YOUNG LAWYERS SECTION OF THE UTAH STATE BAR

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 somwhere 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!

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

ANNOUNCEMENTS & EVENTS

NEW LAWYERS LEARN THE ROPES AT FALL BRIDGE-THE-GAP SEMINAR

On October 17 and 18, 1986, newly admitted attorneys attended a seminar, sponsored by the Bridge-the-Gap Committees of the Utah State Bar and the Young Lawyers Section, designed to help them make the transition from law school to the practice of law.

Participants in the Bridge-the-Gap Seminar included: Utah State Bar President Bert L. Dart, Young Lawyers Section President Paul M. Durham, Bar Executive Director Stephen F. Hutchinson, and Karin Hobbs, Associate Bar Counsel, James R. Holbrook of Callister, Duncan & Nebeker, James S. Jardine of Ray, Quinney & Nebeker, Honorable David K. Winder, U. S. District Judge for the District of Utah, Paul Badger, Clerk of the Federal District Court, Honorable Glen E. Clark, U. S. Bankruptcy Judge for the District of Utah, and Bill Stillgebauer, Chief Deputy Clerk of the Bankruptcy Court.

At a reception hosted by the Federal Bar Association, Ronald N. Boyce, United States Magistrate for the District of Utah, and Kevin E. Anderson, Young Lawyer Representative to the Federal Bar Association, discussed Federal Bar Association opportunities. Attorneys also had a chance to visit informally with the Honorable Aldon J. Anderson, Senior Judge of the U. S. District Court for the District of Utah.

Seminar participants visited the clerk's office in the Third District Court, and heard from Chief Judge Scott Daniels in his courtroom. They also toured the clerk's office and courtrooms in the Fifth Circuit Court,where they heard from the Honorable Paul G. Grant, Circuit Judge. The seminar concluded in the Supreme Court at the State Capitol Building, where attorneys were addressed by Geoffrey W. Butler, Clerk of the Supreme Court, and by Justice Christine M. Durham.

The Bridge-the-Gap Committee of the Utah State Bar is chaired by Randall D. Benson. The Bridge-the-Gap Committee of the Young Lawyers Section is chaired by Clark B. Fetzer. Both sponsors express their thanks to the speakers and the many others who helped make the seminar a success.

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Utah State Bar
(1986-1987)
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Announcements & Events
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UTAH YOUNG LAWYER RANKS GROW

On October 7, 1986, at a ceremony in the Capitol Rotunda, 162 new attorneys (and 6 attorney applicants) became members of the Utah State Bar. Chief Justice Gordon R. Hall of the Utah Supreme Court conducted the ceremony, joined by jurists from the Utah Supreme Court, the U.S. District Court and the 10th Circuit Court of Appeals.

The new attorneys were addressed by Lt. Governor Oveson, representing Governor Bangerter. Lt. Governor Oveson commended the attorneys on their achievements and offered a definition of success. The success for attorneys, he said, should not be financial success but an assurance of justice for all. The Honorable Christine Durham of the Utah Supreme Court, and Judge David Sam of the U.S. District Court echoed the concern for professional conduct.

SECOND BROWN BAGGER FEATURES YOUNG LAWYERS

The November Young Lawyers Section brown bag luncheon seminar featured Commissioner Sandra Peuler of the Third District Court. Commissioner Peuler addressed various procedural and substantive aspects of a domestic relations practice and the role of the commissioner in domestic relations cases. Those attending the luncheon found it both a good learning experience and an opportunity to mingle with other young lawyers. Special thanks to Commissioner Peuler for her time and efforts.

Looking ahead, the January brown bagger will feature an encore performance of the Young Lawyers Section skit presented last summer at the mid-year meeting in Sun Valley. Mark January 22, 1987, at noon, on your calendar and plan to be there. Watch your mail for further notice and information.

COMMENTARY

THE CRIMINAL PROSECUTION AND CAPITAL PUNISHMENT OF ANIMALS

Loren D. Israelsen

The following article is reprinted from the Journal of Tortious Living, a not-so-scholarly legal publication that first made its debut at the J. Reuben Clark School of Law in 1980. From its humble beginnings with a subscribing readership of 77, the Journal has since gained national infamy, having been cited by such notable publications as The National Lampoon and The David Letterman Show Joke Book. The Barrister now is honored to be among such company.

