

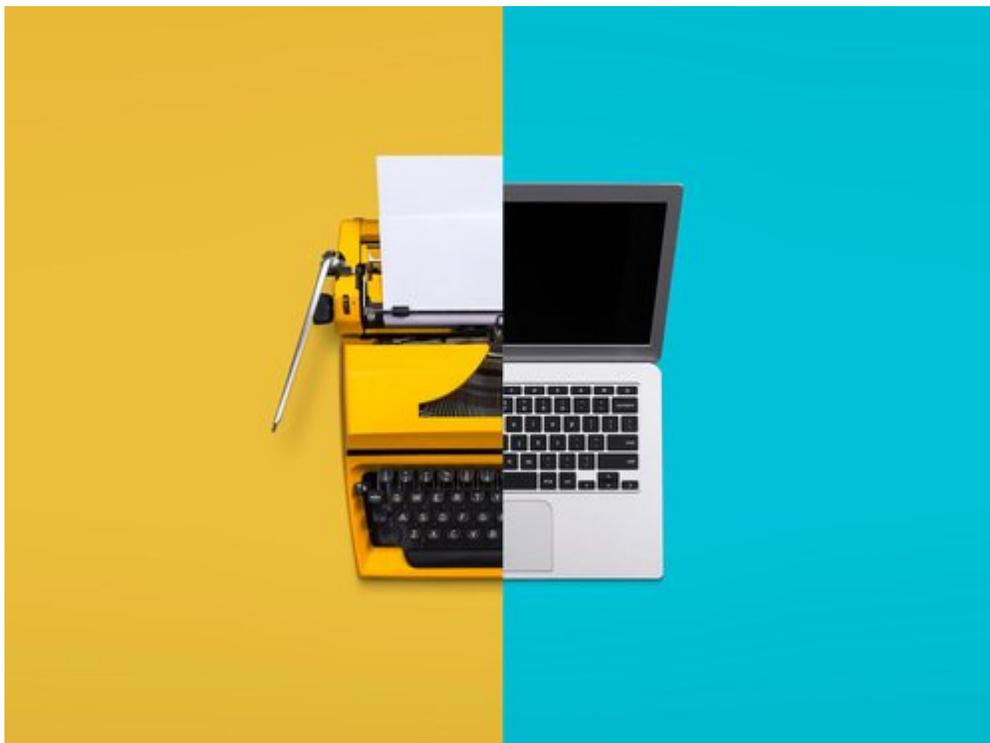
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Back in the Day: Reflections at Mid-career

Most of the changes in the practice of law are irreversible. But there are some that should be reversed, and, at the risk of appearing melancholic, I suggest here a few.

By **Marc Garfinkle** | November 16, 2020



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Mordecai Rochlin, a partner at Paul, Weiss, Rifkind in New York, succumbed to COVID-19 recently, just six weeks shy of his 108th birthday. He had been practicing law from 1937 until almost the very end. He began his career during FDR's first term and practiced through the administrations of Truman, Eisenhower, Kennedy, Johnson, Nixon, Ford, Carter, Reagan, Bush 1, Clinton, Bush 2, Obama and Trump. This is staggering and gives pause to reflect on some aspects of human longevity and on the changes that have occurred in every realm of life. One such realm, the one we peek at here, is the practice of law. Some of the changes have crept slowly down the chimney while others crashed, unannounced, through the front door. Lawyers with longevity have witnessed both subtle and radical transformation of every facet of practice.

In 1982, with four years of out-of-state practice under my belt, I returned to my native New Jersey and found employment briefly at Bendit, Weinstock, the venerable Essex County firm then known as Bendit, Weinstock and Sharbaugh. The firm was in its 25th year—not quite as old as I—and the three partners had each been a lawyer for over a quarter of a century. That seemed a colossal accomplishment.

These days, as I ungrudgingly wear the mantle of an old-timer, with technology constantly reminding me of a generation gap, I contemplate the ways in which lawyering has been transformed during my watch. Imagine the changes over 80 years! Although Mordie Rochlin launched his career before the Second World War had begun, and mine began after the war in Vietnam had ended, there is little doubt that more has changed, and more rapidly, in the past 40 years than in the 40 prior. The rate of change has always been accelerating, and technology propels it ever faster.

When my students at Seton Hall Law watch me fumble with our remote learning tools or distribute the semester's syllabus by hand, because it is less frustrating than posting it on our online Blackboard, I know they are thinking, "Hey, Boomer!" So am I. As they are suppressing their smiles, I am thinking how much easier the practice seemed before all the labor-savers came to be. My students are usually incredulous to learn that, when I passed the bar, no one had computers (and certainly not personal ones), and fax machines were confined to the military. I don't even try to explain what Gregg shorthand is, and how different it was to dictate letters to Marge or Brian than to Siri or Cortana. Attorney advertising referred to your business card, and legal research required time, patience and ingenuity. Younger lawyers can't conceive of paging through half a law library for a case on point and then Shepardizing it to avoid error and embarrassment.

Most of the changes in the practice of law are irreversible. We will never go back to Gregg or to Shepard or to mimeographed copies. We will never again need a bona fide office or be discouraged from advertising our services. Lawyers will never use floppy disks or Rolodexes again. But there are other changes and trends in the practice that should be reversed, and, at the risk of appearing melancholic, I suggest here a few.

Back in the day, as we say, if your client sought other counsel, you would get a phone call from the new lawyer advising that you were being replaced, that a letter was coming to that effect, and inquiring whether the client still owed you money. If the lawyer had reviewed the file and determined you had done good work, the new lawyer might have so advised the client and suggested that (s)he may be better off not changing horses in mid-stream. Today, when your client changes counsel, you get a rude three-sentence email advising of the change and warning you of ethics consequences if you delay turning over the file.

It was friendlier, then. Collegial. Back in the day, lawyers didn't have competitors; we had colleagues. A colleague was another attorney, even in the same practice area, whom we knew and generally liked. We could commiserate and celebrate together. Law was not an organized competition, but a league of professionals with much in common. The communality of our experience and our concerns was the powerful glue that bound us together. Today, we go to lengths to distinguish ourselves from others in our field. We distance ourselves socially from our "competitors" as if the world were not big enough for us all. Behavior which used to be common, such as common decency and common courtesy, are increasingly hard to find. But, unlike the Mag-card typewriters and cross-town couriers, decency and professional courtesy have a chance to make a comeback. All they need is us.

How much better it is to stand in court or sit at a conference table among friends, and not competitors—knowing that you are part of a community that would share with you information and opportunities, cover for you in your absence, keep their paws off your clients, and speak well of you behind your back. How sweet to get a call from an adversary after a hard-fought case, knowing that the shoe might change feet in the next go-round. We can recreate that. We can change how we treat each other. We can start on a one-to-one basis. Then we can join lawyers' groups and professional organizations. We can take marketing back to the "micro" level. With no effort, we can offer the respect and courtesy we would want for ourselves without affecting our bottom line. We can and we should.

The world and the practice of law have changed fundamentally over the decades. Human nature has not. We, alone, can determine our trajectory in the third decade of the third millennium. Think about it. I would bet that Mordie Rochlin did.

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