

BARRISTER

NOVEMBER/DECEMBER 1986

SOME TRADITIONAL THOUGHTS ON PROFESSIONAL DEVELOPMENT

The Honorable Stephen H. Anderson

At the June 12, 1986, Brown Bag Luncheon for the Young Lawyers Section, Utah State Bar, the Honorable Stephen H. Anderson of the Tenth Circuit Court of Appeals discussed techniques for developing clients. According to Judge Anderson, client development is fairly obvious. As Judge Anderson stated, talking about client development is a lot like the definition of sociology, which is teaching you something you already know in a way you can't understand. Nevertheless, Judge Anderson consented to discuss the matter. A summary of that presentation, as edited for the Barrister, is set forth below.

I recall the words of a certain attorney who told me he has two rules for success: first--find where the money is; and second--get it. With those rules in my mind, he thought I would be all right.

I am sure everybody feels pressure to go out and land good clients. The pressures you are feeling right now are no different from pressures that have always been associated with law practice. Therefore, the first thing you must do is place yourself in perspective. Some brief stories about Chief Justices of the United States Supreme Court are illustrative and should accomplish that task.

John Jay Forms a Partnership

In the middle 1700's, when John Jay, our first Chief Justice, was on his way up, there were so many lawyers in Manhattan that the law firms got together and made a pact to limit the number of lawyers. (Antitrust laws were not developed until John D. Rockefeller, with his clever lawyer, came along.) At that time, law could only be studied in law firms. Faced with this obstacle, Jay decided to study in England. However, the law firms partially relented and allowed a few apprentices -- if they paid \$1,000 for the privilege of working in the firm for four years with no pay. As a result, Jay remained in the United States for his law studies.

When Jay was admitted to the Bar in Manhattan, even though he came from a family of influence and had wealth, he had no clients. And, at the time, lawyers generally did not practice in large groups. Initially, then, Jay joined with a fellow named Livingston to practice law. If one of them got a little piece of business, they would both work on it to develop themselves. They did that until they

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Paul M. Durham

PRESIDENT'S REPORT

I was amazed to learn at the last Utah State Bar Commission meeting that, by the end of this year, the Utah State Bar Lawyer Referral Service will have handled approximately 18,000 referrals. I was even more surprised to learn that there were so few attorneys participating in this excellent program (only 519 attorneys out of a total of approximately 4,600). Some quick math reveals that this is approximately 35 referrals per year per attorney participating in the program. Of course, these averages will vary according to area of practice. The Utah State Bar maintains a list of the number of referrals received each year in some 43 practice areas so one can see which areas of law receive more significant numbers of referrals.

You have probably already received materials from the Utah State Bar office regarding certain changes in the Lawyer Referral Service in order to improve the quality of the program and to make it more self-sustaining. I encourage you to sign up to participate in the Lawyer Referral Service. This program is a great way to make legal services available to the public while helping to build your practice.

INSIDE: 1986 LAWYERS COMPENSATION SURVEY and THE CRIMINAL PROSECUTION AND CAPITAL PUNISHMENT OF ANIMALS

CALENDAR OF EVENTS
(1987)

January

- 7 YLS Executive Council Meeting
(noon, Utah State Bar Office)
- 22 Brown Bag Lunch (Young
Lawyers' Skit)

February

- 4 YLS Executive Council Meeting
(noon, Utah State Bar Office)
- 12-14 ABA Mid-Year Meeting in New
Orleans, Louisiana
- 13 *Barrister* Contribution Deadline

March

- 4 YLS Executive Council Meeting
(noon, Utah State Bar Office)
- 5-7 Utah State Bar Mid-Year Meeting
in St. George, Utah

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developed enough business to split up and practice by themselves as most lawyers did at the time. Joint effort, then, is one method for effectively developing clients and legal skills.

**Oliver Ellsworth's
Persistence**

Another Chief Justice worth noting here was Oliver Ellsworth. After he was rusticated from ministerial college, much to his father's dismay, for "hallooing through the yard past vespers," he decided he was going to be a lawyer. His father virtually disinherited him, and people talked about him. Nonetheless, though he had little formal schooling, Ellsworth studied the law.

When Ellsworth passed the bar in Connecticut, he had no clients for at least a year. He made his living by chopping wood and by renting a farm from his father-in-law. In his first three years of practice he made 9 pounds. During that time he developed his legal knowledge by concentrating on one subject at a time to the exclusion of all others "with an attention so undivided that if a cannon were fired in my ears I would still cling to my subject." He trained himself so thoroughly in that method that in after life he became famous for his fits of absent-mindedness. He would stand for hours looking out a window or would come to the table and eat a meal without saying a word. Soon his neighbors began to notice his learning, and his devotion to the law. It led to his being retained in a celebrated case, in which his legal talent was so manifest that it made his reputation. From then on his rise was steady. He soon was handling as many as 1,000 to 1,500 cases at one time. Persistence, dedication and learning, then, provide opportunity. That opportunity may well include a case which will display your talent, creating a demand for your services.