No doubt our readers are aware that the *Journal's* sole purpose for being is to research and publish what no self-respecting legal periodical has ever published before. Naturally, this takes time, questionable taste and liability insurance. But let's face it, where else would you find definitive treatises on the law of wrongful burial, the theological questions raised by stockholder redemptions, not to mention the compelling question--can Siamese twins enter into an arms-length transaction? Who else would face the issue of consumer protection among the gypsies?

In an age of law review perfectionism, we feel there is a crying need to keep step with an increasingly warped world. To that end we wish to present the first condensed version of *The Law of Criminal Prosecution and Capital Punishment of Animals*. We will abandon our usual policy of literary larceny by citing to and quoting from E. P. Evans' classic book of the same name.[1] As we could not possibly make this article any more unbelievable than it already is, we simply say that almost all cases cited herein are *real*, but the names have not been changed as no one is innocent around here.

Recall the time you stepped in the neighborhood dog's calling card, or when that thoughtless bird passed overhead. Or perhaps the time you found one-half a worm after the first bite from an apple. Even now, memories of your childhood cat linger as you gaze at the nine-stitch scar it left on your thumb. For you folks we have good news. Finally, there is the legal means to put the errant animal behind bars. Although obscured by time and incredulity, animal penology is a growing and exciting field of practice.

Think of the possibilities: your own legal aid society at Hogel Zoo, retained counsel for the Uinta Sheepherders Association (clients would come flocking to you), or even in-house counsel for the Provo Small Animal Hospital. The enterprising law student planning to start such a practice will be disheartened to know that only one law school offers a course in animal penology.[2] However, we were informed that the instructor there is a real turkey and our time would be better spent elsewhere. (We are still in doubt whether this was a statement of fact or opinion.) This led us to the conclusion that only one legal entity is really interested in the study of penology: *The Journal of Tortious Living*. Admittedly, this is a shocking state of affairs. But we know a fiduciary duty when we see one, and in the spirit of scholarship, we offer our findings to our readers.

The early law regarded beasts as either wild, domestic, delinquent or stenchy (which needs no explanation). Animals were expected to observe certain standards of conduct and failure to do so often resulted in criminal prosecution, excommunication, exile, or death. No doubt, the reader is wondering, what of procedure? How do you summon a snail? What about a jury of one's peers? Are migratory birds FAA regulated? Who was Lassie's administratrix? Granted, authority is limited, but the *Journal* is prepared to deal with any issue.

The case law finds its beginnings at the Council of Worms (864 A. D.) where a hive of bees was sentenced to smothering for stinging a man to death. The trial record is understandably sketchy, but it is reported that the whole town was buzzing with news of the trial. A subsequent case introduced the criminal conspiracy doctrine when a rooster suspected of laying an egg was tried for

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aiding and abetting demons and was sentenced to be burned at the stake.[3] This would appear to be the origin of the stake and eggs doctrine.[4]

The student (of animal prosecution and penology) is cautioned not to overlook the importance of procedural due process in animal prosecutions. In two well known and often cited cases the defense was able to appeal and win adverse judgments on points of procedural error. In the first case, defense counsel argued that he "smelled a rat" when the plaintiff improperly attempted to avoid service on a class of rodents. Evans states at page 18:

It is said that Bartholomew Chassenne, a distinguished French jurist of the 16th century, made his reputation at the bar as counsel for some rats charged with feloniously eating up the barley crop of the region. In view of the bad repute and notorious guilt of his clients, Chassenne was forced to employ all sorts of legal shifts, chicane, and dilatory pleas. . . hoping to find some loophole in the meshes of law through which the accused might escape. He urged in the first place that inasmuch as the defendants were dispersed over a large tract of land and dwelt in numerous villages, a single summons was insufficient to notify them all, and succeeded in obtaining a second summons. He also excused the non-appearance of his clients on the ground of the length and difficulty of the journey and the serious perils which attended it, owing to the unwearied vigilance of their mortal enemies, the cats, who with fell intent lay in wait for them at every corner and passage.

