of your law firm.

Topical Overview: (1) The Death Zone; (2) Loving It; (3) Over the Mountain; (4) Premeditated Deliberation; (5) Cart Before The Horse

"I'm going to start by introducing myself and a bit of my personal and professional background. Then I'm going to walk through these five 'foundational principles' which

I attribute and consider an absolute necessity to law firm success. Applying and living these principles is not for the faint of heart, as their nomenclature suggests, and it's why only the smallest fraction of lawyers actually start their own law firms. Less than 1% actually. I looked it up. As I will explain, we need to put our mind in a 'death zone,' while loving what we do, and deciding whether to cross over mountains with premeditated deliberation while putting the cart before the horse. Let me spend the remainder of my time unpacking these concepts.

"The first one, this idea of a 'death zone,' is most dominant at the beginning of things when we start our firms and we have no option but to succeed. You know that cliché, *failure is not an option*? It's kind of like that. But worse, because for us lawyers, we tend to be these high-achieving creatures who almost melt down at the prospect of failure. I liken it to something I read about called the 'death zone' in the military war theory. Robert Greene aptly describes this concept in his 33 Principles of War. "Put an army with its back to the ocean and it's either win or die. They're gonna fight 10 times harder. You're gonna find the energy in you that you normally lack when death is facing you in the face" In other words, do or die.

"The second foundational principle to building a law firm, loving what you do, arises out of the fact that it's such a hard job and you have to balance the practice with the job and be both the craftsperson as well as the back-office person and doing all the administrative, and everything else, like taking out the garbage in the morning and washing the dishes, and so you better really love the subject matter of what you're working toward. Why? Because there is so much not to love about it all that you better love the subject matter of your practice. It makes it somewhat unique amongst businesses that we have to be both practitioner and business manager, as it divides the brain in two, and I think it's absolutely integral that we actually do love the subject matter that we're working on because you're certainly not going to love all the people you're working for and around in this business, that's for sure, you know, clients in particular (laughter). I mean, you might love the judge (motioning to the Bench) sometimes when she's rolling in your favor (laughter), but there's a lot not to love, and since you absolutely have it within your control to decide what your subject matter is, choose wisely and then cultivate it so it becomes a passion. That is one of the things in

this business that is very much in your control, and it's important to get that right by both picking the right subject matter and then learning and coming to know it intimately. Not topically. Intimately. I think one of the reasons I really enjoy this job and enjoy my law firm is because I really do love the subject matter of what I do, and I have some ideas on how we can find that love for our practice area. You can actually make that happen, if you pick right and then cultivate right. Thinking about this always brings to mind that Stephen Stills song, "Love the One You're With." Great song.

"The third foundational principle is something that can save your law firm from destruction. This has to do with something nobody likes to talk about, turning back. Not 'giving up,' but turning back. That's how we should think of this, and sometimes, it's necessary and to not do so is to march straight into the jaws of death. Let me explain. You know when you're going full speed ahead in a business and you know you're on a mission and you're doing your thing, it's hard to turn back on the things that you've decided to do. It's the decision whether you're just going to go for broke and stick to the plan and go over the mountain no matter what's on the other side, no matter what the consequences. We'll see when we get there, and we're so capable we can deal with it as it comes. That's how I used to think of it. However, we need to more seriously address in our minds the question of 'when am I going to put the brakes on and pull back from something I decided, at one point, was a great idea?' But what happens when big, important and often expensive ideas aren't working, and how do we see it? The identification, acknowledgement, and retooling is really an art form, being able to do that, because to double back on yourself requires some level of humility as well as, you know, clear cognitive analysis of the situation and weighing things back and forth. I have some tangible and concrete ways that have helped me to do that over the years and which have really saved me from the failure of certain components of my business had I stuck to my original plan.

"The fourth foundational principle is one of my favorites, and I only started enjoying its benefits in the last couple years. This is the idea of deliberate premeditation. To frame this concept in a world that lawyers can readily understand, I like to think of it as the difference between acting in a premeditated way versus a second-degree crime of passion. Obviously, we're not dealing in crime here, and nobody's killing anybody, but

since we've already talked about 'death zones,' just for a moment think of it in that analogy. It's like when I'm doing my thing, whether it's on my case or in my business, I want to be like, you know, lying in wait with a plan ready to jump when I need to make moves or make decisions. Everything, even the contingencies, are thought out ahead of time, very premeditated going forward as opposed to this sort of like passionate and reactionary existence where you're reacting all the time and you're letting the outside world control you more than taking control of it yourself. This is the principle of premeditated deliberation. It should be in all we do. The effort to achieve it should permeate everything we do in our business every single day. If you're not acting with premeditated deliberation, or at least trying very hard to, you are putting yourself at risk, because you are letting yourself be governed like the sand on the beach is by the waves.

“And then lastly, I think this foundational principle is one of the greatest barriers of entry for lawyers thinking about starting a law firm, because, though I betcha most people don't consciously think of it this way, in order to start any business, a law firm in particular, and more in particular when you have no money to do it, you must absolutely 'put the cart before the horse.' And who in their right mind wants to do that? Do you know how hard it is to make the cart go when the horsie is behind it? Yep, we're the horses, and the cart is ahead of us. The secret? Control the cline. As in the incline and the decline. I mean you want to give the horse a fighting chance, right? This is not 'fake it 'till you make it.' That's different. We're not faking. We're doing something real, hard and almost impossible. And so I needed to think of that idea in a different way, and it always reminded me, visually, of a cart before a horse going up or down a hill, and doing what I could to make the incline a little less severe, because a cart before a horse on a steep hill is catastrophic. So, it's a matter of controlling the cline. And, yes, that's a real word. I felt that I had to fast forward to where I wanted to be in my mind. We will talk about some of the ways that we can manage this principle both in practice and in our thought processes.

