

“How to Train Your Lawyer”

A Tongue-In-Cheek Training Manual for Clients

Gary L. Stuart

Lawyer Training Rule Number One:

“Make Your Lawyer Sit Up In The Chair When He Listens to You”

Lawyer Training Rule Number Two:

“Lunge Your Lawyer For Ten Minutes Before Leading Him Into Court”

Lawyer Training Rule Number Three:

“Offer Your Lawyer a Treat For Doing Good”

Lawyer Training Rule Number Four:

“Make Your Lawyer Quit Chasing Things.”

Lawyer Training Rule Number Five:

“Keep Your Lawyers’ Cinches Tight!”

Lawyer Training Rule Number Six:

“Know When to Change Your Lawyers’ Gait and Lead.”

Lawyer Training Rule Number Seven:

“Change Your Lawyer’s Mind When You Change Yours.”

PREFACE, ASSUMPTIONS, DISCLAIMERS, ETC., ETC.,

EDUCABLE LAWYER

If you have an educable lawyer, then this training manual will really help you. That is the first assumption I have to make before I can guide you through the steps to getting your lawyer properly trained. If your lawyer is not educable, take him/her/them back to the ASPCL pound and get one that is. Some lawyers have big reps but are not really educable. Advancing youth, poorly motivated clients, and ill-fitting suits are common reasons why you just cannot educate some lawyers.

By the way, ignore the yellow pages when looking for educable lawyers. The ones you find there are pretty well gone in the training department (they think MCLE stands for Money Coming for Lawyer Enhancement). Educable lawyers are more likely to be found in what we call the Martindale-Hubble Directory. It weighs about five pounds but that’s worth hefting if what you are after is a really educable lawyer.

ASSUMPTIONS

You probably don't know it but no self-esteeming lawyer can get through the day (much less a billable hour) without making assumptions. What we know is not as important as what we assume. After all, facts are easy; assumptions are a real challenge. For example, we assume that clients are not the kind of people who read training manuals. We assume that they will leave their assertiveness in the waiting room while we hold forth in the room with outside windows (that is where we practice and we are going to keep at it until we get it right, so there.)

LTR's

The second assumption is that you have an I.Q. at least equal to room temperature. That makes you as smart as most lawyers and fully able to master the Lawyer Training Rules (hereinafter known as LTR'S) articulated in the subsequent monographs. Right off the bat, you know your lawyer needs training when you hear one of them say something that pompous.

Just who do they think they are talking to when they say "articulated in the subsequent monographs"? If your lawyer talks to you like that, jump to LTR No. 6 (this may be an emergency).

UNTRAINED LAWYERS

By the way, the phrase "untrained lawyer" appears frequently in this manual. I mean no disrespect. That phrase does not imply that the lawyer you have chosen does not know the law or is unskilled in the courtroom. Some of America's best known trial lawyers are "untrained" in the sense that no client has yet taken the time to apply the LTR'S in this manual to him/her/them. They may be schooled by their professors, trained by advocacy teachers and honed by judges; however, until trained by one of you (the so-called client) using the following LTR'S, they will be considered "untrained lawyers."

By the way, again, this little spoof is (hopefully) the opposite of lawyer bashing. Lawyers are a composite of the general population but probably do more good for the general population than most other definable segments. We need more humor, less bashing, and, always, training by our clients.

Now for my eighth and final assumption: Even if all of these LTR's fail, you will be a far happier client for having done your part in trying to bring even one of America's 900,000 lawyers up to snuff. Having no authority whatsoever to do so, I will speak to you on behalf of all fellow lawyers: We need you more than you know. Actually that's another assumption, but who's counting?

DISCLAIMER

I disclaim any thought in making up these LTR's. I further disclaim any bright lines for you not to cross. Too much thought inhibits the compulsive spark critical to real lawyering. Bright lines cause glare. Lack of compulsion and glare are distracting things to lawyers.

As a client, you can use these distractions to your advantage. Those distractions are why the LTR's which you are about to read can change your life as a client (for better or worse). It is up to you.

LAWYER TRAINING RULE NUMBER ONE:

“Make Your Lawyer Sit Up In The Chair When He Listens To You”

Why is how he sits in the chair important? You probably thought that what you said to your lawyer was more important than his or her posture during the time you were saying whatever it was you were saying. Wrong. It's posture.

POSTURE

After all, when your friends ask you about your lawyer, you don't want to have to just say: “Well, he slouches.” You want to be proud of your lawyer and say: “He ain't no slouch.”

Posture is the first thing for you to look for when assessing the extent to which your lawyer was properly trained before you got him. Making him sit up straight in his chair will ensure that you have the kind of lawyer you always wanted in your minute of need.

Poor posture is a symptom. It often means that the untrained lawyer is getting that sinking feeling that the client expects results. Worse yet, it almost always means that the client wants those results right away. So, untrained lawyers often slouch down in the chair whenever the client starts to act like they are entitled to something. (By something, I mean results and/or promptness.)

NATURAL SLOUCHINESS

All you have to do to start the training of an educable lawyer is to get him to sit up in the chair when you talk to him. Now, if your lawyer happens to be a woman then the problem is more subtle but not as serious. Women lawyers come to the law with better posture whereas men bring a natural slouchiness based on being cool behind the wheel in high school. If you have multiple lawyers, like say a whole firm of 'em, the problem is, well, multiple. But, I digress.

SUBLUXATION OF THE AWARENESS LOBE

As I said, posture is the key here. When doctors are sitting upright and taking nourishment they are presumed to be competent. It is not so simple with lawyers. They are schooled in disguising the situation and evading reality. So, you have to make sure that they actually hear you, as opposed to merely listening to you. That can only be done when one is erect in one's chair. Otherwise, the possibility of subluxation of the awareness lobe looms insidiously in the untrained lawyer.

See to it that your lawyer is sitting up straight when he listens to you. That way he just might hear you. If that happens, you will be well on the road to successful lawyer training.

LAWYER TRAINING RULE NUMBER TWO

“Lunge Your Lawyer For Ten Minutes Before You Put Him Into Court”

I know. You are reaching for a dictionary to look up “lunge.” It is not a word you often see in a lawyer training manual. It derives from the French word *allonge*. A lunge line is a rope about twenty-five feet long attached to a training hackamore and used in conjunction with a whip to exercise a lawyer while circling the issues in your case.

