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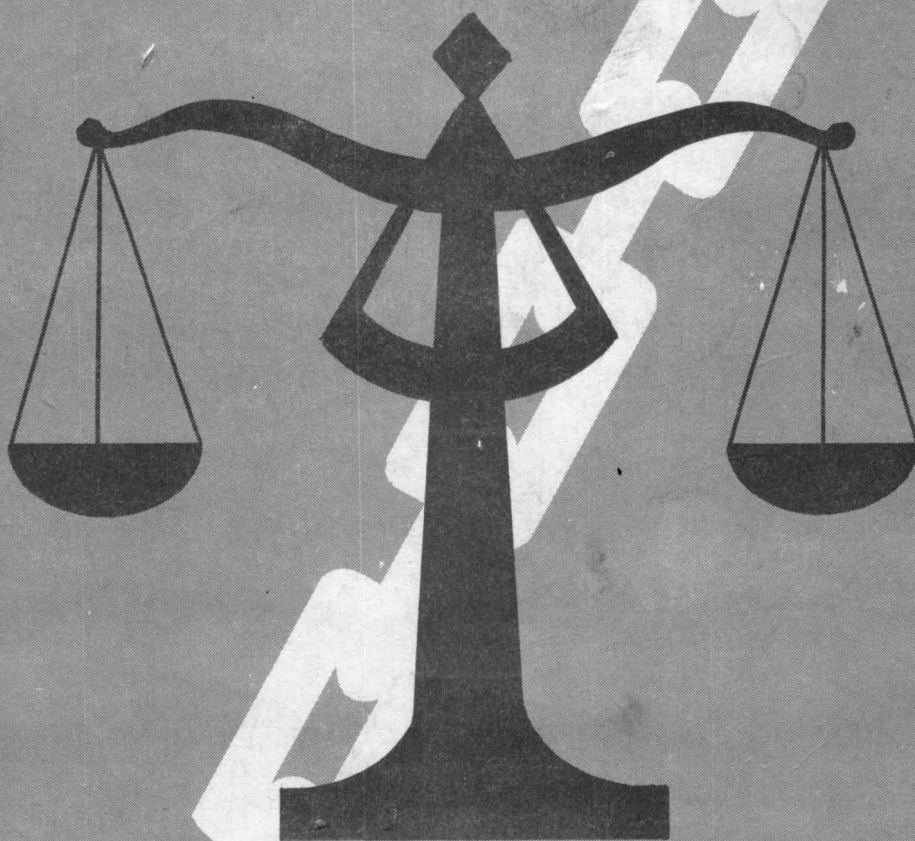
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1978

# Report of Seminar Law Office Management

November 17-18, 1978



Presented by the  
OFFICE OF CONTINUING LEGAL EDUCATION  
UNIVERSITY OF KENTUCKY COLLEGE OF LAW

In cooperation with the  
KENTUCKY BAR ASSOCIATION

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OFFICE OF CONTINUING LEGAL EDUCATION  
UNIVERSITY OF KENTUCKY  
LEXINGTON, KENTUCKY

REPORT OF SEMINAR  
ON  
LAW OFFICE MANAGEMENT

HELD AT THE  
COLLEGE OF LAW  
UNIVERSITY OF KENTUCKY  
LEXINGTON, KENTUCKY

NOVEMBER 17-18, 1978

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DIRECTOR OF CONTINUING LEGAL EDUCATION  
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FORMS OF PRACTICE: SOLE PROPRIETORSHIP OR  
PARTNERSHIP V. INCORPORATION

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Santen, Santen & Hughes Co., L.P.A.  
Cincinnati, Ohio

Our firm, which I'll be referring to during my talk to illustrate some of the problems we've encountered and some of the solutions we've arrived at in the corporate form, was formed in 1965 by three men who had initially formed a partnership. The Supreme Court of Ohio Rules starting on January 1, 1972, stated that lawyers in Ohio could practice in the corporate form. We immediately incorporated and have practiced since that time in the corporate form in Ohio. We've found it very advantageous, in our opinion, as a method of operating and also in the tax effects, such as the retirement plans and disability plans and things like that we have. The reasons for incorporation versus the partnership and the sole proprietorship are primarily tax considerations. There's been a lot of litigation in the tax area stretching back to the early 1950's when some doctors attempted to form a professional association so as to be taxed as a corporation. The Commissioner of Internal Revenue opposed this and there was litigation all over the country over it. The practitioners, generally in the medical field, were almost all successful. Eventually the Commissioner of Internal Revenue conceded that professionals can incorporate, most of the states throughout the country have passed legislation, and the courts have passed rules permitting lawyers to incorporate. There are legal corporations all over the country at the present time.

There are other considerations in addition to tax considerations. One of the more important ones is the limited liability. The tort and contract liabilities are prescribed by state law, as you all know, as such liabilities which may result in professional malpractice, employment relationships, and the ownership and operation of real estate, equipment, and automobiles. In a general partnership, each partner is jointly and severally liable for the negligent acts of all other partners.

In Kentucky, you have Chapter 274 of the Kentucky Revised Statutes which sets out the rules for professional service corporations. They provide, in effect, that the provisions of this chapter shall not alter any law applicable to or which otherwise affect the fiduciary, confidential, or ethical relationships between a person rendering professional services and a person receiving such services. The corporation shall be jointly and separately liable with the tortfeasor to the full value of its assets for any negligent or wrongful acts, or actional misconduct, committed by any of its officers, shareholders, agents, or employees while they are engaged in behalf of the corporation in rendering professional services. Provided, however, that no shareholder, director, officer, or employee of a professional service corporation shall be personally liable for the contractual obligations of the corporation. So, in Kentucky, you do have limited liability by statute and the claimants can only reach the assets of the corporation--your only personal risk is your holdings in

the corporation.

Now, that doesn't prevent anyone from suing the individual lawyer, or the individual professional, in his individual capacity, of course, but you're only liable for the negligence of your other fellow shareholders and fellow professionals to the extent you've invested in the corporation itself. Other states have different statutes and some have said that there's no limited liability, but most, I believe, are coming around to the limited liability theory.

The management of the professional services of our association is greatly eased by the corporation form. The corporate managerial system has worked well. It has promoted efficiency for business corporations and it should work equally well in a professional corporation. That's not to say you don't have problems in a professional corporation in management the same as you do in the partnership--you still have diverse opinions by lawyers especially; everyone is not going to agree, but we have found over the years that it pretty well works the same as it will always work.

We have a board of directors, we have a president and we have a secretary and we have vice presidents. However, we pretty well manage our firm in the same way that we managed the firm as a partnership. We give voice to everybody whether they are shareholders, employees, or officers, and we really don't pay a lot of attention as to who's who until we start signing legal documents. Then we have to fight out who's the president this year. But generally, in the professional association, I don't think you follow the same rules as rigidly as you do in the corporate area, where you have diverse shareholdings.

If continuity of life and transferability of ownership is used in the corporate form, your shares represent the equity ownership in the firm and they can be easily transferred either at death or at withdrawal of the members. The only limitation in the professional corporation, over and above the normal corporation, would be that the stock is only transferable to another professional. Chapter 274 of the Kentucky Revised Statutes provides that a professional corporation may be organized, controlled, and operated by a sole practitioner and does not have to meet the other requirements--normally the three incorporators and shareholders and what have you. So a sole practitioner can be incorporated in Kentucky.

The Commissioner of Internal Revenue was questioning whether a sole practitioner (doctor, lawyer, or whatever) could incorporate; he finally conceded that and there's a revenue ruling out on that matter.

I might point out, that in KRS Chapter 274 there is a provision on who can own stock and who can be officers--they must be professionals. There is also a provision for withdrawing stockholders and redemption of stock that is mandatory.

Let's talk about some pre-incorporation considerations. The decision to interject a corporation into the life of a professional should be founded upon a careful analysis of the tax and economic aspects to the corporation and the nature of the professionals and their practice. This analysis is individual in each instance; you can't take any blanket rules and say they apply to every group of professionals because, especially in the legal area, you have a group of individuals who have their views and you have to work out each plan to suit the particular organization involved.

The tax and economic aspects of it are, of course, the major reason that you incorporate and you must expose the professional to the advantages and drawbacks of incorporation. The potential income tax savings should be evaluated and discussed. Equally important, however, are explanations of reduction of spendable cash. The initial expenses of incorporating, the additional expenses associated with operating a corporation, and the additional taxes resulting from incorporation create a conflict between a professional's need for spendable income and the desire to save money for his retirement.

There are tax advantages and there are tax disadvantages in incorporating. In almost all instances, there will be a reduction of current spendable income to the professional. We do want what we call the mathematics of incorporation. The first thing that you may wish to do in deciding whether to incorporate is to compute your spendable income in savings, both as a sole proprietorship or partnership versus the corporation. This should be done on your present income level and your projected levels of income. While the present level of income may not result in any savings by incorporating and, in fact, may create additional expenses, it is to keep in mind the future considerations and results that may occur because you have currently incorporated. These considerations are things such as vesting provisions, profit-sharing plans, pension plans (which we'll get into a little bit later), the initial service requirements before being permitted to join such plans, and certain carryover features of pension and profit-sharing plans. In performing the mathematics of computation, you must plug in those fringe benefits that can be put into a corporate plan which are not permitted in or are greatly reduced in the sole proprietorship or partnership.

What you do, generally, is you set down the levels of income of the various people involved and you make a computation of that income as a proprietorship or partnership and then compare that with the corporate form. You plug in the fringe benefits to, let's say, group life insurance, and you plug these items into the corporate form because they become tax deductible. Then you compute the deductions--both as the partnership versus the corporation--and then you compare the spendable dollars when you're finished, plus the advantages of the retirement plans that come into play in the future. Those are the mathematical computations so far as determining the taxable or spendable affects of incorporation.

I'm not going into any great deal as to how you form this corporation. I assume that everybody in here knows how to form a corporation; there's very little difference between the formation of a professional corporation and any other type of corporation--other than the special features of Chapter 274 and they are not very restrictive.

There are certain tax ramifications to incorporation which are applicable to professional service corporations, as well as other corporations, and one of the sections you should be aware of is section 351 of the Internal Revenue Code of 1954. Section 351 provides that gain or loss will not be recognized on the transfer of property to a corporation, in exchange for its stocks or securities if immediately after the exchange the transferor owned at least 30 percent of the voting par in



shares of all classes of stock in the corporation. So first of all, you have to transfer property to the corporation, solely in exchange for stock or security, not for notes or any other promises. Immediately after that transfer, transferors, as a group, must have 80 percent of the voting power. Now, if you violate any of these rules, issue residue stock at the initial stages or either a later stage for future services to be rendered that stock becomes income to the recipient and is not attached for exchange. Generally, this isn't a big problem in professional service corporations but it can be depending on the value of the assets being transferred. Until you incorporate partnerships or proprietorships by transferring the office furniture, you generally transfer the receivables; you transfer work in progress. Now remember, work in progress for a cash-basis taxpayer and the receivables to a cash-basis taxpayer have not been reported as income, so the transferor has a zero basis in those items. When he immediately transfers those into the corporation, however, they have that fair market value, so if you have violated the section 351 rule, the stock that you're receiving obviously has a greater value than the basis of stock in the hands of the transferor. If you've violated the section, you have ordinary income. The qualified retirement program, as in most cases, is the single most determinative factor as to whether to incorporate or to remain a partnership or sole proprietorship. This is a comparison between the corporate plan and the Keogh plan that must be made in most cases. Now the Keogh plan is a plan that self-employed people may have--it's the HR-10 plan. It's been in existence for several years; it started out with a contribution of \$2500, now the limitation is \$7500. So you must compare the corporate plans with the Keogh plans to see whether it pays to incorporate. In virtually all the cases, the corporate plan will produce more advantages than the Keogh plan. The question will be whether or not these advantages will outweigh the cost and potential disadvantages of the corporation.

There are deduction limitations in both to consider. The Keogh deduction limitations, the basic limitation, is the lesser of \$7500 or 15 percent of earned income. With the corporate plan limitations, there are several. Under a defined benefit pension plan, the limit of deductions is limited to the amount necessary to fund the benefit under reasonable actuary assumptions. The dollar limitation currently in the benefit plan that can be provided is approximately \$80,000 at retirement date. So you can see there is a large limitation in the defined benefit plan and we're going to get into defined benefit plans a little bit later. Again, it cannot exceed 100 percent of the average income. So even though you can go to the \$80,000, you have to have an average income of \$80,000 to get there.

The defined contribution plan, which is the profit-sharing plan in the corporate form, has a limitation of 15 percent of recovery compensation. There are also limitations where you have combined plans; you have a pension plan and you also have a profit-sharing plan and these limitations are roughly 25 percent of the recovery compensation. There's a further limitation of defined contribution plans, or the profit-sharing plans, limited presently to \$260,825 in any one year.

There are other differences between the corporate plan and the Keogh plan which have become very, very important in comparing the two. The Keogh plan, covering

an owner-employee, must cover all employees with three or more years of service. In a corporate plan, generally, you must cover all employees with one year of service and who are of age 25. In our particular office, and your own offices may be made up of different types of personnel, but in our office we have 14 girls in the office-- we have paralegals, secretaries, bookkeepers, receptionists, etc., and generally, we have found that the age group of our personnel has been below 25 years, with certain exceptions. This becomes very important in working the mathematics and including the cost of these plans. Defined pension plans that provide life insurance benefits become very costly where you're covering a lot of people and you have a lot of turnover personnel. So under this corporate limitation you do not have to bring those under age 25 into your plan. If they stay until age 25, of course, they do come in. You'll pay benefits approximating the total services that they contribute to your firm before 25 and after 25, so ultimately you will be paying for those people who stay but you do save the cost of the turnover which can be very, very costly. Also, if you want to you can bring the people in under 25, figuring they are going to turn over and then in the investment provisions of your plan, provide for vesting it when the participant earns the benefit. There are certain rules laid down by statute on this and there are also other rules laid down by regulations.

Presently, the IRS is refusing to rule on qualified plans or give you a letter of approval if you have investing provisions that do not meet what they call the 4-40 rule. That rule is that after the first four years of participation in the plan you must vest 40 percent of the participants' benefits at that time and you must also vest 10 percent a year for the next six years so that at the end of ten years, there's a 100 percent vesting. There's nothing in the statutes requiring the 4-40 but the Commissioner has rendered a ruling that he will not rule on this and you will find when you get into this that if you do want a qualified plan, you do want a ruling from the Revenue Service before you start making contributions to it. You want to be sure of the deductibility of the contributions and about the only way that you can be assured of that is to have an advance ruling on your plan. So in most professional service corporations you have the 4-40 rule, or something lesser.

We've found in our own practice that we had to have something lesser because of the opinions of the various lawyers involved. Our particular plan, I believe, is 50 percent at the end of four years, 75 percent at the end of five years, and 100 percent at the end of six years. So any participant in our plan if he leaves the service of the corporation at the end of six years, takes all his fund with him. Those that leave earlier take whatever percentage they're entitled to and the forfeited amount (which is called a forfeiture of the plan) gets re-allocated to the remaining participants in that plan.

You can see that if you have a lot of personnel turnover that are in a plan and who leave and are not fully vested, you have a lot of forfeitures. Forfeitures, again, get allocated in that year to the remaining people and those people usually are the lawyers who stay on in the firm. So while you have a 15 percent limitation, that 15 percent limitation does not apply to the forfeitures. So you can build the

contribution, so to speak, through the use of the turnover personnel. We don't find as a practical matter, however, because we use the age 25 limitation that the forfeitures amount to anything and we don't try to use that in building up funds.

The Keogh plan requires immediate investing. So if you put in a Keogh plan as a self-employee and you have three employees, those three employees immediately come in and if they leave at any time, they take whatever they have put in with them. We've had some very bad experiences with Keogh plans and with early vesting profit-sharing plans, primarily with doctors more so than lawyers. We haven't had a lot of experience with lawyers yet, but we've found that if the nurses and office personnel, once they've built up a vested benefit in these plans, if they're vesting in short periods of time (and in the Keogh plan you must divest immediately), decide they want a new living room set or a new automobile, will quit their employment, take their money, go down the hall, and go work for another doctor. So you've really created a monster, so to speak, in your firm where you almost force people out by the use of these plans. Of course the entire idea of the pension and profit-sharing plan is to provide for employment and to retain employees so you have to be very careful on the vesting provisions.

There are many other fringe benefits that you can use in the corporate form, other than pension profit-sharing, but I must again emphasize that that is the major reason for putting them in. I might say, as a rule of thumb, we figure that if you're not willing to save somewhere between \$6,000-\$9,000 a year in pure savings, you shouldn't go into the corporate form unless you have an extremely high income, which most lawyers don't have. So it's \$6,000-\$9,000 that we're talking about; that doesn't have to be right now--that can be off in the future--but you should project that you're going to save at least that amount. Otherwise, the corporate form can become too costly because there are additional costs.

You may want to immediately put a plan in because you generally do have a waiting period before you bring participants in. The waiting period applies to you, the professional, as well as any other employee because in the corporate form, again, you're considered an employee like everybody else. So you may want to start your corporation, have your one year waiting period before you put the plans in, even though you're not at the economic level to put everything in at the present time. Again, there are some carryover provisions in the profit-sharing and pension areas where if you already have the plans in effect presently but do not make your maximum contribution, you have methods of making up that contribution in later years.

What we've done in our own firm in the way of pension and profit-sharing plans is we have set our pension fund down as a mandatory amount that's going to be contributed every year and that's our basic pledge to each other--that that amount of money is going to go in there no matter what happens to the profits, no matter what happens to our own individual compensation. We also have a profit-sharing plan; the profit-sharing plan is basically for the "fat" years. So we pledge the minimum amount that's going in every year. It's computed in as a cost in our books; every month it's accrued as an expense. At the end of the year, if we feel we have had a very good year, we will vote on whether we should make a profit-sharing



contribution in order to, again, reduce our taxes. We also find that the use of a profit-sharing plan for personal investments can operate very well.

As an example, you can have voluntary contributions in a profit-sharing plan as an amount equal to 10 percent of your compensation. So you can pay the tax on your compensation and contribute that money to the plan. Generally, in the professional service corporation, the owners are the trustees of the plan and they are permitted to make investments with those funds. There are some rules about how you can make investments--there are some fiduciary responsibilities for investments--but those rules won't apply if you are investing your own funds (your voluntary contribution money); there's nobody to complain if you lose the money.

As an example, maybe you people in Kentucky know more but I understand Seattle Slew is owned by a profit-sharing plan. If that's true, a profit-sharing plan pays no tax on its profits, and you can see the enormous amount of money that that horse has won on which there's no income tax being paid at the present time. There is a tax at retirement time, but that's a much lesser tax than if you pay your tax currently--as you know, you go to 50 percent on earned income and I assume on the Seattle Slew type earnings you might go to 70 percent. You can have an enormous savings which permits you to invest that money now without paying taxes to earn money again tax free, until retirement time. At retirement time there is a very favorable rate.

The government has said that since the employer is always paying a retirement benefit in the way of a social security payment for employees, although that rate is getting very high today, you can also make a payment based on the \$9,000 a year level, computed at 7 percent. That is, the payment for social security based on the \$9,000 limit, was equal to a 7 percent contribution into a plan. So they would permit you to make a contribution for those people making more than \$9,000 at a rate of 7 percent on their funds in excess of \$9,000. So what have you done if you use the integration? If you have a pure integrated plan you pay a 7 percent contribution on all those people making more than \$9,000 on the fund in excess of \$9,000 only. So you've made no contribution for the lesser paid employees, and that is permissible. It's a much bigger advantage, however, in the pension computation than in the profit-sharing computations. No advantage in the pension area results generally because the professional is older than the non-professional employee and the pension theory is that you arrive at a formula or percentage of compensation that you're going to pay someone after retirement. For instance, say you're going to pay them 40 percent of their average pay when they reach 65 years of age--let's say that's \$4,000 a month for the life of the retired person. That's a sizable amount of money. If the man is 40 years old, you have 25 years to accumulate those funds. If the man is 30 years, you have 35 years to accumulate those funds. Therefore, since generally the professional is older, you're making a larger contribution for that older professional than you are for the non-professionals.

Some of the other benefits that you have may include group term life insurance. The Internal Revenue Code permits an employer to purchase up to \$50,000 of group term life insurance on its employees and the premium that they pay is deductible by

the corporation and is not income to the employee. As a sole proprietor or a partner you cannot deduct life insurance premiums. This is a way to deduct those.

A professional corporation may pay disability premiums on behalf of the professional employee. Such payments are deductible by the corporation as ordinary business expenses and not reportable as income by the employee. However, if in a year of disability or injury, your employer has paid the premium, the proceeds that you receive from your policy are taxable income. One of the methods that may work to avoid this is that the employee pays the premium whenever its due during the year and waits until the last day of the year. On that last day of the year, if he has not received the proceeds, he then requests reimbursement from his employer. Therefore, the corporation gets its deduction and there is no taxable income to the employee. If he had become disabled, of course, he does not request reimbursement unless the premiums exceed the proceeds. This may or may not work for there's no rule in case law that we know of. There are some provisions in the 1976 Tax Reform Act that suggests that the disability plan constitutes a wage continuation plan; you have some limitations on how much the employee can receive when he becomes disabled.

Medical reimbursement plans are another large fringe benefit. As you know, on your individual income tax return, other than health insurance, you can only deduct as an itemized deduction those medical expenses which exceed 3 percent of your adjusted gross income. So you get no deduction for that first 3 percent. A corporation or an employer may have a medical reimbursement plan for its employees and pay all the medical expenses--Blue Cross, Blue Shield, doctors, dentist, drugs, what have you. Up to December 31, 1979, the payment of those amounts are deductible by the corporation and the payments are not income to the individual employee. The Tax Act of 1978, the one that President Carter signed last year, has a provision which states that you may not discriminate among employees in putting in a medical reimbursement plan for taxable years beginning after December 31, 1979. So up through 1979 you can discriminate--you can pick whatever employee you want to include in the plan. After 1979 you cannot discriminate amongst employees. You have similar rules in the pension area and the profit-sharing area and that's all the particular Act refers to. We all know at the present time the real ramifications of this provision. We still think, however, that the medical reimbursement plans are viable sources of fringe benefits. Since most employers are paying some medical expenses of its employees such as Blue Cross and Blue Shield and if you compare the percentage of that cost to your low pay people, and apply that percentage against your low pay people, and put that type of a limitation on the total reimbursement, we feel it's still a very viable source of benefit to the corporate employee.

In addition, the corporation may pay a \$5,000 death benefit to a beneficiary of an employee. That \$5,000 is deductible by the corporation and is not reportable as taxable income to the beneficiary.

The corporation has what we call a "dividend received credit;" 85 percent of all dividends received by a corporation are excludable from income by a corporation, so a corporation can, with its retained earnings, invest in securities, obtain dividends, and only report 15 percent of those dividends as income. It's not used

too much in the professional corporation because generally you do not retain a large amount of earnings in a professional corporation.

A corporation also has a right to pick a fiscal year versus a calendar year for accounting purposes. Partnerships and proprietorships are generally required to use the calendar year. Initially, this can be an advantage but overall, it isn't too great of an advantage. It does give you an opportunity to play with two different tax years--the tax year of your corporation and the tax year of your employees--which are generally on the corporate basis.

On your retained earnings in the corporation (your taxable income so to speak) we have some new rates. After January 1, 1979, for example, the tax rate for the first \$25,000 of taxable income is 17 percent. From \$25,000 to \$50,000 it's 20 percent. An individual filing a joint income tax return is in a 18 percent bracket at \$7600. You can see that on those earnings that you are required to retain in your present practice to reinvest in typewriters, desks, furniture and other capital items, you are presently paying a tax on an individual basis at a much higher rate than you would be paying if you were operating in the corporate form. Again, this can be an advantage; it may not be a large advantage but it may be depending upon the individual practitioners.

Premiums on life insurance are generally deductible by a tax barrier. The only exception is that you can have life insurance and a pension plan or a profit-sharing plan in which the premiums become deductible because the contribution to those plans are deductible. The other exception is the \$50,000 of term life. Most professionals have life insurance to protect their families presently if they're operating as a proprietor or partnership. They are paying tax on their earnings at a higher rate and they are taking what is left and paying those premiums. There are ways to use the corporate retained earnings to purchase that life insurance and pay the bulk of, if not all of, the premiums. The beneficiary can still be the individual professional's wife or family. The corporation cannot deduct those premiums but again, you're looking at income on a 17 percent basis versus a 50 percent basis in the hands of a professional and he can only pay the premiums after he pays for his tax. Again, what I advise in the life insurance area is sit down, if you're going to incorporate, with your insurance man, and believe me, ladies and gentlemen, these people are really up to date on the tax effects of using corporations and life insurance; that's where they sell their policies so they can give you great advice on that.

Another item in the corporate form is income tax withholding. Rarely have I seen any articles or any speakers mention the income withholding tax of becoming an employee in a corporation. I think this is a great advantage and it might be because of my own personal experience. As a proprietor or as a partner, you know that you pay your income taxes by estimated tax returns you file quarterly; so you will pay four times a year. If you still owe money, you pay a fifth installment at the time of filing the returns. There are methods of reducing these installments, if you wish, at very small penalties. I have found, over the years, that there are a lot of lawyers who have paid very little on their current estimates in an attempt



to make it up on April 15 of the following year (or who ask for an extension to June 15 and maybe into August 15). I don't know about Kentucky particularly but I know of lawyers in Ohio failing to file tax returns, which is a misdemeanor under the Revenue Code. It's my feelings, after talking to and representing some of these people, that the main reason they fail to file the return is because they spent the money as they earned it--didn't save it, didn't budget for their estimates, didn't have the money when it was time to pay their tax the following April 15. In Ohio, they disbar such lawyers; I don't believe they do in Kentucky, however.