Marshall's Personality

John Marshall also did not have a client for at least a year after he passed the bar. He went into law because he did not

know what else to do. Marshall was known as a real estate speculator and a scoundrel by his enemies, the Jeffersonians. He was not of colonial aristocracy, he was the son of a real estate speculator and farmer. Marshall came out of the back woods into Richmond, Virginia, at a time when Richmond was frequented by the richest minds of the times, e.g., George Washington, Jefferson, Madison, Patrick Henry, and other great men. Obviously, Marshall was in a very rich environment.

But how did Marshall get his start? He got his start with the back woods folks among the legislature. Because of his background, Marshall could carry on, tell jokes, drink, engage in sports and sing songs with the best of them. As a result, within two weeks, he was so popular that he was elected to the Council of State. Notwithstanding his apparent political success, Marshall was very concerned about professional success, yielding a good income. While striving for financial and personal success in his legal practice, Marshall remained very much himself. His personal popularity brought him clients, even though his legal training was deficient and his early scholarship indifferent. As a result, his practice flourished in Richmond. Personality, then -- people skills -- can play a key role in successful client development.

**Technical Skill--
Roger Brooke Taney**

After Marshall, there is Roger Brooke Taney (pronounced "Tawny"). As you may remember, Taney is infamous for his authorship of the Dred Scott decision. He was a scholarly, learned individual, with a considerable education, but physically just the opposite of Marshall. He was sallow and delicate, with a shy, retiring personality. He studied law for three years under Judge Jeremiah Chase, which resulted in a legal training different from the usual apprenticeship drafting pleadings. He read and obtained a thorough knowledge of all the classic texts of the common law, and all the English books on special pleading. Since pleading then flourished in all its intricacies, nothing raised a lawyer higher in the eyes of his brethren than a reputation as a special pleader. The intimacy which

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Taney established with the theory of traverses, rejoinders and surrebutters was the basis of the reputation which he established as an expert in procedure, and a chief source of business. Much of that business was referred from other lawyers due to Taney's technical expertise.

Finding and Filling a Need-- Salmon Portland Chase

Salmon Portland Chase, Chief Justice after Taney, also had no personality. However, his ego and self-confidence were great. Chase truly believed he was born to govern. He truly believed that. (Thank goodness, there are no present-day lawyers who . . .) There was no shadow of doubt in Salmon's mind that he was better than anybody. He was admitted to the bar in Washington, D.C. even though Judge Cranch, who admitted him, felt that Chase's mind was small, his accomplishments inconspicuous, and his prospects vaporous. In admitting Salmon to the bar, the judge said, "I'll only admit you to the bar if you will promise to practice somewhere else," which Salmon did.

Salmon set up practice in Cincinnati, but he had a difficult time getting legal business. He realized that he had two shortcomings at the time. First, he didn't know much law; and second, nobody much liked him, because he didn't have a winning personality. So he thought, "What can I do in order to establish myself here and acquire some legal knowledge." The answer was *Chase's Statutes*, the first compiled and annotated edition of the laws of the State of Ohio.

Salmon recognized that nobody had ever indexed, organized, or done anything at all to make any sense out of the statutes in Ohio. Therefore, he proceeded to organize and annotate them. In the process he gained a profound knowledge of both the statutes and judicial constructions of them. Thereby, Salmon became respected, and well-known. His name rested, indispensable, on everybody's shelf. His success in the Bar was assured. His secret: find a need and fill it.

Intelligence, Industry and Integrity -- Charles Evans Hughes

Another path was taken by Charles Evans Hughes. Hughes went to college when he was 16. However, he was so young looking when he got out that nobody would hire him. Hughes wanted to teach law, but appeared to be a pupil. Finally, though, he got a job in a New York law firm, but was so timid and shy that he never met any clients. He was the man who got out memoranda and prepared briefs. At the law firm, though, he became known as very smart and incorruptibly honest. Over the years his reputation for intellect and integrity slowly but steadily expanded in the professional community. When he was forty years old, he was widely recommended as the lawyer whose credentials for integrity and brilliance qualified him for appointment by the state legislature to investigate the politically powerful utilities. His success in doing so established him as a public figure. He worked extremely hard, generally from 8 o'clock in the morning to 11 o'clock at night, seven days a week. Hughes later wrote in his memoirs, "Life consists of nothing but work, and more work, and finally more work." That was virtually his epitaph. Thus, intellect and integrity, coupled with hard work, will build a special reputation which can yield its own type of success.