Further quoting from the record of *Stelvio v. Field Mice, et al.* (1519):

The judge recognized the reasonableness of the latter request (for safe passage upon eviction from a field), in its application to the weaker and more defenseless of the culprits, and mitigated the sentence of perpetual banishment by ordering "a safe-conduct and additional respite of 14 days be granted to all those which are with young and to such as are yet in their infancy; but on the expiration of this reprieve each and every must be gone, irrespective of age or previous condition of pregnancy."

In the second case, Cardinal Bishop of Autun in 1487 enjoined certain slugs from eating grapes used for the sacrament on threat of excommunication. Counsel was appointed for said slugs. Fledgling trial attorneys will want to take note of *Inhabitants of Julian v. Filliot in behalf of Weavil*, (full cite unavailable, unfortunately), wherein the defense team persuasively argued that the defendants were merely carrying out the command to multiply (as given in Genesis 1:25) and were thus exercising a legitimate right conferred at the time of the creation. On appeal, the insects were ordered to vacate. Unfortunately, the final decision was subsequently eaten by rats, presumably friends of the accused.

One creative Swiss prosecutor made the argument that certain species of vermin were stowaways on Noah's ark and were thus insectus non grata. General law school vermin policy, which prohibits the bringing of snack foods into the law library because of the vermin attracted thereby, has been traced to this early argument.[5]

Latin America has long been in the forefront of the procedural and due process issues of animal penology. As early as 1659 the groundwork for *Mullane v. Central Hanover Bank*, 339 U.S. 306 (1961), was laid in an action involving forest caterpillars charged with trespass on local gardens. The creatures were ordered

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to appear on June 28 in order to have counsel appointed. Counsel argued that one summons was insufficient, whereupon five summons were posted on trees in the local forest. At trial, the judge recognized the accused's rights to life, liberty, and the pursuit of happiness; however, this victory was marred when the judge accidentally stepped on a number of the accused while retiring to his chambers.

A common European practice was to send writs of ejectment or letters of advice to induce rats to quit a house where their presence was deemed undesirable. Lest the rats should overlook and thus fail to read the epistle, it was rubbed with grease, rolled up and stuffed into their holes.

Regarding criminal procedure, most animal jurists and scholars adhere to the Woodruff J. Deem[6] philosophy: "Animals are *stupid*." This appears to be an irrebuttable presumption in the case of turkeys, cows, and chickens. As a result, few legal rights attached, resulting in flagrant violations of fundamental rights noted in *Miranda*, *Katz*, and *Terry v. Ohio*.[7]

Unquestionably the threat of excommunication weighed heavily on the defense in the majority of such cases. As the Church controlled the ecclesaistical as well as secular courts in medieval Europe, the animal as well as human was expected to observe basic religious protocol. Although the records do not indicate extensive animal involvement during the Inquisition there are two reported cases that must be noted. In 1394, a pig was excommunicated and hanged at Mortaign for having sacrilegiously eaten a consecrated wafer in a church. It would appear that the pig mistakenly thought he was in a "ritzy" hotel. The companion case involved infanticide; it was expressly stated in the plaintiff's brief that the pig killed a child by eating the flesh of its face (presenting a prima facie case of defacing private property), although it was Friday, and this violation of the jejunium sextae prescribed by the Church, was urged by the prosecuting attorney and accepted by the Court as a serious aggravation of the porker's offense. (This must be read to be

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LAWYERS COMPENSATION SURVEY

Gregory G. Skordas and Charlotte L. Miller

This year 531 (of 4500) members of the Utah State Bar responded to the Lawyers' Compensation Survey. The survey requested information regarding attorney compensation and employment during calendar year 1985. Most responses, 154, were from attorneys who have been in practice from 6 to 10 years. The average salary was $51,400, compared to $49,200 in 1984 and $48,000 in 1983. The average attorney age was 37 years. The highest reported salary was a surprising $600,000, the second highest salary was $260,000, and the lowest salary was $6,500.

Type of Practice

Of the respondents, 178 were from firms with fewer than 31 attorneys; 63 from firms with 31 or more attorneys; 100 were corporate counsel; 29 had their own offices; 29 participated in office sharing; and 126 held government positions, including clerkships, county attorney positions, military services jobs, and judicial appointments.