I'd like to mention one thing in winding up. There are some other factors in a corporation which I'm not going to be able to cover but one of the expenses of being a corporation is payroll taxes. As a proprietor or partner you pay self-employment social security taxes; you pay no workmen's compensation taxes and no unemployment taxes. Once you become an employee of a corporation however, you will have to pay employee social security withholding; the employer pays as you presently do on your secretaries. The corporation will have to pay unemployment taxes, you'll have to pay workmen's compensation taxes. This can be a sizable amount--its growing every year by the way. The difference between self-employment social security taxes and the employer-employee share of social security taxes in 1979 is \$952.64. This is a cost because, as a professional, you are actually paying both sides of this cost; you're paying the employer's share, you're paying the employees' share and its all coming out of the same tax pocket.

There are several other corporate attributes that are tax detriments which you generally don't get involved in with the professional corporation; e.g., unreasonable compensation. If an employer pays an unreasonable compensation to an employee the Revenue Service may disallow part of that salary. I can't foresee any revenue agent claiming that any payment to any lawyer would be unreasonable. So I don't think you'd have any problem in that area, particularly since a personal service is involved.

You also have what we call a personal holding company penalty tax in the corporate form. That is, if you had a contract with a client that required the individual services of one particular lawyer from that corporation, those fees coming into that corporation are personal holding company income. It is rare that you have the individual contract to start with, but if you did and it was a large amount of money, you would have to study this particular feature.

#### QUESTIONS AND ANSWERS

QUESTION: Can you elect Subchapter S?

MR. HUGHES: Yes, but when you elect Subchapter S you're subject to the Keogh provision for pension and profit-sharing plans so I don't know of any professional corporation that is a Subchapter S. I would like to point out that the Bureau of National Affairs, which is a tax service, has a portfolio on professional corporations' organization and operation which is absolutely expert; it covers almost any question you may have.

QUESTION: Could you explain a bit about partnership life insurance payable to a

member of a corporation?

MR. HUGHES: I'm not sure I understand your question as to what partnership life insurance is.

QUESTION: This is a form of life insurance that is payable to another partner upon his death for survival of a business.

MR. HUGHES: For purposes of buying out the partner?

QUESTION: Or, supplying the income for him to live on.

MR. HUGHES: O.K. The corporation has the right to buy what we call keyman life insurance on any of its employees. In working out buy and sell agreements on the stock--working out the payment to the deceased or retired employee in the corporation of work in progress and in accounts receivable--many times you fund this with life insurance, the corporation may purchase it but it may not deduct the premiums.

QUESTION: Thank you. I have two questions. One, you said unless the firm members were determined to save from \$6,000-\$9,000 per year, forget the corporation plan. Is that sufficient criterion right there?

MR. HUGHES: No, it's not an absolute firm rule; you should still run through the mathematics. I'm saying that as a general rule.

QUESTION: Secondly, although I'm not interested in Seattle Slew (except at certain times), did you mean that he was owned by a profit-sharing plan or a retirement plan?

MR. HUGHES: It's the same thing. I don't have any personal information on Seattle Slew, though I've read in the paper that he is owned by a profit-sharing plan. A profit-sharing plan or a retirement plan are interchangeable names. A profit-sharing plan can also be a retirement plan and it is a retirement plan.

## BOOKKEEPING, ACCOUNTING & BILLING

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### I. SYSTEMATIC APPROACH

Any law office, large or small, is a business. Good bookkeeping, accounting and billing systems are the heart of business management. Any heart requires predetermined and set paths for collection of input and distribution of output. In other words, it requires systems.

A system is a predetermined plan for performing a specific job. The office must be organized in accordance with these plans. Responsibility and authority for performance must be delegated to specific individuals who will take direction from and report to a single person, such as the business manager or managing partner.

Good bookkeeping, accounting and billing systems are invaluable. The result is better service to clients, higher income for you, improved cash flow, greater control over expenses for optimum benefit, and preservation of capital and assets.

While the systems involved are separate, they do interact and should be designed to complement and support each other. An important tool for planning and control that ties them together is a budget. A budget is merely a forecast of expected income and expenses. Since many elements of expense remain fairly stable, the actual amounts forecast are based on experience, with modifications for known or expected changes such as inflation, number of attorneys and employees, planned salary increases, etc. For example, the timekeeping system provides information on the number of hours each attorney works. Expected hours multiplied by the billing rate and modified by the actual fee collection experience of the firm can provide a good indication of projected income. Expenses can be projected in much the same way. This forecast, then, can be compared with actual results. Significant variances can be investigated and may point to operations requiring closer attention or control or modification.

Referring back to the need for organization and fixing of responsibility and authority, a written partnership agreement can fulfill this need insofar as relationships among partners are concerned. There are many good reasons for a written partnership agreement, but few law firms have one. Lack of a written agreement, neglect of explicit forecasting and budgeting, and failure to produce and analyze financial statements are all common in law firms. This indicates poor management and lack of financial control.

### II. ESSENTIALS FOR SYSTEMATIC BUSINESS MANAGEMENT

No one denies the need for and advantages of systematic business and financial management in a law office, but few will realize the maximum advantages.

This is because lawyers generally prefer to practice law, with the result that they devote attention to the management of their own businesses largely on a sporadic and inadequate basis.

An essential of good management is the bookkeeping system. The bookkeeping system should be set up in a way that will provide for financial control rather than merely to provide an accountant with the information he needs to prepare a tax return. This implies adequate control over expenses, regular billing for expenses advanced on clients' behalf, strict control and accounting of funds held for clients and the use of monthly comparative financial statements.

Another essential is the establishment of internal controls for management and accountability. Internal control means the establishment of procedures to preserve the assets of the firm, detect errors and preclude the undetected loss of funds through improper actions. This is mostly accomplished through separation of responsibilities so that collusion of two or more people is necessary for any embezzlement or other improper act.

Expense control is also essential. This is not limited to putting the squeeze on spending; it is necessary to spend an amount adequate to maintain an efficient office. Expense control is needed to prevent unnecessary expenditures, avoid paying the same bill twice, and insure that all expenditures on behalf of a client, cash and non-cash, are charged to the client. Non-cash expenditures are those not involving a cash outlay at the time the expense is incurred; these include long-distance telephone calls, photocopy costs and extraordinary postage expense.

The fourth system essential to good business management is timekeeping. Many studies have shown the importance of timekeeping in maximizing lawyers' income. It is also important in maximizing the benefit of your services to your client.

### III. BOOKKEEPING SYSTEM

Now we can look at each of these systems in more detail. A bookkeeping system consists of books of original entry for each transaction and a ledger for organization and summarization of these transactions. The operation of the system is essentially the same regardless of the size of the firm.

The first requirement is establishment of a chart of accounts for the ledger. This is an organized and predetermined listing of classifications for financial transactions. An important consideration is to provide a sufficient number of accounts for adequate analysis of financial information without being overly detailed and without lumping into over-generalized accounts. Of particular concern is the establishment of a separate cash account for funds held for clients and offsetting liability accounts for the transactions of each client. In other words, a single cash escrow account and a separate, individual liability account for each client should be maintained.

The type of system needed will depend largely on the size of the firm. Very small firms can best use the simplest system. Medium sized firms can make very effective use of a pegboard system. With a pegboard system, most of the posting to

ledger cards is performed automatically when the transaction takes place. Large firms may use a computer.

The books of original entry are the cash receipts journal, cash disbursements journal, payroll journal and the general journal. The cash receipts and disbursements journals are used daily. Postings are made to these journals for each check issued and fee received.

Payroll in all but the smallest firms should be operated on an imprest basis using a special checking account. There should be a separate payroll record for each employee and a payroll register for each payroll. Of particular importance in relation to payroll is the need for timely deposits of taxes withheld and the timely filing of the numerous tax reports to avoid sometimes severe penalties.

The general journal is used to record entries not involving a cash receipt or outlay. Examples of such entries are depreciation, correction of errors, and adjusting and closing entries at the end of the year.

The books of original entry are later posted to the general ledger. The general ledger usually has a control account for client's account receivable to which are posted totals of entries to individual client accounts receivable. A separate accounts receivable card should be maintained for each client. Expenses advanced on behalf of clients and reimbursements therefor are posted to these individual cards. The total amount outstanding for all clients must equal the balance of the general ledger control account. Ordinarily these same individual client ledger cards also have space for memo entries of fees billed and fees received, but these entries are not carried as receivables in the general ledger of a cash basis firm. They do, however, provide a convenient way to determine the total amounts receivable from a client by reference to a single page.

Some firms or possibly many firms do not carry all costs advanced for clients as accounts receivable. These firms simply record outlays for clients as expenses and report reimbursement as income when received or some variation with the same result. This is not the best procedure for several reasons. First, when you advance money on behalf of clients you are actually making them loans of your working capital, rather than making a loan from your current income. Second, when accounts receivable are not used, you have lost a significant method for controlling them as insuring that they are collected as rapidly as possible. Third, it is psychologically easier to ignore and not collect such costs when they are not a part of the general ledger system. Finally, income is more accurately shown when these costs are carried as assets.

#### IV. MANAGEMENT REPORTS

The bookkeeping system and chart of accounts should be designed to facilitate monthly preparation of financial statements. These statements include a trial balance which results in an income statement and a balance sheet. Proper design of the general ledger can result in financial statements that can be compared with regional and national economic statistics. This is possible when the income statement reports gross revenue less operating expenses (not including any direct



attorney costs) to arrive at operating income. Legal employee costs are then deducted from operating income for net income distributable to partners. The income statement should also include the percentage of gross revenue for each element of expense for verticle analysis and, in addition to a column for the current month, columns with year-to-date and previous year-to-date for comparative analysis. Analysis of this information, along with budget comparisons, can quickly point out any areas that may be out of line and can help in spotting trends.

The balance sheet should contain columns for the current year and the prior year for comparative purposes. The balance sheet shows the financial condition of the firm. It may highlight a present or projected need for additional cash or additional capital, an excessive growth in accounts receivable, or a need for short-term investment of excess cash.

Also sometimes desirable, but of less importance from a management viewpoint, are two supplemental statements. The first of these is a statement showing each partner's earnings and the amount of each partner's drawings. The format of this report is dependent on the financial arrangements among the partners. The second supplemental report is a cash flow statement, which accounts for the increase or decrease in the amount of cash in the bank.

A listing of each client's account receivable balance should also be prepared to prove the general ledger control balance. A similar list of unpaid fees should be reviewed to determine the total amount outstanding and for selecting clients requiring individual collection efforts.

The trust fund balance should also be proven by listing each client's balance.

#### V. MANAGEMENT FINANCIAL CONTROL

All of these financial statements and listings are an important part of internal financial control, but the most important controls are those governing day-to-day operations. Time doesn't permit an extensive discussion of internal control, but I would like to mention a few of the more important considerations that have general application in the form of questions:

1. Are the personal funds of partners and their personal income and expenses completely segregated from the business of the partnership?
2. Does management open all mail addressed to the firm?
3. Do management personnel opening mail list receipts before turning them over to the bookkeeper?
4. Are receipts deposited intact daily?
5. Do two different people reconcile the bank records and make out the deposit slip?
6. Are all disbursements made by check?
7. Is a controlled, mechanical check protector used (especially with correcting typewriters)?

8. Are the managing partner, business manager, or two partners' signatures required on checks?
9. Are checks signed only after they are properly completed?
10. Are all voided checks retained and accounted for?
11. Is an imprest petty cash fund used and are all vouchers reviewed by management prior to signing reimbursement checks?
12. Do different people reconcile the bank records and write the checks?
13. Is a separate checking account maintained for client funds?
14. Are satisfactory ledgers and journals maintained to account for client funds?
15. Is utmost care exercised to insure that disbursements are made only on funds known to be currently available for disbursement for the particular client?
16. Are clients' ledgers balanced monthly?
17. Are monthly statements sent to all clients with unpaid balances?
18. Does a partner review statements before mailing by the business manager or by himself?
19. Are there detailed records available of property assets and allowances for depreciation?
20. Are individual and restricted responsibilities and authority specified for all ordering of supplies, services, equipment, furniture, and law books and subscriptions?
21. Does someone other than the bookkeeper always do the purchasing?
22. Are suppliers' monthly statements compared with invoices noting items received or approvals?
23. Is management always aware of the absence of any employee?
24. Does management approve, sign and distribute payroll checks?

Now, these are just a few questions regarding internal control that really must be answered affirmatively. Once your operations have been studied and internal controls instituted, they must be constantly monitored to be sure the procedures are followed. Also, at least once a year, the adequacy of the system of internal controls must be reviewed.

Internal control also involves controlling disbursements on behalf of clients, recording these disbursements and controlling operating costs.

#### VI. EXPENSE CONTROL

Cash advanced on behalf of clients is a necessary evil which should be minimized. Whenever possible, particularly for larger expenditures, the client should pay anticipated expenses in advance or invoices should be sent to the client for him to pay directly.

Many expenses charged to a client do not involve direct cash outlay. As mentioned earlier, these include long-distance telephone calls, photocopying, and certain charges for postage. A simple method for recording these expenses is the

use of pads of general-purpose cost vouchers that can be kept at each desk and copying machine. These vouchers can be gathered by or sent to the bookkeeper who can sort them by client once a month and post the charges to the client ledger cards. Failure to properly account for these client charges can result in the loss of thousands of dollars each year even for a small firm.

Telephone toll charges are often difficult to handle because it is usually necessary to compare individual voucher slips with the monthly phone bill to determine the cost of each call. There are computerized telephone systems available with call accounting features and printouts of charges, but these systems are too expensive for all but the largest firms. In Louisville, South Central Bell offers a service primarily designed for hotels which provides assistance in accounting for toll charges by printing out the time with the "room" number, in this case a station or attorney number. However, this system costs \$50 per month for the terminal and all long-distance calls are charged at operator-assisted rates which are almost double the cost of direct-dialed calls. Another approach to this problem is credit card calling which is also classed as operator assisted.

The important thing is to devise any system that will work for you to insure that clients are charged for calls made on their behalf.

It is also important to be certain that attorneys' expenses for travel on behalf of clients or the firm be reconciled and properly charged as soon as possible. These expenses and any other reimbursable attorney expenses should be reported in writing with all supporting documents and approved by a partner or managing partner prior to payment. Client entertainment is one example of an expense for which the IRS requires detailed and specific documentation to support its deduction as a business expense. Special forms have been developed by many firms for use in reporting these expenses.

The main control of expenditures for supplies, equipment and library is to designate one person to be responsible for each of these categories. All routine supplies should be ordered by one person given that responsibility. This will preclude duplicate ordering of supplies, minimizes running out of particular items and fragmentation of orders resulting in loss of discounts. Approval for ordering all equipment, furniture, and supplies not normally stocked should rest with a designated partner. Similarly, the ordering of law books and subscriptions should be the responsibility of a designated partner. This precludes duplicate orders and purchase of unnecessary books. It also assures proper maintenance of the library.

As important as all these things are, they are secondary to the last two topics for discussion: timekeeping and billing.

## VII. TIMEKEEPING

As was mentioned earlier, timekeeping is not only important to earning the income to which you are entitled, but is also an important service to your clients in that they can receive a detailed bill. Clients pay fees faster when the statement properly projects the effort that they are paying for. Clients also often

need adequate records to support deductions of legal fees as business expenses when permitted. In addition, when a fee is set or approved by a court, time records are extremely important. In order to obtain the maximum value from the system, monthly reports are necessary to facilitate billing and maintain control over work-in-process.

The attorney should record his time throughout the day and turn in reports on a daily basis. The particular system used is of little importance so long as there is a functioning system. Daily timekeeping is important because it is more accurate, it is more likely to be habitual and time records can be kept up-to-date for quick billing when necessary.

To provide for overall review by attorneys while requiring very little attorney time, a monthly report of unbilled time should be prepared. This is a relatively simple report showing the time-dollar balance for each client matter, the date last billed and perhaps any amount unpaid on the last bill. The attorneys responsible for billing review the report and check off those clients they wish to bill.

When the person maintaining the time records receives the checked-off reports, billing memoranda are prepared. The billing memo is a summary of the number of hours and dollar value of work by each attorney for each client by matter. Time records should be broken down by matter whenever the matters are billed separately or when they must be shown separately on bills. Prior unpaid bills are also noted on the billing memo and unbilled client expenses are listed. Copies of the time record showing detailed entries are attached to the billing memo. These documents are then sent to the billing attorney for preparation of bills.

When several attorneys in the firm are responsible for billing, it is often desirable to produce a billing variance report. This report would show the amount and percentage above or below the standard time-value for each fee bill sent out in a month. This report would point up any undesirable trends to management.

#### VIII. BILLING

The report of unbilled time and the billing memos should be produced as early each month as possible. This is important because almost all bills sent out after the 15th of the month are not paid until the following month. In addition, many businesses pay all their bills routinely on the 10th of each month.

The firm's billing cycle must be on a monthly basis. All work that can be billed should be billed each month. Of course, it isn't possible to bill all work. Contingent work cannot be billed on a monthly basis, but expenses advanced probably could and should be. Monthly billing also makes it easier on the client's budget because he is billed smaller amounts as the services are actually rendered.

A good practice is for the bookkeeper to routinely prepare a statement to each client with an unpaid bill outstanding or unpaid expenses advanced. These bills should then be sent to the appropriate billing attorney for review and they should be mailed out except in extraordinary circumstances. When a bill remains unpaid for more than a couple of months, the attorney should send a letter with the statement or telephone the client to speed up collection.

Business organizations have increasingly demanded detailed bills showing the date and description of all work done and the initials of the attorney who performed the work. I know from experience that when this type of bill is used, it is seldom questioned and the fee is paid promptly.

A particularly outstanding illustration is that of a mortgage banking company which over a period of years never paid a bill in less than 90 days. We had also compounded this delay by sending them the bill for a period ending three to four months prior to its date. In an attempt to correct this situation, I prepared an up-to-date detailed bill covering a six-month period. Because of a misunderstanding with the attorney, I mailed the bill during his absence. Immediately upon his return, he returned a call from a senior officer of the company who was upset over the amount of the bill. The attorney explained that the bill was for six months and equivalent to prior quarterly bills. The check was received in the next day's mail! Future bills were also paid promptly.

Now, I have not told you these things to indicate that without following business-like procedures and developing good systems and organization, you cannot be successful in the practice of law and earn a decent living. What I am saying is that without appropriate and continuous attention to good management practices, your firm will earn from \$10,000 to \$20,000 less per lawyer than it could earn. And service to and satisfaction of clients will be at a lower level than it should be. And don't forget the competition.



## HANDLING FILES AND DOCKET CONTROL

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Everything that I've been doing for four years since I've been with my firm has now been changed because we are in the process of converting to a fully computerized bookkeeping, docket control, and filing system. We have an IBM Office System-6 right now; we should have an IBM System-34 by about the first of December. All of our other machines are the Mag-Card machines.

My topic is handling files and docket control. It's very hard to describe any kind of generalized system to an audience comprised of everyone from sole practitioners to representatives of firms with 30 to 35 persons. The most important thing is to set up a system; spend a lot of time thinking about a system and get some help from somebody - whether it's an office management consulting service or an accounting firm. Alexander Grant has a very, very good office administration consulting section. If you're from a large firm, you might consider that if you're considering changing your methods of docket control and file handling.

The most important thing in the system is for the attorney, the office administrator, the secretary, the paralegal, or whoever is doing it, to maintain control of the system and not let the system control him. Set it up so that you have enough lead time on docket matters. Then you're not faced with some catastrophic event the next day--like being sued for not having something done. Set aside a time, if you can, primarily at the same time every day (either in the morning, at lunch, afternoon, at night) to set the priorities for all of the matters which you currently have on your desk and every matter that might be on your calendar for the next day. If you do it at the end of the day, you should be setting priorities for whatever you have to do the next day. There's a very good book out called How to Get Control of Your Time by Alan Lakin and he's come up with a very simple A-B-C system. Primarily, if somebody never contacts you about a matter, it's rated a C. If they write you about it, it's rated a B. If they call you about it, it's rated an A. If they come into your office about it, it's a crisis. That's what you should look at when you're setting your priorities for what you're going to be doing either for that day or for the next day and be prepared to alter those priorities.

Handling your files and handling your docket might sound like they are different tasks but they're not; you can combine the two. The starting point for the two is when the client first contacts you or, if you're an office administrator or whoever's got this job in your office, when the matter is first referred to you by the responsible attorney. At that time, what we have done (and what we won't be doing the same anymore) is to fill out what's called a "new matter report." These may be designed by you--you know what kind of practice you have and what kind of information you need. There are also some very good forms that are sold commercially.

We've been using the Safeguard system. It's a very simple form; it's made to fit in the client's folder and it has a great deal of information that can be made readily accessible in one place. It should contain, at a minimum, the names, addresses, phone numbers and any other important information about every one who's involved in the case--opposing attorney, your client's name, address, phone number, opposing parties, and if you have investigators involved, have those listed, their names, and any relevant information.

You need a summary of the subject matter for a lot of different reasons. One of them is that somebody else in the office might someday have to look at that file while you're away and it would help them if they can tell what you're trying to do and why. One other thing that's very important from a financial standpoint is to have a generalized statement of the fee arrangement on the form. This form has a very small section which has places to check whether the fee is going to be on an hourly basis, a contingency fee, a fee that's to be determined by all relevant factors, an "other" sort of arrangement, or whether it is a "freebee." The form also has a billing procedure. This can go to your bookkeeping department, if you have one, or your secretary if you don't. It will tell her at the beginning of the case whether the matter should be billed and also whether both or either of the fee or disbursements are being billed on a monthly or quarterly basis or when the matter is finished. It also has a place for an estimate of the total fee. One use for this is that instead of sitting down and dictating the fee arrangement letter to the client, you can dictate some fee arrangement form letters to be used in connection with this form. When you get a matter into the office for the first time, you just hand to the secretary a copy of the form and she can prepare a standardized fee arrangement letter for your signature and it takes absolutely none of your time to do that. In office administration you want to spend as little time as you can. Anything that you can use to help you is very important financially.

The firm should also have what we call a "critical date check list." You have things like statutes of limitation and the dates on which answers are due that can be entered on the one form.

Everyone is always concerned about opening a file but we have found that it's also very important, from the standpoint of rent and storage space, to close files as soon as they can possibly be closed. There can be a file closing date set up on the report; there can also be a check list on the new matter information sheet to make sure that a bill is sent and paid and that all of the client's materials have been extracted from the file and forwarded to the client. Get your storage space down; if you can get something out of your office at the end of the matter, do it. Keep a copy of the letter with an inventory of what you've sent back to the client--there's never any reason, if it's not a continuing matter, to keep pleadings in a client's file in perpetuity. You're just taking up storage space which, today, is very, very expensive.

The new matter report we use only has two copies--we're trying to get them made up with a few more copies because we're going to need some more. The forms can be distributed, again depending upon your type of office, to different people.

If it's going to be a small file, stick it someplace where you can see it all the time. If you get notes, memos, or phone conversations where you want to make a note, make a note on the copy of this; you'll always have it, you'll have one piece of paper with all the garbage on it that's normally floating around your desk or loose in the file. And send one copy to your bookkeeping department or to your data processing department, or to whomever is responsible for billing so they can have a copy.

You should have an index readily available for all matters which are under your auspices at any one particular time and also another index for everything that you've ever handled. Keep that down to one sheet per matter, though. There should be a simple firm index if you're from a reasonably large firm. A 2 person law firm obviously does not need a central firm index of matters--a 14 person firm definitely does. Make a Xerox copy of the new matter report and stick it on the receptionist's desk or circulate it around the office so that every attorney in the office and your other administrative people, if you have them, can see it.

In a 14 person firm it's very easy to get involved in a conflict situation; nobody can know what everybody else has done unless they have some regular system for seeing what crosses the other attorneys' desks. You're going to have to refuse cases if you do that but again, at least you won't be sued. You can then use your new matter report to help with your docket control. It can help to supplement your memory. You'll have a book with copies of the report in it and when you don't have anything to do for 20 or 30 minutes (if that ever happens) you can run through it and see what you've still got, see what you can get rid of, see what you can finish. Possibly, there's something else that needs to be done.

In connection with not relying on your memory, one thing that we found is very, very useful is to either carry around or have available one of the very, very small pocket recorders. Lanier probably has the best, although IBM's is pretty good and there are some other ones. They are about the size of a pack of cigarettes; they use a mini-cassett which is very, very small. If you're someplace where you're not paying attention to a particular matter and you suddenly think to yourself, "My Lord, I have to file that answer the day after tomorrow," you can put it on the recording. You can be out driving to a deposition or sitting in a lecture being bored. Don't rely on being able to remember anything the next day or even later that day. Things cross your mind that you need to take care of--you can pull out the recorder and just pop it on. In the alternative, you can keep some sort of notebook with you all the time but have it be the same one so that it's not just a bunch of loose pieces of paper that you're going to lose.

When you get a new matter in your office and you prepare the new matter report, set a time to sit down and think about the case, if it's the kind of case that merits this sort of attention. Go ahead and spend 30 minutes doing what the construction industry, or a large aircraft construction industry, calls a "critical path analysis." Think about your case and come to some sort of conclusions about what is going to have to be done at what specific time to ever get that case finished. I'm not really talking about things like answers, and obviously critical

dates, but just what you have to do to get the case progressing.

If it's a personal injury case, you probably don't want to wait three or four years to get it tried if you're representing the plaintiff. You need to have some sort of general idea about when you want the initial pleading stage to be over, when you want the discovery stage to be over, and when you want to make some good faith settlement offers. After you've decided those things, go ahead and put down a reminder card or write down on your calendar to get the file back on your desk on that certain date and then get rid of the file; send it somewhere, get it off your desk after you do the things that you have to do right then.

