Appeal

Every 3 weeks

It seems quite reasonable to say that if because such
excessive and time consuming

procedures are not adopted

with respect to the

policies we are doing

anything with the policy

humanity can save...
The Appeal is published periodically at Indiana University School of Law, Bloomington, Indiana. The views expressed in articles and editorials do not necessarily reflect the views of the editors, Administration, Faculty, or Student Body.

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Faculty Advisor: Phillip Thorpe

Special Assistance and Sincerest Thanks:

Acting Dean D.G. Buszkoff

The Secretarial Pool

October 25th, 1972
in this one...

garrettson
editor for something to put on a resume...

mahoney
editor associatively for old times sake...

clancy
cover editor for lack of better talent...

clancy
staff, for lack of a better word indicating less work...

fisher, mcgrath (humor editor??), mishkin,
shine (if he ever contributes...) mcgrath's
wife, who types his articles and therefore has
to read them...

off the bench...

whilst browsing through dictum, the indiana's law
school's equivalent of the appeal, we happened to read that
that school has changed the name of their legal periodical
to the indiana law review. the indication for the reason for
the change was that a better name was needed for "indiana's
foremost legal periodical."

now aside from making me feel a little better about not
being a part of the second rate publication that we have here
in bloomington, it would also seem to me that there are
certain adjustments which must be made if we are to comfortably
settle into the position of being number two. the appeal, by the
way, strongly protests this above mentioned name change, as we
were planning on grabbing the name ourselves...

the first change which will have to be accepted if we are
to settle comfortably into our second rate role is that of our
new dean. the signs adorning our walls have hit the problem
with their usual accuracy. the process of selection is all
wrong for a second rate school. the appeal suggests (we would
"demand" but we don't qualify as a caucus and therefore don't havestanding...) that the recommendation as previously submitted
be scrapped immediately, and a raffle be held in its place. as
befits our newly found status, the raffle would be open only
to retired bail bondsmen and defeated nixon nominees to the
supreme court. to insure entrants, we might even throw in as
a bonus prize a guided tour of the law library.
Another change (again, this was suggested by another sign on one of our walls...) is that the grading reform has to go further. The relation between grades and performance is outmoded, as anyone in my half of the class will tell you. The alternative, keeping in tune with mediocrity, would be to grade on attendance. This would have the advantage of letting students meet the rest of the Commercial Law class, and would also serve to clarify the school’s position on attendance. Silver stars could be given out for perfect attendance, since we assume Indianapolis has cornered the market on gold stars... Its best advantage, however, is that there would be 30% fewer signs on the walls, or at least they might change once and a while.

Sadly, the Women and the Law course would have to be scrapped in favor of increased courses on bankruptcy and traffic violation law, and increased seminars on legal graffiti. Revenues would be increased, however, since it would be perfectly in line to replace both Family Law and Trial Techniques with live tapings of Divorce Court.

Other changes would certainly have to involve the Student Bar Association. The committee system would necessarily have to be dissolved. I suggest it might be replaced by more caucus' (or whatever the plural of caucus might be...) This would eliminate the need for a revamped selection process, and would eliminate the old question of whether committees actually do anything in the first place. The primary function of the caucus, apparently, is to paper the walls of the law school with position statements, burning questions, and news releases. Since there are still a few open walls left, it is also apparent that the new law school would have plenty of room for more of such organizations, and we suspect that anyone with a restless urge to write, or a flair for interior decorating would be welcome.

The S.B.A. might also consider renting out the Gables for the annual Law Day banquet, on the assumption that mediocrity begets indigestion...

Our last suggestion concerns The Appeal. It is obvious that is Indiana University Law School at Bloomington to truly accept and maintain its role as second best, The Appeal would have to be improved. At present, we gladly accept being called mediocre as a compliment...

Oh, the DICTUM's other banner article concerned the evils of using Gilberts as a study aid, but no one here uses Gilbert's, do they?????
Dear Sirs:

I suggest you discontinue the practice of making light of the use of the Law School walls as a method of disseminating valuable information. It works, believe me.

Martin Luther

P.S.: Missouri 38 · Notre Dame 26!!!!

Dear Ed:

I have available for immediate publication an exhaustive study of the committee selection process at your law school, along with a detailed voting record of each committee member over the past twenty years. Our bombshell, is that upon reliable information, we believe that your Dean, Wm. B Harvey, is going to retire in the near future.

R. Nader

Dear Sirs:

Rumors of my death are greatly exaggerated.