The highest weekly hours worked (not hours billed) was not dramatically greater than the lowest weekly hours worked. The highest weekly hours worked was 47, reported by those in office sharing situations and by those in firms with 31 or more attorneys. The lowest weekly hours worked was reported by attorneys with their own offices (40 hours). However, average salaries differed significantly. Those with their own offices reported an average salary of $31,400 while those in firms of 31 and higher reported an average salary of $65,000. More significant is the fact that those receiving the highest salaries do not necessarily work a significantly greater number of hours than those earning less.

Avg. Weekly Hrs.	Avg. Annual Salary	Type of Practice
40	$31,400	Own Office
44	41,400	Government
45	39,600	Firm of 2-5
46	52,900	Firm of 11-15
46	54,900	Corporate Counsel
46	59,900	Firm of 6-10
46	65,700	Firm of 16-30
47	50,700	Sharing

Gender and Age

Of the respondents, 84% were men and 16% were women. Percentages were 86%/14% in 1984 and 90%/10% in 1983. Women in practice 0-3 years represented a substantial number of the women respondents (27%). No women with more than 16 years of practice responded. The average age of women was 2 years younger than the average age of men. However, in each year of practice category (0-3 years, 4-5 years, for example), the average age of women is higher than the average age of men, which corresponds generally with the women law students/men law students age differential.

For 1985, a new category was added to take into account gender-based salary disparities. In each category, women received lower compensation than men. A partial explanation may be that more women practice in government positions, which are typically lower paying jobs. For example, 50% of the attorneys at the Salt Lake Legal Defenders' Association were women, where the average salary was $30,000; but women

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appreciated: see *Evans* at 156).

In animal as well as human prosecutions, trial tactics have always played an important part of advocacy. In one case, counsel for a dog convicted of larceny brought in the puppies of the dog in hopes of moving the compassion of the court. In a colorful display of legal pageantry, defendant counsel for certain rats persuaded Mouseketeers Bobby Burgess and Annette Funicello to file an amicus rodenti brief for the accused. As a general rule such tactics are not terribly productive.

At this point, the *Journal* would like to suggest the addition of an Animal Penology horizon course to local law schools' curriculum. As a goodwill gesture, the *Journal* is willing to fund an endowed chair for this area of study, the Mr. Ed Chair of Animal Penology. Without intending to toot our own horn, the *Journal* has also been instrumental in working with the NAACP to organize the first mutual insurance fund for the support of indigent black widows. With such encouraging developments, it is only a matter of time before animal penology takes its place next to the core curriculum at law schools nationwide.

FOOTNOTES:

1 E.P. Evans, *The Law of Criminal Prosecution and Capital Punishment of Animals* (1906) (hereinafter cited as "Evans").

2 See Univ. of Nevada at Winnemuca College of Law Bulletin.

3 See *Evans* at 10-11.

4 This legal theory has since fallen into disrepute and is seldom argued.

5 At least one law school has been criticized for its prejudicial attitude toward vermin. See *Bugs Before the Law: A Look at Administrative Policies at BYU's Law School*, 67 Utah L. Rev. 34 (1974).

6 Former professor of criminal law at BYU Law School.

7 See *Shepard v. New York*, 223 N. Y. Misc. 188 (1963), in which the court refused to allow the accused, a mad dog, to undergo a McNaughten test. This was sustained on appeal as well.

Lawyers Compensation Survey

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made up only 10% of the attorneys at the four largest law firms in Salt Lake, where the average salary was $65,000.

Benefits

The following benefits were reported as being received by attorneys:

Benefit	Percent of Attorneys who Receive the Benefit
Life Insurance	63%
Disability Insurance	52%
Health Insurance	79%
Dental Insurance	42%
Auto Allowance	18%
Automobile	11%

Information about malpractice insurance was not requested. In this connection, some of the responses to the question "Number of Days Paid Vacation" were interesting:

"All"

"Anything over minimum billable hours (to 25 days)"

"Approximately 20 vacation days per year (unpaid, of course)" -- from a sole practitioner"

Accuracy of the Survey

531 responses for a population of 4,500, a 12% response rate, is fairly typical for a survey of this nature and, thus, represents a good response. Encouragingly, the percentage of male and female attorneys responding corresponds with the number of male and female attorneys that the Utah State Bar reports as members. However, one problem with the survey is the propensity of certain people to respond to the survey (for example, government employees may be more likely to respond than sole practitioners; those working in small firms may be more likely to respond than those in large firms, older attorneys may be more likely to respond than younger attorneys, and so forth). Also, in some categories few responses were received.