As far as the mechanics of docket control are concerned, there are a lot of different systems. Most of them are dual systems--most errors and omissions carriers require dual systems. Probably the standard of due care requires a dual system. We use what probably everyone uses: one is a perpetual central control calendar and the other is the personal calendar. The perpetual calendar is a stack of 3 x 5 index cards in a little index card tray that's about a foot long. You can buy some calendar cards at any office supply shop that will have the months broken down into days for at least two years--get two years worth. When you fill out the card you put the card in the appropriate slot in the card holder and when that date arrives someone will pull the card out and give it to you or remind you to do whatever it is you were supposed to do. The index cards should have the critical date on it in order to get whatever is done.

List the attorneys and, if it's at all possible, list two that are to be notified when you pull the card. Don't rely on being there every day of the year, or every week. Have two attorneys to be notified whenever that card comes around. Write the file number of the file on it or the file name so that you can remember which matter it is. The reason this is important is because you can use these cards for things like will review also. If you prepare a will for a client, you can prepare an index card--take ten seconds, put it in the perpetual calendar and on November 17, 1984, for instance, that card will pop up and you will know that it is time to review Ms. Sweeney's will. It helps.

When you've accomplished whatever the matter is that you're being reminded of, write it down on the card, it might be helpful later. Whoever accomplishes it should also initial the card then put it in the file. Keep it as a permanent reminder that the task has been accomplished and by whom.

Use two cards for everything that is a very critical matter. If you're just reminding yourself that it's time to pay attention to the discovery schedule of a certain case you don't need to do that but if it's a statute of limitation that you want to be reminded of, use two cards or maybe three. Give yourself a couple of weeks before the statute actually runs and then go ahead and put one in there for the last day. Have a stack of these cards around.

Whenever you become aware of a critical date, or a date that you need to be reminded of in order to pay attention to something, fill out the card immediately; it doesn't take very long. If you wait to do it at the end of the day or whenever it crosses your mind again, it will never get done.



These cards have obvious uses: statutes of limitations, answers, appeal dates, administrative appeal dates, hearings, that sort of thing; you can also use them for will reviews. We have a fairly large estate practice and it's very important for us to get the clients back in order to maintain a continuing relationship with them. Have your secretary write a short form letter saying, "It's been five years since we prepared your will (or ten years or however long you want it to be). We think it's time to review your present circumstances and see if there's been a change for the purposes of a new will." This will help develop your practice.

Use them for corporations if you have any corporate practice at all. I would guess that probably only 20 percent of the corporations formed ever have a second annual meeting. You can use these cards to do that; you can also use them so that you don't get badly burned on a Subchapter S election. It's very important.

Use them as billing reminders. A lot of cases are billed at the conclusion of the matter but there's some lag in the bookkeeping process. It takes a while for the timekeeping books to get off your desk on to the bookkeeper's desk or on to whatever sort of ledger you have. When you really do the last act that's going to have to be done in a case, prepare one of the reminder cards to remind you to send a bill two or three days later. Let your administrative process catch up with you but remind yourself to send the bill; it's really important to get those things out in a hurry.

These cards can be used as reminders of discovery schedules, dates to answer interrogatories, and that sort of thing. If you have someone who's being seen by a physician you may want to continue the report. Fill out a reminder card that in three months it's going to be time to get this client back to his physician to get another review of his situation.

Also use them for personal matters; it will save you a lot of trouble. Write down birthdays on them, have somebody else in the office use them to remind you of personal matters.

Probably one of the most important uses that is not generally recognized by people is that those cards will allow you to get a file off of your desk--to get it out of your sight, removed to the file room or wherever it's kept and get it back in a certain number of days. If you've got something that really doesn't require any prompt attention--say you've got something that you need to look at in the next two weeks--there is no reason to have the file sit on your desk for two weeks. Go ahead and send it somewhere, fill out a reminder card and have somebody bring the file back to you in two weeks when you really need to devote attention to it.

Control of the reminder cards is very, very important. It should not be any one named individual's responsibility to go through the reminder cards on a daily basis. Pick an administrative position in the firm that someone will fill everyday, regardless of personal absences, sicknesses and deaths. The best example would be a receptionist--someone has to answer the phone everyday. Have it be the receptionist's job or whoever is filling the receptionist's job--to pull the reminder cards and distribute them to the attorneys. When you get the reminder



card back, assign a priority to whatever the task is that you have to do. Not everything that you're going to be reminded of is going to be a crisis. It may be something that you would like to do if you have the time to do but it doesn't really have to be done that day. Transfer it to some kind of a pad, a "things to do today list," and assign a priority on that pad so that you don't just sit there and say, "Well, which one of these shall I do next?" When you write it down, determine whether it needs immediate attention or whether it can be put off until the next day. It's very important not to do something today that can be put off until tomorrow.

As a backup to the reminder cards you also need a personal calendar--everyone, I guess, has one. But use the same general theories that give yourself enough lead time on your personal calendar so you're not going to be rushed to accomplish whatever it is that has to be accomplished; then, cross it off when you get through with it.

On handling your files, probably the most important thing to do is to keep the files where they're supposed to be. Keep them in the file room, keep them off your desk, keep them off your secretary's desk. If you're not actively working on a file or not contemplating actively working on a file within the next couple of hours get rid of it, get it off of your desk. This serves a lot of purposes. If you sit there and look at it, you're going to worry about why you haven't done anything on it; you might not have to do anything but you're going to pick it up and look at it anyway. A fellow named C. Northcoat Parkinson created Parkinson's law, which is, "Work expands to fill the time allowed for it." If you allow too much time for one file, you're going to be able to use that much time; you're not going to be able to pay attention to the other matters which might be more important. If you have a file on your desk, keep every piece of paper that has any relationship to the file with it. If you have telephone reminder slips, put those in the file; don't transcribe a message--just write it on a slip. If you want a letter dictated, don't just hand the tape to the secretary, hand the tape and the file; get it off of your desk when you do that. This helps from losing pieces of paper; from having a big stack of loose letters, memos, notes, and pleadings sitting on your desk and a file somewhere else. Keep your file together with all of the information that should be in it.

Now, on file systems, there are a number of different systems depending upon the size of your firm and each system might be better for your firm. The first type, I guess, is the oldest type and that is an alphabetical list--you alphabetize your files by clients' names. There are some obvious problems with that and a lot of times when you're dealing in a complicated matter you can't remember exactly what your client's name is. If it's a corporation you don't remember whether you had the file under Pizza Arcade, Inc. or whether it's under the individual client's name who came to have that corporation organized. There are some helps that you can use with an alphabetical filing system. Someone somewhere has developed a breakdown of the entire alphabet in a numerical system. It's commonly seen in the County Clerk's index books where you're referred from a portion of the

alphabet to a page number based on a breakdown of the alphabet. If you're using an alphabetical system, I would suggest that you use what they call the "alpha-numeric secondary guide" to help you cross-index your files. Assign a number to it based on where in the alphabet it falls and then have a cross-index of numbers so you can run through it and try to find the file which you lost.

Most people now, I guess, are using a numeric system. There are a couple of different numeric systems. The first one is the sequential system (which probably everyone's familiar with) in which you start off when you open your office with file number 1 and right now you're on file number 15,794. Some of them have gone to storage but when you take them to storage what happens is you take maybe a section out of one cabinet and you have to stuff all the other files back in there and then move them up from another cabinet into that one so that you're not just forever buying file cabinets and have them sit in your office. You have another problem with those, that's misfiling. It's much, much easier to transpose five numbers than it is two numbers. It's very easy when you're putting away a file to mistake 15,476 for 15,746. You have to remember five numbers, if you use that many.

There's an alternative to that called the "terminal digit filing" and it's not really a magic system, it just reduces the number of digits that you have to remember. The file that I had prepared for this seminar--we use a terminal digit system--is file number 13620. This would be filed right behind 13520. Every file that has the same last two numbers are filed in the same area--in the same drawer for instance. If you have to run downstairs and get a file, you don't have to remember all five numbers. All you have to remember is the last two and you're going to hit it one side or the other--it makes it very, very easy to find. All files with the same last two digits are filed consecutively; you have 13520, then 13620, then 13720, and so on. One way in which this system can be a lot more economical is that you're going to find that you're not constantly either buying new file cabinets or shuffling files from one cabinet to another. You're not going to lose the same filing area every year and then have to replace it with new files. If you remove file number 720, you just pull it out and then when you start a new file, 13820, you stick that in that same small section. It's probably a little bit difficult to visualize and it probably isn't making very much sense listening to me talk about it. What you need to do is find a firm that uses the terminal digit filing system and go pay them a visit. We'll be happy to have anybody come down and look at our system. We're very happy with it.

We also use color coding; it makes it very difficult to miss a file if you're looking for one that is pink on the bottom and it is sticking in the middle of a bunch of files that are all black on the bottom. We use an open-ended file system; we don't use cabinets. We use shelves on the walls with the files stuck in and the tabs sticking out. It's just as easy to do in a filing cabinet; you just put the tab in a little different place. It becomes very obvious when the colors don't match.

One of the more neglected areas, I think, on this topic is closing files--

finally getting rid of them and saving yourself some storage space, making sure that you've done everything that you needed to do in a case, forwarding the client's materials to him, destroying the material that you don't need, etc. You may have some material that you want to keep. There are very, very few files that need to be kept intact forever but unfortunately, most of them are. Weed out the materials from the files and then remove the files to an inactive storage area, somewhere that can be cheaply rented. All rental space is expensive these days so rent the basement of a commercial building and put them there.

Set up some sort of system for retiring files. We haven't done this yet but we're in the process of doing it now. Devise a time table--determine how many years the file should be kept in the active area before it's removed and have a set of guidelines; use a reminder card. I think you'll find that you'll save a considerable amount of money doing that.

I am not really sure how much is going to be covered in the computer applications workshop this afternoon. We're converting to a totally automated date processing system for the normal administrative tasks, bookkeeping, etc. I'm not really sure whether we're justified in using it for payroll. It may still be easier with a 14 person firm--even a 24 or 30 employee firm--to do the payroll manually. We probably will get around to automating that but we are also going to use our data processing equipment in docket control and file control.

There was a question earlier about the IBM System-6. It is primarily a word processing piece of equipment, and very good. I think they've now developed a tie-in between that and the System-34 so that you can, in effect, give your System-6 the computational qualities that it needs to handle files for you. I believe it will already index files and alphabetize them. It will give you breakdowns of your matters. If you want to know all of the files that involve wills that are active, it will give you all those and give you the relevant information--the client's name and that sort of thing. The System-6 is not a true computer; it's got some micro-processors in it but it's not really a true computer. But a "smart" computer such as a System-34 will help you with your docket. If you tell it what to do in the right way, it will not forget a statute of limitations date and it will remind you every day if you need it to do that. It will perpetually set up corporate meetings for you.

There are some already prepared docket control programs. There are also legal accounting programs being developed that include things like docket control. IBM's is not a very good legal management program from what I've seen. There is a company in New Jersey that has just developed one which is what we're going to go with and we're happy with it.

I've talked to a lot of people concerning the size of the offices that can adequately use a computer. There are one man law firms using computers but generally, it's a computer freak who's using it as a hobby. There's an aviation lawyer in California who has a totally automated office; he doesn't even have a secretary. He does his own letters from canned programs. He's got a data processing program on a regular computer that does a very adequate job of getting

pleadings out--primarily administrative appeal and license revocation cases--aircraft pilots license revocation cases, and they are canned pleadings. He pulls a paragraph here and a paragraph there and then sees if he wants to add anything and suddenly he's got a brief. He has his secretary come in about two hours a week.

On the other hand, there are 50 person firms that will not be prepared to adequately utilize a computer because they don't already have a system. You have to have your file control, your docket control, your office management, bookkeeping, and things like that, systemized before you can adequately use a computer. There are a lot of firms that have a lot of trouble when the switch to data processing equipment occurs because they're really not prepared for it. I don't think there's much question that our firm of 14 will be able to adequately utilize the computer. Don't be afraid to pay some money for somebody to come in to tell you how to use the thing because their help will end up saving you a lot of money in the long run.

#### QUESTIONS AND ANSWERS

QUESTION: On your terminal digit filing procedure, you have a hundred or ten slots?

MR. REINHARDT: You have one hundred slots. The way we have it set up is that we have our file cabinets across one wall, actually two walls, but you have them all together and we allocate shelf space of about eighteen inches for each number.

COMMENT: I think our color code system is the same as yours--where all tens through nineteens would end in a pink color.

MR. REINHARDT: That could very well be.

COMMENT: All right, but the bottom shelf covers ten digits, right? So you're going to have ten sections with the bottom color being pink.

MR. REINHARDT: Right.

QUESTION: Do you have trouble getting the twelves mixed in with the tens because it would be ~~very~~ hard to find, wouldn't it?

MR. REINHARDT: No, because of the other colors. It's a very multi-colored system, the other colors would also stick out.

QUESTION: 13520 is the same color as 13522?

MR. REINHARDT: Yes, you're right.

QUESTION: I just wonder if you'd have any trouble with the twelve getting stuck in the ten hole?

MR. REINHARDT: Yes, you can have some, it does not totally eliminate the problem of transposition in numbers but it reduces it from having to look through every place--you're going to get it close. You may not get it in the right slot, but you're going to get it very close. With the pure numeric system if you transpose the earlier digits you're going to have to look everywhere in the file room for the thing and you still may not find it.

QUESTION: Now, on your reminder cards for just a minute. You have a 14 lawyer firm? [Yes.] You have a central file area? [Yes.] When these daily reminder cards are pulled, are the cards given to the attorney or are the cards matched with the file and given to the attorney?

MR. REINHARDT: The cards are given to the attorney. It could just as easily be

that the file would be pulled and with the card be given to the lawyer, but a lot of times you're being reminded of things that you really don't need a file for. It might have to do with calling someone, so as a matter of routine we do not have the files pulled; we just have the cards pulled and put in the mail slot of the various attorneys.

QUESTION: From where do you get that docket form sheet?

MR. REINHARDT: We buy them. Safeguard Business Systems in Lansdale, Pennsylvania. Also in Toronto, Ontario, Winnipeg, and Manitoba. There are numerous systems and I'm not recommending the Safeguard over any other--it's what I'm familiar with. The reason that we use the Safeguard is that we also use the Safeguard time control system and they compliment each other.

QUESTION: Could you explain briefly what you consider essential to keep in a file when you close it out and what you feel is O.K. to get rid of?

MR. REINHARDT: I would keep the new matter report with all that information and from then on it depends on the type of case. If it's a domestic relations case, a divorce case, you probably should keep any agreements that are not of record in the courthouse. You should not keep anything that's of record in the courthouse--get it all out of the file. Keep your new matter information sheet and from there on it's totally your own discretion.

Obviously, in will files, you may never destroy those until some period after the client dies. With estate files, what we're going to do, I think, is go by the IRS guidelines and get rid of everything about eight years after it's filed. If we look at it, it's only because the IRS comes to us and they'll have it; we don't need it. Anything that's somewhere else where you can get your hands on it, there's no reason to keep it. Go ahead and get rid of it; shred it or something.

QUESTION: On this terminal digit filing system do you keep a central index for that?

MR. REINHARDT: Yes, we do. A central index both alphabetically and numerically. A lot of times with a new matter you might not remember the exact name of the file because you haven't been working on it long enough but you'll remember that it was opened some time in the first part of this year and you just run back to your central numerical index and it'll have the consecutive files that were opened during that time. It's very easy to pick it out.

QUESTION: From a malpractice standpoint, how much time do you generally allow yourself before you close out a file; do you wait five years before you clean out all correspondence and pleadings or what guidelines do you use?

MR. REINHARDT: Having to do with statutes of limitations?

QUESTION: About weeding out and thinning out files that are closed.

MR. REINHARDT: How long I would wait depends on the matter. With a very simple uncontested divorce with a property settlement that's filed in the court you can get rid of everything but the new matter report after a year. If you have, say, a case in which you're representing a securities underwriter in a private offering, I'd think you'd want to keep everything that you ever got your hands on. Don't get rid of any of that because of the length of potential liability; that goes for both



the client and for yourself.

QUESTION: I think I'm still confused about destroying things that are in the file. You're presuming that the court system has accurately maintained every file that there ever was.

MR. REINHARDT: In Fayette County they're not too bad about keeping files; in other counties it might be a little different, but it has to be a matter of discretion. I don't feel, and there have been rulings, that an attorney-client relationship exists forever. The duty of the attorney, both ethically and legally, to retain his copies of matters or documents does not last forever. The documents can be returned by the attorney to the client--you don't necessarily destroy everything. You say, "Well, it was nice representing you but now that you've gone down the street to somebody else I thought I'd mail all the material in your file to you." Go ahead and mail it to him; if there's anything really important in there, make a copy of it and keep it but it has to be on a case by case determination of whether you want to keep all that material. Fifteen lawyers can amass an incredible amount of paper in a year.

QUESTION: Let me explain one thing. Part of the reason I'm asking you is because I work for the state which means all of our case files are Commonwealth case files. Would you say that we need to throw those files away?

MR. REINHARDT: I have a couple of cases I wish you would get rid of. Most governmental agencies have retention guidelines which are adhered to with a passion.

COMMENT: Well, we're in the process of trying to divide the whole records management system for the Attorney General's Office and one of the reasons why I'm asking is because if there's a real possibility there's no need for us to save the case file--say there hasn't been any action taken on it in 15 years--then should that go to the archives?

MR. REINHARDT: Are these criminal matters? I'd be a little leery of throwing any criminal matter away until the criminal is dead. You can get an 11.42, or you can get a lot of motions and a lot of petitions for relief filed 15, 20, or 30 years down the road and you may need to keep the record and as you say, the courts that long ago did not always do a very good job.

EMPLOYMENT AND TRAINING  
OF SUPPORT STAFF

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It's always a pleasure to talk about law office management. It seems that the main concern in law office management is that the attorney wants to give quality work and at the same time minimize his overhead. I'm sure that is everyone's objective. It seems that overhead is a culprit that's hard to deal with and unless you take a realistic approach to that, more than likely you're going to be spending more money than you would like. In a recent economic study by Daniel J. Canter, he reports that overhead, excluding costs of attorneys and legal assistants, for 1977 was somewhere around 38 percent. Of this 38 percent, approximately 44 percent of that was contributed directly to salaries of non-legal, non-timekeeping staff. From this you can see the need to be very selective in hiring and training support staff.

In order to select personnel properly, first of all you have to take a very thorough look at your firm. What are the goals of your firm? What objectives do you want to reach--short-term as well as long-term? Your short-term objectives deal basically with your immediate needs. Are you getting the work out as fast as you should be? Do you have employees that are standing around waiting for work or are the employees overworked? What type of equipment are they using? Are they using equipment that is conducive to a good turn around time? In the long run, you have to look over a certain period of time, say, five years. How much do you plan on growing in this period? How many employees are you going to need to fulfill your growth plans? What type of equipment are you going to be using to fulfill these plans? These are all questions that you have to sit down and take a realistic approach toward.

In a short run, most firms tend to overstaff. They're scared of emergency situations. If you have a job that has to be done and your secretary is currently working on a project, there's no place to turn. So in order to meet this situation, most firms hire too many people. They're going to be in a situation where they do have, 75 percent of the time, one girl standing around talking to another girl. This is the situation that you want to try to eliminate.

There are alternatives to overstaffing. One is to pay the present staff you have overtime. Let the secretaries work late. As long as you can get your work done in a 24 hour turn around period, you're doing a pretty good job. That's a goal that most firms try to establish. If the work turned in can be back on the attorney's desk within a 24 hour period, then you're operating fairly well. On the other hand, if you're overstaffing, more than likely you're going to get your work back sooner than that but like I said, that secretary is going to be available for work that isn't there to do. Everytime that you have an employee like that, you're having to

pay a salary for work that is not being done. You're having to buy or rent equipment that is being unused and having to furnish a desk space for that person. All of this contributes to the overhead picture of the salaries, so you want to take a very close look at this because it can create an inflated overhead for your firm which you can have some control over if you sit down and look at thoroughly.

Once you've looked at the objectives of the firm, you can see in which direction it's headed. If you have some idea of the employees that you're going to need to fulfill these objectives, then you can really sit down and take a good look at the type of employees that you want.

What exactly is needed in a firm? Does a firm need an office manager or administrator? Do you need legal assistants? These are two areas that are really new in Kentucky. They've been used in metropolitan areas for several years but Kentucky is just now really getting into this market. Most people don't realize the duties of an administrator; they are somewhat leary of legal administrators because they don't know the benefit that they can produce. Let me go over a few of the duties of these various office positions and after that we'll get into a further discussion of the benefits that they can produce.

When I am talking about office administrators to anyone, there are basically two questions that arise: who needs an administrator and, what exactly does an administrator do? The duties of an administrator vary from law firm to law firm. Probably one of the biggest areas is the personnel area. Most firms hire someone when they feel the need. They just go out and grab a secretary if there is extra work. The job of administrator in the personnel area is to really sit down and study this position and ask whether there really is a need for another secretary? Is there some way that we can rearrange the present staff to accommodate the extra work? Can we use new equipment to take care of this work? Is automated word processing being used with the present personnel that we have? Are administrators in charge of training, supervising, discharging, disciplining, and controlling the whole staff? Included in this control are the wage structure, the promotion patterns, supervising insurance programs, and really taking care of the whole personnel picture. An administrator is also in charge of all the equipment and supplies used in the department. He needs to know all the latest equipment that is available and whether any of it is satisfactory for present use. Should we change to an updated type of word processing system? The expenses that are involved in modern equipment are very great so you have to look at this very carefully. To get into word processing where you're solely on an automated plan could get quite costly. If you don't look at it carefully you're going to get in over your head and be on a two to three year lease or own a bunch of equipment that you can't really afford. So you need to sit down and really check this out carefully.

In a lot of instances, you really should get a consultant. The consultant can sit down and see how much income the firm has and whether or not you can afford this type of equipment. The office manager should stay up-to-date on all new equipment and see if there is any present application for that equipment in the firm.

The administrator should have control of the bookkeeping, financial reports,

all timekeeping and forecast capital expenditures; should work with the proper partnership authority in preparing revenue budgets; should forecast cash outflow; and should deal with all the financial problems of the firm.

Another area is firm housekeeping. We have to be sure that the firm is kept clean; first, that the janitorial service is doing what is expected of it, and that the furniture is in good shape. If there are any changes that need to be made we should see that it is done and just make sure that the premises look presentable for clients and visiting attorneys when they come. You also need to analyze your space needs. Do you have sufficient room in your offices? Or do you need to expand? If you do need to expand, what alternatives do you have? Should you move to another location? Is adjacent floor space available? What type of lease arrangements can you get into? Should you buy a building or should you build? By doing a cost analysis on all of these alternatives, you try to get the best available space for the least amount of money.

You also need to develop new approaches and plans. All firms get lackadaisical at times and they fall under a certain pattern. New plans are really necessary to keep the morale up and to implement better processes. By establishing these plans and working with all the support staff as well as the attorneys, you keep a whole new image that everyone can relate to. I think it improves the morale of everyone in the place when they can feel like they are part of a new plan and they have something to do with it.

These are basically guidelines that an administrator follows, some of which I follow myself. Not all firms really need an administrator. A lot of firms need administrators that don't have one. There is no set guideline as to which firm does need one. That is something that the firm has to sit down and determine themselves. One way that you can go about this is to look at the functions of the managing partner. How much time does he actually put into all of these processes? Get a total of all of his time, multiply it by his billing rate, and more than likely you are going to come up with a substantial figure. Now, if that figure would justify paying the salary of an administrator, it's quite possible that you would be ready to make that move. It's also quite possible that you would not. Again, it's a judgment that the firm has to make. Once the firm makes that decision, it has to be a total commitment by everyone in the firm. Everyone has to support the administrator and set down guidelines that he can follow and abide by those guidelines because the downfall of most administrators is due to members of the firm not following the guidelines themselves. If this happens, then you're going to have a conflict and more than likely the administrator will not last long.

Another new area is the use of legal assistants. Legal assistants are becoming more predominant throughout the state. In Louisville, a lot of the firms are beginning to use them; the smaller firms throughout the state are beginning to use them; and here in Lexington, there are quite a few firms that are using them. They are realizing that legal assistants can be both productive and profitable. They can fill in spots where you don't really need an attorney.

There are several ways of using legal assistants but I think the best is to

have a legal assistant that can specialize because that is the way they are most productive. If they're specializing in one area and work solely with that particular department in your firm, the training of the legal assistant is much easier; their knowledge is much more comprehensive; and they do a much better job. If you try to train a legal assistant in all areas of your practice, they will be faced with too much to learn. So the success of your legal assistant more or less depends upon how much you're willing to work with them.

I recently read an article that said a good legal assistant is not taught but trained and I feel that's quite true. The legal assistant has to have the ability but you have to do the training. If you have the time and are willing to put forth the work that it takes to train them, then you're going to have a very successful legal assistant.

Legal assistants are usually readily accepted by clients. In order to assure this, the first step you have to take is when you bring a client into the office and you know your legal assistant is going to be working with that client, introduce the legal assistant to the client; sit down and talk with the client in the presence of the legal assistant; tell the client the role which the legal assistant will play in the case; and you will find that the client will accept the legal assistant. The client will find that they can contact the legal assistant much more frequently than the attorney. 50 percent of the time when a client calls, the attorney is out of the office. The legal assistant knows all the information pertaining to the case and they can relay it to the client without any interruption to the attorney.

What are the limits of a paralegal? That's another question that's frequently asked. Since there are guidelines set for what a paralegal can do, the limits are basically as much as you want one to do, with the exception of signing a document and appearing in court. The only thing that you have to realize is that you are the one ultimately responsible for the actions of the paralegal so you want to be sure that you're going to be prepared to accept any consequences that might result from what you make the paralegal do. So you want to be sure that whatever the paralegal does you check it before it goes out.