Principle #1: Create Your Own Personal “Death Zone”

“Now, before I talk about myself, it's one of my favorite subjects, of course (laughter) I'd like to know a little bit about you just in the room today . . . we're all lawyers here, but

how many of us are law firm owners? (hands raise). How many people have thought about being a law firm owner? (hands raise). How many people have thought about it and decided they absolutely don't want to be a law firm owner? (one hand raises). Good job, you're the smart one (laughter). Well, when I was starting out a decade ago with my law firm, I didn't really think about it much. I subconsciously created a situation for myself where I had no choice but to succeed. Do or die. Back up against the Ocean. Especially where I was the sole breadwinner in my family of 5, which is something we don't see much these days, but which really puts the pressure on. This was my personal 'death zone,' and we all have them. Identify them early, tap into the energy and show the world what you can do. This is our rocket fuel.

"As I mentioned, I had had my first job for 14 years, when something just came over me all of a sudden, albeit it was probably a long, slow build up, that I just had to get out of it. It had just gone on too long. Of course, after that long, there's a long list of grievances probably that that that that that factored into that as can happen in long term business relationships. And I left my job that I had had for 14 years, where I was a named partner in that law firm. I had made a decision about a year before that to take the first job that came my way, which is just a terrible way to decide what new job you're going to take . . . nothing more than, 'I'll take the next one.' So the next one came along and swiftly realized it wasn't for me. And after three months, I quit that job too. I told my wife I was quitting because the way that it was stacking up and my three kids were getting older, there's no way I was going to be able to pay for college, and here I was still getting student loan bills for me and my wife. So that was the principal motivating factor of getting this law firm thing going. And when I earlier talked about this idea of a 'death zone,' and I know it sounds a little macabre, but, seriously, when, as a dad, when, when you're looking at your growing family and you have to, you have to take care of them, and you find yourself in a deep, dark financial hole, and you got this law degree, you have no choice but to succeed with it. In a way, I had everything and therefore nothing to lose – time to go for broke. Which in a strange way made it less stressful and frightening . . . but that in and of itself can be a danger too. Stress and fear get a bad rap in society. They can save us.

“Then all of a sudden, 10 years passes and, hooray, you did it. You see what you created and you look around and you have some really nice things in your business that you want to hold on to . . . to protect. Now you have something to lose, which presents a whole new dynamic, as your personal ‘death zone’ has faded. That means it’s time to find a new one. It’s like working out at the gym. It never ends. And so it's interesting, like you think that the beginning of the law firm must be the most anxiety ridden, stressful thing in the world. But for me, it was really a blast because I was already, well, my house was under water, I was in deep debt of all kinds – consumer, student loans, house, cars . . . groceries! I still keep in my top drawer the savings account statement that I had that day to remember, and it has a buck eighteen in there. I cashed in the 401K, but after taxes it was like eight hundred dollars. So I borrowed some money I couldn’t pay back and got to work. By New Year’s day I was able to pay my brothers-in-law back the \$14,000 I borrowed, which gave me the confidence shot I needed to keep going and not turn back. It was off to the races from there. I think it only happened because it had to. There wasn’t an option. I would not have taken it if there was. I had applied 3 times to every law firm in town by that point, and been rejected every single time. There was nowhere to go. I absolutely would not have made that jump unless I felt that there was something forcing me to do it.

“And so when I find myself in various difficult and challenging situations now, even if the circumstances around me aren't actually, you know, ‘death zone’ level anymore because I’ve got some things under control and I’m conducting myself in a thoughtful and premeditated way, I still find myself putting my mind back in that place, that zone. And it works really well in the times when you're struggling to manage the business on the one hand and the crazy practice on the other hand. And for me, on a daily basis, I seem to naturally channel that mentality that I have to get it done or else I'm going to lose everything. And it might not be the safest mindset, but it can work for you. In fact, it might be one of the reasons they say it's not necessarily a psychologically healthy job that we have (laughter). Necessary evils, they’re sometimes called. And nobody understands at all or cares other than us other lawyers. And so I've always felt that I'm really lucky to be in a group of people as lawyers, like here today, because you can look at them and know they understand what you're dealing with in these regards. It’s an

unspoken language. How do we stay alive in the ‘death zone?’ Well, let’s talk about bringing a little love into the death zone. Fight fire with fire, right?

Principle #2 – Loving It

I spoke earlier a bit about making sure you're trafficking in the subject matter that you love, which is an absolute necessity in order to survive in what I think is the hardest white-collar job there is – I mean does anyone have any more fight and flight from behind their computer screen and at their desk than us lawyers? And sometimes people roll their eyes at me when I tell them that. But I truly believe it and it is it is really about as backbreaking as a white-collar job can get, even to the point, for example, when you're just dragging all your stuff into court for trial and sweating through your clothes and like getting ready to cross-examine witnesses and and deal with judges, opposing counsel and lying witnesses . . . and maybe a client who can't pay. If you don't like the subject matter of what got you there in that hypothetical or any myriad of other hypos, I can't imagine being able to do it, do it, do it, do it well. So we gotta love this thing we do that is so unlovable.