H. Boggs

Dear Sirs:

I will be available for comment at a later date. Please submit written questions to my secretary—please:

D.G. Boshkoff

Dear Sirs:

We are poor little lambs who have lost our way... (hint, hint

The Dean Search Committee

P.S.: Ba, Ba, Ba...

Dear Sirs:

How

D. Geronimo

Dear Sirs:

I've borrowed your Gilbert's

...
REPORT OF THE DEAN SEARCH COMMITTEE

We have been requested by several students to make a report to the student body on the progress of the Dean Search Committee since last spring. There has not been much to report. Here is what there is.

The search and screen committee made a unanimous recommendation to the Chancellor in May, during finals week. The contents of the recommendation has since been treated on a confidential, need-to-know, basis so as to preserve full freedom of choice for those who have to make further decisions.

Over the summer, the committee dispursed. No action was taken by the university on the recommendation. This is reasonable in view of the need for the administration to evaluate and come to terms with a nominee and of the changes and uncertainty throughout the summer as to the personnel of the board of trustees.

In mid-September the committee prepared a supplemental report to the administration setting forth in great detail the procedures used and the persons considered by the committee. This was done to give the administration a sufficient background to inform both the new members of the board, who were unfamiliar with such matters, and those old members whom it be concerned whether a one-semester search has adequately covered the field.

The recommendation of the Search Committee has not been formally put before the board. There is no reason to believe that the university administration is not satisfied with the work of the committee or that it is not working in the best interest of the law school in this matter. Quite the opposite is true.

In summary, the Search Committee has finished its part of the selection process, and others involved must now be given time to finish theirs.

Mike Fruehwald
Carolyn Abren
ADDENDUM OF STUDENTS AND THE
DEAN SELECTION PROCESS

by Mike Fruehwald

The preceding statement was written before the latest attacks on the Dean selection process by the Radical Caucus, "Concerned Freshmen", and whoever put up the latest placard. That statement is therefore merely informative, and not a response in particular to these ramblings. Urged by spurts of anger and bewilderment, as well as by the editor of this esteemed publication, I will add a few comments to my own personal response. I have selected several sentences from the various papers on the hallways as a means of organizing the basic complaints and their underlying factual errors:

"The two students on the Committee have been unwilling to communicate with the rest of the student body," (R. Caucus Memo)

This complaint as stated is factually untrue and I think that the authors of this memo know this. No one who has asked me any questions about the Dean selection process has been turned away or evaded. I have been and still am willing to talk to anyone about it. The complaint really goes to a matter of style. It is rather that I have been unwilling to communicate by the methods advocated by the Radical Caucus, and the other anonymous groups. As a factual matter, such a complaint would have merit. I prefer one-to-one conversations to press releases and speeches. And I continue to prefer a low-key, flexible atmosphere, which I think facilitates favorable decisions in this context, to attempts to arouse feelings, force issues, and exert power. The answer that such conversation is inadequate to reach the "student body" because many individuals do not know me also has some validity, but it is less persuasive to me because I spent all last summer finding people I didn't know to discover their views on the deanship and didn't mind doing it. The feeling may have been a mistake. If so, I apologize to those who were not as "concerned" in looking me up about this matter as I would have been to discuss it with them if they had.

"There has been no meaningful student input into the selection process... We have had no assurance, however, that the reactions of these students to the candidate have been considered. Further candidate suggestions made by students were disregarded by Prof. Roland Stanger..." (Radical Caucus letter to Carter)

It is difficult to know how to respond to this assertion and prove to doubters that student opinions were considered equally with those of other constituencies in the law school. Everyone who was on the committee can describe their own thought processes and will tell that they considered student opinion
important in their decision making. I can certainly say that. As if that is unsatisfactory proof, the question becomes how to go about proving your own good faith to those who don't want to believe you. Those who think that members of the committee went to the trouble of setting up meetings with students and soliciting nominations only to ignore them must also think us very stupid or very fraudulent. In either case not much can be said that is persuasive. All that can be provided is an outline of what student data was provided to the committee and conclusions about its effect can be left to your views of the personal integrity of the members of the committee.

First, as to nomination of candidates, a few were suggested by students. In most cases these names were suggested only by observations that these people were good scholars or were women, or both, and without any further indication as to why they would make a good Dean. (This followed my prediction in my first Appeal article last spring that students did not have much background for making deanship nominations.) Nevertheless, all candidates biographies were examined and were discussed by the committee. There is no evidence that Mr. Stanger, of all people, disregarded the suggestions, or that anybody else would have let him if he wanted to.