The acceptance by others in the office of the paralegal may create a problem. When you introduce a paralegal into your office, more than likely the paralegal is going to take a lot of the duties away from your present secretary. The secretary, if not prepared for this, can get very upset over it. That's one thing you want to guard against because, as you know, there's nothing worse than having a secretary that won't speak to you. If you can't get along with your secretary, you're in trouble. The best way to go about this is to sit down with your secretary before the paralegal comes and discuss what you're planning on doing. Try to get her thoughts about the move. Tell her the benefits that the firm as a whole will receive from the addition and ask her for any input she might have on how you could best use the paralegal. Ask her what duties she is presently doing that she feels the paralegal can take to enable her to do her secretarial duties. If you let her help in this decision, then when the paralegal does get to the office, the secretary and the paralegal, more than likely, will develop a very good relationship. They will be



able to work together knowing that the legal assistant is assisting also for the good of the firm, and rather than having an attorney-secretary relationship, you will have an attorney-paralegal-secretary relationship.

As we're going down the line on our support staff, I think probably one of the most important members in the support staff is the secretary. I feel that the secretary is the backbone of any law firm. A good secretary means more to the law firm than anyone there. Attorneys really rely on them to such an extent that it's complete turmoil if the secretary leaves. They handle all your routine matters, your docketing, etc. I think most of you who probably have lost a secretary know what I'm talking about. It probably takes about a six month training period before you get another one to the point where they can read your mind and you can read their mind and you don't have any conflicts.

There are certain areas, though, with secretaries that need to be discussed. One major area is the type of equipment a secretary should be using. If you do get into word processing and equipment, does everyone need a secretary? How many secretaries should you have in a firm? How many attorneys should be using the same secretary? This is a very hard question to answer, but from my experience and from talking to a lot of others, I've seen very few attorneys that need their own secretary. Most secretaries are capable of handling at least two attorneys and some up to as many as three, depending upon the equipment they're using and their proficiency. A good secretary with the proper equipment (and by proper equipment I'm referring mainly to everything from Mag Cards to CRT computers) can handle two to three attorneys without a problem.

You look at this from a cost standpoint. Say you're paying your secretary \$750 a month. Your Mag Card is going to run you somewhere in the neighborhood of \$230 to \$275 a month. Now you're talking about approximately a thousand dollars, not counting the area in which your secretary works. If you have two secretaries for two attorneys, you're probably not talking about a Mag Card typewriter but an IBM Selectric typewriter which would run you considerably less, if you purchased it for say \$850 dollars. But you're still paying two secretaries' salaries of \$750-\$800 each plus you have added space needed for that secretary. So with one secretary per attorney relationship with Selectric typewriters you're talking about \$1500 dollars at the least. With two attorneys and a Mag Card you're talking about \$1000 or so, and we're not counting the floor space needed to house the other secretary. So you can see the savings with automated equipment along that line.

Now, with two attorneys and one secretary, the attorney is still getting the personal attention and the attorney-secretary-client relationship which a lot of attorneys demand, so there is a dramatic savings right there.

Another thing that a lot of firms are going into now is word processing centers. This means that you're putting two to three automated typewriters or other forms of equipment in an area all to itself where the attorney really has no relationship with any of the operators. The one good thing about it is that the turn around time is much less. They get the work out and generally it's very good work. But there is one thing that keeps me from going to that type of situation, and that is the secre-

tary-client relationship which I feel is very important in the long run. I think that the secretaries answer so many questions for clients that it's very important to maintain this relationship.

There is a way that it can work whereby you can have both your word processing center and keep your attorney-client-secretary relationship and that is to go to the administrative secretaries. This would be where you have one secretary for perhaps three attorneys with that secretary being responsible for the correspondence of the three attorneys, for their docket control, and for the little needs that attorneys demand. She also will route any documents over a certain length or any documents where extensive revision is going to be needed to the word processing center who, in turn, returns it to her. That way, she can still keep in touch with what's going on in a particular case and she will be available to answer the client's questions.

There's really no set answer on which procedure works best. It depends a great deal on which you want in the end and what you're willing to pay for. It is something that you really need to think about. You don't need to go out and just jump into word processing all at once. You might seek professional guidance before moving into this. It's also a situation that you want to discuss with your employees. Too many times you run out and jump into a situation like this without ever discussing it with the people that are going to be affected by it. This creates problems. As I said, one of the largest problems you're ever going to face is when you do something without discussing it with the employees first. Employees in a law firm are now probably as educated as any employees you are going to find in that pay level. They have excellent ideas and they deserve to be asked about their thoughts concerning new matters like this. So before you make any move in word processing, it should be a joint move with you and your secretarial staff.

Another area that really is not talked about much but is one of the most important areas in a law firm, is the receptionist. Most people take the receptionist for granted. Anybody can answer the phone. Get a girl, pay her the smallest salary in the office, let her sit up there and answer the phone. This might be one of the biggest mistakes you'll ever make since your receptionist is the first person who has contact with a client.

When a client walks in the door, the receptionist is the first person with whom they have any contact; when they call on the phone, she's the first person to whom they speak. A client expects a professional person when they call a law office so you want a professional person to answer the phone and greet people at the door. You need to sit down and train her properly. Go over what steps she should take when greeting a client. Should she get him coffee? Should she tell him to go straight back to the office? Should she have him take a seat first and call you and let you know that he's out there? These are questions that most receptionists never get answered. They are more or less left on their own to determine which way they think is proper and you hope yours is doing it the right way. More than likely, the majority of you have never sat down and discussed this with your receptionist. It is an important job which you should really take some degree of interest in and if you have to pay a little more to get a professional, it's well worth it.

I want to talk now about what I call "other" personnel. These include the file clerk, the librarian, the messenger, and the bookkeeper. They are really all first line jobs that get second rate billing. More than likely you would have a secretary doing the filing when she doesn't have anything else to do. You'll have a law clerk make the changes in your library when they get through with their research. When you put these jobs in a second class category, they tend to get put off. When they are done, they are done in a hurry; the people doing them don't realize the importance of the job.

When I first came to our firm, law clerks had been taking care of the entire library. We had changes probably three months old that had never been put into the volumes. When you go in to do research on a matter and you find that the changes have not been put in your volumes, you can be in big trouble because you're going to give the client some bad information. So your library is a very important area to which you need to pay immediate attention.

Most firms probably cannot afford a full time librarian because the work just isn't there to keep them busy. My solution to that, which has worked very well, is to get part-time people. Lexington is full of students. High-school, college, whatever, looking for part-time jobs. I'm sure all of your communities offer the same thing. High school students frequently do a great job and they know what they have to do. With a minimal amount of training you can show them how to make changes--it's no great task. And, if they know that's their sole purpose at that office, they're going to do the best job they can, which is more than likely a very good job.

Our library stays current on a daily basis. The employee that we have is tickled to death with the job; she really likes it--she's working her way through college. The pay probably isn't great but it's probably better than she could find in a restaurant. The same holds true for our file clerk. We have a girl that comes in for a half day, every day. She does all the filing, opens all the new files, closes all the files, takes care of all the indexing and that's about half-a-day's job. It's not a full time job. We couldn't hire a full time person for it because there's not enough work for it. But by getting part-time people and making that their sole responsibility, the jobs have been done very well. We're very satisfied with it.

The same thing goes for our bookkeeper and with our messenger. We have a computerized bookkeeping system and our bookkeeper mainly does things like writing checks, paying invoices, keeping a day book, and making deposits. We don't have any general ledger worries for her. But it's these little positions that sometimes get very little attention and they should get quite a bit of attention. Part-time people can be the answer to a lot of your problems.

The training of employees gets into an area in which you have to be very precise, not only for support staff but for the attorneys also. Most attorneys are never trained to work with support people. They have legal training, sure, but do they know how to work with the secretary? Do they know how to work with the legal assistants? I think this is often taken too much for granted. The attorney may say, "I'm the boss, you do what I say." But he has to remember that the people that he's

dealing with have feelings and thoughts on how it should be done also. There should be a workable compromise between the two in order to get the best productivity.

The best way of going about training is to produce three manuals in the office. One would be your office manual. What you really want to accomplish in an office manual is to explain your indoctrination, your firm's standards, your office policies and rules. By firm's standards, I'm mainly referring to the neatness that you're going to expect of employees, and the confidentiality of all the material that they handle. In your office policies and rules, you should discuss the working hours, paid holidays, sick leave, over-time, breaks, insurance plans, and other things of this nature.

The next manual that you should have is one with your office procedures in it. All attorneys and support staff should know how to open and close files. You just don't go to your secretary's desk and say, "Close it." A lot of you do, but why take up her time to do this when it would be just as easy for you to walk to the file room; the two are probably not breaking the secretary's train of thought and you're accomplishing what you had in mind when you started out with the file.

You should also have procedures on keeping time records, your docket control, your billing, your reimbursable expense forms, and your mail. These are all areas that are more or less taken for granted to some degree. Now docket control, I hope, is not taken for granted by anyone because with the price of malpractice insurance now, you'd better take a very keen look at that. You'd better have an excellent procedure; one that everyone is familiar with because you can get yourself into a lot of trouble if you don't.

The third manual contains the job descriptions. You should have a job description laid out for every employee in the office, and not necessarily a job description that you've taken from the present employees. You should not sit down and say, "Well, what's my secretary doing now?" and write down her jobs at that time. You should take a more objective approach toward that; not only what jobs she is presently doing, but what other jobs could she be doing. Also, discuss this with her. Find out what she feels like she's doing right now. Find out what she would like to be doing and what other jobs she feels she could do as well. It could be that you're going to open up a whole new area that your secretary could be handling so you should discuss this with her. You should take an objective look, disregarding the person that you have in that position at that time.

You might have a new employee come in. She gets her manuals and she knows how the firm operates and some of the procedures, and she knows what's expected of her and her job but there are a lot of little things with which she's going to need help. That six month training period I was talking about gives a new secretary a long time for her to really get adjusted to the attorney and for him to get adjusted to her. This is where you get your on the job training. You want a qualified employee that's presently working in a similar position to work with her in person--someone who knows the ins and outs of the firm, someone who can tell her what space she should start a complaint on, things like that. Hopefully, a lot of you are going to have this information already in a standardized manual in your office. But in case you don't,



you need an experienced person to which a new employee can go. Assign one person to that new employee so the new employee will have someone they can fall back on and to see if they happen to have a problem in a particular area, to answer any questions, or to help them in all the procedures.

Another area of training is to meet with all the employees. Get them all together in one room, sit down and have a good round table discussion with them. Get their thoughts out in the open, how they think the firm can improve. This is an area that really is beneficial.

Intraoffice memos are very good; they keep everyone informed on any changes that come about in the office, any new laws that pertain to format (e.g., Kentucky going to different colored backs on briefs.)

The next area is training the attorney. As I said before, this is one area that probably gets very little attention because the attorneys are the ones doing the training. I have found that very few attorneys, when they began anyway, knew how to use dictating equipment. (Personally, I feel that shorthand has no place in a legal office. It's time consuming, and takes a secretary away from very productive time when she can be using the typewriter.) Dictating units are not that expensive and with a little time and training on it you can become very proficient. Most secretaries prefer using dictating equipment over shorthand, anyway. So this might be one area you might want to talk about with your secretary if you're currently using shorthand.

Attorneys generally need two guidelines on how to dictate and one of the most frequently misused applications is not giving the pertinent information at the beginning of the tape. After a secretary finishes the tape the attorney might say, "Make one original, three carbons, and a copy for the file." This means that instead of being able to do that at her desk originally, she's going to have to go back to the copy machine, run copies off of it and sometimes attorneys will not accept that; they want the carbon copy. So this type of information should be given at the beginning of the tape.

Words that secretaries are not familiar with or names should be spelled at the time they are given. The attorney should learn to speak clearly and not mumble his words. This is another common problem.

When you get to the hiring part, one thing you want to be very familiar with when you bring in a prospective employee for an interview, is the equal employment opportunities laws. Very few people realize what these laws involve. Most of you are probably using outdated applications which probably conflict with all the recent changes in this law. You cannot ask an employee if they've had a felony conviction or anything regarding garnishment of their wages, credit references, their plans to have children, or why they are single and have a child. You cannot ask their age, you cannot ask their height and weight, their race, a lot of these things are on a standard application. They're not really prohibited by the law; the law says if you do ask these questions, you have to be able to show that they're directly related to the position you're filling and has some bearing upon that position. So you need to be very careful when you get into that aspect of hiring.



What sources do you use when you hire? Most people in this area probably use the classified ad in the newspaper and I would say that in areas smaller than Lexington, that's generally the way it's done; either that way or by word of mouth. It's a good way, particularly if you put a good ad in the paper. You get good results that way; better than with an employment agency because they tend to send anyone that they have available at that time. Another good place is through the schools. Your trade schools are now offering decent legal secretarial programs and the paralegal schools are turning out top-notch paralegals who need little training, or less training than if you train them yourself.

In keeping trained employees you want to try to establish salaries that are very competitive with the current market. They provide an extra incentive in keeping employees that you've already trained. They also look for the benefit package these days. They want insurance plans that are going to cover them and their families, they want a retirement plan, and perhaps disability insurance and life insurance. These are becoming more attractive to employees all the time.

I think the most important aspect in keeping good employees is to learn to work with them. Make the employee part of the firm, don't make them a piece of machinery. If you consult the employees on decisions on which they're working, whether it's a secretary, paralegal, or whatever, and you have a question about something, get them together, talk to them, get their ideas. They're intelligent people, they have good thoughts concerning this and their ideas are important.

In closing, I'd like to say that the working atmosphere is very important. Recent surveys have shown that people are much more productive when they're working in an atmosphere that's pleasing to them. They like nice surroundings, they like to have a plant in their office or nice wall covering. They don't want to be stuck back in a corner; they want to be out where they have their own little self-designed corner. The firm's working atmosphere is very important.

#### QUESTIONS AND ANSWERS

QUESTION: On the hiring of personnel, how many people do you supervise?

MR. KITCHEN: It varies with the part-time employees we have but basically we'll run somewhere around 16.

QUESTION: Do you use the newspaper to get applicants?

MR. KITCHEN: I use the newspaper a great deal of the time; either that or word of mouth.

QUESTION: Do you run a blind ad?

MR. KITCHEN: No, you don't get any results with a blind ad. You have to put down your phone number and allow them to call you and to build up your firm as much as you can in that ad.

QUESTION: You have them call first as opposed to coming to the office with an address?

MR. KITCHEN: Right. I try to screen them somewhat on the phone first. It is somewhat time consuming, but I found it to be worth while.

QUESTION: On an initial interview do you use some kind of an evaluation test?

MR. KITCHEN: I'll give them a typing test.

QUESTION: One of our larger law firms in Walton has a Mag Card typewriter. They spent a lot of money on it and did not use it. They wondered why anybody would use it because they don't have that many standard letters going out. They found that their probate or will situations call for more individuality than they'd like.

What's your thought on that?

MR. KITCHEN: Like I said, you have to think about this carefully before you get into the automated equipment. I think they're probably scared to use it more than anything else because it does cause an individual to have to standardize to some degree. They're going to get their production out of it. But as far as making money on it, it can be used for any long documents that require several revisions. That's an area in which we mainly use it, moreso than in the repetitive work.

QUESTION: What are your views on developing secretaries into legal assistants or paralegals? Can your veteran secretaries be utilized well in that area with proper training?

MR. KITCHEN: I read an article on that last night and according to this article, it is a very workable situation. If you have a very bright secretary who knows the ins and outs of your practice, they can go into the paralegal field without any complications. This article was basically for a paralegal-secretary situation; where she remained a secretary to some degree but with a lot less secretarial duties, handling her own work and some for the attorney for whom she was working.

EVALUATING, COMPENSATING AND  
TRAINING THE NEW ASSOCIATE

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Making the decision to expand

Properly treated, this subject would require my entire forty-five minutes. Tomes have been written in recent years by Voorhees, Parshigian and others on the why, when and how of law firm expansion. We know from several sources, including I suppose, our own KBA 1977 Economic and Opinion Survey about the economic ramifications of law firm growth: firms which grow and diversify according to their client service potential make more money for firm owners.

I think it appropriate though, before addressing the expansion mechanics as they relate to hiring and training of new lawyers, to call attention to the complexity and impact of the firm expansion decision itself.

We fight a lot of brushfires in our business. Our clients force us into that posture most of the time--we really can't accept all the blame for the state of our art. What we can control, however, is the way we run our own business--the business of practicing law. It ought not be simply reactive and we ought not let it get that way. We are getting better as a profession, I think, in streamlining our day-to-day operations. We invest a lot of time and energy into that function. That you are here at this program today speaks of your own commitment to a well-organized professional lifestyle. We need to be just as careful, though, to be as serious and deliberate about planning our future as we are about planning present activities. Planning for the future necessarily involves dealing with the firm growth. Assuming you are in a community with stable economic growth and that your performance is satisfactory to clients, expansion will hit you in the face as an issue. You'll either do it or decide not to do it and send the new business away.

Bringing new lawyers into a law firm is a momentous act. Like it or not, new faces and new personalities will alter the dynamics of your office, if at first only subtly. Eventually, it might alter the nature of your practice. Bringing new lawyers in is a significant investment of time and money for you; it is equally so for the new lawyers brought in. My point is, be you a two-person shop or a 100 person mega-firm, your intake of new people has an important effect on your professional status quo and on your professional future.

The decision to expand should involve much more than evaluating your present workload and making the judgment "We do/do not need another lawyer." A number of other considerations are involved, some of which I want to mention in passing as food for thought.

The formula for evaluating whether to expand has two components: the

business side and the personal side. The nature of your practice, the history of your firm's growth, the volume of your clients' demands, and the overall economic health of the community in which your practice is centered are key business-related considerations. As to the economic determinants of the need for increased legal services generally, you might find Peter Pashigian's article in the April 1977 edition of The Journal of Law and Economics interesting reading.

We hear two ideas bantered about frequently as reasons for the increased workload (thus the increased need) for lawyers' services in recent years: increased economic activity (GNP growth) and increased government regulation/legislation. The extent to which the latter directly affects the overall workload of lawyers is debatable. (According to the Department of Commerce the percent of lawyers' time used by individual consumers has remained constant in the last 30 years--53 percent of total billings in 1972 as opposed to 52 percent in 1948). But there is no question that increased governmental involvement in the marketplace at least indirectly affects many types of practices. Impending or threatened legislation/regulation in your areas of practice is certainly something that should be looked at vis-a-vis evaluating your need for more help. (In the future, government may give us little new increase in work). As some areas grow more complex, (for example tax) requiring more lawyers' and accountants' time, some agencies, notably the CAB, ICC, OSHA seem on the brink of deregulating.

Perhaps even more important and often overlooked in the expansion question is the second component of the formula, the human side. What kind of office do you and your partners want for the future? Which is paramount for you--practicing only 25 professional partners which outlook would restrict ultimate growth, or moving deliberately towards being a legal business?

All firms at their creation are small, intimate groups, two or three people personally and professionally compatible who want to cast their lots together. Yoked equally, with little or no bureaucracy there exists no partners/associates distinction or other personnel complications. Just a group seeking to establish itself in the business hoping the synergy of effort and appeal will attract more business and facilitate its handling more efficiently.

At the other end of the size spectrum is the large, diversified firm where a chain of command and plenty of established administrative procedures exist. To move up the scale of size is to inevitably take on more of those kinds of trappings. (If you're going to practice competently and efficiently.)

Deciding to expand requires that you and your partners each and all carefully consider all that's involved. To rush into expansion without deliberate aforethought and planning is to invite disaster and dissatisfaction. Unhappy partners, dissatisfied and inefficiently-used associates, deteriorating service to clients, all are lurking dangers.

#### Determining what to look for in candidates

Once the threshold decision has been made to bring a new lawyer, what next? The first step is to attempt some kind of firm self-analysis to decide what kind of person you want and what kinds of duties, both initially and long term, you would

have him/her to perform.

What to look for in particular candidates? I think firms look at three factors. I refer to them to students as the three C's. In order of importance, they will vary from firm to firm but I think their application is universal.

One is the old bugaboo for law students--credentials. What kind of academic achievement has the student had? I believe students' achievements are necessarily relevant to a thorough evaluation of their candidacy. However, I submit that a narrow inquiry must not be made on the matter. There is much more to consider in the way of academic achievement than one's GPA or class rank. Has the student consistently improved in the course of his/her law school work? Was the student involved in significant and meaningful co-curricular activity--Moot Court Board, Client Counseling Competition and Law Journal? Has he or she had some work experience that relates to your type of firm or practice? Was the person wholly or partially self-supporting while in school? Besides overall academic performance, how has the student performed in course work related to your practice? What do the candidate's references say about his/her personal skills as they relate to the practice of law?

Students who today are admitted to a quality law school are very capable people. Law school GPA's reflect that. Now quartile distinctions are almost insignificant--so little may separate the student at the top of the class from one in the lower half.

Regardless of the relative weight you attach to the credentials thing, I think you must recognize the importance of the second C, the compatibility factor. And by that, I mean more than just personal compatibility with you and your partners, though that is very important. Would this person likely be compatible with your clientele and within your community?

Compatibility is, of course, subjectively determined and largely incapable of objective analysis. Important to recognize though is that a lot of contact should be involved before making compatibility determinations. Law firms should try to spend a lot of time getting to know all the people whom they consider strong candidates. You must recognize that not much that's real that relates to the compatibility thing can be determined in the brief first interview. Interviews are unnatural and awkward for both parties involved.

Besides spending time yourself with the candidate, talk to their references. The broader the base your subjectivity has to develop from, the more reliable your intuition is likely to be.

The third thing evaluated in candidates is the commitment factor--their commitment to your type of practice and firm and to the type of community in which you operate. That the candidate has at least an idea of what your practice is like and expresses some familiarity with the size and location of your town is an indication he or she has done some thinking about the matter before contacting you, or before signing up for the interview. But I would want to know more. What attracted you to our firm specifically? Why are you interested in this town? Candidates should be prepared to articulate their reasons if they've carefully



thought them through.

Bringing in a new associate involves a significant financial and prestige commitment for a law firm. You obviously want someone who will be happy and do well in your firm, your bar and your community. You want to key in on candidates who have an educated interest in your setting and be very alert to identify and weed out people who are just job shopping and have little real interest in your situation.

#### How the law school can help

The associate search is as traumatic for the firm as for the student, even for the large firm that engages in the procedure every year. You are putting your firm's personality and practice on the line. Because it is such a formidable task, there is a tendency to employ, in the identification-of-candidates-stage what I have labeled the cousins' network. The senior partner calls up his cousin who practices in a city where a law school is located and asks: "Got anybody good clerking for you?" That is preferred to opening one's professional affairs up to the world via the law school placement office or some other perceived "meat market."

You owe it to yourself to look at a number of candidates. You want the person who feels right to you and you should not overly rely on a third party's judgment. Good law school placement offices have procedures you can avail yourself of to avoid being deluged by the masses. We know our students and their interests well; we'll extract from you your initial ideas of your needs and work with you towards an acceptable, convenient way of bringing you two--firm and interested student--together.

In recent years, law school placement offices have strengthened their overall programming and their special services to law firms and other employers. The Young Lawyers Division of the ABA this summer won its long battle to include in ABA Accrediting Standards a requirement that law schools provide adequate placement services.

Rather than exhaustively list the specific ways our placement office can help, let me just share with you some paraphrased excerpts from the guidelines formulated by our Task Force on Standard 212 to represent what any good placement program can offer.

Placement office programming should ensure that students have a working understanding of available career options and have a feeling for the growth potential, the special rewards and frustrations and the method of access into each. This ultimately serves also the employer, because though projects like summer placement seminars, resource libraries and personal counseling, students' career decisions will be "informed" and more likely to be consistent with their true life goals. Result: you have young lawyers approaching your firm who have an appreciation of the real world and an understanding of what things are like in your type of practice. Students are then not just looking for a job but seeking to effect special career interests.

Placement offices must also adopt procedures for offering both structured

and informal assistance to employers. Facilities and procedures will exist for campus interviewing, other arrangements will be at the ready for the firm simply willing to receive inquiry from interested persons. Comprehensive information on local, regional and national placement statistics and starting salaries will be compiled and retained for the bar's and for prospective students' reference.

#### Productive interviewing

I have now been on both sides of the interviewing table, as an interviewee while a student, and as an interviewer for a government agency. I now sit, I suppose, in the middle, as a referee. I can say without offending anyone, I think, that lawyer-employers can do with instruction in interviewing skills every bit as much as can the students. We are like they; it is not something we are trained to do, nor have we had enough exposure to the process to develop by trial and error skills that are all that productive.

The National Association for Law Placement has appointed a national consulting faculty to conduct interviewing skills workshops for lawyer-employers at selected sites around the country. Having recently been appointed to that faculty, I won't go on to steal my own thunder and offer a full-blown workshop in five minutes or less. I will share with you briefly three tips--things I think interviewers are most often unaware of. I'll then move on, since time is running.

1. Remember that the interview must be a conversational two-way street. Just as you will be about the business of extracting from the candidate what you want to know about him/her, you should be prepared to give the candidate a thorough introduction to your firm, your practice, the position and the growth potential involved.
2. Explore gently yet thoroughly into the commitment area. Besides wanting to know what attracts the individual about your practice and your town, I think it's helpful to ask, after looking over the resume, the why-you've-done-the-things-you've-done-in-your-life kinds of questions. You'll be on the road to getting to know the person and find out what motivates him/her. You'll also pick up signals about what he/she is really looking for in a career.
3. Be careful to be professional and courteous to each interviewee, even to those whom you immediately consider unsuitable for your needs. Nothing travels among law students faster than word of brusque treatment of a peer. An incident like that could sour your firm's reputation with those candidates you do develop an interest in.

#### Compensation

Once we find someone we're happy with and who's happy with us, how and how much are we going to pay him or her?

To what does one peg a starting salary? Two things, actually--the market and

your own ability to bear increased overhead.

As to determining what the rates are, there are two annual studies you can refer to. If you're interested in reviewing regional and national scenes, (which you should if you expect to interview at law schools outside your immediate area and thus "compete" with law firms from other locales), get the NALP Nationwide Salary Survey. It's very comprehensive, it costs only \$10 and you can get the address from me.