“And the way that I found this love was in the subject matter. This passion for litigation and lawsuits, and business law and in particular corporate shareholder and fiduciary separations didn’t come naturally. It’s not like I was born with it and it was latently waiting to be triggered out of me. Well, maybe, you never really know what is going on in that regard, but, really, the secret to loving it can be as simple as starting with something you’re good at and then learning it and knowing it inside and out like, you know, the music that you love. So it’s echoing in your head and you can recognize patterns and predict outcomes and you actually know more about it than anyone in your immediate circles. You are an expert. You could teach it at a school. You understand its rhythms, meters and word sequences. You know, almost every, you know, not just the words and but also the notes to it, like Elton John says, “the words she knows, the tune she hums.” Love that song. Tiny Dancer. And I love what that line means. If you can get your practice area into that level of fluency and comfort and, and actually love for it in some strange way, I think that it creates a legitimate excitement, passion and confidence that is an important ingredient to finding success in running a law firm,

because, without it, without a passion for the subject matter, I think it would be very hard.

“At the beginning of my law firm, I pretty much did everything that came in the door. I proudly called myself a jack of all trades and a master of most, and I was really proud of it and truly believed that I could do anything. This ‘supreme confidence,’ as the late and great trial lawyer, Norman Lippitt called it in his book, *In The Trenches - Guerrilla Warfare and Other Trial Tactics* . . . it can be a double edged sword. And so you can start out in this mindset, but you ought not to stay that way. I, when I was working all alone, basically took anything that came in along with a retainer check. And so I got to learn a lot of what to do, and what to not do. But as I got older and maybe my mind wasn't as able to absorb new concepts and deal with them as adeptly in my practice, it really became more clear to me that I just I needed to get into my lane, so I could really hit the accelerator. But before then, I was all over the road, which triggers all manner of difficulties with clients. I think at some point you kind of have to abandon the whole like, idea of forever racing across a learning curve and embrace what you, what you've built in your wheelhouse because that's really what makes us really special as lawyers.

Principal #3 – Over The Mountain?

Okay. Going over the mountain, as a metaphor for abandoning initial plans, dreams and missions, and turning back, and doing something different so that we can stay alive. I don't like to think of this as ‘giving up,’ but rather, in terms of making a metaphorical decision of whether to ‘go over the mountain.’ The reason I think of this as going over a mountain comes from a very dramatic life experience when my friend Greg, sitting over here, and I were young, we went on a trip around the country and ended up at one point in Jackson Hole, Wyoming, and we went on a we went I want to call it mountain climbing, but it was more hiking up a big mountain in the middle of the summer and it was beautiful. And when we when we got to near the top of it, well, as some mountains are, when they're really high up above sea level, they're snow covered. Even in the summer. Okay, that was unplanned. And we lost the trail. And like we're from the Detroit area, city people, and, you know, we just don't really, we're not good at navigation in untrailed mountain terrain at high altitudes with raging rivers fed by the melting snow all around making the path very difficult. We had maps, but like if there's

no roads, it's kind of hard to read. We had no safety precautions, totally unprepared for this. And we got we got to this point in the mountain and we're standing there and we're deciding whether to push over the mountain top or go back down. This was a real 'death zone,' and looking back we were very close to death on a number of occasions over that three day period. And Greg and I have talked about it countless times over the last 25 years or so, and how and why we decided to turn back and go down. It was hard, because we had a dream of accomplishing something that we thought was really cool and felt like we were "giving up." And the decision was, in truth, pretty obvious because what we saw out there, and maybe it was a 'sign,' no definitely it was a 'sign,' an obvious one, maybe even a 'red flag,' well there was a carcass of some large animal like a moose or an elk that had been ripped apart and shredded into a bloody pulp. And this is grizzly bear country, too. Big time. People would get mauled by bears in those parts if they didn't have whistles, bells, side arms or mace. Which we had none of. So this is real. And and we could see from the trail of blood, guts and bones that it was dragged out along the snow and into the trees to be devoured. And it was fresh. And there's there's really nothing as stark in my mind's eye even to this day as that crimson blood staining the pristine snow we thought so beautiful and enticing at first, especially when you're out in the mountains with like no idea what to do and entirely unprepared. And in fact, Greg tells me he does boy scouts with his kids now, and he sits there listening to like, you know, everyone talking and learning about the 'be prepared' motto and all that goes along with that, and how you can die if you're not prepared, and he thinks about how incredibly unprepared we were, and how close to death we really were on that little adventure. But we really wanted this because over the mountain there, there were these awesome hot springs, there's all this fun wilderness stuff to do. And we could have just driven there . . . like I did a few winters ago with my daughter, Gracie . . . but we thought it'd be more fun to hike, to hike over the mountain at that moment. And I think he thought I was better at navigation than I really was. In any event, when we saw that blood, that sign, that red flag, we swallowed our pride, put our dream and vision aside, and decided to go back down the mountain. And ever since then, I've always, even though it probably saved my life, I've always kind of wondered if we could have made it, in that weird prideful sort of way. I keep a picture of the mountain on my desk and have started looking at it over the years in a different way, like that's the picture of the humility you have to exercise when you've, you've decided to do something and you've

got yourself in a situation you may need to change change courses, and give up on something you think was really cool. In other words, you need to protect yourself from yourself, and, in my case, my foolish pride.