Secondly, as to evaluation of candidates, Carolyn and I made a decision very early that the best conclusions could be drawn from small, informal discussions between the visiting candidates and a group of students who represented various elements of the student body. With each visiting candidate and Mr. Boshkoff, such a discussion was held. Approximately 30 different students participated in these affairs, selected by Carolyn and myself from the list of people who signed up for such duty and from others with various viewpoints. After each such meeting, students were asked to write up their impressions and evaluations in a memo to the committee. Many did this and their comments are in the files along with evaluations from other sources. Those who did not wish to write anything were talked to by Carolyn or myself and the results given orally to the committee. When there were other sources of evaluation from our student body, these too were questioned and communicated.

Thirdly, Carolyn and I were fully participating members of the committee. We received all data coming into the committee and participated in all selection decisions up to and including the final unanimous recommendation. Other members of the committee listened to our points of view and requested and received more from us in the way of student opinion than I often thought valuable.
This, in summary, was the nature of the student input in the dean selection process. I think it was "meaningful." Other methods were suggested for achieving this result and may have produced more data or more sense of involvement. Carolyn and I made our choice on the basis of our abilities and time and concepts of what would be valuable in making the selection decision. I continue to stand by that choice.

"The design behind the silence seems to be to present us with a new dean as a 'fait accompli', somehow based on a thesis of our incompetence to constructively participate in that selection." Concerned Freshmen Memo)

It is probably true that as far as the freshmen class is concerned, announcement of the dean will be a 'fait accompli', just as everything that was done in years before this one can be so described. I do not feel that the dean search committee is responsible for the fact that freshmen are freshmen this year and not last. As for the rest of the student body, announcement of the new dean by the board of trustees should be considered a fact accomplished in part by student participation last year.
Mr. B. Ewell Sheeder  
Chancellor's Office  
Indiana University  
Bloomington, Indiana  

Dear Mr. Sheeder:

With regret I must report to you that my partners have not authorized me to invite you to Metropolis for further interviews. With your fine record, I know that you will have little difficulty in obtaining employment as an Associate in an excellent and reputable law firm.

Thank you for affording us the opportunity to become acquainted. You have our warm wishes for continued success in law school.

Sincerely yours,

"Alluv Us"

ABCD/goldfish
GENTLEMEN: THE LAW IS PRESENT

Nelson Algren

The City is a watcher. The City sees it all.
Blackmail, bribery, extortion
Let me have two tens for a five
I can't sell you this ring it belonged to my mother.
Just let me have twenty on it until tomorrow--
Homicide fratricide infanticide matricide suicide
Dropping the pigeon
The penny-matching game
The bypsy-switch
Hitting a blind goose in the ass with a wet towel
Stabbing a horse to steal its blanket-
One by one the marquee lights of a summer night
Dim one by one
Then the marquee goes black:
Incest, outcest, mopery on the high seas
Walking a public highway with a non-transparent lunchpail-
It's been a hard day.
You can't win 'em all.
Tomorrow's another day.
Write if you get work

A single fork of heat lightening above the North Avenue Beach
Brings the Little Men of the Rain running the sands
Each with a small broom in his hand.
When they've swept the beach they'll wash alleys, sidewalks
Junkyards and the El platforms clean;
The Little Men of the Rain have been working overtime
For the Department of Sanitation
For a long, long time

What was I 'doing', your Honor?
Why, I was out gandering for a soft mark
And made the tip to cop a short
Eased myself into the tip and topped a leather
In Mr. Bates' left pratt
Then seeing I was getting a jacket from these two honest bulls
So I kick the okus back in the kick and blow.
Then this smart flatfoot nails me
So here I am back on another bum rap.
And all I'm asking, Your Honor, is justice--
But I'll settle for thirty days.

No, Your Honor,
I had no 'intention' of robbing that store.
I was leaning against the window thinking of enlisting in the
Marines
When the glass gave in.
So I stepped inside to leave my name and address
So I could make the damage good
Before leaving the country with my outfit.
I was looking for a paper and pencil in the cash register
When these officers entered.
No, Your Honor, I "don't" know which officer it was
Who planted the glasscutter in my coat.
After all, I've never been arrested in Illinois before.
I love my state too much to steal from it.
I go to Indiana to steal.
Who was my accomplice?
I don't have a girlfriend at the moment
Your Honor.