BARN-SOUR LAWYERS

I made this the Second Rule in the manual because it is sometimes difficult to use and often hard to get away with. Lawyers are not horses but have some of the same bad habits. So, similar training tools are sometimes useful. Any good cowboy can tell you the benefits of lunging a barn-sour horse. Any horse trainer can recite the toning and muscle building effect of lunging a race horse.

TONING WEAK COURT MUSCLES

All you need to do is to apply those same techniques to your untrained lawyer and wait for the toning of weak court muscles to appear. On a good day you can even expect to work off that rough edge that unruly horses and lawyers get just before being led onto the track or into the courtroom.

SUPPORTING THEORIES

There are two theories to support the lunging of an unruly lawyer ten minutes or so before letting him into the courtroom. Neither theory works but it is fun for the client and always amuses the judge.

The first theory is that lawyers aren't born with bad habits. In fact, they don't know good habits from bad habits until a client sets them straight. Most lawyers are raised from early pre-lawyerhood to actual client contact without disciplinary problems. If trained with consistency and never hurt beyond mild correction, they will learn and remember the way they are supposed to do things.

GETTING THEM TO TRUST YOU

If trained by a single client they often become so responsive that one wonders if they understand non-lawyer talk. Gently and carefully trained lawyers are very trustful of those who handle them well and will do what they are asked quite willingly. They will jog up the courthouse steps, briefcase in hand, with aplomb and seeming confidence. They will lope down into the pit of the courtroom even when the other side is numerous and the judge fearsome.

TRAUMATIC BLOCKS FROM BAD TRAINING

Unfortunately all lawyers are not well trained. Some were raised by unhappy clients. So, new clients may find that they have to deal with blocks and traumas resulting from bad handling or over permissiveness of a former client.

ONE-LAWYER CLIENT

The one-lawyer client is especially at risk. Clients who only have occasional legal problems are not as well versed in training techniques as those clients who are always in trouble. The one-lawyer client has to be very much on guard against bad lawyer habits caused by idleness.

IDLENESS LEADS TO ANNOYING HABITS

Because she isn't called upon to demonstrate the things she does well, the idle lawyer will gradually replace her good manners and eagerness to please with a lot of annoying habits. Lunging her will bring her back into form.

OVERLY PERMISSIVE CLIENTS

I hasten to add that this is not always the fault of the lawyer. Clients are sometimes tempted to be too permissive with their lawyers when they can only spend short periods of time with them. You will do your lawyer and yourself a favor by steeling yourself and correcting every bad habit before it becomes set.

PAMPERED AND PETTED LAWYERS

A lawyer that is pampered and petted, used little, and well fed can easily become lazy and reach the point where she hates to leave her comfortable office and actually go to court. The office becomes a refuge from obnoxious opposing counsel, overbearing judges, belligerent bailiffs and, worst of all, juries that look at you and laugh.

LAUGHING JURORS

Nothing is as humiliating as a juror who laughs at you. It is enough to send you back to the office convinced that probate law is a better life. Lunging for ten minutes makes you forget how humiliated or small or inadequate you felt the last time out. A good lunge makes you think that this time it will be different and your eloquence will be stirring and your cause just.

NO HITTING

A final word to the wise: You don't actually hit the lawyer with the whip while he is on the lunge line circling around and around. It is the cracking noise made by the tip of the whip that does the trick. Whipping a lawyer is a high misdemeanor. It often necessitates the need for a new lawyer and a bail bondsman.

LAWYER TRAINING RULE NUMBER THREE:

“OFFER YOUR LAWYER A TREAT FOR DOING GOOD”

Dogs and lawyers have many things in common. One of them is that they respond well to treats. But, the difference is that with dogs it is important to actually give them the treat. With lawyers, you only have to offer it. It is a little like why we prefer assumptions to facts. The tantalizing aspect is in the offer not the actual receipt.

JUST OFFER IT

Even though you are not going to give the treat to the lawyer, it is important to offer them the right one. The wrong treat is like printing directions on shampoo bottles. No one reads them because everyone knows what to do with shampoo. The wrong treat won't serve your purpose because your lawyer will ignore it.

REWARDS AND BRIBES ARE NOT TREATS

A famous observer of the lawyer-training art once said: *“From the manner in which rewards and punishments are administered, interesting conclusions can be drawn as to the character and mind of the client.”* [Podhajsky, circa a long time ago] Less you find your fellow clients drawing “interesting” conclusions about you, it is advisable to learn the difference between treats and their second cousins in the lawyer training world: rewards and bribes.

POSITIVE REINFORCEMENT

Rewards and bribes change a lawyer's tendency to repeat whatever he has just done. Rewards (technically known as positive reinforcement) come during, or straight after, an action and encourage the lawyer to do it again. If they don't get the reward, they pout. When they pout, they rarely do whatever it was you wanted them to do, again. The problem with rewards is that you actually have to give the lawyer the reward to make it work. With treats, you avoid this nasty little problem because you only offer them the treat, you do not actually give it to them.

Bribes are fundamentally different from rewards. That's because when bribes are used the lawyer can see the reward before he has done anything. While they can be valuable in early training (such as law school where bribes are both studied and learned) they do not add much to the client's arsenal because, once again, you have to follow through with a bribe. Treats are cheaper, easier and work better.

Besides, really frightened lawyers cannot accept bribes. If they think they are being bribed, their mouths get tense and their minds are elsewhere. Greedy lawyers, on the other hand will do almost anything for a bribe. Fortunately, most lawyers are neither frightened nor greedy; consequently, treats are your best training aids.

LAWYER-SPECIFIC TREATS

The right treat is one that is lawyer-specific. That means that what works with other professionals like doctors, engineers, cartoonists and staple-pullers might not work with lawyers. The right treat is one that will make your lawyer salivate and shake his head at the very thought of getting such a treat.

APPRECIATION

In the beginning of the lawyer-client relationship, try offering the lawyer something tangible but elusive; like, say your appreciation even when you haven't understood a word he has said so far.

ENCOURAGEMENT

As the case develops, try offering encouragement rather the usual demands for action now, now, now. As the case nears the end, try telling your lawyer that you understand that a loss is possible and you won't blame him for the inherent weakness in the case.

UNDERSTANDING

Appreciation, encouragement and understanding are really hard for clients. Since lawyers rarely get them they find them almost better than money (I said almost). That is why they work. If you can't be sincere about your appreciation, encouragement and understanding, do what politicians do: keep trying until you can fake it.