“And this principal also I apply it in the context of my litigation practice, alternative planning, deliberately premeditated, which I’ll get to in a bit, I think of in terms of creating plans A, B, C and D, all of which in you’ve got on the shelf all premeditated ahead of time, so it’s easier to cut bait and shift gears if it’s necessary. Like plan A is awesome – everything’s going great and you’re amazed at how everything is falling into place. Plan B, you know, things are starting to go sideways. It’s okay. It’s cool, though, you shift directions. Plan C, though, we’re in a bit more trouble, going to have to focus some more energy and assets on the situation and reconfigure a lot. Plan D, we’re screwed and we have to bail. Pull up the stakes and move camp. It’s time to go back down the mountain. And as an example in my practice where that happened is after I formed my firm in the first year, I was getting some pretty big cases, and I needed lawyers. I went through several machinations to secure the legal talent needed to take on these cases and win them, culminating in a costly partnership separation.

The problem was, I didn’t have the money to hire anyone and do these big cases. My rule of thumb from the beginning was that I wasn’t going to hire somebody until I knew that I could go three months without making a dime and still pay that person. Because I think one of the greatest fears and challenges for business owners is payroll. Like talk about an overnight transformation of how you view ‘payroll’ when you’re an employee versus a business owner, takes a little adjustment in viewpoint. But the reason it’s such a real fear and something you need to avoid at all costs is because people look at you differently when you don’t make payroll. It’s not good. They start looking for jobs almost immediately. And so I had to get to that point before I could have the confidence to start hiring people, which is a whole other experience that I underestimated. And so, initially, I started using ‘of counsels,’ because I couldn’t afford employees. I think you could do a whole seminar on the of counsel relationship. It’s like the loosest business relationship known to the human race. And it’s really funny that it exists in the context of lawyers who, you know, people come to, to hire, to button things up and do contracts and things, paying attention to detail. Problem was that I found I was paying the Of Councils more

than I was taking home because I didn't account for the fact that I'm paying all the expenses of that. So once their take of the spoils were higher than mine and then the Of Counsels start getting their own work and they don't really want anything to do with your work anymore, I realized that plan needed to change fast. At least that's how I set it up. It was totally dysfunctional, so I abandoned that. And jumped into a 50-50 partnership with a dear friend.

“Got a law partner. Then I had to dissolve that. Let me talk about that a bit, because it represents the biggest professional change of direction I've experienced, and it was very difficult. A year after I started the firm, and I had enough money to split in half and still live, I tapped my good friend with whom I had worked at my first firm, for seven years. I was so excited. And he's awesome. I love him to this day. But we got to a point where I think there was a divergence in terms of our professional values and attitudes, not one not being better or worse than the other, just two different ones, with two people in two different places in life with different professional aims and aspirations. But it necessitated, you know, some foresight into seeing how this was going to play out. We decided to end the relationship. And it was a hard decision to make because I went into business with a friend, too. He is very good lawyer and incredibly smart. Hard things to find in this business. We were doing very well after 4 years and I didn't want to separate, because we were doing well and it would be very, very expensive to separate a business partnership. And so it so it had to end. So that that was an example on which I really had to draw back and change direction. I wanted to take it over the mountain, but it would have led to our demise.

“Then, I had a pleasant surprise as the next couple years unfolded. I found that there was a really nice spring forward in terms of production, as I reorganized the firm and realized potential that I had been previously overlooking. And so if you find yourself in these situations where you've got to go, you've got to backtrack, you've got to get rid of something you worked so hard for. You have to abandon a dream. It's hard. It's defeating and deflating. It can even be embarrassing. However, I think you can have a fair degree of confidence that the bounce back from that decision will be something you'll be smiling about. Like when the sun comes out after the clouds. I think of it as the 'trampoline effect.' And you say, my gosh, like it's something I didn't want to do. I didn't want to

address these issues with my partner, I didn't want to break up with him, didn't want to change the name of the law firm. I didn't want to give up on a dream that I actually had to have a lifetime, successful partnership where I wouldn't have to, you know, then break up and assume all of the equity responsibility and liability all by myself. Little old me. But no question I think it worked out for the best for both of us, which I am so thankful for because it is a very sad thing when the demise of business relationships end friendships. The feeling I had when we parted brought to mind the words of John Lennon when he said, "it seems that my partings are always not as nice as I'd like them to be." No, partings, or departings for that matter, are never as 'nice as we'd like them to be,' but they're necessary to our survival . . . a survival and existence that must evolve and become permeated with premeditated deliberation.

Principle #4: Premeditated Deliberation

"So first degree versus second degree. We all know what that means. And I know the analogy is a little weird because it involves like killing people and stuff, but premeditation as a foundational principle to my professional existence came to me when, after a lot of years when I was what you might call 'flying by the seat of my pants' and just getting into the mix, doing the best I could, but really not thinking much about what I was doing in a forward thinking way, whether it be with respect to finances, hiring, case selection and type and all of the things that we try and bring to our law firm to, to build it up and make it as permanent a fixture as possible so that you and your lawyers can reach their full unabridged potential so you can crush your opponents in the courtroom and maintain your competitive edge in the marketplace. It was really working well at the time, and that's what misled me. Success can be a very deceiving teacher. It made me feel like I was doing it correctly when I wasn't. Because what would happen, what would happen is it drains you. It burns you out. You tend to be totally reactive and surprised all the time. You eat fight or flight for breakfast, lunch and dinner. It can and will lead to burnout if you're not in control of your practice. I view the idea of control in the practice in the construct of first degree premeditation, and I remember that idea of first versus second degree murder being the first legal concept I truly readily grasped in law school, so I think it came to me by metaphorical analogy to be premeditated in my professional life, but in a good, constructive way – building my practice as opposed to it being built around me by uncontrollable circumstance which I