Local Talent

Now, let's come a little closer to home. Paul Ray was a preeminent lawyer in Salt Lake City. He would catch the 8 o'clock trolley to work in the morning, the 11 o'clock trolley home at night. Paul would work five days a week, Monday through Friday, and on Saturday for at least six hours. Sunday, unless he had a trial, generally would be devoted to his family. That was his professional career. His secret though, was not just a lot of hours at work. He loved and savored the law. He was devoted to the client and that client's case. He battled in court but always respected the ethics and standards of the profession. Hard work and "professionalism" made for a successful law career, with numerous clients.

Practice Makes Perfect

Another successful attorney in town was on his school's law review. His academic credentials were outstanding. He was at the attorney general's office, after which he went downtown to get work. However, nobody would give him a job in downtown Salt Lake City. There were few jobs for lawyers. They were all taken up. So, he opened up all by himself with no clients. Undaunted, he would sit in there all alone, phone not ringing, ready.

Nonetheless, he did not waste time. He would draft articles of incorporation and by-laws for make believe clients and, then, pretend a make believe client would arrive. He would advise the make believe client and set up files, so that when a client came in he would know what to do; he wouldn't have to start from the beginning. Because nobody knew him, he started to haunt the chambers of the judges, working for free representing indigents. Just assign me to a case, he would say, any case. He took on anything that came by. Finally, with such diligence, drive and patience, he compelled a place for himself in the community and developed stable client relationships.

Where Do Clients Come From?

I trust that the point of these examples is self-explanatory. Where will your clients come from? If you are in a big firm, the first source of your clients is legacies. They are firm clients. And the best way to develop business is to develop the client or piece of business that comes to you by assignment in the firm. That is golden rule number one. The first and best source of business is with an existing client. Golden rule number two: If you are so far down the ladder in a firm that you do not have face to face contact with the client, who is your client? Isn't it the referring lawyer in the firm who gave you the business? Doesn't that lawyer, in effect, take on the role of the client? How do you please your "client"? You please your client by prompt, precise, dedicated work that the client does not have to do over again. What happens when you satisfy a client, including a referring lawyer inside a firm on a piece of

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firm, on a piece of business? You get more assignments, more work. If you overbill on your assignment, if it is too wordy without a conclusion, if it is sloppily done, if you are indifferent, disinterested, or just plain wrong, will you get more work from your "client"? You can look around your large law firms and actually almost see, and if not see, sense, the flow of work to certain lawyers. Why? What secret do they have? The secret that they have is that they give prompt, courteous, accurate, committed, and reasonably economical service. "Clients" come to the attorney who consistently delivers in that fashion. Client first; money second.

Start With Present Clients, Then Expand Your Contacts, Reputation

So, your first source of business is current clients. If you have no face to face contact with the paying client, your client is the referring attorney. The second source of business is probably going to be other lawyers whom you impress. How do you meet other lawyers? Should you be involved in Bar activities or should you go home at 5 o'clock or 6 o'clock after you have your billables? Should you become involved in politics? Should you be involved in community activities? When you are discharging community services, what do you do? You meet people, you impress people, you show them that you have some fire, some commitment, some creativity, some follow through, some organizational ability, maybe a good personality. And when they think of someone to whom to refer certain work, they think of that person.

What is another source of business? The opposition. The best client I ever received on my own was on the other side of the table. The client watched me through a very complex transaction, which I structured from our side and then, because the client's counsel was not as well prepared, I structured it for the other side, too. After the transaction was completed and the new business under way, the client called to arrange lunch. At lunch, they said they wanted me as their corporate lawyer. The

next golden rules, then: expand your contacts; make your professional work so good it attracts referrals and the attention of those who see you in action.

Specialization

In addition, specialization means something in successfully developing clients. Why do people hire you, or any lawyer? Because you know something they don't. Why do most of us go to a lawnmower repair shop for mower repairs? Because they know something we don't. Why do we go to a brain surgeon, instead of a title company, for medical work on the head? Because you don't want the title company working on your head. (It does enough of that already). Specialization is going to mean more and more in the bar. Of course, if you over-specialize you run the risk of putting yourself in a corner. Therefore, part of your time should be spent developing additional expertise in peripheral areas, even if you must study on your own "non-billable" time. Then, when other lawyers have a question, they will come to you, because they know you have some technical ability in the area. As that skill becomes more widely known, clients will begin to call upon it.

Advertising

Advertising, for a very small group, is a method for developing clients. We now have 4,000 plus lawyers in the Utah State Bar. If 4,000 lawyers advertised, we would need a truck to bring the yellow pages. There wouldn't be enough time on television. Even if 300 or even much less advertised, lawyers would appear to the public and the consumer as a confusing mass, and they still would not know where to go. There is also a danger here of unwarranted claims and misleading ads. That danger will escalate as the number of lawyers advertising escalates. Pamphlets have proven not to be very successful. Newsletters, perhaps, but they are expensive to prepare. I still opt for the more traditional ways described above.