DOING GOOD

The hardest part of this rule is the doing good part. With dogs you can always tell when they have done good because they did what you told them to do. When you treat them you reward that behavior and they remember it. Sooner or later they do good just because you say so and the treat loses its significance. Unfortunately it does not work that way with lawyers.

RELATIVE GOOD

Doing good is harder for lawyers than for dogs. That is because everything is relative with lawyers. Good for one client is almost always not so good for some other client. Good for worthy clients (ones with lots of worth) is different than good for clients from hell (the ones that descend on you in the dark of morning when you are recapping your billables).

That is why it is the offer of a treat not the receipt of it that is important. Lawyers might not do good no matter what you give them so why waste the treat. Just offer it; your chances are just as high as if you actually gave it.

WHAT IS GOOD CHANGES OVER TIME

Training your lawyer can get complicated. The experienced client knows that what is good at the start of the case often changes as the case gets older and older. You start out wanting to drain the political swamp and you end up just trying to keep the alligators from eating your assets. It is the same with family swamps or business swamps or malpractice swamps. Your ideals and high motives change as the truth emits from the other side.

MULTIPLE VERSIONS OF GOOD

So, you certainly don't want to train your lawyer with only one version of good. More importantly, you don't want her to stick with your first version of good. That is another reason why you don't actually give her the treat. Just offer it; things might change and she will be confused if she actually gets the treat.

LOSING FOCUS

In law school they taught us to be focused; you will recognize that attribute as being simple. When we are focused we stay that way. But, if we actually get a treat we can lose our focus. This makes the offering of a new treat problematical.

LOSING FOCUS IS GOOD

That is what you want. You want your lawyer to lose focus on your original version of good as your new version emerges from the truth of the moment. Then, you want your lawyer to have a new focus based on the new truth of the case. Remember, don't mess it up by actually giving her the treat. The offer is enough.

FEES ARE NOT TREATS

Lastly, don't confuse treats with fees. Fees are what you pay for legal services. Treats are how you motivate the delivery of those services. One is just business, the other is an art form. If you forget the difference, you run the risk of having a lawyer who is in your case just for the money, not the thrill of being treated.

Always ask yourself this fundamental question: What do you want? A financially comfortable lawyer or a happy one? You can have it both ways: fee them regularly and offer them treats at just the right time.

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LAWYER TRAINING RULE NUMBER ~~THREE~~FOUR

"Make Your Lawyer Quit Chasing Things"

SKIRTS, LETTER JACKETS AND FAST CARS

When they were little, it was balls or boys, sometimes both. When they were in high school, it was skirts, letter jackets and fast cars. Eventually they became lawyers, and, by then, the chasing was in their blood. Only now its ambulances, political office, the infamous buck, and, sadly, you. That's right, you, the one wearing the client clothes.

WHAT THEY CHASE

Only a minority of lawyers chase ambulances; a slightly larger proportion chase political office; most of them chase the almighty buck; and, nearly all of us chase clients. It is up to you to stop this if you really want a well trained lawyer. If you let them keep chasing, the next thing you know, they are off chasing some other case or cause or client or office or, perhaps, the root cause of injustice.

WHY THEY CHASE

Of course, we have an historical explanation for our compulsive need to chase. It stems from our professional ancestry. You see, the word "chase" comes from the Sixth Chief Justice of the United States, the Hon. Salmon P. Chase (1808-73). Before he was the Chief Justice, he was the Secretary of the Treasury. While he was the Secretary of the Treasury he ordered what has become our national motto engraved on all U.S. coins: "In God We Trust."

Stay with me now. All lawyers aspire to the Supreme Court. All lawyers have a fascination with money. All lawyers trust in God and ask you to trust in them. So, it is a natural evolutionary thing for us to be chasers since the very word is part of our professional genetic code.

Chasing may be harmful to the client's health and so you must do your part to stamp it out.

NON-CHASING DRILL

Well-trained lawyers are those least likely to chase. That is because the instinct has been dampened by client drilling. The drill to inhibit chasing is fairly simple but needs to be understood thoroughly before it is attempted the first time.

TIMING THE NON-CHASING DRILL

You have to start the drill within a few hours of the time the chase is started in order for it to be really effective. This means that you have known your lawyer well so that you can spot the on-coming chase in time to run the drill.

Spotting an on-coming chase is mostly a matter of knowing the symptoms. Each category of chasing that lawyers engage in has its own set of unique symptoms. They usually don't cross over from one kind of chasing to another so it is not hard to keep them straight.

AMBULANCE CHASING SYMPTOMS

Ambulance chasing is usually preceded by some sort of tragic event. Most of the world just sees the tragedy but the ambulance chasing lawyer sees the opportunity. As previously noted, only a small percentage of lawyers actually do this so you probably won't see this symptom in your lawyer.

CHASING POLITICAL OFFICE

The second major class of chasing done by lawyers is political office. Like tragedy, this kind of chasing is always preceded by public notice. Usually it is a vacant political office for which merit is given lip-service and the benefits of holding the office are not easily apparent.

It is just this kind of office that some lawyers chase after. When they do they tend to let the little things back in the office slide; like court appearances, deadlines, document preparation, etc., etc.

CHASING THE ALMIGHTY BUCK

Chasing the almighty buck is the third major attraction for some lawyers. In fact, most of us are guilty of this sort of chase during at least part of our career. We are not unlike all other professions but we are nevertheless resented for it because some of us are overly pious about the irrelevancy of money in serving the public.

GOLD CHAINS AS SYMPTOMS

But, the problem for the unlucky client with an untrained lawyer can be quite severe. The most common symptom is an overt display of wealth and an ostentatious preoccupation with the things commonly seen in the entertainment world. For example, good suits and nice offices are to be expected but gold chains, diamond pinkie rings and Dom Perigno for lunch are bad signs.

Be especially on guard when your lawyer is more interested in your retainer than your remedy. Chances are that he is untrained and in need of your help to overcome this malady with money.

CHASING CLIENTS

The last but by far most common form of chasing is chasing clients. This type is also the easiest to understand because it is nearly identical to what clients do when seeking out lawyers. They chase and chase and chase. Finally, you agree out of exhaustion even if the retainer is weak and the case boring. But, again I digress.