Of more interest inside this state is our own survey of each year's graduating class. We collect salary data by size and type of firm or employer and by region within the state. We also attempt to measure extra-salary compensation (but not non-cash benefits).

In evaluating your own firm's ability to pay, I think you have to be realistic when measuring the new income potential the new lawyer will give you in his first year or two. To be fair to your client and keep things in perspective, a fairly high percentage of the new lawyer's time (Voorhees suggests 20 percent) to "learning." Even simple client tasks will take longer for the new associate to accomplish and it is not fair for your regular clients to bear that cost of your new investment.

Many firms now reject the fixed starting salary and instead offer a "draw" amount plus "commission" or some other form of profit-sharing, plugging the new lawyer directly into firm income. It both protects you from heavy constant overhead and it encourages the young person to be as productive as possible. You may want to apply a separate multiplier for new business the new associate brings in. One way to determine what's fair in that situation is to compute your total overhead-to-gross-income percentage, factor in a premium for your supervision and training, usually 10 percent or so, and allow the new lawyer the balance. When he/she becomes a partner, the bifurcated formula yields, of course, to a general distribution.

In presenting your compensation package to a prospective associate, be aware of how he or she will be looking at it. I suggest to students they apply a stock purchase analogy. When one purchases a share of the stock, one looks at things other than current price and dividend production, though they are important. You must also look at its upside growth potential. The more of the latter there's likely to be, the less "up front" one can justify accepting. Document and present to the prospective associate what the potential is likely to be and let him/her evaluate that along with the starting compensation.

In planning an associate's compensation package and structuring his/her advancement in that regard, consider the importance of what Altman and Weil call "non-salary motivators." These are elaborated on in 21 Practical Lawyer 3, at 69. They also discuss the concept in Chapter 5 of their practice aid How to Manage Your Law Office (Bender).

Young lawyers see themselves as investing in an option on partnership when they accept that first job at a modest wage. Economists refer to this as human capital. Tell your offerees what their progression is likely to be assuming good

performance. Tell them when they will be re-evaluated and by what standards. I submit to you that young lawyers are greatly motivated by coming into the firm income stream and that that can be accomplished by less than a full partnership arrangement. Altman & Weil in their writings and Strong and Clark in Law Office Management, a 1974 West publication, discuss the varying degrees of junior partnership status--labels vary--junior partner, salaried partner--limited partner--non-percentage partner you can adopt for the in-between years period/program. If he/she can see some orderly development of professional skills, the whole grind seems much more worthwhile. More on that later.

A third important motivator is to give the associate some high quality work assignments and some participation in decision-making. Increase the associate's responsibility commensurate with his/her development and involve him/her in client contact. A certain amount of routine work will necessarily be assigned the associate. It has to be done and it is more profitably done by associates than by partners. It also provides a valuable learning exercise for the associate. However, let him/her out of the vault occasionally and into the sunlight. If all you need a new lawyer for is routine work and there is little prospect for any other future use of him/her, maybe what you really need is a paralegal.

Associates like to feel involved and of some value. I heard a very bright young lawyer who left a well-established firm where he was held in high regard say: "I just didn't think I was making a difference."

And fourth, make sure there's good interaction between senior firm members and associates. A better learning environment will likely be created, and younger attorneys will have a sense of belonging to the enterprise. It is that sort of atmosphere and professional lifestyle we all went to professional school for.

#### Sample Compensation Schemes

In a very well-written article in 19 Practical Lawyer 4 at 43, George Norton sets out a profit-sharing formula for compensating the associate after he has hit the break-even point for the firm, but before he generates or bills enough to be made a full partner. He shows ways to measure the financial progress of the associate, how to allocate billings and receipts and how to address the work-brought-in-by-associate situation.

Norton stresses the importance of both working out the compensation scheme completely with the new associate at the time he is hired and then planning to discuss with him/her his/her progress periodically.

As to novel "participation in profits" formulas, see Strong and Clark's Law Office Management at Chapter 2. Their examples first gained widespread acceptance, like everything else it seems, in California.

As to allocation of profits among partners, they suggest at page 29 a point system that provides for the young partner coming up through the ranks programmed incremental growth while at the same time proving emotionally easier for older members of the firm to accept than the percentage method. There are ways to structure a workable, non-formula allocation plan and Strong and Clark suggest elements necessary in such a plan, also in Chapter 2.

If you've read much about formula methods for distributing profits you've

doubtless heard of the granddaddy of them all, the Hale and Dorr formula. Strong and Clark set it out as recently amended at page 48 of their book.

#### Employment contract

Though I think most professionals young and old react strongly against the notion, there are firms which use a written detailed employment contract with new associates. Some considerations as to what one could contain are set out in 23 Practical Lawyer 8, at 63. In my opinion the example produced there by Barrett is especially harsh and lacks any tact whatsoever. But it is an example.

Be advised of one thing in this regard. Every associate employment contract I have ever seen or heard about has run square afoul of DR2-108(A):

DR2-108 Agreements Restricting the Practice of a Lawyer.

- (A) A lawyer shall not be a party to or participate in a partnership or employment agreement with another lawyer that restricts the right of a lawyer to practice law after the termination of a relationship created by the agreement, except as a condition to payment of retirement benefits. (Also see ABA Opinion 300) 1961.

#### Training the new associate

I think I have already stated some of why I believe a structured training period for new associates is so important. The reasons chiefly are three:

One, it results in happier associates. They can actually enjoy their fledgling days as attorneys and progress methodically from task to task. Two, you are fulfilling your own obligations under the CPR to combat incompetence. Third, to the firm's long-term benefit, if the lawyer develops good basic skills early on, regardless of the specialty he may later develop within the firm, he will be better able to pinch hit in some area outside his expertise, when that is needed.

The danger that having a training program will avoid is overworked partners seeing the coming of an associate as merely a relief from their burdens and dump off their excess on him with little thought for educating.

There are several methods of associate training, principals of which can be adopted by the two-person firm as easily as with the large firm. I'll mention some in a moment.

Ted Voorhees wrote a marvelous little book entitled Manual of Law Office Training for Associates. It was published by ALI-ABA in 1969, but remains remarkably current. In that book, he suggests that any effective program will involve three elements: senior lawyer supervision, a method of work allocation, and provisions for criticism and evaluation.

-Supervision in a sizeable firm ought really to involve two people. Perhaps a senior associate can oversee day-to-day supervision, but the partner whose expertise area is involved in a particular case ought to oversee the integrity of the process.

-Work allocation can be done on the associate pool method (lawyers-on-call



generally works best for firms who use their young associates principally for research and writing); the partner-assignment method (associates assigned to a particular person for the duration of a project, transferred to another on completion); rotation by department (or by partner) (set period of time), or by a hybrid method (assign associates work from all departments or partners, compile a list of specialized tasks for associate to accomplish within his training period and assign assorted work that will involve eventually all those tasks).

Criticism and evaluation should be two-pronged. It should come at the conclusion of specific projects, and then periodically at which time the associate's complete performance should be addressed.

Whatever method of associate training you adopt, be it one I have described or some other, I think it's important to get your associate(s) into court early on, when their mistakes can be forgiven because of inexperience. New lawyers then have the chance to conquer their fears before being put in the courtroom later, on perhaps some weightier matter.

PROFESSIONAL RESPONSIBILITY AND  
AVOIDING MALPRACTICE

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A recent opinion survey taken nationwide sought to determine where lawyers ranked in a group of 16 institutions, occupations and professions. It was reported in the "Wall Street Journal" that lawyers ranked 15th on that list. They just barely made out better than advertising agencies. In terms of public confidence, it was reported that lawyers ranked the same with organized labor. For some reason or another lawyers have had an image problem in recent years and it's difficult to determine whether the image problem has been the result of increased disciplinary cases and malpractice actions or if the image problem has been the cause of those cases and actions. Malpractice rates are said to be on the rise and indeed they are. The reasons for that rise are unclear. If you read the recent Kentucky Bench and Bar article and the survey that was published on the study of Kentucky lawyers and malpractice claims, you'll note that the data compiled there do not support the fact that increasing malpractice claims are being filed. On the other hand, in the disciplinary area, there are increasing numbers of lawyers in the state of Kentucky being disciplined. Les Whitmer reports that his case load has tripled in the last two years.

What I've attempted to do here today in this presentation is to give you an idea of what the Kentucky Supreme Court is doing in the area of lawyer discipline and also to give you some idea of malpractice activity in the state of Kentucky.

The 1971 Code of Professional Responsibility, the ABA Code, has been adopted in the state of Kentucky under Supreme Court Rule 3.130. And that Code is recognized as setting the minimum standards for lawyers in the state of Kentucky. Traditionally, the disciplinary system has paralleled the criminal justice system in Kentucky as it has done in other states nationwide. That is, lawyers who have been convicted of criminal offenses also find themselves being disciplined, whether permanently disbarred or temporarily suspended. Until recently, the conviction of a felony or a serious misdemeanor involving a crime of stealing, false swearing or dishonesty could also result, in Kentucky, in automatic disbarment. The old rule was changed in January of 1978 and a new more comprehensive rule has been adopted. The new rule that the court has adopted would give the court greater leeway in imposing discipline against attorneys. It recognizes the Code. Let me state what its standards for discipline are going to be. It says that the board of governors may cause to be tried all charges brought under the Code of Professional Responsibility as well as charges for other unprofessional or unethical conduct tending to bring the bench and bar into disrepute. The rule is no longer limited to automatic disbarment for felony cases or misdemeanor convictions. This is a much broader standard and it would be interesting to note to what extent the Supreme Court will forge ahead in disciplinary

matters. A review of Kentucky's disciplinary decisions in the past several years reveals that the court is now severely disciplining lawyers for negligent conduct involving the handling of clients' affairs. This has traditionally been scrutinized in civil malpractice actions. You will see by the examples that I give from recent case law that these areas are now areas in which the courts are disciplining.

One of the first cases in which the court rendered a decision on negligent conduct and imposed discipline was Kentucky State Bar Association v. Murphy, 549 S.W.2d 295 (Ky. 1976). In that case, the Bar suspended a sole practitioner in a small town in Kentucky for one year for failing to attend a deposition, failing to offer proof on behalf of his client, and failure to pursue post-judgment remedies in a case involving title to real property. A little later in Kentucky Bar Association v. Clem, 554 S.W.2d 360 (Ky. 1977), the Supreme Court imposed an even harsher penalty: two years suspension for the following conduct. The lawyer failed to appear at a workmen's compensation deposition. He informed his client that an appeal had been taken from a judgment of the board when it had not. He failed to perfect an appeal in a divorce case, and he gave a client misinformation regarding his wife's ability to withdraw funds from a joint savings account during a pending divorce action. The court in that decision recognized the fact that perhaps they had been too lenient in their prior cases--too lenient in proposing disciplinary action of only one year's suspension--and decided to change that. However, they did not adopt what apparently was the board's recommendation which was disbarment in this particular case. One might be led to believe then that the Supreme Court is now suspending lawyers for two years where they're involved in multiple acts of negligence or multiple instances in which they mishandle clients' affairs, but that is not so, at least according to cases that have come down since Clem. In Kentucky Bar Association v. Martin, 558 S.W.2d 173 (Ky. 1977), the Supreme Court suspended an attorney for two years for a single act of attorney negligence. Here again, we find an act which is usually taken care of in a malpractice action. An attorney failed to file a suit in federal district court after having taken a fifty dollar fee to file it. He misled his client as to the fact of his having filed it. And finally, in total exasperation, the lawyer told the client that he just did not have time to fool with it.

Up until now all of these cases were decided under the former rule 3.320. We have only a few decisions under the new rule to date. However, Kentucky Bar Association v. Sandidge, 25 Ky. Law Summary, number 12, page 18, the first case reported under the new rule, was a case in which the court disbarred an attorney who had been convicted in the federal court of a felony. I really don't think that we need to get into the area of felony convictions before a group of this sort, but just briefly I might add that the court here is continuing its policy of automatic disbarment in the case of a convicted felon. We don't know yet what the new rule will be in the case of a convicted misdemeanor. In the case of Kentucky Bar Association v. Clem, 561 S.W.2d 91 (Ky. 1978), the lawyer was convicted of theft of property of a value less than a hundred dollars. He was disbarred. But traditionally, you may note that the Supreme Court of Kentucky suspends for six months those lawyers who are convicted of misdemeanors in the federal court on charges of failure to file

an income tax return. If an attorney were to fail to file an income tax return, it's not a crime involving dishonesty or stealing in the eyes of the Supreme Court of Kentucky. (See Ky. Bar Assoc. v. Trimble, 540 S.W.2d 599 (Ky. 1976)). A third area closely paralleling criminal conduct which has resulted in severe attorney discipline is the area of misappropriating or commingling client's funds (I'll refer to that again a little later). In Kentucky Bar Association v. Grogan, 554 S.W.2d 81 (Ky. 1977) the lawyer was disbarred even though he attempted to pay back the money to the client. As stated earlier, the court has been given even greater leeway under the new rule. The effect of the new rule on the continuing pattern of cases is unclear. I suppose we might list five things that we can be sure of: conviction of a felony means automatic disbarment; conviction of a misdemeanor involving a crime of stealing or false swearing means automatic disbarment; conviction of failing to file an income tax return means six months suspension; commingling client's funds or misappropriating client's funds means disbarment; and in the area of negligence, I suppose we have been put on notice that one act of negligent mishandling of a client's affairs can result in a suspension of up to two years.

I heard an interesting comment this past weekend at the Kentucky Trial Lawyer's conference. Some of the lawyers were talking about the countersuits being filed by doctors for malpractice. They felt that the court's involvement in the area of disciplining the lawyers for negligence may be an effort to ward off malpractice claims. It was the opinion of many of these lawyers that client's would much rather have money in their pocket as a result of a malpractice claim than to see their lawyers suspended and that lawyers under these circumstances would probably prefer the same. Legal malpractice encompasses a broad spectrum of acts and omissions which can result in the liability of an attorney for non-fraudulent wrongs committed as a professional.

Common to every finding of liability in a malpractice action is a duty which when breached causes damage. I refer you to a recent treatise by Mallen and Levit entitled Legal Malpractice published by West Publishing Company in 1977 which is the most up-to-date treatise that I've found on legal malpractice actions across the nation. In Stein's survey, which is the survey that the Kentucky Bench and Bar recently reported, he listed most of the claims in malpractice actions in Kentucky as falling under the following five headings. Most of the claims involved a failure to comply with the statute of limitations. The second largest area of claims fell in errors and abstracts in title opinions. The third area was failure to meet procedural deadlines. The fourth area was fraud or conspiracy against the client. And finally, the fifth major area was an error in the preparation of documents. There is one case in Kentucky of particular importance in the area of malpractice that just came down recently and that is Hill v. Wilmott, 561 S.W.2d 331 (Ky. 1978). In that case a plaintiff sued a doctor for malpractice. The lawyer representing the plaintiff was practicing in Henderson. The doctor was in Henderson. The lawyer did not want the doctor to know that he was involved in the action so he hired a Lexington attorney to file the complaint for him. The action against the doctor resulted in summary judgment for the doctor and the doctor turned around and sued the lawyer.

In the opinion by Judge Gant, he discussed the basis of the doctor's claim against the lawyer which went as follows. The doctor claimed that the lawyer was negligent in failing to contact him prior to filing a lawsuit against him, that he was negligent in failing to contact another doctor for another doctor's opinion in the case, and was negligent for not attaining any other medical evidence or medical opinion before filing the claim. The doctor also alleged that the lawyer had not consulted with the plaintiffs before filing the action. The issue there was whether or not an adverse party can sustain an action for negligence against his opponent's attorney. The Court of Appeals, in an opinion by Judge Gant, decided that he could not. There is not a single case that I know of today allowing a suit based on negligence in that situation. The court stated that there was no breach of duty on the lawyer's part because the lawyer of the party opponent owed no duty to the doctor. The only cause of action that the physician might have had against the lawyer would have been an action for malicious prosecution or abuse of process. I'm sure you're acquainted with those cases which have not required privity in suits against lawyers. Those cases have mainly arisen in areas where lawyers made mistakes in will provisions, where the beneficiary of the will comes in and sues the lawyer for a breach of duty. Courts have sustained those actions on the basis that the duty to the beneficiary was foreseeable, and that a duty was owed to a beneficiary. In the area of party opponents and their counsel, recovery has not been allowed.

There is another case which is here on appeal. There has not been a decision on it yet. This was the case that the Louisville doctors filed against the Louisville lawyers. In that case there was an action against doctors and I believe the doctors took summary judgment. They then turned around and sued their party opponents' lawyers for negligence in filing the action. Their claims included malicious prosecution and abuse of process. The jury returned a verdict of some \$50,000 against those lawyers on the basis of malicious prosecution and negligence. Again, that case is on appeal under the theory that Hill v. Wilmot is controlling in that no action should have been allowed for negligence against the party opponents' lawyer. The case name is Drasin and Fadel v. Raine and Highfield. An opinion on that case should be out shortly.

The third area that I wish to deal with here today is probably the most difficult area and it is how to avoid malpractice. I suppose that I should tell you that I wish I knew and I suppose we wish we all knew. All we can do is try. I might make an effort here to tell you or to give you an idea based upon my reading of the decisions in malpractice cases and in disciplinary cases particularly in Kentucky and also on the basis of what I've been able to gather from attorneys as to what might be important in this area. In addition, there have been some interesting studies lately. Some people have finally decided to study the area of why lawyers have grievances filed against them. One was a study by Steel and Nimmer that was published in the American Bar Foundation Journal. Another study was published in the University of Illinois Law Forum in 1976 by Marks and Cathcart. These investigations, surveys, or attempts to provide data show that clients sue lawyers and file grievances against lawyers not particularly because their cases are lost



but often because feuds develop between themselves and their lawyers and they decide that they want to get back at the lawyers some way and the best way of doing that is to file a grievance or to file a civil action for malpractice against the attorney.

The two areas that I want to discuss are these: 1. the area of maintaining good attorney-client relationships and 2. the area of what has been characterized as attorney business and aptitude. Again, most of us are not trained in the ways of business unless we've been to undergraduate schools in business or economics. Many of us were French majors and that helped us very little in practicing law. The first suggestion based upon reading of the cases, both rules of discipline and malpractice is as follows. You know that in many of those negligence case decisions, the Supreme Court came down hard on the fact that not only did the lawyer fail to do something, not only did he fail to meet the statute of limitations, but he also lied to his client about the fact of his having failed to do so. Of course, remember the case involving Martin where he eventually couldn't stand it anymore and said to his client, "I just can't fool with this case." My suggestion is not to lie to your client. Another suggestion is take clients' calls. I know that in private practice, especially those of us who are in sole practice, you cannot take every single call that comes into the office. But at some point in the day, return that call. One of the other things that the Supreme Court noted is that many of the clients who file grievances complain that after multiple attempts to get in touch with their attorneys, the attorneys did not return their calls. And in some cases, even months elapsed. Clients supposedly tried for months to get in touch with their attorneys to no avail. The attorneys would not see them.

One of the other things that I have heard clients and even attorneys talk about is the old system of having your secretary take the name of the person who is calling and then the secretary will say, "Just one moment," will come back and say to the person who is calling that she's sorry but so-and-so is in conference at the moment. That sort of an arrangement often leads a client to think that the attorney simply does not want to talk with him which is often true. I suppose there's no way of handling it except at some point during the day to get back to that client even if you don't want to take all five of his phone calls; even if you haven't done what he wants you to do--at least tell him that.

The other thing that I might suggest is report to the client regularly on the progress of the case. A lot of clients who have filed grievances report that the attorney never got back to them after the initial conference. They've never had any idea what the attorney was doing. Maybe he made no effort to tell them. One suggestion that I've been given by attorneys who have been in the practice a long time is to send copies to the client of everything you file, even of everything you mail, that relates to that litigation. Even if you can't afford to or don't have the time to attach more than a brief cover letter, do so. Explain the billing system to your client immediately. Most of the complaints against lawyers that are filed, grievances that is, which wind up in the state bar association office relate to clients who are disgruntled over fees. One suggestion has been to bill regularly or enter into a contractual arrangement for a certain fee. Then the client will be

less likely to be surprised when you present him with the fee.

Don't make a client wait if you can help it. Not only does that make him angry with you, it also for many of us means that he may walk next door. So I believe that there are multiple problems with making a client wait.

And finally, set your bill so that the time which you spend on your clients' case will be worth your while. Many attorneys report that one of the reasons they let clients' claims go or let clients' business go is because the fee will not fully compensate an attorney's handling the claim. One way of handling bills is to charge your client a little more which would make it worth your time to handle him. Don't charge him ten dollars for something that's going to take you two hours and something that you won't want to do because it's simply not worth your while.

Negligence cases I think are terrifying to me as a sole practitioner and the statistics show us that the sole practitioner is the one most often disciplined. The statistics also show us that the lawyers involved in smaller law firms are the ones most often disciplined. Any of us can make a mistake. Any of our docket control systems, if we have them and we supposedly do if we've got malpractice insurance, can fail which brings me to another problem of attorneys. I have some suggestions here: one, keep a docket control whether it's a cross-diary system or cross-index system. My office has both. My secretary has a diary and I have a diary. We also use the file drawer with the dates of the month, and we put a five by eight card in on the day that something is due. I also have a notice in my index system three days in advance of something due. If it's a brief, I give myself at least seven days notice. You should review that bill if no more often than on Monday of each week.

Segregation of client's funds is the next area which has gotten numerous lawyers in Kentucky into trouble. Commingling clients' funds with those of your own will invariably result in disbarment. As a matter of fact, there is a recent case, the Wilson case, 555 S.W.2d 953 (Ky. 1977), in which an attorney deposited a check from an insurance company made out to himself and to his client in the amount of \$281.19. He did not put it down in his escrow account or his trust account, he put it in his office checking account which meant that he had access to that money to pay his bills, to pay himself, to pay his secretary, and the Supreme Court disbarred him. So it doesn't seem to matter that you commingle a little money or commingle a lot of money, the results in the Supreme Court are going to be the same. Also, the segregation of clients' funds is required in the Code of Professional Responsibility. And I refer you to Disciplinary Rule 9-102 which requires preserving the identity of funds and the property of the client. It pertains to all funds received for the client except those funds for filing fees, and fees that are going to pay reasonable expenses of litigation. If you have any other money belonging to a client, it ought to be in your trust fund, and your trust fund ought not be used to pay your bills. I refer you to Mr. Parker's article in 41 Kentucky Bench and Bar 20 on the escrow account, which is a good article.

Another comment I want to make is on a recent case dealing with business and how one runs his business, Kentucky Bar Association v. Graves, 566 S.W.2d 890 (Ky. 1977), which condemned the practice of the attorney who charged his client a fee and

in addition charged his client for his operating expenses. In that case, the attorneys' fees were given to the lawyer. Then the lawyer billed monthly for all his operating expenses including his secretary, his law clerk, and his meals (when he had his meals on a day that he was working on his client's case). This was condemned by the Supreme Court as being improper office practice and put attorneys on notice that this kind of business procedure would not be tolerated in the future.

Finally, you might note in closing a few suggestions in the criminal area. I notice a lot of young attorneys here who, if you're practicing in small towns in particular, will get involved in appointment cases in criminal work. The criminal attorney suffers from petitions filed under RCr 11.42 for ineffective assistance but he does not suffer at least to date to any great extent in malpractice actions being filed against him for ineffective assistance. Although there have been some recoveries in this area, none of the cases, at the reviewing court level except one, has upheld a verdict against an attorney for malpractice in a criminal action. The case in which that was upheld was a Minnesota case, it's Nore v. Ginsberg, and it's an old one.

In criminal cases, it is a good idea to record what you have told your client as to possible penalties, his prospects for probation, the length of his sentence, whether or not he will be entitled to shock probation, at what point in time he can go before the parole board, and whether or not his sentences will run concurrently or consecutively. Each of those items has recently been the basis for collateral attacks in Kentucky and has also been the basis for actions in the federal court in collaterally attacking a judgment. Once you have recorded this information, you could have your client sign it. I will put you on notice that at times it's difficult to determine what your client's parole eligibility would be even when you call the parole board. All you can do is make a good decision based upon what the parole board provides you.

In closing, I'd like to read you just briefly from an opinion by the Kentucky Supreme Court which states the duty that an attorney has or the level of conduct that the Supreme Court expects from an attorney. It's taken from Kentucky State Bar Association v. Vincent, 537 S.W.2d 171 (Ky. 1976). The court states, "He (referring to an attorney) is an officer of the court and it is his duty, yes, even more so, it is his responsibility to conduct his personal and professional life in a manner as to be above reproach. Is this too much to ask of any attorney? We think not. Of even one's own confidants, no person occupies such close relationship to the general public as do the members of the legal profession. It is the attorney to whom the intimacies of family relations are confided. It is the attorney who is trusted with advising as to the management and disposition of the family estate. It is the attorney who is entrusted with the protection of our constitutional and statutory rights. Such a burden resting upon the members of the legal profession must not be taken lightly. That you will faithfully execute to the best of your ability the office of attorney at law are not idle words to which all attorneys have pledged their allegiance. The conduct of even one attorney which would embarrass the legal profession would not be tolerated."

## QUESTIONS AND ANSWERS

QUESTION: I would like to ask a question. Do retainers qualify for improper office practice in commingling client money?

MS. BENTHALL: No. Not under the interpretation that the courts have given, nor under the Code of Professional Responsibility.

QUESTION: Would you please address yourself to payments of estimated future court costs? How should these be accounted for?

MS. BENTHALL: I would say theoretically they would not be funds to be placed in the escrow or trust account because they're designated as expenses, reasonable expenses of litigation which would be a definite exclusion under the disciplinary rule.

QUESTION: Even if some of them are eventually to be returned to the client?