Comments by Respondents

Sole practitioners and those office sharing had difficulty responding to certain questions, because most questions were directed toward traditional employer-employee relationships, with fairly rigid guidelines for paid vacations and insurance, for example. Many of the attorneys in this category reported their gross salary, with no indication of amounts deducted therefrom for overhead and other related costs. Obviously, attorneys in most law firms and government practice do not account for overhead. These factors are are being considered and will be addressed in future compensation surveys.

Several respondents suggested additional information including:

1. Hours billed per month;
2. Difference between partners' and associates' salaries;
3. Area of law the attorney spends most working hours;
4. If you had to do it over, would you choose to practice law?;
5. Salaries of women vs. salaries of men in same practice/level;
6. Breakdown by school attended;
7. Larger, more detailed form; and
8. Geographic region of practice.

We welcome you to analyze the charts below and draw your own conclusions.

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YEARS IN PRACTICE: 3 or less

Type of Practice	Number of Responses	1985 Salary	1985 Bonus	Employer Retirement Contribution	Weekly Hours Worked	Paid Vacation Days
Own Office	6	13,900	-0-	-0-	47	0
Sharing	8	36,300	-0-	-0-	42	0
Firm 2-5	26	73,900	540	-0-	40	9
Firm 6-10	10	27,900	900	-0-	42	11
Firm 11-15	4	39,000	2,000	-0-	45	10
Firm 16-30	4	36,000	-0-	-0-	45	10
Firm 31+	18	37,700	1,000	2,750	46	9
Government	24	28,500	-0-	2,700	44	19
Corp. Counsel	23	32,400	380	350	44	10

Average salary plus bonus: $ 29,900 (123 attorneys)

YEARS IN PRACTICE: 4 - 5

Type of Practice	Number of Responses	1985 Salary	1985 Bonus	Employer Retirement Contribution	Weekly Hours Worked	Paid Vacation Days
Own Office	2	20,500	-0-	-0-	32	0
Sharing	7	41,700	-0-	-0-	58	0
Firm 2-5	8	29,700	670	-0-	46	10
Firm 6-10	11	35,700	175	500	45	12
Firm 11-15	12	43,200	2,400	1,000	47	14
Firm 16-30	12	48,700	2,500	1,700	48	10
Firm 31+	12	45,400	950	4,500	46	14
Government	21	31,100	700	2,500	42	24
Corp. Counsel	10	47,700	-0-	-0-	49	15

Average salary plus bonus: $ 39,400 (95 attorneys)

YEARS IN PRACTICE: 6 - 10

Type of Practice	Number of Responses	1985 Salary	1985 Bonus	Employer Retirement Contribution	Weekly Hours Worked	Paid Vacation Days
Own Office	9	22,300	-0-	-0-	33	0
Sharing	11	65,500	-0-	-0-	46	0
Firm 2-5	11	47,200	-0-	-0-	52	9
Firm 6-10	23	69,500	9,300	2,900	46	12
Firm 11-15	0	N/A	N/A	N/A	N/A	N/A
Firm 16-30	15	75,300	4,600	-0-	45	7
Firm 31+	21	61,400	4,400	6,400	46	11
Government	36	42,900	100	2,700	47	17
Corp. Counsel	28	67,500	5,500	5,000	49	12

Average salary plus bonus: $ 57,700 (154 attorneys)

YEARS IN PRACTICE: 11 - 15

Type of Practice	Number of Responses	1985 Salary	1985 Bonus	Employer Retirement Contribution	Weekly Hours Worked	Paid Vacation Days
Own Office	5	56,000	-0-	-0-	55	6
Sharing	2	39,000	-0-	-0-	40	0
Firm 2-5	8	61,300	-0-	-0-	45	20
Firm 6-10	16	86,800	2,500	-0-	48	14
Firm 11-15	1	100,000	-0-	-0-	50	21
Firm 16-30	3	110,000	3,000	3,000	53	10
Firm 31+	6	82,500	5,000	1,500	52	10
Government	18	50,600	-0-	2,700	41	17
Corp. Counsel	18	56,200	2,500	7,900	45	16