BEWARE THE QUARTER-PAGE AD

Let me list the most common symptoms of client chasing: First, quarter-page ads in telephone books, newspapers and shopping center throwaways. Second, large supplies of business cards spread all over the office. Third, the predictable "Yes, I take those kind of cases" no matter what kind of case you say you have. Fourth, taking phone calls from "others" while you are in the office.

Any one of these symptoms is not alarming in and of itself. But, watch yourself if your untrained lawyer displays three of the four in any one month. If that happens, you must act decisively and make him stop chasing right away. Of course, you can't break him on a permanent basis but you can slow it down during your case.

NON-LAWYER CHASING

None of this is meant to demean chasing by others. Ordinary people do it to wild geese; baseball players do it (except they call it shagging balls), gunsmiths do it (by grooving and indenting), and, poets do it. Lord Byron is probably best known for his line: "To chase the gloomy hours with flying feet . . ."

THE DOG PARADIGM

Dogs chase cars because the cars are thought to be invading their territory. Some people think dogs are pretty stupid when they never catch the car. Actually, the dog achieves his goal just by engaging in the chase. The car goes away which is what the dog wants.

With lawyers, it's just the opposite. Unless the lawyer actually catches what he is chasing he feels like a failure. Consequently, your irritation when your lawyer engages in undue chasing is often exceeded by the lawyer's frustration when the chase is unsuccessful. So, you can make both your life and his better by putting a stop to this insidious practice.

HOW TO MAKE THEM STOP

The right drill to inhibit chasing involves stern looks, a wagging first finger and a calm, deliberate voice. You must gather yourself, take a deep breath, squint a little bit, and point your first finger on your dominant hand and say: "Quit that chasing right now."

Of course, just saying it is not enough. You must mean it and your untrained lawyer has to know that you mean it. Be prepared to shake your head back and forth when the first "But all the other lawyers are doing it" comes out of your untrained lawyer's mouth. You do not have to justify your insistence but you must be totally uninterested in what all the other lawyers are doing. It is your lawyer and your case that you have to concentrate on.

TAKE AWAY THEIR CARDS

In addition to sternly instructing your lawyer on the evils of chasing you should also be prepared to take stronger measures. Sometimes this involves taking their business cards away or not letting them read police reports or clipping out the op-ed pages of the newspaper before they are allowed to read it.

ONE STEP AT A TIME

There are lots of other measures but the key is to understand the compulsive nature of the chasing activity and deal with it one step at a time. In those rare cases where the chasing activity is triple sourced (i.e., genetic, environmental and the result of a professional contagion) all twelve steps must be climbed.

It takes a lot of energy but you will feel great if you end up with a lawyer who is not only well trained in other respects but no longer chases.

LAWYER TRAINING RULE NUMBER FIVE:

“Keep Your Lawyers Cinches Tight!”

THE POWER OF LAWYERS

Have you ever thought about the tremendous power a lawyer possesses? About the great strength they can muster up---for better or worse---in a split second? All clients with savvy have. Just like whenever you are around horses, you must be careful to do the right thing at the right time around a lawyer.

CUING AN ADVOCATE

Lots of clients have learned the hard way to respect a lawyer for what he is: an advocate that can respond to his client's cues but might not understand your reasoning. So, you must keep your cinches tight when you ride a lawyer into court.

HOW TIGHT IS TIGHT?

Now when I say tight, I do not mean you must cut your lawyer in half. Just pull up on the cinch, easy-like, until your case is down snug on your lawyer's mind. Ideally you want to be able to squeeze in a couple of thoughts in your lawyers mind (a cinch that is too tight won't let you do that.) Usually you want the cinch just right as your lawyer travels between the office and the courtroom. The trail between the office and the courtroom is no place to fall off just because you forgot to tighten the cinch.

CINCHING FOR SECURITY

If lawyers were as easy to cinch up as horses, life would be wonderful. You see, horses understand cinching and actually want their riders to feel secure. Lawyers, on the other hand, get spooky when they sense confidence and security in a client. It has something to do with reverse control.

SPOTTING LOOSLY CINCHED LAWYERS

Of course, you see a lot of clients jogging through the courts with loosely cinched lawyers. Sometimes the cinch is flopping, with just enough space between the case and the law to make things unpredictable. Usually, these clients are sure of their lawyers and are good enough to maintain the excellent balance that is critical when riding a loosely cinched lawyer. Even though you do see it, it is bad practice.

DOWN THE CHUTE

Other times, you see a lawyer so badly cinched that any fool can see where that case is headed. Right down the chute. They will hit the dirt so hard that the case will disappear in the dust. It makes you cringe because you know that the client not only did not check the cinch, he probably did not even know what a cinch was. The lawyer was so used to prancing about in court uncinched that she loses her composure in every case. Some lawyers deserve those kind of clients.

TAKING UNNECESSARY CHANCES

Any client who forgets to check the cinch is taking an unnecessary chance. That's mostly because a lawyer's ability to change course once in court is doubtful. And, no matter which court you ride into these days, something strange can pop up to scare your lawyer. If he bolts or spooks on you in the middle of your case, you will wish you had taken better care to make sure your cinch was good and tight.

A BAD WRECK

I know of a case in Arizona that is a good example of what can happen to any client who forgets to cinch up. The client's case was being tried in a courtroom on the first floor directly below a bigger courtroom on the second floor that was being used by an appellate court. What no one knew was that if a trial was going on down on the first floor while an appeal was being heard on the second floor, the air ducts between the two allowed for secrets to be heard from one bench to the other.

THE JUDGE SNORTS = THE LAWYER BOLTS

The lawyer, and he was a good one, was arguing a point of law to the trial judge when, down through the air duct, came the loud noise of a reversal from the appellate court up above. Well, the trial judge's ears picked up, he snorted several times and started to paw the bench with his gavel. The lawyer, sensing a change in the legal wind, bolted. Now that happens, but in this case the client had not checked the cinch before the trial and got bucked off in open court.

With a tight cinch this could have been prevented. The properly cinched lawyer would have just spun a bit, settled and changed leads into a new argument. The judge would have relaxed at this change of pace and the appellate court would never have known the difference.

TEAM TYING LAWYERS

If think the problem is bad with just one lawyer loosely cinched, imagine what a wreck you'll have if your whole trial team is poorly cinched. Some cases are big enough to have two or more lawyers arguing down the same track. It's like team roping in the horse world. The header (lead counsel) works on the steer's horns while the heeler (second chair lawyer) tries to rope the steer's hind legs. Team work is essential and unless they work together, the steer gets away and the judge throws out the case.