Now here comes tomorrow and here we go again:
Muggery-thuggery-buggery and hanger-binging
Mush-faking, ringing the boosters, the match-game
The boosting-grift, cold sloughing
Soup-cooking, The Badger game
Drrippping the glim, the fruit squeeze
There will be 426 abortions and nineteen accusations
of Malfeasance in High Places.
(Referred to as Common Theft) in low places)
And another day when you forgot to slow up when losing
And press when you're winning
Will go out with the marquee lights.

The way it looks to me, Your Honor
Nothing can happen to you if you're somebody else the whole time.
Living is only a sideline with me anyhow.
What if I put a shot of strychnine into my next hype--
Wouldn't you all disappear?
No, Your Honor: I never hollered, "Cheezit here comes the cops!"
What I said was: "Gentlemen, the law is present."

ON GOVERNMENT

Mark Mishkin

There's a reek of expedience found in the deeds
Of elected officials, as suiting their needs
They ignore all the promises, slogans, reforms
Made before they took office (their conscience conforms).
Though they speak and act strangely now, still you can tell
The duplicitious bastards apart by their smell.
TO B OR NOT TO B

Russ Mahoney

If A lawfully conveys to B, it is perfectly clear to me,
That even a Property professor, claiming as an adverse possessor,
Can't get Blackacre in Chancery.

But if A later conveys to C, and the Judge finds C bona fide,
Then C gets the land, though B takes the stand
And swears C outran him to Registry.

Does it seem right to you (it does not to me),
That dirty fraud A and road runner C,
In a Race-notice state, when B records late,
Take the fee to the reality from B?

Now, I do not suppose that any would find
A race to the clerk is what the court has in mind,
Nor that it wants A's and C's to harass,
But since this is the result in a Race-notice cult,
I think that the law is an ass.*

* A fortiori, it is intollerably hoary, when
the law of the place is just Race.
Our goal in this course is to learn certain essential skills: e.g., how to use the materials in the law library, how to isolate issues from a set of facts, how to use "legal reasoning," how to deal with case law, and how to organize and write a legal memorandum. The course should be designed to teach us these skills, not to test any prior knowledge or ability we might have. Obviously, each of us enters the course with different abilities, but each of us should, by the end of the course, become competent in legal research and writing. The course should meet the needs of each individual and should be designed to maximize his or her individual progress. Our goal is not to compete with one another, but to work together and to learn.

Methods:

One way to learn is to struggle in isolation to solve an assignment problem. Although this method of learning undoubtedly has some merits, it is only one method and not necessarily the best one. We can also learn from each other and from our instructors. We see no reason why we should be bound by this single method, particularly when we must master so much in so little time. To accomplish our purpose of achieving competency in legal writing and research, all communication channels -- those between student and student and those between instructor and student -- should be fully opened.

We submit the following for immediate implementation:

I. Nature of the assignments

1) The assignments should be more limited in scope than those which we have received. Our completion of the assignments should not be dependent upon our mastery of substantive concepts which we have not yet encountered in our course work.

2) The progression of the assignments should be more apparent. Students should be able to apply what they have learned in one assignment to their completion of the next assignments.

3) The topics of the assignments need not be designed to titillate our prurient interests. We would find other controversial topics equally interesting.

II. Before the assignment is undertaken

1) The instructor should explain, in detail, the purpose of the assignment.

2) Class discussion should be directed towards highlighting the important elements of the assignment at hand. (Assignments should be distributed before the initial class meetings.)

3) We should be exposed to a finished product of the type we are supposed to produce.

III. While the assignment is in progress

1) We should be able to periodically check our progress rather than proceed on a purely hit-or-miss basis. This would be accomplished by:
   a) our producing an outline to serve as a basis for a discussion of the assignment at the class meeting before the assignment is due. We can compare the progress of the discussion with our own outlines and determine whether or not we correctly understand the problem. Or by
   b) our attending collaborative student group meetings to discuss the assignment

IV. After the assignment is completed

1) Where a student's problem is definable, either the instructor or another student should work with him/her to correct the problem.

2) The rewriting of papers should be allowed and encouraged.

3) Special classes for those who need further instruction should be arranged.
Grading: An Alternative Proposal

Evaluation is not synonymous with grading. In the context of this course, grading can only serve a ranking purpose, to fix our endeavors at some arbitrary point along the arch of the bell-shaped curve. We assert that grading of this kind is not necessary for the purposes of this course, and that it is, in fact, counter-productive. Grading often becomes a substitute for evaluation; evaluation becomes quantitative rather than descriptive. Individual conferences too easily become an argument over the grade rather than a discussion of the paper. Since the goal of the course is to master certain skills and since this mastery will be achieved by a learning process unique to each individual, the performance on each assignment is irrelevant as long as competency in legal research and writing is achieved by the end of the course.