let into my life. My goal today, and not always achieved of course, but I try very hard to, and spend most of my time doing it in my day, is to control as much as I can on the docket and in the practice – while at the same time recognizing what you can't control – kind of like the 'Serenity Prayer' says. Everything in this arena is such a fine line, yet another reason less than 1% of lawyers even think about doing this. There's things that need to be controlled and things that need to be let go and even ignored at times because you just can't get anything done or delegated. But everything that we do in our business practice, I mean, there's instinct, of course, but there should be a lot of deliberate premeditation in what we're doing. And I would really emphasize doing that at the beginning of the law firm, really thinking about a plan on which way you want to go and how you're going to get there. What's the secret? Planning, planning and more planning, and changing plans when you have to go back down the mountain. People call me an 'overthinker' and I say hell yeah because if you don't overthink this business . . . well, I've seen what happens to 'underthinkers' and it ain't good. But we won't talk about them.

"Now, the way that my first business plan came into being was interesting. I knew how to do a business plan because when I was at Wayne State, I was going for a joint MBA and a law degree, and then I dropped the MBA and doubled up my law credits to get out of law school real fast when I found out our first child, Owen was on the way. I guess this was an early example of coming down the mountain. And so I only got like a couple of semesters of the MBA program, but I learned some useful things in there. In particular, how to do a business plan. So I was working at my second law job – yeah, the one I had for 90 days – and my boss, former Attorney General, Mike Cox, asks me to make a business plan for him. And he's he's he's a he's he's a good lawyer and a firm man. He he asked me to write a business plan for him, and I did. It didn't really go anywhere while we were working together. But what it did is it planted in my mind for the first time exactly what I wanted to do – and it wasn't working for a law firm that I didn't create. I had been let down by a lot of people, and, well, what do they say, 'if you want something done right, do it yourself.' I realized that I wrote what I had been subconsciously thinking of doing for the last several years as I stared out the window at my first job thinking how I could do it better. And by mapping it and looking at things like basic strengths, weaknesses, opportunities, costs, who you need in your in your

circles, the relevant market, things like that. Other things, like how are you going to promote yourself out in the marketplace? And in all of those things, even if you're deciding not to do some of them, it should be by deliberate premeditation that you're saying I'm not going to advertise, I'm not going to hire quite yet. How you're going to capitalize on strengths and strengthen weaknesses. Or here's this segment of the marketplace that I need to get into. And here's the people whom I know who are in some business circles and can show me around a little bit and maybe open a few doors, which is what I try to do for my young lawyers. And what's cool is that kind of deliberation is very, very profitable, if you're looking for a reason to start doing it. I mean it's good for a number of reasons, but it can help you build your proverbial 'war chests,' to further build your law firms. I think, though, and at least in my experience, anecdotally, I think what a lot of us do is something like get work, do it, count the money, pay the bills, count your money again, take what's left and go home. And that's fine. But that to me is more akin to how one might run a household. Not a business. A business is more than money in, money out, and save the rest. It must be mapped out, on paper and in your mind constantly, with alternative contingency plans A, B, C, D always available. Foster an environment for yourself and those around you where premeditated deliberation is valued in the highest order as something that you actually must do, because you don't want to be stuck in a perpetual second degree, crime of passion mindset. I used to brag that my day was like showing up at the beach and letting the waves roll over me. Not the way you want to exist. So how do we foster this world for ourselves? One of premeditated deliberation.

“First thing, and there's no substitute for it, is hiring *remarkable* people. Not normal people. Not people who are just hard working and smart. Remarkable. Set this as your standard. I had a client and he had a phrase on his arm, tattooed it on his arm. And it said 'Be Remarkable' right there on his arm in Old English lettering. And I asked him about it and he said it's not used much as a word in describing people, because remarkable is a hard thing to find in a person. It's unique. It's special. And it means that the person stands out in a special, important way, and you want to work only with those people, because they raise you up more than bring you down. They make you better. And he wanted to remind himself and everyone who saw his arm, I guess, that's how important it was. And he's right. And those are the kinds of people you want to

identify with and keep on your team. And if they're not remarkable, they've got to go. And his job, basically, is to fire people *en masse* at plants and factories around the country. So he knows.

I can tell you from experience, hard lessons, how important this is. I've kept a lot of non-remarkable people around over the years just because I didn't have the stomach to end it or had decided to settle. And you know what? When you drag it out the eventual termination of something like a relationship, it just ends in a more painful and expensive way when you do that. It's not a marriage. These relationships don't need to survive hell and high water for the good of society and children. I think that you should be incredibly selective about the people that you're working with and know you're in charge. And you should know also that the terminus of these things is usually the best thing for all parties. For example, I had a guy working for me years ago, and he turned out to be the first person I had to fire. And it's a terrible, terrible feeling. And, afterward, I heard he had gone into teaching at a grade school. In law, he was doing something he shouldn't have been doing. Square peg in round hole kind of thing. You have to identify that and eliminate it. He was really, really happy in his new job I heard. And when I thought about how unhappy he was in his office writing briefs that weren't up to snuff, I realized absolutely it was the best thing for both sides to end that relationship. The end of a relationship. It's hard. If you're going into business, though, plan on ending relationships, and even hurting people in the process. It's just sort of one of the gut-wrenching things that you have to do. I went into the business without ever intending to end any relationship. Again, less than 1%. A fantasy that everything's going to last forever.