MS. BENTHALL: I believe if you estimate a fee, a reasonable fee, as nearly as you can and you expect to have to pay it, that the later attained knowledge is not going to cost that much, and this would not be designated as commingling the funds.

QUESTION: What about a situation where you take the retainer, do some work, and then the obligation is on the client to return and the client doesn't return? As a matter of fact, I've got one case I think where I'm not really sure if I can even locate the client but assuming that you could, what is the obligation there?

MS. BENTHALL: I don't think there's any obligation as long as there is a retainer. You may also have a similar situation where a lawyer charges a retainer, then bills an hourly fee, and if the hourly fee does not use up the retainer then that amount left over is to be paid back by the attorney. Again, I believe, that this qualifies under the decisions and the Code as non-trust funds, non-escrow funds.

QUESTION: OK, after you get over that, it's in my checking account where I put it, but is there a time there that I've got an obligation to go hunt him up and return the unused retainer for the sake of it?

MS. BENTHALL: It seems that if you can't find the man and you have used reasonably good sense in trying to locate him that the burden is no longer on you. If you can't locate him then you have no way of returning the funds to him so I don't think there would be a problem.

QUESTION: If you can locate him, what is the reasonable time?

MS. BENTHALL: I don't know. I've had clients who have been lost for six months. I really can't give you an idea as to that, since there is no case law where the reasonable time is mentioned.

QUESTION: Now, in connection with that, as I understood you, if the attorney charged a retainer to a client, and let's assume that this is a monthly retainer from a bank, that the Supreme Court condemned the action of charging operating expenses in addition to that. Suppose these expenses are in connection with legal work being done as a result of that retainer, does that apply to that?

MS. BENTHALL: What was happening there maybe can be distinguished. In that case, he not only charged a reasonable fee for his work, but then he also charged for ordinary operating expenses. I think we're really talking about expenses not related to litigation but reasonable or ordinary business expenses: rent, secretarial



expenses, law clerk expenses, whatever mundane expenses are supposed to be included in the fee.

QUESTION: On the commingling, suppose you were doing a lot of collection work and the same day you collect money for your client you remit the two-thirds or whatever. If you run it up your office account should you set up a trust account for those same remittances?

MS. BENTHALL: Technically, I suppose you should. Because at any point and time when you have access to those accounts, you are technically commingling. Now, I assume you can just as easily run those through a trust account or an escrow account, though it seems like a lot of extra trouble because then you have to go get your escrow account booklet and run through that, but technically there is commingling under the Supreme Court's decisions. Even momentary access would be commingling.

QUESTION: On that point, let's suppose that I receive three thousand dollars, two thousand would be the client's and one thousand would be mine. Are you suggesting that I go get two checks? You won't receive two checks, you'll receive one three thousand dollar check. Are you suggesting that one check must be totally in the escrow account and then the fee portion transferred to the operating account?

MS. BENTHALL: Yes.

QUESTION: Is there anything wrong with doing it the other way?

MS. BENTHALL: Doing which the other way?

COMMENT: Depositing the three thousand into your operating and immediately writing a check for two thousand to your escrow.

MS. BENTHALL: Again, that's momentary commingling, I suppose.

QUESTION: Is there a disciplinary rule or case on that?

MS. BENTHALL: The disciplinary rule is--

COMMENT: No, I'm talking about just your procedural aspect that goes into it.

MS. BENTHALL: No, not really. It's not very clearly explained and that's why I think so many of us have problems understanding exactly what it is we have to do. I think that's the way so many lawyers have gotten into trouble because it has not been explained by a disciplinary rule or otherwise.

QUESTION: You're suggesting then, that all funds that come to me as an attorney must first be placed in my escrow account?

MS. BENTHALL: Yes, I am.

QUESTION: It's always been my understanding that the reason behind not permitting even this momentary commingling is that even if it is momentary a creditor could attach that, is that right?

MS. BENTHALL: That's one of the reasons certainly.



## A CHECKLIST FOR LAWYERS CONSIDERING AN INDEPENDENT PRACTICE

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I am someone who is presently attempting to put a practice together. The jury's not in, so I don't know whether I'll make it or not. At this point I'm optimistic.

Let me say this in general about my conclusions after five months of being away from a firm and a regular paycheck. That's one of the things that I miss most: a regular paycheck. But I'm very optimistic about the opportunities in Kentucky and in Lexington for anyone who wants to hang up their own shingle. I say that because, before I did it myself, I asked a lot of attorneys who've been around longer than I what they thought about it. No one told me not to do it, but I received lots of discouraging words, and I believe the consensus was that it would be very difficult in any community, particularly in Lexington, to make it on your own without enormous financial reserves.

Well, my situation at that time was that I had very thin financial reserves, and I had a wife who began law school this year, so I obviously didn't have a spouse to support me. But after five months of seeing what has happened to me, and after looking at what has happened to a number of other people who graduated with me in 1976 who established independent practices in this and other towns, I have just got to say that I am optimistic. If someone's willing to work hard, if someone's willing to hustle, if someone's willing to work at putting a practice together, and if someone's willing to endure difficult financial times, then I think it can be done. Let me say, furthermore, that I am enjoying enormously the kind of practice that I have. That's one of the things you've got to factor in. Do you want it? Do you enjoy it? Do you enjoy it enough to put up with all the difficult times that you're surely going to face?

I'm going to give a checklist this morning of things to consider, and that's about all I can do in the time that I've got. I don't know that I can discuss any of these things in very much detail. If you're a law student, if you're a young lawyer, or perhaps even if you've been in practice for several years and you're considering hanging out your own shingle and separating yourself from the corporate employer, the law firm, or the state, local or federal government, there are a number of things that you need to consider.

The first major topic I have on my list is what I label, simply, "personal considerations." There's a very obvious reason for putting this first because personal considerations are the most important factor in whether you're going to make it on your own. Whether you're going to enjoy private practice depends on the kind of person you are: the experience you've had, who you know, the kind of practice that you want, the self-confidence that you have. I could go on forever.

One of the things that almost doesn't need to be said but is so important in any community is who you know. If you are thinking about going back to a hometown, or establishing a practice in this town, do you know anyone at all? I can say confidently that, out of my class, people have established a practice in this town with very minimal contacts in the community and yet over the past two years they've made it. Still, it's going to be easier to make it and pay personal and business overhead if you know a few people, if you can refer your cases.

Do you have any independent sources of income? If I had had an independent source of income, if I had had a working spouse, or if I had had stocks and bonds that were paying dividends, I believe that I would have had no worries from the outset. If you've got an independent source of income, if you've got a cushion, if you've got a large financial reserve, then I believe it's quite apparent that you can make it on your own because you're going to be able to stick it out. You're not going to run into a difficult period where you just can't make overhead anymore.

Another personal consideration that obviously needs to be mentioned is the kind of experience you have. I worked for a very fine Lexington firm for about a year and a half. It was a civil litigation defense firm. I got an enormous amount of experience, and I just can't tell you how valuable that was to me. If you're a third year law student considering hanging out your shingle, remember that first year is going to be difficult. I have a friend who graduated in 1976, went back to Louisville and hung out her own shingle. She is a very bright and very capable person, got good grades in law school, was active in moot court and law journal, and she said that her first year in practice was the most miserable year of her life. It was the most miserable year of her life because she constantly felt like she didn't know what she was doing. She wasn't sorry that she went out on her own. She was glad that she did, but it was a difficult time. All of us, I think, can remember the first day out of law school. I can remember it well. I can remember not knowing how to draft a petition for a dissolution of a marriage, a simple will, or a deed, and the list just goes on and on forever. Motions, orders, those are the things that lawyers routinely do. If you're a law student hanging out your own shingle, you're going to have a rough time if you don't have experience. You can make it, but you have to consider this.

Another question to ask yourself is what kind of practice you want. If you are considering an independent practice, you have probably considered alternative practices with firms, with corporations, or with state government. All of those positions have good benefits, and I'm certainly not trying to advocate sole practice, hanging out your own shingle, over any of those. I am just addressing my remarks to those who are very concerned and very interested in independent practice. Well, the kind of practice that you're going to have initially, unless you find two, three, or four very good clients who can throw you a lot of good business, is a very general practice. On July 7 I went out on my own. Because of the kind of firm I was in and the kind of clients that we had, I wasn't able and didn't try to take any clients with me. I wanted to leave amicably, and since that time I have been taking anything

that comes in the door to pay the overhead. That's the kind of practice I have these days. And that's the type of practice that you're likely to have unless you have really terrific connections, which most of us don't. From day one of law school I think I knew that I wanted a generalized practice. Perhaps somewhere down the road I would like to limit my practice to four, five or six areas. I think that this inevitably happens. But it's not that way in the beginning. One day it's a class B misdemeanor; the next day it's a class B felony. It's a petition for dissolution of marriage. The list goes on and on. The range of problems that you deal with is really enormous. Now, I like this and I enjoy it. I want to do it, but if you don't want that kind of practice, you're probably going to be unhappy in an independent practice unless, as I said, you've got connections with really good clients from the start.

You've also got to gauge your self-confidence index. I think that maybe this is a problem with most people who come directly out of law school. How self-confident are you? The first six months out of law school I wasn't very self-confident. The woman that I referred to a few moments ago was miserable during the first year of practice, precisely because she wasn't very self-confident. When you hang out your own shingle, when you have a generalized practice, all kinds of cases are coming through the door. When you don't initially know very much about the law on the kind of case you're dealing with, you're going to have to have a lot of self-confidence to dig in and do what you need to do. Unless you're that kind of person, unless you have that kind of mind set, hanging out your own shingle may not be for you.

There are all kinds of other personal considerations and there's no use in getting into them in detail. Are you married? Do you have children? What kind of personal debt load or monthly debt load do you have? Do you have any line of credit with anybody? Is there anyone you can turn to if, after six months, the overhead is beginning to get you? You need to put all of these questions together. You need to look at yourself, and that's the most important thing you can do.

It would appear, from looking at the audience, that most of you have been in practice. And if you've been in practice for any length of time, you're familiar with the second major topic I have on my list. The dirtiest word in the lawyer's vocabulary, I have found, is "overhead." It was nice when I was in the firm because my only administrative duty was picking up my check every couple of weeks. I had a case file that I had to handle, but beyond that I didn't really know very much. I didn't really understand firsthand this business of overhead: the secretaries' salaries that fall due weekly, the rent that comes due once a month, the utilities that have to be paid, West Publishing Company expecting to be paid, and so on down the line. Overhead is something that you've got to face. You have to factor it in and decide whether you can make it on your own.

My Lexington overhead, and I have an extremely modest operation, runs about \$850 a month. I have a partner, and the two of us together have an overhead of about \$1700 a month. If you have the most modest operation in the world, and if you cut expenses to the bone and get in the most advantageous office arrangement possible,

you're still not going to get by, in my opinion, with overhead less than \$500 or \$600 a month.

Legal fees these days, I suppose, are high enough. If you can get the clients there will be no problem. Some months you'll find, especially in the beginning, that if you're not well established and don't have a lot of contacts this is difficult to do. Obviously, when you start off in practice on your own, there are all sorts of initial expenses. As I said, my financial reserves were very thin, and when I started adding up the total bill, including stationary and business cards, announcements, malpractice insurance, getting my diplomas framed, and this and that, I came up with a bill between \$750 and \$1,000. At that time, that figure was rather large for me. It may be insignificant for you, but if you've got thin reserves you're going to have to have at least that much money.

Obviously, there are other things you've got to have to put a law office together: desks, tables, file cabinets, executive chairs, client chairs, perhaps a dictaphone (although you can get by without one initially), bookcases, books, a secretary, and equipment. With all these costs it really comes down, finally, to the kind of office arrangement that you're able to get into. Most of the people that I know in this town and in other towns are able to negotiate some kind of office arrangement with someone else. Ordinarily in these agreements, part of the equipment that they need and part of the furniture that they need is supplied. Needless to say, the \$750 to \$1,000 figure that I gave you a few moments ago isn't going to work if you have to buy a \$500-\$600 desk and executive chairs. You've got to factor all of that in.

The more experienced people that I've talked to in the past two years have indicated that I needed enough put away to handle business and personal overhead for one or two years. Well, I agree that it's nice to have enough money put away to pay all business expenses and personal expenses for a year or two; but the truth is that if I had waited for that time to come, I would never have hung out my own shingle. I just couldn't have done it. There was no way to wait. I'm happy to say that, after five months, my preliminary opinion is that you don't need that type of financial reserve. If you're the right kind of person, if you've got the right kind of attitude, if you're willing to work, if you're willing to hustle, you're not going to need those financial reserves. In my case, to be very blunt, and it's a little embarrassing to admit that my reserves were so low, I had accumulated \$4,000. And I scrimped and saved to get that much together. But so far I really haven't had to dig into that reserve, and I think that my experience is not uncommon, even in the Lexington market. I had two friends in the 1976 class who graduated with me and who also went out on their own. One of them had a reserve of \$1,500. Now, he had some bleak times, let me tell you--some close times, and it was a rather nice fee in the ninth month of practice that saved him. He played it awfully close, but he got by on that. He's still practicing, and his practice is on the upswing. He's doing very well. I had another friend who had a cushion of about \$4,000 who found that it lasted him about 6 months. At that point, however, his income began to be enough to take care of his business overhead and in a minimal sort of way he began



to take care of his personal overhead. I am telling you what I believe is the bottom line. People have started their own practices in this town on songs and prayers and shoestrings, and it can be done if you're willing to work at it.

Let's look at the problem of income the first year. Income the first year depends, I think, on whether you're straight out of law school, or whether you've been out for a couple of years practicing in this town or whatever town in which you intend to set up your practice. I can say that, out of three people in the 1976 class who hung out their shingles in this town, none of whom knew very many people in this town, the gross income they received for the year ranged between \$10,000 and what I believe to be \$30,000. I know one person grossed about \$10,000, which left him with a net of \$4,000. That's cutting it pretty close. Another had a gross of \$13,000, which left him a net of \$7,000. And another fellow received a very nice fee that gave him \$35,000 for the year. All three people are doing much, much better the second year.

One of the things we need to talk about is the kind of office arrangement you're going into. That's the next thing on the list, and by "office arrangement" I don't mean the way you arrange your desk and your hat rack. I'm talking about business relationships you can enter into with other attorneys. Attorneys are the most inventive people in the world when it comes to using business relationships to help take care of and reduce overhead. Obviously, anyone has the option of going out and renting office space and hiring a secretary and buying equipment and being on his or her own, and that's very nice if you can do that. You have more independence that way than in any other kind of practice. But the truth is that it's very expensive to do, because secretaries alone, even with very little legal secretarial experience, are getting \$600/mo. You're going to have to get your overhead down, and that means that if you have thin financial reserves you're going to have to look for an office-sharing arrangement.

I investigated office-sharing arrangements. I can tell you about at least one arrangement, though I believe there are several more of this kind in town, in which an established attorney has an office, a secretary, a library, and all the things that he needs to run his practice, but what he needs is help in running his practice. He also has extra office space. So, he looks for young attorneys fresh out of law school, brings them in, puts them in the office, and gives them everything they need in terms of overhead to practice law. What he asks for in return is maybe half of their time, 20 hours a week. He even gives a minimal salary. Needless to say, that's an arrangement that's not going to work very well for very long, because as a young attorney develops his own practice, he's not going to be happy with that arrangement, not going to be happy with giving someone else 20 hours a week in exchange for merely having the overhead paid. Initially it's a great situation for someone who has no financial reserves at all. I'm from Henderson, Kentucky, and at one point I investigated the possibility of going back there. One fellow offered an arrangement in which he would supply all the overhead, the office library and secretarial services. We would split fees on any case he referred to me. Essentially, I would



be helping him in his practice. And from anything that I attracted to the firm, I would get two-thirds and he would get one-third. Now, you have to just negotiate that sort of deal on your own. What I'm suggesting to you is that, if you're really serious about going off on your own, you probably can find an arrangement, if you look for it, that will completely eliminate overhead and most of the initial expenses that you will have in setting up a practice.

Of course, the more traditional office-sharing arrangements are always available. Groups of attorneys get together, buy equipment, share expenses, and that's all that's involved. Everyone has his or her own independent practice, but they get together and share expenses. That's the situation I am in now. I am a partner with a fellow I graduated with who's been on his own since 1976. There's another partnership, Bassler and Benton, and the four of us have offices together. We split all of the expenses, and it is only by that method that we're able to get our overhead down as low as it is.

Other kinds of arrangements are available, such as partnerships. In the beginning you may have another law student who wants to go with you, hang out a shingle also and form a partnership. Obviously a partnership, if you get together and share expenses, has the same advantages as an office-sharing arrangement. That possibility is available regardless of what your financial status is. You can also, I think, if you want to look for it, find an office arrangement that will help you.

The next thing I have on my list is "sources of referrals," a subject that is dear to my heart these days since I'm looking for all the referral sources I can possibly find. There's lots of work out there, I believe, contrary to what everybody says these days. The problem is getting it into your office. Business generally tends to go to more established offices, more established attorneys, but there are places where almost anyone can get referrals just for the asking. The Kentucky Bar Association has a referral service. For \$25, the Kentucky Bar Association will refer to you the names of people who call in, asking for the names of lawyers. You can talk with a client, set a fee, accept the case, reject it, whatever you want—that's up to you, but it's a source of referrals.

In this area, and in any area, I suppose, where you have a federal court, there's a federal public defender system. There is a public defender with assistant public defenders. They're full-time, paid employees of the federal government, but each arraignment day in federal court when the public defender's office has a conflict, Judge Moynihan chooses lawyers from among the local bar to represent indigent criminal offenders. For that kind of work you get paid an hourly fee. In order to get on that list, you have to apply for it. You have to have a letter from the president of your bar association, which in Fayette County is Jim Kegley, and you have to be approved by Judge Moynihan. If you're interested in it, the Federal District Court clerk's office has all the information you need. Also, in Fayette and every other county, there are county attorneys who have assistant county attorneys. Those jobs aren't always the easiest in the world to get, but sometimes if you go after them and hang around for a year or two, they come along. They're part-time

jobs and pay several hundred dollars a month. The beginning salaries are perhaps in the neighborhood of \$7,000 or \$8,000 a year. It depends upon your experience, I think, as to the exact salary. That kind of money is not going to make you rich, but it will go a long way towards paying overhead, and lots of attorneys traditionally through the years have used that kind of position precisely for that.

In Fayette County we have a legal aid office and a public defender's office. Each office has full-time employees. Each office also makes use of private attorneys who work very much the same as the assistant county attorneys do, who have set salaries per month, and who are given a particular number of cases each month which they have to handle. It's part-time. It helps you with overhead and you're left with whatever else you do. Whatever else you do, of course, is yours. Similarly, I'm sure everybody is aware of the fact that warning order attorneys are appointed by the circuit court; that in incompetence and in adoption cases, guardians have to be appointed. Fees are paid by the courts in those cases. The fees are rather small sometimes, but they are fees, and any fee is better, I think, than no fee at all. In Lexington, we have Central Kentucky Legal Services. I understand that they also have offices in Frankfort and Bowling Green. I think they may have offices in other places, but I'm not sure. If you're in a county where you've got that kind of state or federally funded agency, where as a matter of their charters they are unable to accept fee-generated cases, you will have an obvious source of referrals. I know for a fact that, in Fayette County, Central Kentucky Legal Services is looking for lawyers to take fee-generating cases all the time. Most of the time modest fees are involved, but the cases are there.

You can also get referrals by getting out and getting involved in organizations and meeting people. I'm not going to elaborate on that, other than to say that you can be the best lawyer in the world stuck up in a law office someplace and, if no one knows you, you're not going to have any clients. You have to meet people.

The best source of referrals, in my opinion, are the attorneys in the local bar. I can remember hearing people say that there was no point in being a member of the local bar because it was almost entirely composed of attorneys and thus you were not going to pick up any clients there. That's simply not true. I've stayed afloat for five months because of the graciousness and the help that I have received from members of the Fayette County Bar. Every day attorneys in this town have conflicts of interest and conflicts in schedule; they get cases in the office that they don't handle because they're specialists; they get cases which they don't want to fool with because the fee isn't high enough; and, if they're established attorneys, they can turn away certain kinds of cases. These attorneys are constantly looking for people to refer those cases to. What I have found is that among most of the members of the local bar there's a natural inclination to help younger members of the bar who are trying to strike out on their own. In my experience, then, the richest source of referrals is other attorneys. About all you need to do to get some cases from other attorneys is to simply let them know that you're in practice for yourself. Unless you've alienated the bar or are an extremely unlikeable fellow, some cases are probably going to come your way.

The next subject I want to discuss is fees--another subject dear to my heart these days. Fees really pose a problem for the young lawyer who doesn't have any experience in fee-setting. Let me say at the outset, and I don't know how to say this delicately, that I think you ought to keep your fees reasonable. By reasonable, my worry is not that you'll charge too much. On the contrary, I think most lawyers have a tendency to charge too little. You have to look at your overhead. My overhead runs, and I repeat that I have a very modest operation, about \$200 per week. If I only have ten hours' worth of business that week, then obviously I'm going to have to get \$20 per hour just to pay my overhead. And another \$20 per hour is only going to net me \$200 per week. It's that kind of calculation that you've got to make in order to help you understand the kinds of fees that you need to set. Julius Rather, an attorney in this town who many of you know, advocates the three "in's" for the practice of law: get your fees "in" cash, "in" advance, "in" full. I think in certain kinds of cases, such as criminal law work and domestic relations work, you really need to do that. If you don't, and if you have thin financial reserves, you're going to find at the beginning that you're doing a lot of work and that the fees aren't coming in, the secretary is not getting paid, and you're really going to get yourself in trouble. I was the most idealistic person in the world my first year in law school and I hope I haven't lost the idealism. My first year in law school I decided to do, and I now do, pro bono work. But, I have to face the reality of my overhead and of getting those fees in, and I think many young attorneys have to do that.

One of the things that young attorneys want to know right after they hang out their shingles is how much they should charge for a particular service. Well, obviously, you can ask around town and find out what other attorneys are doing. One of the things that I did was to pull out the old Fayette County Bar Association minimum fee schedule. It's not enforced or in effect anymore, but it gave me some guidance as to what lawyers thought were reasonable fees ten year ago, and that's been a pretty good approach for me in assessing the kinds of fees that I should set in my cases. I don't really have time to talk about all the kinds of fees that can be assessed in different kinds of cases. There are contingent fee arrangements in estate work, percentage fees, and real estate work percentage fees which are often assessed, as well as fixed fees, and hourly rate fees. You have to work all of that out on your own, but there are all sorts of fee arrangements available to you. All you need to do is rationally decide, on the basis of your business and personal overhead, what kind of fee you need to set, what a reasonable fee is, and then work it out with your client.

Briefly, let me say that you ought to bill your files. If you're a young lawyer who has just gone out in practice and if you have overhead problems, it would appear that it wouldn't be necessary to say that, but lawyers are often very poor businessmen. To a certain extent I suppose that's fine, because we're professionals and we like more relaxed practices and many of us don't want to run our practices like a rigid business right down to the last detail. Nevertheless, send out those bills.

Lawyers often don't do it. Send out follow-up bills every month. I think that quite often a young lawyer sends out a bill, and when it doesn't get a response, it just sits there for six months and finally is abandoned. You need to try to get the bills paid that you've sent. You shouldn't be a banker. You shouldn't grant interest-free loans to your clients. There's no reason to do that. No other business in the world does it, and there's no reason for you to do it.

Another topic I want to address is office organization and record-keeping. The strangest feeling in the world, if you've worked for a firm for a couple of years and have had no accounting or business experience of your own, is to walk into a little rectangular room with a desk and have to face all the administrative problems. The only thing that I would like to say is to go into the office with the idea that you're going to be organized. It isn't maybe crucial in the beginning that you don't know exactly how to be organized. You can get that kind of information. But be intent on being organized. Keep your books straight. Absolutely list the income that comes in. List the expenses that go out. If you're not an accountant and the only thing you can do is the single entry system, then use that.

The next thing that I would say to you, and I think it's almost mandatory unless you have an accounting background, is to get an accountant into your office to set up your books for you and show you how to do things. It's going to benefit you in the long run. It's going to benefit you when tax time comes, because your records will be in order. It will be less trouble to file your Internal Revenue Service returns and your Kentucky state returns. In the process, you are going to have books set up that are going to reflect what you're really doing in your business. If you have very simple single entry systems, about all that you're going to know is what the bank balance says. But you need to know more than that. You need to know about accounts receivable, owners' equity, and so on down the line. There are a number of other things. Keep client information. Keep client files. Have filing systems and retrieval systems for your research. Develop forms from the very beginning and save those forms.

The next thing to consider is taxes. When I walked into the office on July 7 I knew very little about taxes. If you're used to receiving a wage and having taxes withheld from your salary, you're going to have to learn about self-employment taxes, filing estimated annual returns, and making quarterly payments of federal income, state income and federal social security taxes. If you have an employee, you're going to have to withhold taxes, and that's very interesting too. Federal income taxes and social security taxes have to be withheld. Federal unemployment insurance may have to be withheld. State unemployment insurance will almost certainly have to be withheld. Local taxes, if you're in Fayette County, have to be withheld. There are all kinds of forms. They have to be filed quarterly, and payments may have to be made to various agencies more frequently than that. If you can afford to do it, turn it over to an accountant. If you can't afford an accountant, contact each one of those agencies in the beginning and ask them to send you the material that you need. If you don't, you're going to find that four months down the road you owe all of these agencies \$500-\$600. That can be a lick if you're not expecting it.



You've got to have tax numbers from each one of those agencies. Go to the local Internal Revenue Service office and tell them the kind of business that you're setting up. They'll pull out a folder and stuff it with all of the informational brochures that you need to adequately handle your taxes in that particular kind of business. If you want to work it out on your own, you can do it. But know from the outset that you need to investigate and find out what your tax liabilities are going to be.