We recommend, as an alternative to grading, that each paper be evaluated descriptively, in terms of its strengths and weaknesses. In addition, the student should discuss his/her progress in the course periodically with the instructor. At the end of the course, all students who have become competent in the techniques of legal writing and research should be granted credit for the course. Those who have not yet mastered the requisite skills should do such additional work (or, if necessary, retake the course) until he/she has achieved an acceptable level of competency. The requirement of competency is to be considered only as a criterion for credit; it is not a substitute for each student achieving his or her potential, which is still the principle goal of the course.

Student Input: Now and in the Future

The proposals set forth in this report could be put into effect immediately and benefit us as we complete our legal research and writing tutorial and move on to moot court. However, several good proposals for restructuring the course in the future were introduced at our meetings and these should certainly be considered in discussing the structure of the course for next year. We believe there should be substantial student input not only in designing the course but in selecting the instructors. As the instructors must work on an individual level with students, they should be sensitive to individual needs and be able to relate well to all students. These abilities should be at least as important as academic or professional achievement as factors in selecting instructors, and student participation in screening applicants would insure that these factors be given weight.

We submit the proposals set forth in this report for immediate implementation. We further request that students be invited to participate in any future action relating to the structure of the course and the selection of instructors.
At 7:13 P.M., in the main dining room of a large hotel, a mirror suddenly fell from the wall and landed on the head of an unsuspecting diner.

No one could figure out exactly why the mirror had fallen. Nevertheless, the diner, painfully injured, filed a lawsuit for damages against the hotel.

"He has no case," the management argued in court. "He cannot point to any specific thing we did wrong."

But the court upheld the man's claim.

"Mirrors do not ordinarily fall off walls," reasoned the court, "unlike someone is negligent."

The court was invoking a famous legal doctrine known as res ipsa loquitur—"the thing speaks for itself." This doctrine is widely used when there is no direct, eyewitness evidence of an act of negligence. Weighing the odds, the law decides that an act of negligence— even though unseen—probably did occur.

Thus:

Using res ipsa loquitur, a court found negligence when a car, parked on a steep slope, started to roll downhill. Chances were good, said the court, that the driver had neglected to set his brakes and cramp his front wheel against the curb.

Also using res ipsa loquitur, another court found negligence when a housewife encountered a piece of glass in a newly opened can of spinach. Chances were good, said the court, that someone in the canning factory had been careless.

But the mere fact that an accident has happened does not necessarily justify the use of the doctrine. Consider this situation:

A woman climbing down from a trolley lost her footing and fell to the pavement. Demanding damages later from the trolley company, she said the car had probably moved just as she was getting off.

But the court said there was an equal probability that she herself had simply failed to watch her step. With no odds in her favor, said the court, she could not use res ipsa loquitur to win her case.

However, the court disagreed. Tossing out Fred's claim, the court said a manufacturer must make its product reasonably safe but not "accident proof."

This has been the law's usual attitude in accidents involving power lawnmowers. Some degree of risk is accepted by the user, merely by choosing this method of cutting his lawn.

Nor will he necessarily win his claim just because the mower happened to lack some particular safety feature. In another case, the injured user complained that his mower did not have the special guard with which more expensive models were equipped. But again the court denied damages.

"It is common knowledge," said the court, "that the various models of power mowers differ in size, weight, design, and safety features, and that new models constantly come into the market. Purchasers select according to their choice and the price of the respective models."

Nonetheless, even though a user must accept some risk, he should at least not be deceived as to what that risk is.

One customer had been assured by a salesman that the mower would stop instantly if it struck any hard object. But when the mower did strike a rock in the man's back yard, it reared back, wheels spinning, and cut his foot.

Later, he succeeded in winning damages from the seller. The court said a customer is entitled, if not to total safety, at least to simple truth.
REGINA V. OJIBWAY

8 Criminal Law Quarterly 137
(Toronto, 1965)

Reprinted for the benefit of the freshman class and all others not fortunate enough to have encountered this case in "Legislation."

BLUE, J.: This is an appeal by the Crown by way of a stated case from a decision of the magistrate acquitting the accused of a charge under the Small Birds Act, R.S.O., 1960, c.724, s.2. The facts are not in dispute. Fred Ojibway, an Indian, was riding his pony through Queen's Park on January 2, 1965. Being impoverished, and having been forced to pledge his saddle, he substituted a downy pillow in lieu of the said saddle. On this particular day the accused's misfortune was further heightened by the circumstance of his pony breaking its right foreleg. In accord with current Indian custom, the accused then shot the pony to relieve it of its awkwardness.