Other Considerations

To develop a corporate or business client, the client must know you care. You should also know something about their business. With personal injury

clients, there are other considerations. In those situations, knowing something of the client's personal anxieties and problems as well as working hard--really doing an honest day's work for an honest day's pay and not overbilling--is important. And, *communicate with your client!* The same considerations apply to the corporate and business law practice.

What else? What about dress? You've got to dress for your part as a professional, keeping in mind your particular client audience. The same is true of language and personal conduct. Also, develop peripheral vision, *i.e.*, if you are really interested in clients, you might endear them to you by developing some other part of their business. Remember golden rule number one: the best source of business is an existing client. Finally, work habits are also important. As one of my colleagues told me, "If an employer has to tell you what you have to do to please him, the battle is probably already lost."

What Price Will You Pay?

Finally, we must consider what price you are willing to pay. Do you want to be home at 5 o'clock every night to be with your family? Do you want to be very, very active in your church, which may or may not yield clients, but certainly will yield personal satisfaction? Do you want to think up something different that will set you apart, and then pay the price?

Client development, then, comes down to what price you are willing to pay. Give your clients some free work sometimes. Do some free work for your neighbors sometime. Cast some bread on the waters. Above all, learn and know the law. Dispense excellent legal service.

Patience and Quality

There is one last golden rule. This golden rule is patience. You will not be rich and famous tomorrow unless you marry very well, or get the terrific case which is like a random strike of lightning. You are in it for the long haul. Nevertheless, don't get discouraged. The usual course for any profession is a long haul of quality. Patience, long haul, quality. The law is a profession, not a trade. Be a true professional and you will make a living. Law as a business can be frustrating. Law as a profession can be

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satisfying.

I will close by relating the story of the fellow who drove into a service station in Ireland, pulled up to the pump and said, "Fill me up with petrol, mate." The guy says, "We don't have any petrol." "Well give me some oil, fill me up with oil." "We don't have any oil, either." "You don't have petrol; you don't have any oil? What kind of service station is this, mate?" He says, "This isn't a service station at all. It's a front for the IRA." So the fellow says, "Oh well, then, blow up me tires."

In other words be optimistic. Seize your opportunities, and good luck to you!

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WORTH NOTING

POST-LAW SCHOOL TRAINING REQUIREMENTS CONSIDERED BY BLUE RIBBON BAR COMMITTEE

John A. Adams

In July of 1985, the Utah State Bar Commission created a blue ribbon panel with United States District Judge J. Thomas Greene as chairman to examine post-law school education and training. The sense was that new lawyers did not have adequate practical training to begin their legal careers. The committee was instructed to determine whether that assumption was true for new lawyers and, if so, to formulate recommendations for change. Initially, only one young lawyer was part of the committee, but the lack of young lawyer representation was more the result of oversight than design. The committee membership has now been expanded to include twelve young lawyers or law students.

Several conclusions were made by the committee: First, apart from the United States, most western countries require some type of apprenticeship before lawyers are admitted to the Bar. Second, the other leading professions in this country, *et al.*, medicine, accounting and architecture, require some form of mandatory post-graduate school apprenticeships as a prerequisite for admission to practice. However, some states have had success with a mandatory bridge-the-gap program.

As such, after considerable research and investigations, the committee determined that the Utah State Bar should adopt two mandatory concepts as prerequisites for admission to the Bar:

(1) CLE (continuing legal education) involving the teaching of practical skills, and (2) apprenticeship training. Now the committee must consider and recommend whether such concepts are workable and reasonable.

A final recommendation likely will not be reached until some time in 1987. However, the young lawyers in this state, and particularly law students, should be aware that the inquiry is moving forward. As such, any comments, inquiries or suggestions must be received as soon as possible. Any recommendations made by the committee must enjoy broad support and understanding throughout the legal community. Therefore, all input is welcome.

Questions and suggestions should be directed to John A. Adams, RAY, QUINNEY & NEBEKER (801) 531-1500.

FROM THE EDITORS' DESK

The *Barrister* is published by the Young Lawyers Section of the Utah State Bar. Contributions to the *Barrister* are invited, but the editors reserve the right to select the material and advertisements to be published. Deadlines for submissions are February 13, 1987; April 17, 1987; and June 19, 1987. Please make submissions to the Editor-in-Chief, Guy P. Kroesche, Van Cott, Bagley, Cornwall & McCarthy, Box 45340, Salt Lake City, Utah 84145.

The response to the first issue of the *Barrister* has been encouraging. We appreciate reader comments and suggestions. The *Barrister* is designed to bring you news of young lawyers' activities in Utah and to provide a forum for issues that concern young lawyers.

Guy P. Kroesche
Editor-in-Chief