The next thing you need to consider is secretaries. If you go into an office-sharing arrangement, there will probably already be secretaries and you won't have to worry about hiring, firing, and what they have to be paid. You just pay your monthly share. I think I mentioned earlier that in this town, a beginning legal secretary without much experience gets about \$600 a month. What you also have to factor in is whether, in addition, you're going to pay health insurance. Also remember that you've got to withhold social security taxes from the secretary's salary, and these taxes have to be paid in. These latter items can raise the total bill on a secretary up to \$700.

To take about thirty seconds to sum up, equipment and law libraries are things you can get along without initially, because that kind of thing is going to be available across the street in the county law library. With respect to insurance, if you've got an employee, workmen's compensation insurance has to be paid. It's cheap, but it can be very expensive if a secretary injures herself on the job and you have to reimburse the uninsured employers' fund. Keep checking accounts. Keep escrow accounts. If you don't have a safe in your office, get a safety deposit box and put your clients' wills and other important papers in it. If you operate under an assumed name, be aware of the fact that you have to file a certificate with the Secretary of State's office and the local county clerk's office. Finally, one of the things that I did not know, although it's spelled out clearly in the Rules of the Supreme Court, Kentucky Bar Association dues are mandatory. We ought to pay them voluntarily anyway, but if you don't pay them you'll get a notice, a show cause order, asking you to show cause why you should not be suspended from the state bar. Little things like that you ought to know.

#### QUESTIONS AND ANSWERS

QUESTION: Terry, do either of you use the lawyers' referral service of the KBA? Or do you know of anybody who has? Do you have any feedback on how it's been working?

MR. SELLARS: Let me be very frank. Since July 7 the local members of the bar have kept me so busy that I really haven't needed to rely on them and I haven't used it. I don't know how frequently you get referrals from them, but I know that other firms have and that this is a good source for clients. It's something that I haven't done but I do intend to do. I'm sorry I can't tell you more about the system and how it works.



## DEVELOPING A PRACTICE

Terry W. Holloway  
Holloway and Southerd  
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In discussing my topic I have to look at factors that have been discussed at least in part by previous speakers but I think what we're dealing with is analyzing and comparing the various methods that people have and can use to obtain, retain, and upgrade their legal clientele, which seems to me to be the essence of developing a practice.

What I have to say to you today is not any legal jargon; it's simply a common sense approach that I think people can use to try to develop a practice. Many of the items listed in my outline have already been discussed by previous speakers. I will do the best I can not to discuss the substantive nature of those things but rather just deal with them in the matter of how they relate to developing a practice.

The first thing I want to get into is formulating the goals of your practice. It seems to me that we have to look inwardly at ourselves and decide: one, what do I want to do, how do I want to practice law? I think that when you're talking about goals you're talking about two specific things. The first is, where do you practice--in an urban area or in a rural area? The second thing is, what type of law do you want to practice? Do you want to practice criminal law, constitutional law, labor law, etc., or do you want to engage in a general practice? If most of you have already gotten your practices started and are working in an area then most of these things that I'm discussing at this point you probably already know. But I would just like to point out a couple of things that I have learned from my practice in Louisville, and from talking with various other people that I went to school with at UK who are in other areas of the state.

The court system in Louisville is sort of an entity all its own, when compared with the rest of the state. We have 16 circuit court judges, 23 district court judges and there are anywhere from 6 to 10 commissioners. So if you are going to have to deal with a legal system of that magnitude, you're going to have to take a different approach there than in a smaller area. I have friends in various smaller communities in the state where there may be just one judge for a three county area. Certainly, that's a fact that you need to take into consideration.

The next subject is the methods of developing a practice. I don't want you to feel I'm being condescending in talking about some of these things, which may seem obvious to some, but in talking with Carroll Stevens and in determining how you develop a practice, it seems to me that it all goes right back to the client. What is a client seeking when he comes into your office? He is the starting point. Many times, (and I assure you that this has happened to me) you wish that you wouldn't have to deal with a client's particular problems. Nevertheless, if you don't have clients that are satisfied with your legal services, it's going to be

difficult for you to develop a practice.

The starting point is the client. When you have a client come into your office you have to determine what he wants. Obviously, he wants you to handle his legal problem and his legal problem may be something other than what he thinks it is. You have to make an evaluation of this and a number of other factors when you're talking to him. In determining why he came to you and what he wants, these things have to be, or should be, determined by you in the initial interview. I think you have to guide the conversation and lay the foundation for the relationship that you're going to have with him. In all honesty, what you're doing is selling yourself to the client. I don't mean that in a negative sense but in one way or another the client has to believe that you can handle his problems and if he doesn't, then he's not going to come back to you and he's not going to provide you with referrals either. So in selling yourself personally and in selling your abilities I think these are some of the things that you have to consider, as well as how to do them.

Developing confidence, skill, honesty and an attitude are things that you've got to have, in my opinion, as you already know. The client must have confidence in you and your ability to deal with his problems. You could have an excellent initial interview with a client and talk with him at length about what he perceives to be the problem. But, if you don't get the results in the courtroom, it's not going to matter, so confidence is something that's going to be developed by you throughout your relationship and as you go on through the courtroom and deal with other attorneys on the case.

Skill is something that's going to have to come with time. Even if a client likes you, or if he comes to you because you're his friend, I can assure you, if you don't handle his legal affairs to his satisfaction, he's not going to come back. And quite frankly, you wouldn't blame him. So even if the person is your friend, you have to develop skill and expertise in the areas that you're handling in order to develop a practice. That too, is going to come later on, in your relationship with the client. I can't say enough about that.

I think all of us have in some small degree come under public attack with the aftermath of Watergate. I hope that's over with and we don't have to deal with it anymore but nevertheless, issues like that are before the public and I think the public is concerned about whether or not a lawyer is honest or whether he will be above-board in his dealings with them and with the court system. I also think that there have been a number of actions recently taken against lawyers for having committed alleged acts of malpractice and that type thing. I'm not dealing with the merits of those actions, but when these types of things occur and these things get before the public (that is, potential clients) then, you have to deal with them and I think it's important that you be able to present an image of honesty and integrity in your dealings with the client. From what I have read in preparing this talk most of the authorities submit that honesty is one of, if not the most important characteristics that the client is looking for in a lawyer. Many lawyers don't realize that that is one of the most important factors.

In order to develop a practice you're going to have to have a good reputation; a reputation for expertise in your particular area or areas as well as these other factors that I'm talking about. That reputation is developed, rather obviously, from other client referrals and from your relationship with your peers and your contemporaries; that is, the other attorneys in your community and naturally, that reputation is developed through handling your cases in court and obtaining good results.

The next thing that I feel is important is your attitude. Sometimes it's difficult to convey the correct attitude. I've had clients come to me and when they are half way through talking to me about their problem I have thought to myself, "I just really don't want to deal with this particular issue or this particular person." I'm sure that if we're honest with each other, we would discover that we've all been in that position before. My experience has been that if you feel that way, you'd better tell them so then and suggest another attorney to whom they can go. I know this has probably happened to all of you, but how many times has a client come to you who is "attorney-shopping" and said that he has talked to lawyer A and lawyer B about his case and now he wants to talk to you and find out what fee you're going to charge and how you view the case.

I've had it happen a number of times where a person will come to me and he'll say, "I talked to lawyer A but he didn't explain it the way you did, he didn't tell me these things." That's not to say that I did it better than lawyer A but simply I think that you've got to develop an attitude that comes across to the client wherein you can convey to him some things that he doesn't know when he came to you. He knows that he's been charged with "driving while under the influence" of intoxicating beverages; he probably knows that he can lose his driver's license so he doesn't need you to tell him only that. What he wants to know are the legal and factual matters that are going to relate to his case. That's part of your attitude that you convey when you talk to him.

I think you've got to be interested in his case. He probably thinks that you're just handling his case along with five or six others that day and if he doesn't think you're interested, then he's not going to have a very good attitude and he's not going to feel comfortable with you. If most of your clients feel that way, you're going to have a difficult time developing a practice. I think you've got to try to utilize these factors, of which we're all aware, and apply them in your dealings with clients in trying to develop a long-range practice.

The next thing I want to discuss is the relationship of secretaries and office personnel to clients, as well as to yourself. I think a client, when he comes into your office, is interested in knowing how your secretary, the paralegal, and the other people in the office relate to you. He's watching everything you do. If people are friendly or if they're courteous, then that makes him feel good. The person is looking for a lawyer and probably he wants to believe that you are his lawyer, but I think they've got to feel some sense of comfort and relief when they come to your office. If your overhead budget permits, have your secretary get the client a cup of coffee or a coke. It makes them feel better; it makes them feel

more at home.

Now, with regard to the office structure and its physical layout, we have to just use whatever funds are available but I think you have to make the office pleasant and nice and a place where people feel that they can at least relax. I don't know how many of you have gone to doctor's offices, as I have on many occasions, where the only reading material in the waiting room is medical journals. I think we lawyers are guilty of that same thing--having bar journals and so forth in the office. That's fine, but have TIME magazine there, have PEOPLE magazine, something that they can read and get into a relaxed attitude with, before they come to see you.

The next item is your relationship with judges and other court personnel and I've related that back to the structure of your legal community. Again, this is based on your common sense, because, again you're selling yourself. The client has to believe in your abilities and believe that you can accomplish his legal tasks and your relationship with the judges in your community is important, believe it or not. I'm not talking about being buddies with the judge and being able to sit down and have a cup of coffee with him so that all the other lawyers see that you're talking to the judge--I'm talking about when you go into the courtroom. Be in a position to know that the judge is going to give you a fair hearing so that, at least, if he doesn't like you, he's at least going to respect you.

I've been in cases, many times, where I've been on both sides of the coin, where it's obvious that for one reason or another, either rightly or wrongly, the judge is not giving you a fair hearing; he's not giving you a fair shake and he's giving the other lawyer a break. Well, let me tell you something, the clients know that. It may be that it's not your fault but if you are consistently going into court and this judge or that judge is not giving you a fair shake, the clients are going to know it and the word's going to travel. It's going to be difficult to develop a practice if that's part of your problem. It may not be your fault but I think you've got to keep in mind that you have to develop some kind of relationship with the judiciary that's correct for you, so that when you come into court and you've got a legal point or issue that you want to propose, at least the court will give you a hearing. He doesn't have to rule in your favor every time, of course, and clients are aware of that, too.

Clients are also aware of the fact that it may appear that the other lawyer is always the one who is making the points and you're not the one who's getting anything across. It's difficult to develop a practice if this is your style or if this is the way things come across. It may be that your position and your concepts with regard to the case are correct but if you're not going to get a fair hearing and/or lose your case, then you're going to have a difficult time developing a practice, particularly if the only way you're going to get a viable result is to appeal your case. You've got to win a substantial number of your cases; at least get good verdicts in the lower court level. Often, the relationship of the judge to you is important in that regard.

Let me give you one example of a situation like that. I had a client who



contacted me after he had discharged his attorney in a criminal case. His attorney was a very good friend of mine and a very fine lawyer and I sort of had the feeling that he was discharged improperly by that client; the client just wanted a result that no lawyer could get. In talking with the client, I asked him what happened and he told me about his case. They were having a suppression hearing in front of the judge and this client was what we might term a "jail-house client" --he'd been around and he knew the in's and out's of the court system and he knew, at times, when his attorney was making points and when he wasn't.

He indicated to me that in this suppression hearing they were presenting their case very well and things were going great. He thought he was going to get the physical evidence suppressed in this case, and, had he been able to do that, the Commonwealth wouldn't have had a case and the judge would have had to dismiss it. He indicated to me, however, that midway through the hearing, the judge called a recess and called both lawyers into his chambers. They were in there about 15 or 20 minutes and when they came out the judge was a completely different man--he was angry and hostile toward the client, at least that's the way he perceived it, and he was hostile towards the client's lawyer.

He told me, "I don't know what happened in there and I don't care, all I know is that we lost the suppression motion and I'm going to lose my case." Well, I don't know what happened in there either, but if that had been my case I wouldn't have gone into the judge's chambers without my client and whatever happened in there, the client would know that you were fighting for his cause. That kind of word spreads; it spreads among clients and it spreads among lawyers and it may very well be that this attorney that was representing this man at the time, didn't do anything wrong. I have a feeling that that's probably the case, but the client didn't understand. All the client knew was that the circumstances changed when his attorney came back from the judge's chambers and that's a bad situation in which to be.

With regard to court personnel, I find that they are of crucial importance in helping you to develop a practice and to be more efficient. Like it or not, they can help you or they can hurt you and I think we have to do a little back-slapping every now and then to insure that the court personnel will give you some assistance. It's a heck of a lot easier if you can pick up a telephone and call the clerk of the district court and find out about whether this case is on the docket or whether you can have this case put on the docket than it would be for you to take 15 or 20 minutes of your time to leave your office, to go to the courthouse and get those things done. Ten minutes here, fifteen minutes there, can help you to devote more time to your work in the office or more time to another client's case. Certainly, that is of great help to you in beginning to develop your practice.

Another thing I wanted to point out on this matter is the fact that when clients go to court with you, they are aware of how the court personnel and how the judges perceive you. If you say "Hello" to the sheriff, if you say "Hello" to the special bailiff, if you say "Hello" to the judge's clerk, you're putting on somewhat of a show, I suppose, although that's a rather misleading way of putting it.



I'm not suggesting that you should be an actor, but again, you're trying to develop your client's confidence and how he feels about you. He's much more likely to accept your evaluation of the case if he has confidence in you and I think people look at these little things. In the long run, it helps build up your reputation.

The next important aspect in developing your practice is promptness in your client's awareness of his case. Again, it's just common sense. This is one of my main problems; I have a difficult time getting things done on time. But my experience has been that that's one of the main reasons why client's discharge attorneys --not because the attorney is incompetent or because they don't like him but simply because he won't do the work, or he won't keep them advised, or he won't return their calls. He may very well be working four or five hours a day on their case, but if they don't know that, then they're concerned about it and they don't think the lawyer's doing anything. I'm sure all of us have been in that situation. I'm sure clients have come to many of you and said, "Attorney A represented me but he simply won't call me back. I don't know what's going on." Attorney A may be the finest attorney in town but he is not going to be able to continue developing a practice and have a good solid basis of client referrals if this is the attitude that he conveys to his clients.

The way I deal with that, and I don't know if I'd be called a "paper-bug" or not (I'm sure my secretary would think that I am), is whenever I receive a motion or a letter from an attorney I make a Xerox copy of it and I send it to my client. I want him to know what's going on; I want him to know what the other side wants out of the case, also. So, even if I get a routine motion to put a case on the docket for a pretrial conference, I'll make a Xerox copy of that motion and send that, along with a brief one paragraph letter, to my client. I'll send it to him and tell him that I'm going to court on his behalf on such-and-such a date and I'll advise him after that court date what the result was. It may be that you're just going to court to get a pretrial conference date and then prepare for the case but my feeling is that the brief amount of time and the paper work it takes is well worth it.

My experience has been that clients like to have something in their hand; they want to know that this lawyer is doing something to help their case and that's one way of doing it. Again, some of you may feel that this is not an appropriate approach and it may work for some and it doesn't work for others. I feel like it works for me.

Now, with regard to interrogatories and that type thing, I have a case right now that involves an automobile and we're suing because of a defect in the engine and so forth. I don't know anything at all about a car but fortunately, my client does have a pretty sound understanding of engines and their functions. In this particular case I received a set of interrogatories and requests for admissions from the attorney on the other side. I just looked them over briefly and didn't even attempt to answer them. I made Xerox copies of them, sent them to my client and told him to fill them out as best he could and send them back to me in the mail; then

I would work on them with him at that point. I think that helps the client know that you're interested in his case and it helps him get involved. He understands the difficulty of his case and he understands the pros and cons and gives him a partial understanding of the legal issues in his case.

My client sent the interrogatories with his answers back to me and then he came into my office. We went over them and I prepared them for his signature. Of course, plain common sense is going to tell you that you're going to have to change his answers so they are in the appropriate legal terminology but the client often knows more about the case than you do and when you force him to sit down and deal with these issues, you're helping him to prepare for the case, as well as yourself. As time goes on, I think that helps to develop a reputation of concern and it goes back to some of the things I talked about before--your attitude towards the case and your honesty in dealing with the client. I think that helps. However, in the particular case I'm talking about, when the client came into my office there was one question that he had answered "No." We took 15 minutes to decide whether or not he could honestly answer the question "No" or whether we ought to answer the question "No" and qualify it. I can assure you, when that client left my office, he was well-versed in the ins and outs of this particular problem; he knew the kinds of things the lawyers were going to ask him when we got to trial and I think it helped him. He felt like a part of the case and I think that kind of thing helps you to develop an attitude as an attorney who cares. That will help you develop a practice.

The next things I want to cover are client interviews, billing, and fees. I'm going to touch on these issues briefly--as how I feel those things relate to developing a practice. With client interviews, my philosophy is that you don't take telephone calls during the interview. You may sit there and have conversations with other attorneys or this person or that person, and you may feel like you're a big person, but I don't believe that doing that helps the client feel that you are truly interested in his case. I don't think that it helps him to develop confidence in his case or in your ability to handle it, so I try to give the client my undivided attention in dealing with his case.

Now, with respect to billing and fees, my experience has been that fees can be a major source of problems between attorneys and clients. You may have done the best job possible for your client in the case that you handled--no other attorney could have done any better--but if he doesn't understand why or for what he is being billed, then he doesn't understand what the basis of the fee is and he's not going to be satisfied. So I have developed a concept or a philosophy, where I tell people when they can come in the office, that I'll be glad to talk with them about the case, and if we choose to have an attorney-client relationship, that's fine--they don't owe me a thing. But if we do, then we discuss fees. I naturally wait until the end of the interview to discuss fees. Often, clients will call you on the telephone (they're lawyer-shopping, possibly) and they'll say, "How much do you charge for handling a divorce?" I won't answer that question; I'll tell them if they'll call my secretary for an appointment, I'd be glad to talk with them about it. Then, I'll

discuss the fee at the end of the interview because first of all, I don't really want a client who's "lawyer-shopping" anyway. But, if you have talked to a client about the case, explained the legal ramifications of it, he understands what the fee is and why it is \$500 instead of \$200 or whatever it may be.

My experience has been that almost every time, if I don't say anything about a fee to a client, and if I appear to have concluded the interview, they will ask me about it. People want to know what they're being charged and that's understandable. I think you're short-cutting yourself and you're short-cutting your relationship with that client if you don't deal with it. I don't have a very high ratio of accounts receivable; I don't have to send out very many bills.

Nine times out of ten when a client leaves my office he knows what the fee is or will be. We have agreed on pay arrangements if he can't pay it all at once, and the latter is usually the case. He understands that if he doesn't pay then I'm not going to represent him. I find that most people prefer that type of relationship. They'll respect you for it in the long run. I've told people time and time again, I'm not a bill collector. I'd rather devote my time and my energies, to developing the client's case rather than trying to deal with him in trying to collect my fee.

I have also found that people want to get a bill on a regular basis. If you send out one bill at the end of the case, the case may have lasted two months or six months, or whatever, they may be surprised at the fee. If they don't know when you've been to court, if they don't know what you've done and they get a bill for \$400 they wonder what you did to earn it. I can assure you that all you need is three or four people like that to go out in the community and tell people that this lawyer doesn't do anything and charges \$600. Well, that's not going to help you develop a practice. Again, it's just common sense, but I think you've got to relate that to what the client wants, and what he's looking for.

Another aspect of developing a practice, though rather obvious, is your "sources" of business. I don't need to talk too much about that because each of you have, I'm sure, used various ones with different degrees of success. It depends upon what state you are in, what area of the state you're in, and whether you're in an urban or rural community.

Obviously, client referrals are one of the most obvious sources of getting more business and developing your practice. If you don't have client referrals, you're not going to develop a practice. And, the only way you're going to get client referrals is to have clients who are satisfied with your legal results, and my experience has been that bad news travels faster than good news in the legal community. I'd rather have three satisfied clients than one dissatisfied client because that one is going to create more problems for you than the other three, even though the other three may refer business to you. So, I think client satisfaction in the way that you handle their case is of crucial importance.

The second way of increasing your business is other lawyers. I feel that other lawyers have been an invaluable source of referrals for me. Depending on what type of practice you have, what type of things that you do, if a fellow attorney

feels that he can't handle a case for one reason or another, he's got to feel some confidence in referring the case to you because he doesn't want you to not be able to handle the case; he doesn't want you to do a poor job because then it's going to make him look bad.

There is one attorney who refers a number of cases to me on a regular basis because he doesn't do criminal work; he doesn't want to. He's been an invaluable source of business to me. One day I was talking to him and he was talking about another lawyer in the community to whom he has referred other business and he was very derogatory about this individual. I knew the other individual and thought he was a pretty good attorney, so I asked him, "Why do you feel this way?" He said, "Well, I referred a case to this attorney and everything was fine. He handled the case well. The next thing I knew this guy had written the same client's will and handled the estate and so forth and so on." This particular lawyer was extremely irate about it. So when other attorneys refer cases to you, unless they specifically tell you, "Here is client A and I'm referring his business to you," I think you should infer that they're referring that particular case to you because they want you to handle the criminal, the divorce case, the labor case, whatever.

If that client ever calls me back and wants me to do something else, the first thing I'm going to do is call the lawyer who made the original referral to me and find out if he wants me to represent the client in that particular matter. If an attorney feels that you're trying to take his clients, he's not going to refer business to you. Again, that's just common sense but I've seen it happen on a number of occasions. Not only does it keep you from getting referrals from that attorney it creates ill-will. My friend has already told me about it, and I don't know how many other lawyers he's told about it, so it's going to be difficult for that other attorney to develop a practice if those kinds of things happen on a repeated basis, even though what he did may not have been intentional.

Another thing that I try to do and I think it's a good idea is when an attorney refers a case to me is to send him a thank you note or letter. He may not even care about it, he may wash his hands of the case and doesn't want to deal with it anymore but I think if you send him a letter it is a very professional way of handling it. It helps the other attorney to know that you appreciate what he's done for you.

I think one of the things that you can do in order to get other lawyers to refer cases to you is develop an expertise in a particular area. If you handle criminal cases exclusively, and lawyer A handles criminal cases exclusively, he's not likely to refer a lot of criminal cases to you unless he's got a conflict of interest or something of that nature because that's the bread and butter of his business. Those other lawyers have got to know that you handle divorce cases, that you handle juvenile court cases, etc., and when he's got something like that, he can refer that to you. Certainly you can return the favor at an appropriate point in time. I think that helps you to build a good relationship with other members of the legal community and it certainly helps build a more well-rounded and lucrative practice.

I have found, more often than not, that when a client comes to my office because lawyer A has referred him to me, I'm already one step ahead of the game. I don't have to sell myself to that client nearly as much as I thought I would because the other lawyer's impression of me has helped the prospective client.

Family and friends can be a very helpful source of business for you, but I've learned some things the hard way; sometimes it's difficult to represent your friends or effectively handle their cases. When I first started practicing a lawyer told me that one of the things that you should never do is represent your friends, especially if you have friends on both sides of the case. I've found that to be true.

The next thing I wanted to discuss is relationships with people outside the legal profession. Lunches, athletic activities, business meetings, and things of that nature can be a helpful source of business and help you to develop professional relationships with others. Some of the authorities that I've read suggest never go to lunch with lawyers; don't spend your time over at the courthouse jaw-boning and talking about things that are not going to help you in your practice. You'd be better off in the office doing your work. I agree with this, in part; I think you've got to use discretion in the situations appropriate to you personally. If lawyers are a lucrative source of business to you, then obviously you're going to have to do some of these things. If they're not, then you're better off trying to go to lunch with the president of the bank; you're better off trying to go to lunch with a corporation president, or whatever. That's just common sense, but just as an example, I play tennis in a foursome one night a week with three clients of mine. It's a lot of fun, we enjoy it and it helps me to keep in contact with them. So I think you have to broaden your contacts with people outside the legal profession, as well as within it.

I'd like to talk now about legal specialization. Unquestionably, it's coming and this is particularly true in Louisville. Because of the large number of courts that we have, it's impossible for me to handle a general practice on a broad basis; I can't do it. Our motion hours on Monday last from 8:30 a.m. until 4:00 p.m., so if you have a number of cases in different circuit courts, you can't get anything done except go to motion hour. So I try to limit my practice to two or three areas and try to be proficient in those areas. I think that also helps other lawyers to refer cases to you; it helps to develop client referrals.

How many times have you heard a client say, "Oh, he's a criminal lawyer," or, "He's a divorce lawyer"? Sometimes that's good and sometimes that's bad. But in terms of getting client referrals in an area of expertise, which I think is becoming more predominate, that's a helpful thing to have. If you're with other people in a firm I think that could help you to devote more of your time to your specialization, your area of expertise. If you spend three-fourths of your time dealing with administrative matters in the office, you're not devoting your time to your clients' affairs and it's going to be difficult to develop a reputation or expertise.

Now, on to office personnel. I have a secretary who does a really fine job. I have her at the point now where after an interview with a client on a divorce case,



for example, I can give her the file and she can do the rest of it. Actually, of course, you've got the sole responsibility of proofreading your secretary's work and making sure it's correct, but her proficiency can save you an invaluable amount of time and help you to devote time to other matters.

Use of paralegals I think, is a coming thing and if you can get a person, or persons, who could assist you in your firm, it's going to be a great help. They can do things all the way from preparing pleadings and doing research to investigating the scene of a crime or accident, and so forth.

Like it or not, everything I've read about timekeeping systems say that the lawyers who keep one have a higher profit margin. I do myself; it just so happens I have a client who can provide it to me on a low cost basis but you've got to make yourself do it and it certainly helps you in developing a practice in the long run.

You've got to keep your overhead low. My philosophy is, it's not how much money you make--it's how much money you take home. That's going to have a direct bearing on the nature of the practice you develop, too.