The accused was then charged with having breached the Small Birds Act, s.3 of which states:

2. Anyone maiming, injuring or killing small birds is guilty of an offence and subject to a fine not in excess of two hundred dollars.

The learned magistrate acquitted the accused, holding, in fact, that he had killed his horse and not a small bird. With respect, I cannot agree.

In light of the definition section my course is quite clear. Section 1 defines "bird" as "a two-legged animal covered with feathers." There can be no doubt that this case is covered by this section.

Counsel for the accused made several ingenious arguments to which, in fairness, I must address myself. He submitted that the evidence of the expert clearly concluded that the animal in question was a pony and not a bird, but this is not the issue. We are not interested in whether the animal in question is a bird or not in fact, but whether it is one in law. Statutory interpretation has forced many a horse to eat birdseed for the rest of its life.

Counsel also contended that the neighing noise emitted by the animal could not possibly be produced by a bird. With respect, the sounds emitted by an animal are irrelevant to its nature, for a bird is no less a bird because it is silent.

Counsel for the accused also argued that since there was evidence to show accused had ridden the animal, this pointed to the fact that it could not be a bird but was actually a pony. Obviously, this avoids the issue. The issue is not whether the animal was ridden or not, but whether it was shot or not, for to ride a pony or a bird is of no offense at all. I believe that counsel now sees his mistake.

Counsel contends that the iron shoes found on the animal decisively disqualify it from being a bird. I must inform counsel, however, that how an animal dresses is of no concern to the court.

Counsel relied on the decision in Re Chilcote, where he contends that in similar circumstances the accused was acquitted. However, this is a horse of a different color. A close reading of that case indicates that the animal in question was not a small bird, but, in fact, a midget of a much larger species. Therefore, that case is inapplicable to our facts.

Counsel finally submits that the word "small" in the title Small Birds Act refers not to "Birds" but to "Act," making it The Small Act relating to Birds. With respect, counsel did not do his homework very well, for the Large Birds Act, R.S.O., 1960, c.725, is just as small. If pressed, I need only refer to the Small Loan Act, R.S.O., 1960, c.727, which is twice as large as the Large Birds Act.

It remains then to state my reason for judgment which, simply, is as follows: Different things may take on the same meaning for different purposes. For the purpose of the Small Birds Act, all two-legged, feather-covered animals are birds. This, of course, does not imply that only two-legged animals qualify, for the legislative intent is to make two legs merely the minimum requirement. The statute therefore contemplated multilegged animals with feathers as well. Counsel submits that having regard to the purpose of the statute only small animals "naturally covered" with feathers could have been contemplated. However, had this been the intention of the legislature, I am certain that the phrase "naturally covered" would have been expressly inserted just as "Long" was inserted in the Longshoreman's Act.

Therefore, a horse with feathers on its back must be deemed for the purposes of this Act to be a bird, and a fortiori, a pony with feathers on its back is a small bird.

Counsel posed the following rhetorical question: If the pillow had been removed prior to the shooting, would the animal still be a bird? To this let me answer rhetorically: Is a bird any less a bird without its feathers?

Appeal allowed.

Reported by: H. Pomerantz
S. Brasin
This writer will not pretend that this article is a definitive or conclusive guide to the development of a law practice in a rural community. The variables are too numerous. Consideration must be given to the individual practitioner's personality as well as that of his family, and rural communities themselves tend to have individual personalities (or quirks, if you will).

In addition, the financial status of each new lawyer anticipating establishment of the rural practice will vary. As strange as this may seem, lawyers have been known to harbor differing opinions concerning rural practice. A caveat is therefore in order: This article reflects much of this writer's personal opinion based upon this writer's personal experience.

Initially a lawyer must decide whether to step from the glittering metropolis into the proverbial "sticks." There are numerous factors to be weighed in reaching this decision.

Professional reasons contrary to the rural practice may take the following form. If you wish to specialize, don't move to the country. The country lawyer is still basically a general practitioner.

There will be no opportunity for association with the large law firm. Firms of from one to four attorneys are the rule in the rural community. There is generally a lack of proximity to the federal courts, administrative agencies, state legislatures, large well-equipped libraries and constructing legal education seminars. Frequent participation in state bar association activities is inconvenient and involves sacrifice.