“How can we create and foster ‘remarkable’? Well, you have to stack your team with remarkable people, for starters, and everyone needs to push and pull and complement each other like a real team does. Right now I have a really, really good team that is obviously great because of their own individual remarkable qualities. But we also make a real effort to work together as a group, in order to help ourselves achieve our potential, both collectively and individually. Working together as lawyers, it's not always easy, because the art of it is not really encouraged or taught in law school to work in groups as teams. Law tends to be quite an isolative experience preparing you for a career that

tends to be pretty lonely in terms of doing the work. So when I started the MBA program, the idea of the 'group project' really annoyed me, like I'd roll my eyes and be like, seriously, group, group, project? We're supposed to just be learning on our own, like over at the law school. But what I found is, I saw something there that we don't see in the law school. It's absolutely nonexistent in my view, unless you're on like maybe a trial team or a moot court. And it's teamwork, the effort to have true teamwork, the kind where people know each other and the rules of the game and the dynamics that go along with it so well that we don't even really have to talk about certain things we're doing because we know each other's moves, like on a basketball court, or in a symphony, intuitively moving in concert with one another. That's so important. In other words, start acting like a business person, not just a lawyer.

And I started thinking about this idea of the 'businessman' when my son Connor, who is at Hope College right now, he's a senior. My daughter's a sophomore there. And he, you could say he lacked direction academically speaking coming out of the pandemic and into college, and so picking a major has been a really delayed process. When he finally decided, he ended up picking business for his major. So what made you pick business, I ask? Like you're really artistic. You know, you write, play music and whatnot, why not English, art, or something like that? And he kind of facetiously just said to me, 'I want to be a businessman' and walked off (laughs). I'm like, What's a businessman? Like, just a businessman. What's that? You have to be more specific. You can't just be a man who does business. And so I started thinking a little bit about it, and really, in it's simplicity, it's genius. It was a bit of an epiphany and I'm like, you know what, there have been a lot of years where I was way less of a businessman and way more of a lawyer. And I thought it was awesome at the time because being a lawyer is so fun – and doing things like human resources and tax planning isn't. I was doing the fun stuff . . . getting out there. People see you. You get to accomplish things. You get to win. You get to lose. And you're in that game. It's fun. But I wasn't running my books. I wasn't paying attention to costs. I wasn't monitoring my employees. I wasn't mentoring. And I wasn't holding them to the high standards that I held myself to. I wasn't acting like a businessman.

“I decided to become more of that business man and let a little bit of the lawyer side, the craftsman side, go and give it to other people in the law firm. You want to be careful, I think, though to never totally give up the law side because, like I said, it’s a fine line and we’re craftspeople and practitioners and we also have to be there with our sleeves rolled up. And this is something that’s interesting, too. Like, if you go to a construction site, you don’t see the foremen with shovels digging. But if you go into a trial, you’re going to see the owner of the law firm and the newest associate and law clerk working with their sleeves rolled up trying to accomplish a common goal. So that’s a tough balancing act. And in this arena, it becomes very difficult to maintain a high level of premeditated deliberation, but you can do so by taking very seriously the business, and not just the work it’s doing.

“Rule number 1 in this regard, in terms of not undermining your premeditated deliberation: be as selective as can be on case selection. Your cases and these people that we invite into our lives can absolutely throw our minds for a loop. And when we’re stressing about cases we wish we didn’t have, or we’re not being paid what we think we should be paid. Or this person’s this way or that way or totally insane. The red flag for me is if it’s somebody calling and I don’t want to answer the phone, if I don’t want to answer the phone, that probably means I shouldn’t even be interacting with this person in any way, shape or form. And I’ve kind of followed that red flag a few times over the last two years and been so happy I did. Just, just ending the client relationship, even at the expense of losing out on fees. And that might sound a little cold and offensive in some way, particularly to clients. But that’s what makes us do our job better. We are better lawyers when we’re working for our fee in a deliberately premeditated way, as much as possible, and not spending our time fighting with a client or fighting against a bad set of facts in a case that shouldn’t even be around. Good case selection is so, so important. Without it, the entire enterprise can fail. It’s like putting unleaded in a diesel engine.

“I read a story when I first started my business about the person who founded Under Armour. I don’t know the person’s name, but one of the things that he did when he was getting started and working out of his basement. He’d answer the phone. He’d tell the person he’s transferring it, and he’d then take the call posing as another person. He’d

put, you know, make it seem like there's more of an organization. A real business. He'd put a vice president on his business card, so it looked like there was a president and more than just him, and just little things like that to look like he was already there . . . he was a real business. Now you've got to be careful not to be deceptive in this, but in your mind, I think you have to act like you have a real business. You are not just a lawyer and a law firm, just as the Under Armour guy was not just a clothes peddler. You are a fully functional, operating, organized, normal business. We're a business.

“Business people focus more on the bottom line, than the top line. You should too. The top line revenue gets things started, but the determination of whether it is all worth it, and whether you are doing it correctly, is what appears on the bottom line. What is your profit? Like I said earlier, the typical model is build the biggest book of business possible, pay your bills, and keep the rest. That’s wrong. It’s hitting for average, not runs, to use a baseball analogy, and only runs win games. The lawyer should hit for runs, not average. To win games. Not to look good with a big fat book of business. As lawyers we don’t recognize this; as a business person, we must keep it first and foremost in our minds.