Average salary plus bonus: $ 66,000 (77 att

YEARS IN PRACTICE: 16+

Type of Practice	Number of Responses	1985 Salary	1985 Bonus	Employer Retirement Contribution	Weekly Hours Worked	Paid Vacation Days
Own Office	7	43,500	-0-	-0-	34	0
Sharing	1	90,000	-0-	-0-	40	0
Firm 2-5	6	78,000	-0-	-0-	50	7
Firm 6-10	4	44,000	-0-	2,000	50	15
Firm 11-15	2	115,000	-0-	4,500	40	21
Firm 16-30	2	89,000	-0-	2,000	40	10
Firm 31+	6	230,000	-0-	30,000	50	15
Government	27	52,500	100	4,400	42	21
Corp. Counsel	21	65,000	5,000	4,100	44	14

Average salary plus bonus: $ 71,800 (76 attorneys)

1985 AVERAGE SALARIES
Based on 531 Respondents

Years of Practice	Male	Female	Total
0-3	73% 30,900	27% 27,200	100% 29,900
4-5	84% 41,000	16% 30,900	100% 39,400
6-10	79% 61,300	21% 44,300	100% 57,700
11-15	96% 67,000	4% 41,000	100% 66,000
16+	100% 73,800	0% -0-	100% 73,800
1985 Total 531 Responses	84% 54,500	16% 35,100	100% 51,400
1984 Total 650 Responses	86% 51,800	14% 33,300	100% 49,200
1983 Total 743 Responses	90% 49,800	10% 32,000	100% 48,000
Average Age	37	35	37

EDITORS' COLUMN

At 4:54 p.m., four lawyers and two secretaries stood by and watched the word processor print out -- ever so slowly -- the last page of a 41 page memorandum of points and authorities in support of a motion which, of course, had to be filed, no exceptions or extensions, by 5:00 p.m. that night. Not leaving any controllable factor to chance, a runner was in the clerk's office, instructed to remain there and prevent the clerk from closing the office until the motion and memorandum arrived. A young associate, with car running, was stationed by the back door waiting for yet another young associate to bring the precious documents.

As each page was peeled from the printer and the four lawyers attempted to see if some semblance of sense or organization had resulted from their joint, but frenzied, efforts, I reflected briefly. If the section I authored conveyed, using accepted forms of the English language, the arguments I actually meant to make, it would be a monumental accomplishment. More horrifying, I suspected the odds were very high that it did not and, considering the time constraints, that I would have no opportunity to remedy even the most obvious errors before the documents were filed with the court. A typical day in the life of a young associate, you may say.

All too often, I'm afraid, the pressures on young associates to turn out all manner of agreements, correspondence, memoranda, answers, objections and motions on less than two hours notice, and an overwhelming work load, result in a more quantity-minded, rather than a quality-minded, practice. Care as to the words chosen, or in the devleopment of the thought to be conveyed, seems a luxury not encouraged in practice or even in theory.

On many occasions I have read memoranda and documents that can only be described as "senseless," seemingly random thoughts placed on paper without connection or conclusion. Many times there were glaring grammatical errors and omissions and, more importantly, the words used did not convey the author's intent.

The written word is one of the most powerful means of influencing society and, indeed, civilization. Law in its written form is an art form. We in the legal profession should be ever mindful of the power and importance of the written word. A finely written document, argument or legal opinion has influence which will surpass and outlive the most persuasive jury argument. Moreover, what young lawyers often overlook is the fact that much of a lawyer's early professional reputation is based upon his or her written work.

Finally, there can be grave consequences when quantity, as opposed to quality, is emphasized and a young associate subscribes to such a mentality. More times than not, the press of time and work results in carelessness in the preparation and drafting of documents. Relevant and important avenues of research are overlooked and pertinent elements and theories are not recognized or developed. Such omissions may lead to forfeiting clients' rights or interests, or at least increased and unnecessary cost, when amendment or motion must be made to remedy the oversight.

The Bar must withstand the pressures of ever-increasing workloads and the resulting quantity-oriented mentality, and give greater care and thought to what may be a lawyer's most important and effective tool -- the written word.

Barbara K. Berrett
Associate Editor

Young Lawyers Section of the Utah State Bar

BARRISTER

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