Private considerations may also weigh against the rural practice. To one's wife, the rural community may represent the end of the earth. A rural community may city can sustain. It may be distant, as well from educational facilities, light entertainment outlets such as restaurants and night spots, and the city's wide variety of consumer outlets. (Is the latter a blessing in disguise?)

Single lawyers may feel with some justification that the "action" is not to be found in the country. Nor does there exist in the rural community the ease and flexibility of movement among social circles that exists in the city. Finally, the comfortable degree of anonymity offered by the city is not to be found in the rural community.

On the other hand, rationalization in favor of a rural practice may take the following tract. There is a satisfying degree of professional independence immediately available in the rural community that increases with time.

If a lawyer wants and appreciates a general practice he may do well to go to the country. The rural community needs and appreciates the multitude of services that a competent general practitioner can provide at a cost the general community can afford. As a rule, office overhead and other general business expenses are lower. Close working relationships with other local attorneys, judges and court personnel can be developed, and knowledge of the people in the area is always a potential advantage in jury selection.

There exists an opportunity for truly meaningful and rewarding participation in local governmental affairs. Finally, given the necessary measure of competency, the country lawyer stands out in a community as a leader entitled to the general respect and esteem of the people.

Aside from these professional considerations favoring a rural practice there are private considerations in support. Environmental factors may be paramount. The cost of living is generally lower than in the city, with a concomitant, relatively higher standard of living.

A small town is a great place to raise children. The pace of living is not so strenuous, and commuter time is never a problem, allowing additional time to devote to one's family. Finally, it's always fun to get away to the city.

However the scales may tip in a particular instance, two factors come to mind which are equally applicable to a metropolitan or rural practice: Competition is tough and there is never a substitute for hard work.

Given a decision to establish a rural practice the next consideration is that of location.

Is there a need for another attorney in any given community? Is that community able to support another attorney? Inquiries among other attorneys, judges, bankers and community leaders will be helpful. Also helpful is an analysis of the population in the general area, country and community.

This information should be viewed relative to the active attorney population, and an examination of the nature and extent of local business and industry will shed additional light on this question.

Look at the local government. Is it effective, responsive and progressive? Is it enthusiastic? Such qualities of the local government indicate a healthy community.

It is obviously important to know what educational, medical, religious and recreational facilities are available. Find out whether local service clubs are active.
Evaluate how you are received. Are the people you talk to warm or cool, discouraging or encouraging? (A caveat is offered here. People in small towns often take time to get to know a newcomer. Their confidence is usually earned and not gratuitously offered. First impressions of the townsmen may be misleading and should not be dispositive.)

There exists what might be termed the "back to the old home town syndrome." Many attorneys establishing practice in rural communities have youthful ties to the town of their choice, but sometimes find it difficult to dispel the townsmen's doubt that the devilish little rascal they all once knew can now be a mature adult able to handle grown-up legal affairs.

Suffice it to say that in this writer's opinion the advantages far outweigh such disadvantages. If there is an opportunity to return to the home town to establish a practice, don't overlook it or take it lightly.

Selection of a town ultimately boils down to feeling comfortable among the people in the geographical environment.

The crucial question of establishing the rural practice is really one of dollars and cents. It should come as no surprise that the more money you have to do it with the better.

Association with a competent established practitioner can soften the initial economic impact of commencing practice. Such a relationship might be initially founded upon a salary arrangement with a view toward partnership. It might also be founded upon an arrangement whereby expenses are shared or rental is paid.

However, salaried arrangements are often harmful in the long run in that they provide no incentive to learn the realities of office management. Awakening to the necessity of meeting expenses is a shock, and salaries merely postpone the inevitable day of reckoning.

It is a myth of marriage that two can live as cheaply as one. The analogy to office-management is apparent. Overhead will increase with an additional lawyer, but it is nevertheless considerably more economical to share expenses than to office alone.

Both the established attorney and the newcomer can benefit. The established attorney is in a position to forward work to the newcomer who does not have time to handle. This keeps the client in the office and provides a source of income to the newcomer. In addition the established attorney has in the newcomer a potential buyer or part of his office assets (and the new lawyer has the prospect of a seller).

The new lawyer already has the benefit of use of facilities and the use for a period of time on the cost side of the established lawyer's reputation. Eventually, of course, he will have to establish his own.

Association with another lawyer further provides a wealth of practical advice and assistance. Then, too, it is wonderful just to have another lawyer to talk to.

It may not be possible to find an established lawyer to associate with. If another lawyer is setting up practice, explore the possibilities of an association with him. Many of the advantages listed above may present themselves.