CINCH UP THE SECOND CHAIR TOO

If you find yourself in this situation, remember to check both cinches. The cinch on lead counsel can be nice and tight and so she is focused on the issues in your case. But the cinch on your second-chair lawyer might be loose and he might be lolly-gagging around in the court room when he is supposed to be conducting the cross-exam of an easy witness.

If your second-chair lawyers' cinch is loose he might spook when he gets an unexpected answer. It's hard to cinch up in the middle of cross examination. Also, you can't rely on lead counsel to do everything. Besides, she might be over-confident because her cinch is just right. You are the client and it's your job to check them both. Only the client really knows how awful it can be to see your case go off the track for something so easy to fix as a loose cinch.

SHE'S EXCITING, THEN, SHE'S GONE

Clients can learn a lot about lawyer training from cowboys. Any cowboy worth his salt knows that a loose cinch is a lot like a loose woman. It's real exciting for a minute or two and, then, she's gone.

Lawyer Training Rule Number Sevenix:

“Know When to Change Your Lawyers’ Gait and Lead.”

A lawsuit is not a static event. It moves along slowly at times and at other times is absolutely frantic. The pace and rhythm of the case can be controlled by having your lawyer in the right gait. More importantly, you can move from one gait to another by changing your lawyers’ lead at the right time.

THE THREE BASIC LAWYER GAITS

Of course, before you train your lawyer to move from one gait to another you must know what gait you want for the phase of the case that you are in.

Most lawyers can accomplish the three basic gaits: the Walk; the Jog Trot; and the Canter. More accomplished lawyers can also do the Rack and the Fox Trot. These last two are beyond what you can expect of this simple lawyer training manual. We will focus on the three basic gaits; for advanced gaits check the pocket part in a year or two.

THE LAWYER WALK

The start of the case is best done at a Walk. The Lawyer Walk has a certain rhythm and usually serves the early phase of the case well because the facts are just being discovered.

THE LAWYER JOG TROT

Once the facts are gathered, the lawyer should be moved into the Lawyer Jog Trot. Otherwise, the case can languish on the trail and everything gets cold. The Lawyer Jog Trot is actually a slow trot; that makes it a two-beat gait that is faster than a walk but not as fast as the Lawyer Fox Trot (oddly named since lawyers and foxes have different intelligence levels). The Lawyer Fox Trot is particularly well suited to business litigation but sometimes a little slow for personal injury or criminal cases.

LEGS OF THE CASE MOVING IN UNISON

A word of caution about the Lawyer Jog Trot. It is suitable for clients who like to post. It is a natural two-beat gait in which the diagonal legs of the case move in unison with the court rulings. The Jog Trot has a wide range from a moderate trot of about three decisions a month to an extended trot which can be used to push nine or ten decisions into a veritable verdict wedge.

POSTING

Posting is movement up and down as the case moves from discovery to trial. It can make for a comfortable if schizophrenic ride. It is best done with proper adjustments to the stirrup files. Of course, lawyers are quite used to posting and do it all the time.

POSTING BAIL OR DATES

For example, they post bail, they postdate, and, on occasion, they use the post to file and plead. The posting necessary for Jog-trotting your lawyer is commonly used in civil cases but is risky in criminal cases. Criminal clients are usually trying to avoid all manner of posts, poles, bars, wires and things that are made out of any combination thereof.

THE LAWYER CANTER

The Canter is a three-beat gait. It is a slower version of the old style “gallop.” (The gallop is still used in statutory countries but has been largely abandoned in common-law countries.) Just as the hind legs of the horse do the driving when it is cantering, the Lawyer Canter is predicated on rear-driven force.

FORGING AHEAD BY FORCE

You the client do the pushing (always from behind, not from the side). This forces the lawyers gait and makes him forge ahead even in the face of a strong adversarial blow or an uphill battle with the law.

Now that you have the three basic gaits down, the next thing is to get your lawyer into the right one at the right time. To do that, you might have to change your lawyer’s lead mid-stride (that is, mid-case).

CHANGING THE LAWYERS LEAD

A flat saddle rider in changing the lead of his horse often moves the horse’s head slightly to the right for an instant to “open the shoulder” just before the strike-off into the *left* lead. And so it is with lawyers as well.

TIMING THE LEAD CHANGE TO THE PRETRIAL STATEMENT

As your lawyer is walking through the facts, move his focus slightly into the theory of the case. You have to be subtle with this. Don’t try it for more than one or two minutes or the claims for relief in the complaint will become blurry. You want the lawyer moving from the Walk into the Jog Trot by changing the left lead just before the pre-trial statement is due. That will give you plenty of time to move up to the Canter before *voir dire* and well before the next gait change (usually the giving of opening statements).

THE WESTERN LOPE IS FOR HORSES, NOT LAWYERS

A word of caution is due here. The Lawyer Canter is sometimes confused with the Western Lope. The Western Lope is a free canter. For lawyers trained in the Western Lope, it can be a rewarding thing for the client. In reality most lawyers prefer the Canter because it is not free. Surely you understand.

COLLECTION

The only other thing you need to know about gaits and lead changes is the concept of “collection.” In the horse world the term is used to describe the action the rider causes when she gets the motive power (the rear of the horse and his hind legs) under his body. This is done by cues or restraint keeping the forelegs back, thus making the legs available for higher action, change of gait or change of direction.

READY FOR HIGHER ACTION

In a lawsuit, you really need a lawyer who is ready for higher action from the jury and can change direction whenever the judge says so. You might need to cue the lawyer to do that even though “collection” is instinctive in every lawyer (even poorly trained ones.)

A DIFFERENT KIND OF COLLECTION

The problem is that the collection the lawyer has in mind sometimes is different that the collection you expect in your case. You might need to cue the lawyer to collect for you too.

LEARNING BY ROTE

In closing, always remember that a lawyer learns by rote. This means that his client has to have certain basic ways of doing things so that they will become habitual. The lawyer (even the slow ones) will learn by recognized routines and will respond if you are both patient and persistent. A client must school himself in proven and accepted ways that are effective in the office as well as the courtroom.