“Another thing that's important to do in order to maintain the frame of mind that enables you to implement extreme deliberate premeditation in your practice is to be thoughtful in your well-being. And you hear a lot of it now, like work life balance, you know, all of these ideas about how important it is to strike some kind of balance, but, the problem is, most advice tends toward neglecting your professional existence in some way, which really doesn’t work when you’re playing in a ‘death zone’ and putting the cart before the horse and trying to love your subject matter while climbing mountains pretty much all the time. I just admit it . . . there is no work life balance when you own your own law firm, it totally consumes you and you need to manage it, control it, and compartmentalize it. It’s like wrestling with a dragon. At least that’s how it is for me, and I can’t imagine pulling this off otherwise. I don’t think I’m good enough to do it without being totally consumed. But we can do, what I do, to maintain sanity is establish achievable goals for how you can treat your mind and body, and there are This is obviously unique to each person, and the list is long. But there are some big things that are undeniably happiness crushers and you need to assess them. First, pay attention to

intoxication. I find a lot of lawyers, myself included, casually numb the stress and the pain of the day with a few drinks and then it builds up over time. It almost got the best of me a few years ago and I had to reign it in. And I realized it was not because of the job. It was all because of me and what I failed to control it and let it control me. And that is something that I think when I raised that and really improved my ability to control my day and control the people that were coming around me.

I also believe you have to plan your 'escapes' as a lawyer. I think for a good ten or fifteen years, I had my head down and didn't do anything in this regard, and I was proud of the fact that I worked harder than anybody I ever knew. Completely dedicated to becoming the best lawyer I could be, toward a good end, of course in providing for my family. But at the same time, you can really fry your brain if you don't step back from the job, even if it's just by reading Emily Dickinson on a Saturday morning. And the problem is if you really love the job like I do, it's really easy just to completely immerse yourself in it to the exclusion of everything else around you. But you don't always have to not be doing that all the time. You have to do it sometimes, but you need to deliberately do things good for you that aren't work related, and not for other people either. For you. And when you do, you come back super strong and become a better servant to those in your personal and professional life. I give a lot of days off time off at my firm, and I do it to force what I didn't have when I was young and my boss didn't exactly give hall passes. You are going to be a better person and law firm owner if you go take your time for yourself, because, contrary to popular opinion, you are the most important person in your life, and if you don't view it that way, there's a high probability that you're going to really screw things up around you. Take this time for yourself. Don't be scared. And now by putting it on my schedule, I'm actually doing it too. My wife will be like, 'wow you're home today, you never did this when you were young.' I'll tell her, the firm has given us a day off. Like, it almost has to be that mechanical in my mind. Like my "boss" gave me a day off. Or else I have to be there because that's how I was programmed out of law school and into the proverbial asylum where I was raised. At my first job, I worked for a Honigman lawyer. And I mean, you probably heard about that firm. I mean, a good year there is 2500 hours and some people up to 3000 billable hours a year. And so, you know, it's something to think about. Now these 'escapes' don't mean that you're not

consumed by your business. But you're managing it. You're taking control of it through conscious premeditated deliberation.

“As your business grows, so also will your magnetism. Pay attention to what's going on around you, because business owners become quite attractive to those folks who perceive wealth that may or may not exist and want a piece of it. Someone told me when I started my firm that you should assume the people around you think you're 3-4 times as wealthy as you really are, and why do I tell you that? If you are not deliberately controlling who comes in and out of your business sphere, your business can quick become a magnet for trouble, and not the good kind, as mine did several years ago. I absolutely had no idea that could even happen while I was minding my own business – or not minding it, for that matter – or even that it was happening. I didn't see it coming. I didn't know that once people perceived you as owning something that could put money in their pockets, that they'll all start coming around like flies on, well, you know what I was going to say. And whether it's vendors, clients, people for favors, other lawyers, like the number of favors that I've done for other lawyers that have gotten me in trouble and put me down into like plan C or plan D because they dumped some garbage on me that they were trying to get away from. And I took it because I wanted a future referral – ‘loss leaders’ they call them. Don't do them unless you absolutely have to. That's a high-risk game that might be a necessary evil when you're building your practice. But again, don't do those things without deliberate premeditation and recognize that they can be very, very risky.

Foundational Principal # 5: The Cart Before The Horse – Controlling Cline

How much time do I have left here? About ten minutes. All right, cool. I'll go through this last point real quick. As I kind of touched on it and then what I'd like to do is just ask you if you got any questions and we can chat about things, but it's the concept of the cart before the horse mindset. And so in theory, I think it's a fun thing to think of. Picture it. It makes me laugh. Like, how absurd is it? The cart before the horse, you know, it just won't go anywhere. And the horse is trying to push the cart around. And I just I always felt that that my vision of that was how I felt in getting my business started. And I never felt that I had the horse before the cart until year 7 or 8 or so. Here's some examples of where I put the cart before the horse: spending money you