Assuming there is no steady salary there will be immediate overhead whether or not expenses are shared.

It takes time for accounts receivable to build and turn over, and there may be initial capital outlays for office remodeling, equipment and library.

There is always the specter of personal living expenses. As stated before, the greater the initial monetary cushion the better. As in any other business, sufficient initial operating capital is a necessity. It varies only in degree from individual to individual.

Find a friendly full service bank. This may take some shopping; small town banks vary widely in loan policy and character of service.

Book publishers have a well-deserved reputation for fairness in financing purchases, generally charging little or no interest and giving generous discounts for full immediate payment.

When office furniture and equipment are acquired, consideration should be given to lease-purchase arrangements which allow annual lease-payment tax deductions with eventual depreciation of assets after acquisition.

The view is widely held that in the small town the appearance of one's office is of minimal concern and, in fact, if it is too plush the clients will feel uncomfortable. I do not subscribe to that view. There is no substitute for tasteful design and quality of office decor. Such an office reflects concern for the client and provides a pleasant environment in which to work.

The composition of the rural practitioner's library is of critical importance. He does not have ready access to the large, well-stocked libraries of the large office building or university. Many counties maintain a library but quality varies and the practitioner's office may not be at the county seat. There may be a tendency to overbuy or underbuy.

Library space is less of a concern than in the city because rentals are lower, but careful planning is nevertheless required in acquiring the library.

In developing a clientele any lawyer should strive to manifest in himself those qualities of character which obtained all good attorneys. Practicing law in a rural community places the attorney before the public eye on a day-to-day basis. Consequently it is necessary to be more image-conscious than when practicing in a city. "Appearance non-conformity will impede clientele development."

During the initial months of practice there will be ample time for civic affairs. This can be a two-edged sword. Participation in such affairs or projects is

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satisfying and allows the new lawyer to meet people and become known.

However, people know there is time on a new lawyer’s hands and will tend to make excessive demands on that time. Be selective of the committees and projects to which service is given so that a time problem does not develop later.

Often there are opportunities to fill such part-time positions as city or county attorney, municipal judgeships or deputy district attorney. Jobs well done in such capacities not only bring in clients but provide a steady supplement to income which may go far toward meeting overhead.

There is sometimes a tendency to take on everything and anything that walks through the door for fear of losing a potential lifelong client. Sacrificing quality of work for quantity will have a detrimental effect on clientele development. The word gets around a rural community quickly.

Finally, development of trial ability is invaluable. It is important to the client that his attorney be able to provide the full measure of service and see the matter through litigation, if necessary.

There is no precise formula applicable to the establishment of a rural law practice other than hard work, aptitude, a willingness to undergo a few lean years if necessary, and a fondness for the rural way of life. Add to these qualities of character a belief that, despite the general specialization in law, the competent rural practitioner can continue to provide vital service for the community, and the sum total reflects an attitude that will appeal to sound founded instincts which a good
Bratwurst and Pumpernuckle, two first year law students, were striding briskly towards class engaged in animated conversation. They did not notice the approach from the opposite direction of Frank Dickson, Professor of Torts and man about the law school.

Suddenly, Bratwurst fell to the floor clutching his forehead. Blood trickled from under his fingers. He was rushed immediately to the university infirmary where, while being treated for a gash above the eye, he died.

In a suit brought for wrongful death brought by Bratwurst's estate against Professor Dickson, Elias Fink, a law student, testified that he was present in the hallway at the time of the injury and that he saw Professor Dickson vigorously swinging "a round object on a chain."

Other students in Dickson's classes have variously identified the object as an Aztec calendar, an avant-garde peace symbol, and an ancient fertility icon of the Mesopotamian Basin. All swear that it was a regular part of the professor's costume and they would recognize it instantly.

Dickson admits that he owned a circular, metal medallion about two inches in diameter and 1/8th of an inch thick. However, he claims he lost it shortly before the incident in question.

Thorough combing of the hallway failed to yield any item capablc of causing the injury sustained by plaintiff's intestate. Although a search was made of Dickson's home, the medallion was never found.

At the conclusion of his evidence, plaintiff moved for an instruction of res ipsa loquitur on the grounds that Dickson had exclusive control of the agency of intestate's harm and was palpably negligent in his conduct. Dickson offered to prove that no one else had ever seen him swinging his medallion, that his mother raised him never to hurt anyone, and specifically moved for dismissal on the grounds that plaintiff had failed to show a cause of action. He contends that there is nothing to connect him with Bratwurst's unfortunate demise.