CUING STRAY LAWYERS

The client must also learn to deal with stray lawyers as well as their own. The client who learns to use these cues for changing gaits and leads can manage not only his own lawyer but almost any lawyer.

Lawyer Training Rule Number ~~Eight~~Seven:

“Change Your Lawyers Mind When You Change Yours.”

STICKING TO THE PLAN

Not many things will be more frustrating for you than having a lawyer who sticks to the plan when you've got a new one. After all, whose case is it, anyway? Sure, you began with a simple search for justice and only wanted what was right and fair. But now you want money, lots of it. But, your lawyer seems committed to the original charge and is still out there seeking justice, fairness and right.

MONEY, AND ALL OF IT, NOW

That sounded good in the beginning but now you realize that what you really wanted all along was everything they had (the defendants that is). Better yet, you want all the money they have and you want them in the poor house after you get it. But, your lawyer says, “No”. We don't have a case for punitive damages, all you can get is something arcane called “specific performance”.

Here is what has happened. You have changed your mind; she is stuck in hers. Make her change it or all you will get out of your case is justice.

PHYSICAL ATTRIBUTES OF LAWYERS

Physically the lawyer is superbly adapted to life in court. When necessary for survival, they can also cope in other types of places (such as the bar, the bench, the holding cell, the venire). Most clients are never allowed in the venire, which is a sort of secret place that some lawyers use to work their magic. But it is in court that lawyers prove that evolution works for them as well as the ferns of the Galapagos.

FIT FOR COURT

They have adapted so completely over the millennia to their physical surroundings that they are unmatched and without competition in their environment. Have you ever hear of a doctor taking on a lawyer in a courtroom and winning? No, the lawyer reigns in court and all other professionals give due deference and stay out of court whenever possible. Even though they call it civil law, it's no place for civility.

MENTAL ADAPTATION

Unfortunately, this evolutionary adaptation is more physical than mental. Sometimes, all the lawyer's physical adaptations are useless because they do not mentally adapt to a client's change of mind.

CHANGING OF THE MIND

Of course, they are very good at other kinds of change. They change fees, theories, contracts, arguments, suits, judges, chairs and all sorts of things in and around the courthouse. The one thing that they seem to have real trouble with is changing their minds at the time that you change yours.

BONES, MUSCLES AND INNARDS

Just as natural selection shapes bone, muscle, innards and skin to suit a particular profession, it can also be used by the client to change a lawyers mind. Lawyer's bones are sharp; their muscles flexy, their

innards long and loose and their skin thick. It is up to you to see that your lawyer's mind is changeable whenever you change yours.

IT IS YOUR CASE, NOT THEIRS

A lawyer does not, and cannot, think like a client. They do not have cases of their own, they only have yours. They do not suffer pain, they only talk about yours. They do not lose cases, only you can do that. (Of course, they do win cases but that is their special talent.)

STANDING MINDS

All of this leads to the inevitable conclusion that a lawyer cannot just change her mind as willy-nilly as does the client. After all, lawyers are steeped in the ancient doctrine of "*stare decisis*." That means that their minds stand decisively no matter how reasonable change might seem to you.

NON-ADAPTIVE SURROUNDINGS

I must digress a bit here to speak to those clients who do not keep their lawyers in the surroundings for which they are so superbly adapted. Some clients keep their clients in the office, late at night, reading the law and such. That sort of restrictive control will dull the lawyer's natural inclinations for the work they do best: courtroom advocacy.

THE TRUTH OF THE CASE

The client's inclination to keep the lawyer in the office is a product of the instinctive fear some clients have of courtrooms. For new clients, tethering the lawyer to the office is a symptom of lack of confidence in the lawyer's trial skills. Most often, it comes about when the client knows the truth about their case.

NON-ADAPTIVE BEHAVIOR

Do not try to change a lawyers mind in surroundings that are less comfortable than open court. They might behave non-adaptively, that is, stupidly, like a fish flopping on a riverbank.

BLIND CLIENTS

There is an old Sufi story about a group of blind clients meeting a lawyer for the first time. "Ah," says one patting the lawyer's stomach, "It is big and feels strong, but moves every which way when you push it." "So, this must be a defense lawyer."

"No," cries another, feeling the lawyers' face. "He is crying and he feels sincere. He must be a plaintiff's lawyer."

"You're both wrong," yells the client who has examined the lawyers' feet. "These are stuck down in the dirt and they will not move. He must be a judge as they are immovable and unyielding, even in the face of change."

LAWETHOLOGISTS

Learning about the different forms can be done in the field or in the laboratory. Some professional lawyer watchers (called law ethologists) choose to watch deprived laboratory-bred lawyers pushing paper around on a flat surfaces (often a standard office desk). Others choose to study the behavior of free-ranging

wild lawyers in open court. Frequently their views are not as contradictory as they first seem. The behavior common to both is linked by assertive tendencies heavily burdened with compulsion and a delusion of adequacy.

LAWYER EXPERIMENTATION

The value of the many years of lawyer experimentation and watching is that the scientific method sorts out which factors are relevant in certain conditions. The huge body of evidence that has gradually accumulated shows the general principles on which lawyers' minds work.

ASSERTIVENESS AND COMPLUSION

In attempting to get a clearer picture of lawyers than the blind Sufi clients did of their first lawyer, we can call on first one school of lawyer thought and then the other while remembering that the overlapping is due to assertiveness superimposed on compulsion but limited by the lawyers natural delusion of adequacy.

Of course, the perceptive client will add this the evidence of his or her our own eyes (ever mindful of the Sufi blind client story).

GESTALT

One of the most famous of all lawyer trainers, the Most Hon. Clarence Gestalt, stressed that a lawyer does not respond simply to a cue but to a set of conditions of which the cue is only one. "The whole," he said, "is more than the sum of its parts." Unlike the mid-European behaviorists, Clarence Gestalt emphasized the importance of the lawyer's perception and understanding of the whole situation (or Gestalt). This is helpful in understanding lawyer latent learning and lawyer insight learning.

LAWYER LATENT LEARNING

Latent learning, when done by a lawyer, is "hidden" learning. It is done without even the offer of a treat. For example, forming mental outlines of the flow of the case during the initial client interview. If left to their own devices, lawyers can often show how clearly they laid out the flow of the case even before they appear to have given it any conscious thought.