don't have. I mean, unless you're coming from some big law firm and a bunch of rich people join together and make a law firm, you just you have to start from scratch. And that means you have to make expenditures and that you don't have the money to pay back. And you got to weigh the risk. Borrow money you can't pay back. You have to do it. I took big cases before I had the people to do them and was in a very serious and precarious financial position, but I needed the big cases to get more and be known as somebody who can take those kinds of cases. Yeah. I signed an expensive lease with no money. Here's one, hiring people with no knowledge of how to manage them. And looking back and now I've been doing it ten years and I'm pretty good at it. And I think I'm also pretty good at it because I got a team of people that are all kind of like working together and totally crushing cases, plaintiff side and defense side. But when I think about how I jumped into that without even ever having read a book on the topic, never having really managed anybody other than my little kids, it's kind of scary. And it sort of brings a vision to my mind of jumping off of a quarry ledge into cold, dark water. And you don't know the depth down there. It's just it's a really scary thing. Looking back on that I did it kind of like going up on that mountain. But looking forward, you have to say, I'm going to do it in a bit of a different way. And if you're sitting here listening and thinking that I'm in the midst of doing some of these things or I have to do some of these things. It's one of the things that makes you special. If you're doing it, it makes you *remarkable* because this is why other people don't do this. 1 percent. And the reason that that's the case is because I think these are the kinds of things that you have to deal with. And they're the kinds of things that are really, really difficult. And then that kind of brings me to my final concept, which is, and it dovetails on that, which is this concept of risk tolerance.

“I always I hear people brag about their risk tolerance. Comment on people's risk tolerance. I got to thinking about it recently, and I concluded that my risk tolerance is very low. And then I started thinking about the rest of the world and the people I know. And I'm like, actually, most people's risk tolerance is very low because as an organism on this planet, our base goal is just to survive. Thus, an organism that has as its principal goal survival isn't going to be taking huge risks unless there's huge benefits on the other side. But what I saw is that in order to do this business, you actually just have to simply shatter this ceiling of your low risk tolerance. You have to completely

disregard your comfortable level of risk because that's the place that puts you in a comfortable position, which is the antithesis to the death zone, which we were talking about earlier, and which is what drives us as human organisms to succeed at the highest, most intellectual and complicated levels of thought. In other words, 'risk tolerance' just almost needs to become an irrelevancy in your gut. And that's where the idea of 'risk tolerance' seems to lie. And it needs to move up into your head, out of your gut. And it needs to be what I learned when I was in the MBA program. It's the simplest of concepts and we even talk about it all the time. But to really live cost benefit in decision making, that's how you can make the best decisions possible because of the economics of it, and it's how you can control the incline and decline while you're putting the cart before the horse. Deliberatively weighing costs versus benefits, not what feels good in your gut, not what is in your risk tolerance level, but what are the benefits, what are the risks, do the benefits justify the risk and why? Talk these issues out, you get much further than just thinking about them. Just like when you're resolving a case, the case usually resolves when people get to a sort of a place of financial clarity and they see the cost and the benefits of their decisions more clearly. And so I kind of think of like, get the risk analysis up into the head out of the gut and into the brain in order to level the playing field for yourself. So that's that's all I have. I really appreciate you having me here today. If anybody's got any thoughts or questions, I'm happy to happy to share.

Audience Member: What are your thoughts on managing people?

“Okay. I think that the most important change for me was when I started reading books on personality types and not like the sort of popular science ones that are for self-help, which is all popular in popular culture, which is I guess what makes popular culture, but more of like a layperson, scientific analysis of what types of personalities there are in the world and how we can identify them. Types of personality is key. Because when you're able to peg someone that way, then you know better how to motivate the person, their needs, how to deal with them when there's stress, how not to take something personally maybe that they're dishing out because it's just a byproduct of who they are, whether they're maybe a more creative type or a more, you know, sensitive type or perhaps even conflict oriented. All of that matters. You can have high-conflict people

that you have to deal with, and they're difficult, but they're not all bad, and you can steer them right and utilize them in your business endeavors. And when you learn to deal with them, you can find ways to work with them. And what I felt and I'm certainly no expert in it, but the best book I read, it's called *Surrounded by Idiots*. The title doesn't mean that we're actually surrounded by idiots, but our predisposition to think everyone sees the world through the same eyes as our own colors our interpretation of others to think that they are well, 'idiots', if they don't talk, walk and think like us. Once we break that vision, and realize they're just different, and actually fall within certain personality categories, it really helps the endeavor. Put another way, it's the idea that we view the whole world like we view ourselves, and it gets us into all kinds of trouble. It's hard to step outside of ourselves truly, even though we say we do and we know we should. Until I started thinking like this, I felt that everybody was like me, and, ergo, what's wrong with them – after all we're all human, right? – and that all I had to do was deal with them communicate with them how I want it. And what I realized is that is not a good way to do it. It's like I'm very different from a lot of people and they're very different from me. And when you have a sensitivity as to who the person actually is, I find that it makes your communications more effective with them. And you can make deliberate decisions on how you're going to communicate with them to get everybody to the place where they want to be. So that put me really, really far ahead from where I started. And when I started thinking about things in that regard, and also involving other people whom I trust and respect in this thought process, I saw vast improvements.

Before I wrap things up, I did want to mention that in 2022, I produced a symposium for the Privately Held Businesses Forum, Business Law Section and the Michigan State Bar focusing solely on “The Business of the Law Firm.” The resources and presentations for that can be found in the symposium archives, www.bizsymposium.com.² We do this symposium every year on a different topic, and this year it will be on the art of mediation and negotiation, and it's going to be February 13, 2025 at the Gem Theatre in downtown Detroit. It's going to be a great event, and I'll send Steve the information so he can circulate it. You can attend virtually or in person. Thank you for having me. I'll look forward to reporting back after the next 10 years, or, perhaps, maybe before. I'd love to come back.

² Specific link: <https://bizsymposium.com/4th-annual-symposium/>



Mark's daughter, Grace, mailing the Articles of Incorporation for his new law firm ten years ago, on April 20, 2015