LAWYER INSIGHT LEARNING

Lawyer insight learning is the sudden realization of the solution to a problem without trial and error. This is harder for lawyers because, while they like the trial part, error is bad, bad. A well trained lawyer, separated from a trial by delay tactics of opposing counsel will soon overcome by quick responsive briefs and solicitous pleas to the judge. The untrained lawyer will not brief or plead but rather contribute to the delay by whining about the other side to excess.

BACK TO THE GESTALT

Clarence Gestalt's brilliant training methods are helpful in understanding lawyer latent learning and lawyer insight learning. You see, the lawyer sees these as a mental rearrangement of known, but temporarily absent, points of law. When the untrained lawyer fails to recognize a familiar point of law in an unfamiliar setting (say an art gallery), it is because the Gestalt, the whole, had changed.

THE CLIENT AS GESTALT

When the untrained lawyer responds in a certain way in court but differently in an art gallery it is because the Gestalt has changed. The client can solve these little mental walk-about by making sure that the lawyer's whole attention is on the client. In that way you become the lawyer's Gestalt and you can be familiar when and wherever you choose.

THE THREE THINGS USEFUL IN MIND CHANGING

It would unduly shorten this chapter to recite all the things that must be considered in actually changing your lawyer's mind. Consequently, I will only talk about the three things that are critical to the process: Perception, Conflict and Maturation.

PERCEPTION

The world inside the courtroom presents an almost infinite variety of sights, smells, sounds, and feelings. There are gunshots; the smell of victory; the sound of being overruled; and, the feeling of inadequacy when a lower than expected verdict comes in. It is impossible to absorb them all.

FILTERING

These sensations are filtered at three different levels, so that the average lawyer tends to notice only what is useful to him at the time.

THE LAWYERS SENSE ORGANS

Firstly, the sense organs themselves only pick up certain sensations. As we have seen, lawyers' sense organs are quite different from clients, so that they do not hear or see the same things as clients do. Although there are overlaps, their worlds are different. For example, the client might sense relief from the downcast look on the faces of the jurors, whereas the lawyer would interpret this as boredom.

FIRST FILTER, THEN ANALYZE

Secondly, the areas of the brain that deal with sense information act as filters too in the way that they analyze that information. Thus, though the average lawyer's eyes are not as sensitive as the client in most ways, lawyers are quicker to notice little fluttery movements than clients are.

LITTLE FLUTTERY MOVEMENTS

These things are vitally important to a lawyer's survival. For example, a lawyer will immediately notice the fluttering eyelids of an elusive witness about to explode a bomb in the middle of your case. The client often misses this and is surprised when their lawyer sits down with a quick "No more questions of this witness, your Honor."

WATCHING VICTORY SLIP AWAY

Another good example of this is when the lawyer sees his victory slipping away during the closing argument of the opponent. The lawyer actually sees the loss while the client merely hears the words. Of, course most clients ignore the words because they come from the enemy so it makes it doubly hard to see the coming loss. The difference is soft and, well, fluttery.

THINKING IS A FILTER

Thirdly, what the lawyer is thinking about acts as a filter even on that analyzed information. It is strange how thinking is supposed to take place after information has already been filtered but it happens in lawyers. That is because lawyers are focused beings and when you understand their focus you can reprogram the filters.

ADVERSE FACTS ARE IGNORED

A plaintiff's lawyer takes no notice of adverse facts (he is thinking about winning). Now this is not all bad. But sometimes adverse facts are best dealt with rather than ignored. Mentioning the adverse facts first is an effort at taking the sting out of them before the other side can use them. Winning is important but it should not cloud your lawyer's observation of adverse facts.

Defense lawyers always take notice of adverse facts (it is usually all they have). The bad news is that they often notice so intently that they become adverse themselves. That helps the plaintiff (and in a perverse way, the insurance company also because they raise the rates when they lose.)

POSITIVE FACTS ARE IGNORED

A frightened lawyer thinks about losing; he ignores positive facts and notices only the quickest way out of the case. Sometimes the fear of one makes the other one glad. This is because one side knows the truth and is afraid it will come out; the other side is ignorant of the truth but is woefully unprepared. So, both lawyers think the case is a dead bang loser. Their fright blinds them to the positive facts in their case.

ALL FACTS ARE IGNORED

A hungry lawyer, thinking about a new client ceases to be able to hear the ringing of the caution bell; the "client acquisition lobe" in the middle brain literally switches the middle ear for a brief time as the new client approaches. If you are an existing client and you see a new client headed straight for your lawyer, be on your guard. You might have to disable the client acquisition lobe with a proper adjustment tool. In law school, they used legal size rulers as adjustment tools but they are hard to come by in the client world. A suitable substitute might be three-battery flashlight or an older model Motorola cell phone.

HOW HIGH IS THE FILTER ANYWAY?

The hardest part for the client to understand is that filtering is done at a higher level. The sensations still arrive in the lawyer's brain but no notice is taken of them. This is what is loosely known as "attention." By higher level, I do not mean the kind used in Zen schools or pole-vault competitions. I mean that part of the lawyer's brain above the hypothalamus and lateral to the jury ventricle. Attention is diverted when filtering is done at lower levels. That is why so much disciplinary action is taken against lawyers who become overly familiar with their clients (if you know what I mean.)

All these filters are highly adaptive: that is, they work in such a way that the lawyer tends to know only about the things that are useful to him in the courtroom. While they can function reasonably well outside the court, you just cannot change their minds at the exact point in time when you change yours.

CONFLICT

What happens when a lawyer has good reason to do two incompatible things at the same time? Now there is a conflict for you. The things may be perfectly compatible to the client but unequivocally incompatible

to the lawyer. Here are some common examples, presented in abstract form so that undue specificity can be avoided.

APPROACH/AVOIDANCE

He may be caught between the desire to approach something and the fear of doing so (approach/avoidance). An example of the conflict pattern known as approach/avoidance is when your lawyer files the suit but is afraid to take it to trial. A poor settlement is often the result.

AVOIDANCE/AVOIDANCE

Alternatively, your lawyer may want to go two ways at once, as when frightened (avoidance/avoidance). The avoidance/avoidance type of conflict is characterized by the lawyer who won't even file the suit. No settlement at all is even worse than a poor one.

APPROACH/APPROACH

The third most common conflict syndrome is found in the lawyer that is attracted (approach/approach) from two different directions at the same time. This one is a bit complicated. It is best illustrated by the lawyer who (a) files the suit, (b) takes it to trial, (C) loses, (d) appeals, and, (e) tries it again. On the surface this may seem like approach/approach/approach/approach/approach. It is not; it is just approach/approach repeated twice and a half. It still conforms to the scientific model because often the second trial is for a different client; the client having fired the lawyer before the second one actually began. The pattern is quite repetitious in some lawyers.

AGITATION BEGETS REPETITION

Unable to make up his mind, the lawyer who can't handle incompatible choices tends to become agitated and repeat the same rule of law over and over again. Often, the lawyer who cannot resolve these conflicts will run excitedly in circles around the issues he wants to approach but continues to avoid.

CONFLICT RESOLUTION = RUNNING AWAY

When your lawyer was just a youngster (i.e., in law school) the last two types of conflict (avoidance/avoidance and approach/approach) were fairly easily resolved; the budding lawyer almost ran off in a third direction, headed towards whichever attraction he was facing at the moment.

BEHAVIORAL MODIFICATION IN LAWYERS

That is expected behavior in law school but you cannot allow it to continue in the real world where you expect results from your lawyer. You need to moderate your lawyer's behavior with focused mental adaptation techniques.

DITHERING

In the animal world (sometimes used as a scientific model for the lawyer world) the donkey between two piles of straw does not starve. He dithers about for a while until one pile is directly in front of him. His attention becomes focused and he forgets about the other for the moment. You can use that same model.

IS IT RIGHT?

If your lawyer cannot file the suit because of indecision about whether it's the "right" suit, it may be that he is dithering back and forth too much between "it" and the "right" suit. You can help him regain his focus by forcing him to stare right at your suit. He just might forget about the other one long enough to get yours filed. Don't tell him the story about the donkey though, he won't understand it and he might be offended by the piles of straw part.

O.K. WHAT'S NEXT?

Approach/avoidance conflicts may take a little longer to work out. That's because as the lawyer's conflict mounts he often begins to behave in a third, totally irrelevant way: it is as if he gives up the idea of approaching or going away and simply turns to the next thing on his list instead.

SNATCHING AT GRASS

To take another analogy from the horse world, young colts occasionally find themselves in the company of young fillies. They want to approach but are afraid because they don't know the stallion stuff yet. In this approach/avoidance conflict they often snatch at grass or weeds although eating is really far from their minds. For both the young colt and the untrained lawyer, snatching at grass (or assumed legal points) is no solution.

GENTLE SPURING WILL DO THE TRICK

We see this often, when, for instance, a lawyer wants to approach a judge and argue a point of law but is unduly fearful of being overruled. Just as when your horse won't cross the stream, a gentle use of the right spur, will often do the trick. Of course, you can't actually spur a lawyer, but you can kick him.

DISPLACEMENT ACTIVITY

This type of behavior is called "displacement activity." Displacement activities constitute a type of behavior which occupies a fair amount of the untrained lawyer's time anyway. Cats do a good deal of displacement grooming; people often fiddle with their hands; and, horses eat.

REVISING, REMOOTING AND HOLDING FORTH

Displacement activities in lawyers include excessive talking, revising the revised brief, mooting and re-mooting the argument, and, (most common of all) holding forth ad nauseum. Whatever the displacement activity, it is always easy to spot because it is a nervous, hurried affair, noticeably unlike the placid talking or briefing seen in well trained lawyers.

HEADSHAKING AND NAILBITING

Other signs of conflict are agitated movements, some of which may take a stereotyped form. For example, headshaking in overly solicitous lawyers, nail-biting in indecisive ones and too many "ah's" in office lawyers pretending to be trial lawyers. Chronic conflict, if unresolved by the client, often results in nervous breakdown and neurosis.

MATURATION

Some behavior programs are only active at certain stages in the lawyer's life. These programs are genetic and are started and stopped by chemical and electrical changes in the lawyers brain. Consequently, they are not really "training" things, but they might help you understand what appears to be untrained traits that are tantalizing turgid.

THE MOUTHING RESPONSE

The first year lawyer's "mouthing" response which signals his submission to older lawyers disappears as the youngster nears partnership. It is something that the client can usually rely on the senior partner in the firm to cure before it messes up your case. If it does not happen quickly enough for you, you can mouth yourself directly to the senior partner. She will understand, having had those awkward moments herself.

THE SUCKLING RESPONSE

As the young lawyer moves through the firm on the partnership track, the suckling reflex also becomes less important. This reflex (along with mouthing activity) is replaced by a learned reaction. Learned reactions are something to behold. They are far more interesting than raw instinct and will serve the trained lawyer very well when faced with conflicts or inappropriate contact by overly friendly clients.

DISCOURAGEMENT CAN BE A GOOD THING

The usual way the suckling reflex is replaced by a learned reaction is that a senior partner discourages it. That discouragement can take the form of a direct command (like, "quit that suckling right now") or a more subtle, indirect suggestion (like: "suckling is stupid, don't you think?")

In the worst cases, your lawyer might need intense and direct discouragement from the client. It is sad but true that some untrained lawyers are in firms where senior partners (inexplicably) still mouth and suckle well into their middle partnership years.

ZEALOUS LITIGATION

In trial lawyers, the zeal to litigate is a behavior pattern that develops with age. Although young lawyers seem to learn to litigate zealously over a period of a couple of years, it is not learning that is taking place but a slow turning on of the genetic program.

TURN ON THE PROGRAM, PLEASE

Lawyers prevented from practicing zealous litigation during that time can, when the right animus acids are released, litigate just as well as those that "learned" to do so.

Mouthing, suckling and zealously litigating are all "programs." They are turned on and off by the changes in hormonal levels associated with becoming a real lawyer. We know that sexual, mothering and nest-building behavior in many animals varies according to the level of sex hormones released at any given time.

THE LITIGATION HORMONE

And so it is with lawyers, they are the product of the unique hormones that start and stop things like mouthing, suckling and litigating. Now, the client does not really care about the hormone that stops mouthing

and suckling. Those are distasteful things but they can be overlooked if the litigation hormone level is sufficient to crank up the zealousness to an appropriate height.

NO ARTIFICIAL LITIGATION HORMONES

As of yet there are no synthetic hormones that you can buy over the counter to modify your lawyer's deficiencies. You must just wait it out and allow the natural Maturation programs in the lawyers DNA spiral to take their lawful effect.

The End