There's a thing called the "acquisitive syndrome" that I'm very guilty of and I think all of us have "acquisitive syndrome" occasionally, in the sense that we try to represent everybody we can; we try to acquire as many clients as we can. But I think that in order to develop a good quality practice you've got to learn to weed out those clients and those clients whose cases that you don't want to handle or you don't have the ability to handle effectively. You've got to do that, and sometimes it's difficult, especially when the client is in your office with money in hand and wants to pay you to take his case. If you don't understand it or if you don't have the time to devote in order to do a good job, send him to another attorney who will. Hopefully that attorney will reciprocate by sending cases to you in the future. You've got to start trying to weed out those clients whose cases you don't want to handle and you've got to start doing it right away even though it's difficult. The nature of your practice, especially if you specialize, could help you do that.

Finally, a few "do's" and "don'ts." Don't develop a ratio of client expenses to profits so that you can't feasibly take cases that you want. That just means "keep your overhead down." I've had some difficulty myself in having a client who comes in with what appears to be a malpractice case and my firm is not like some of the bigger firms in Louisville that have a big "float" where we can advance certain client expenses. Depositions may cost \$400 or \$500. I don't like to do that, so if you keep your expenses at a lower level you might be able to handle those kinds of cases that might give you better exposure and help you get a bigger fee.

Never let clients borrow money from you. I have done a lot of criminal practice and a number of occasions clients have asked to borrow money. It's been extremely difficult at first to say "No," but I assure you I never say "Yes" and I haven't been sorry for it later.

The last thing is, don't take a case that you don't understand. If a client comes to you with a problem that you would like to handle but you don't understand it, work with another attorney on it. Call attorney A and get him to come in and assist you with the case; you get a better result for the client; the client will

be satisfied and it will help you develop your practice in the long run.

#### QUESTIONS AND ANSWERS

QUESTION: If you use contracts with your clients on personal injury-contingency cases, or in criminal cases, do you require a contract with your client on divorce cases?

MR. HOLLOWAY: On divorce cases generally I don't. I don't know why but with divorces, I usually represent women rather than men. Generally I like that because courts are at times more favorable to women, as a general rule, but in those cases a lot of times you get your fee by petitioning the court after the case is over. I just don't work with a contract in a divorce case.

In a criminal case, unless it's a small fee, I do because I want the people to know that if they don't pay the fee, I'm going to get off the case and I'm not going to handle it so I've got a standard contract that I use. It's very broad; I can include or eliminate certain things but I use them in every criminal case. That contract also sets forth the basis and guidelines by which the people are going to pay the fee.

QUESTION: I'm sure that you've had the same problem that I have where it's a very serious criminal matter with a substantial fee and the client pays a retainer and there is an agreement to make installments. You get yourself too far into a case where you're approaching a trial date and the client is still \$300 or \$400 outstanding. What do you do in a case like that, what have you done in the past? Have you ever had any problems with a client then filing a complaint with the Bar Association because you're threatening to withdraw because he hasn't paid the balance of the fee?

MR. HOLLOWAY: I can really relate to that. That has happened to me on a number of occasions, not so much the client filing the complaint, although I'm sure it has, or will happen. Often times, if you do the kind of work I do, criminal work, that's what happens: a client comes in with one-half or one-third of a fee and your trial date is two months away but you want to take the case, so you do. But, again, that's why I use the contract and I set forth the specific terms that they've got to pay and if they don't I have my secretary send a letter out. You know, "Dear so-and-so you've got to make payments as we agreed." The client has to know enough and understand what he's supposed to do before he leaves your office and if he's not doing it as per the terms of your agreement, my experience has been they're not likely to complain about it too much--especially if you kept him abreast about what you've done. If you've sent him copies of your motion for the bill of particulars, etc., that you've filed, they know that you haven't been sitting around and doing nothing. The main problem is with the courts, however, and with the other lawyers. It's difficult to walk that fine line of coming up to a case three or four weeks before trial and trying to get off the case because you haven't been paid. The judges don't like it and the lawyer on the other side doesn't like it because that means he's probably going to get a continuance and he's going to have to prepare his case again. But I tell you, I've just taken the position lately that it's not

that I don't care--I don't mean to be obstinate about it--but those people aren't helping me develop a practice, or make a living, so I've taken the position that if I can do it far enough in advance, say, two to three weeks, and if the client hasn't cooperated, if he hasn't done the things that he said he would do, I'll make a motion to withdraw. If I have to, I'll put an affidavit in the file and just say the client has not complied with the terms of the agreement and unless the judge is extremely detached from reality, he understands what's going on and he won't make you stay on the case. As for whether you'd have to return the clients' money, I don't know. That's where your timekeeping systems come in and if you can document what you've done, I think that would help you to keep whatever fees you have. It's a really tough problem. In criminal cases it happens to me with some degree of regularity. I've gotten to the point now that I just have a standard motion to withdraw; if they don't pay, I'll withdraw from the case. That may sound rather harsh but that's just my approach.

QUESTION: This is somewhat in the same vein from the civil side understanding that the non-payment of fees is fairly rare. Let's imagine in a non-litigation situation on the civil side that your client simply hasn't paid. Now, we've gone through the steps you've suggested which I normally do: send the bill, follow it up and after the second one send a polite letter. What, if anything, do you do after that?

MR. HOLLOWAY: It may sound like all I do is withdraw from cases, that's not really true but, I'd withdraw from the case. Again, it relates back to what I said at the very end about not developing a high ratio of clients' expenses to your profits--to the money that you keep in your office account. If you feel that when you talk with a client you're going to have to advance part of the bill, e.g., the deposition cost in advance, then I think you've got to decide whether you can effectively do that. If the client can't reimburse you for those costs as the case progresses, you've got to make a determination of whether you feel like you're going to win the case and whether you can recoup those expenses. One of the things I do is since there are so many lawyers in Louisville (I haven't even practiced against half of them yet) but if I know the lawyer, I'll call him up and I'll tell him the problem. Most lawyers are reasonable enough and they understand the problem. I'll tell him, "If this-or-that doesn't happen I'll be forced to do this. I'm not trying to put you in a spot, but I'm trying to protect myself as well." I'll also tell people that I'm only human. When I don't get paid, I don't do the work for that client as well as I do for the other ones. So, I have found that if I don't get off the case, I don't do as good of a job and I have a dissatisfied client and it's difficult to help me develop a practice or make money. I don't know if I addressed myself to the question adequately.

QUESTION: Not quite. I tried to hypothesize non-litigation matters so you couldn't withdraw from it. Let's imagine a case, this happened to a friend of mine yesterday, for work already performed--he was burned to the tune of \$450. I'm wondering what, if anything you would do? Under the circumstances I would do nothing besides send a polite letter towards collection or possibly a lawsuit.

MR. HOLLOWAY: I have taken the philosophy that I would never sue a client. I just think it's unprofessional; that's just my feeling about it. However, I have some friends who've taken a different posture. I have found, from talking to one lawyer in particular who said, "I have sued clients and when one particular client came back to me I asked this one client "Why are you coming back to me; you know I'm going to make you pay in advance?" and he said, "Well, you really went after it and 'stuck to your guns', and I appreciate that."

I had one case where the client owed me a great deal of money and I had gone to trial and I had put in a lot more work than money and I pondered the idea. Finally, I just said, "No, this is not my style and I can't sue a client." So I went down and I talked to another lawyer who's advice I respected and I asked him what he thought and he gave me the pros and cons of it. I just about made up my mind that I was going to break the barrier and I was going to sue this client because there was enough money at stake and I knew the client had some assets. I went back to my office and as soon as I walked in the door there was a telephone message from the client; the client had checked back and paid the fee. I think an attorney can get a bad reputation for suing his clients.

## BUILDING A LAW LIBRARY

Wesley Gilmer, Jr.  
State Law Librarian  
Frankfort, Kentucky

In Judge Mac Swinford's book, Kentucky Lawyer, he tells about William Colston of the Cincinnati law firm of Harman, Colston, Goldsmith & Hodly. Mr. Colston had a case to argue before the United States Supreme Court and he took the president of his client to Washington with him. While they were waiting for the case to be heard, the client wandered about the Supreme Court building, inquiring of the habits and practices of the Justices. He found a bailiff who was pleased to answer questions, and who entertained him with various stories in connection with sessions of the Supreme Court. One thing that the client learned of was a rule of Court that any attorney addressing it must wear a vest. "But," the bailiff said, "some of the attorneys go far beyond the rules and appeal to the vanity of the judges by dressing in formal attire, with striped trousers and cutaway coats. Your lawyer is complying with the rule by wearing a vest but has on only a plain business suit."

Several weeks later the ruling of the Supreme Court came down; the case was decided against the client. Mr. Colston telephoned his client and talked to the president who had been with him in Washington. "We lost our case," he said. "I know why," was the disgruntled response. "Why?" asked Mr. Colston. "Because you weren't dressed right," said the president. To which came the rejoinder from the disappointed and belligerent Mr. Colston, "Well, by God, that's a better reason than they gave in the opinion."

Perhaps I can give you some good reasons for the opinions that I will convey to you today. To a significant extent, however, book selection is a subjective decision.

### I. Basic Necessities and Optional Additions

When we build a law library, none of us should expect to acquire all the law books that we might conceivably use in our practice of law. The expense of purchasing them, keeping them up-to-date, and housing them would be prohibitive. For these reasons, it is important that we assign priorities and be selective. We should buy the law books that we believe we will most frequently need, in order to save the time consumed by regular trips to some law library where we might be able to find them. The less frequently needed books, however, we should occasionally borrow or use at institutional law libraries as particular needs present themselves.

As an example, we all need quick and frequent access to at least one of the two versions of the KRS; this is perhaps the first priority. Because the annotations are different, ideally both versions of the KRS should be in your office. As another example, we need frequent and easy access to the currently used reports of cases, i.e., Kentucky Decisions after 1951, and prior to 1951 either Kentucky Decisions or Kentucky Reports. The Kentucky Decisions take us back to



1886. There is little need for the pre-1886 Kentucky Reports, consisting of 84 volumes, or the other older series of Kentucky reports of cases; they are usually available in county law libraries and I see no reason to personally acquire them. Shepards Kentucky Citations are, of course, of unique importance. A set of Kentucky Shepards should be acquired.

One of the legal encyclopedias, either American Jurisprudence 2d or C.J.S., would be the next most necessary item. Ideally, a law office should have them both, but economic considerations may limit you to one or the other.

Many lawyers believe that it is important to have a Kentucky Digest. If you use the Kentucky Digest, you would probably be in the majority. If you chose to get your case citations, instead, from the annotations to the KRS, Am.Jur.2d, C.L.S., A.L.R., and the other secondary sources in your law library, that would be a useful alternative to a digest.

At least A.L.R. 2d and A.L.R. 3d are important. They, of course, perform the important primary function of furnishing essays, in addition to non-Kentucky cases. The essays serve as detailed expansions of the articles in the two legal encyclopedias. A.L.R. may be expected to be of use in only about ten percent of our problems, however.

\* If you have a few hundred dollars and the space to house an additional 14 3-foot shelves of books, consider A.L.R. (1st), consisting of 175 volumes, plus a digest and various other finding devices, which can be economically acquired on the used market, and is still frequently cited in treatises, textbooks, and annotated statutes. It is kept up to date with annual "Blue Book" supplements.

In addition, depending upon the unique needs of each lawyer, there will be a need for various other textbooks, treatises, or perhaps looseleaf services, directed toward the particular facets of the practice of law which each of you pursues. Although there are numerous multivolume sets of legal treatises, the bibliography which you have concentrates on the less expensive textbooks.

If you are a lawyer who litigates, you will need some type of practice or procedure book. Ideally, you should acquire several of them. You will probably want one or more books of litigative forms. Litigating attorneys need Palmore's Instructions; many litigating lawyers believe it is a good set in which to begin their research for a lawsuit. If you have an office practice, you are likely to need transactional forms.

The "Hornbooks" that we knew in law school are helpful, and usually economical to acquire. I recommend them because of their low cost and usefulness. Lawyers and judges use the "hornbooks" to obtain an overview of the unfamiliar areas in the law. They are a valuable source of citations to leading cases and law review articles.

The bibliography indicates for you, by the use of asterisks, the titles or kinds of books that I recommend for a basic Kentucky law library. The entries on the bibliography which do not have an asterisk are there to recommend possible additional selections for you, if your kind of practice requires them.

Perhaps a few other comments concerning the bibliography are in order. Some

of the books on the bibliography are there because the price is right. As examples, the national, annual Criminal Law Outline is useful to find leading cases relative to particular points in criminal law. This annual is brought up to date each fall, and costs but \$5 per year. The law schools publish economical periodicals, i.e., Kentucky Law Journal, Northern Kentucky Law Review, and Journal of Family Law, published by University of Louisville, which, considering the relatively small sums that must be paid for them, provide a wealth of information. References to articles in those periodicals are noted in the annotations to the KRS. Consider also Your Federal Income Tax and The Master Tax Guide. For \$10 per year, and maybe free if you can talk the local bank or IRS out of a complimentary copy, you can answer the great majority of your individual clients' questions concerning federal income taxation, without buying one of the large and expensive Commerce Clearing House, Prentice-Hall, or other income tax sets.

If you in fact have a large contracts practice, a large criminal law practice, a large corporations practice, or a large wills practice, you may want to buy one of the large treatise sets. In any instance, the unique needs of your practice will determine what you can economically afford to purchase. I caution you against buying law books that you do not need, however, because the initial cost and upkeep of many sets becomes a burden. For that reason, I would determine that I really need a particular treatise before I decide to buy it. If you can effectively practice law with one or two of the inexpensive probate books such as Clay's Kentucky Wills and Trusts Manual, furnished free to Jefferson County lawyers and for \$15 to other lawyers by the First Kentucky Trust Co., it is unwise to invest in a set of Page on Wills; if you can win your cases with a few inexpensive criminal law books, it is unwise to invest in the various Wharton sets on Criminal Law, Criminal Procedure, and Criminal Evidence. In some instances, there are abridged editions of larger sets, such as the one-volume Powell on Real Property, the small Collier on Bankruptcy, and the small Moore's Federal Manual and Moore's Federal Forms. They will likely be economically justifiable before the other larger sets are economically justifiable. If you come to believe that a larger set would be more productive in your individual unique practice, then that is the time to buy the larger one; not before.

## II. How to Acquire Law Books

When acquiring law books, there are several ways to do it. You may be able to acquire a complete law library of a retiring or deceased practitioner. You can purchase a new set of anything that is in print from the local representative.

There is also a national market in used law books which I want to call to your attention. The used market is not a place where you should try to acquire one volume of Prosser on Torts or a set of KRS, and it is unlikely that you will be able to acquire a set of Kentucky Decisions or a Kentucky Digest, although you may get lucky and do so. KRS, Kentucky Decisions and Kentucky Digest are, in fact, difficult to find on the used market.

The used market is a good place to acquire such things as A.L.R., American

Jurisprudence 2d, C.J.S., and other sets of national law books.

The last time I examined the market, you could buy A.L.R. 2d and 3d, combined, for \$1600-\$1800. A set of Am.Jur.2d was selling for about \$1600. I have a recent brochure advertising the 1st, 2d and 3d series of A.L.R. combined for \$2,400 and an Am. Jr.2d for \$1800. C.J.S. tends to sell for less money. I have a current brochure offering a set for \$950.

A few words of caution about buying books on the used market. Virtually all used law book dealers are reputable people who desire to furnish you, at an economical price, first quality books that are up to date. Sellers of used law books may not, however, know that their books are out of date, or it is possible that they do not give you all the details regarding their sets. Be careful when buying used books, therefore, and this is especially important when you are buying them from a private source such as an estate, to make certain that the seller understands that you expect an up-to-date set. Another word of caution regarding used books is that you should not overlook the fact that most new book dealers give some future service without additional charge. For instance, you can buy a set of U.S.C.A. on the used market for perhaps as low as \$500. I have a current ad offering a used U.S.C.A. for \$750. The annual upkeep for the set, however, is \$250 and West Publishing Co. offers you two years free upkeep and a new set for a specific price. When comparing new and used prices, therefore, take into account what it costs to keep up certain sets. Similarly, you get one or two years free upkeep with a new set of Am.Jur.2d, C.J.S., and Kentucky Digest.

Another word of caution concerning the used book market. You should make certain that the vendor understands that the price you are paying is a delivered price, with inside delivery in your town. Books are as heavy as logs, and the expense of shipment can be substantial, particularly if they are shipped from as far away as the east coast or the west coast, from which we frequently buy used books.

### III. Frequency of Citation by the Courts

By the use of the "Lexis" computer, we were able to determine the number of cases decided by the Kentucky Supreme Court and the Kentucky Court of Appeals since January, 1955, in which various secondary authorities were cited.

The most frequently cited secondary authority was A.L.R., which was cited in 1,611 cases. That breaks down to 135 citations to A.L.R. 3d, 764 citations to A.L.R. 2d, and 712 citations to the first series of A.L.R. There were 811 cases that cited Am. Jur. (1st), and 432 cases that cited Am.Jur.2d for a total of 1,243 cases. There were 750 cases that cited C.J.S.

Among other frequently cited secondary authorities were: Clay's Kentucky Civil Procedure, 125 cases; Prosser on Torts, 99 cases; Kentucky Law Journal, 34 cases; Corbin on Contracts, 26 cases; McCormick on Evidence, 21 cases; Lawson on Evidence, 4 cases; Russell & Merit on Probate Practice, 7 cases; Powell on Property, 6 cases; and Kentucky Practice, 7 cases.

A large number of other items were not cited at all. The fact that they were

not cited, however, does not make me believe that they are useless. An example, there were no citations to Criminal Law Outline. This, however, is not a book intended to be cited like a treatise or text, but rather to be used as a "finding device," as is Kentucky Digest, which I would not have expected to be cited. Other textbooks, treatises, and law journals can similarly serve as useful case "finding devices" and are not cited in the court's opinions.

An article by Professor Paul Willis in 61 Kentucky Law Journal 512, reports an analysis of the published decisions of the Kentucky Court of Appeals covering four years opinions dated in the calendar years 1968 to 1971.

Among other findings, the article reports that during the 4-year period, decisions from other state courts, 765, slightly exceeded the references to federal court decisions, 741. The federal court decisions may be broken down as follows: U.S. Supreme Court, 366; U.S. Courts of Appeals, 237; U.S. District Courts, 138.

During the same period, among other things, treatises were cited 336 times, periodicals were cited 46 times, and the Restatements were cited 46 times. This compares to 280 citations for A.L.R., 349 citations to Am.Jur.2d, and 195 citations to C.J.S.

Professor Willis also stated that the Kentucky court tends to cite its recent decisions as authority. More than half of the Kentucky cases referenced were from the period 1960 to 1971, and relatively few cases were prior to 1900. Decisions from New York were cited more frequently than those of any other foreign state. During the 4-year period checked, 78 decisions from New York were mentioned as compared with 1 each from Idaho, Nevada, and Vermont. Frequent citations was also made to California, Texas, Missouri, Florida, and Illinois cases.

During the same period, the treatises cited by the Kentucky court were also tabulated. The tabulation may be found at 61 Kentucky Law Journal 520-21. The table shows that the more frequently cited were Clay, Kentucky Practice, 64; Larson, Workmen's Compensation, 49; Stanley, Instruction to Juries, 27 (now superseded by Palmore's Instructions), Wigmore, Evidence, 27; Prosser, Torts, 24; Couch, Insurance, 15; and Roberson, New Kentucky Criminal Law and Procedure, 13. It is interesting to note that the Roberson book was published in 1927 and has long been out of print. The Lexis computer shows that Roberson was cited by the Kentucky Supreme Court and Court of Appeals in 66 cases since January, 1955. It was cited twice in 1977, once in 1975, and twice in 1974.

The Kentucky Court of Appeals referred to law journals in approximately 2 percent of the opinions analyzed by Professor Willis. The only two recurring journals in Kentucky Court of Appeals opinions discussed by him were Kentucky Law Journal, 15 citations, and Harvard Law Review, 6 citations.

When you compare Professor Willis's 4-year survey to the Lexis computer's 23-year calculation, it is important to recognize the different basis for the counts. Professor Willis counted the number of "citations," and the Lexis computer counted the number of "cases" in which the citation occurred. Therefore, a case in which a particular authority was cited four times would be counted four times by Professor



Willis, but the same case would be counted only once by the computer.

#### IV. Assistance From Institutional Libraries

Good county law libraries can be a significant aid to the practicing attorney. Probably more than half of the county law libraries in Kentucky are financed by a 50 cent tax on misdemeanors and \$1 tax on civil cases. This type of financing is authorized by KRS § 172.180. The statute also describes the way in which this plan of financing may be put into effect. Chapter 172 of the KRS concerns, generally, county law libraries.

Some of the more expensive sets could be acquired by the county law libraries, thus pooling their cost and use and freeing up your personal money for other purposes. Examples of such acquisitions could be a Kentucky Digest, Am.Jur.2d, and C.J.S. The A.L.R. series could likewise be acquired by the county law libraries.

Many local bars use the county law library as a repository of federal material, such as U.S.C.S., or U.S.C.A. In addition, county law libraries might be places where U.S., F.2d, and F.Supp. are kept. Your attention is called to the sums that it takes to keep those sets up-to-date, however. U.S.C.A. costs about \$250 per year, F.2d costs about \$440 per year, and F.Supp. costs about \$400 per year.

The county law library is also a place to keep or find the less frequently used Kentucky Reports, such as the pre-1886 Kentucky Reports (v.1-84), Kentucky Law Reporter, and Kentucky Opinions, which I mentioned previously.

The state law library furnishes to each county law library in Kentucky a Bobbs-Merrill KRS, and the supplements and replacement volumes. It also furnishes the county law library current Kentucky Decisions and S.W.2d advance sheets.

On some occasions, such as interpretation of wills or land suits, it becomes important to know not what the KRS says today, but what the analogous compilation said many years ago. The county law library is a good place to keep those old statutes.

Do not overlook the facilities available at the state law library and, incidentally, the university law school libraries. The National Reporter System reports of cases, pre-National Reporter System reports, statutes of all the states, and hundreds of legal periodicals, textbooks, and treatises are generally available there. Today it is easy and inexpensive to obtain a copy of a non-Kentucky case, law review article, or a passage from a book by the use of copying machines. At the state law library, you will find the personnel very helpful and accommodating if you telephone or write for copies. (State Law Library, Room 200 State Capitol, Frankfort, KY 40601. Telephone: (502) 564-4848.)

You may be handling a legal-medical case, or need to deal with the medical aspects of a problem. The examples of those are many, e.g., personal injury, workmen's compensation, drug abuse cases, medical malpractice, and social security disability claims, to name just a few. For such purposes, you need to develop a working arrangement with a conveniently located medical library. After using some of the medical books, depending upon your individual experience and the frequency of need, you might wish to acquire some for your own library. Those of you who are



located in northern Kentucky could do your medical literature research at the Cincinnati General Hospital Library. Persons in central and eastern Kentucky could do it at the University of Kentucky Medical Center Library, and those in western Kentucky could use the University of Louisville Health Science Library. There are also medical libraries at St. Elizabeth Hospital in Covington, the U.S. Army Hospital at Ft. Campbell, the Kentucky Department for Human Resources in Frankfort, and Lourdes Hospital in Paducah. Many medical libraries stay open at night. It is not difficult to use that material, if you understand the analogies between medical literature and legal literature.

If you believe that the use of medical books and journals would be useful to you in a particular case, you might first read an article concerning medical books, written for lawyers, in a periodical frequently found in law offices, 34 A.T.L. L.J. 97 (1972). If a lawyer reads the same material that a medical witness reads, he will be better prepared to examine or cross-examine the medical witness, and to evaluate the witness' conclusions, or at least to recognize their weak points. It may open some new doors for you and better qualify you to practice law in cases concerning the areas mentioned. Medical library personnel are just as helpful as are law library personnel, if you will only ask.

#### Closing

After I have told you about all the books that you need, should buy, ought to read, and can read, and after you have spent two days learning about all the other things that various people believe you need to know in order to manage your law office, perhaps this poem, called "Help Wanted" will interest you:

Help Wanted  
by  
Franklin Waldheim

A law firm commanding  
Position of standing  
Requires a general clerk--  
A man who's admitted  
To practice and fitted  
To handle diversified work.  
Must know the proceedings  
Relating to pleadings,  
Must draw a good logical brief;  
Must argue with unction  
For writs of injunction  
And all sorts of legal relief.  
Must form corporations  
And hold consultations,  
Assuming a dignified mien;  
Should read all decision  
And legal provisions,  
Wherever the same may be seen.

Must have a sound basis  
In all kinds of cases,  
Should never be idle or slow;  
Must manifest learning  
In all things concerning  
The matters referred to below:  
Attachments and trials,  
Specific denials,  
Demurrers, replies and complaints;  
Disbursements, expenses,  
And partial defenses,  
Ejectments, replevins, distrains;

Above are essentials;  
The best of credentials  
Required--and a handsome physique.  
Make prompt application;  
Will pay compensation  
Of seventeen dollars a week.



#### HOW TO SELECT A COPIER\*

With the market offering a wide array of copying machines, purchasers should make a careful analysis of their uses and needs.

By Norman M. Martin

There was a time, not too many years ago, when the average small law firm had to be sold on the benefits of having its own copying machine, rather than going "next door" to a neighboring office to borrow theirs or to the nearest store with a sign: XEROX COPIES MADE HERE.

The featured equipment was the Xerox model 914, which, after a fifteen-minute "warm-up" period and in between jams (there used to be a fire extinguisher mounted under the console), turned out grayish, heavily backgrounded copies of originally typed documents at the blinding speed of six per minute. This compared favorably, however, to the then common alternative of manually assembling two-or-three-sheet copy paper and original "sandwiches" and inserting them into a slot provided, conveniently, on the front of the desk-top machines from 3M [dry, "one-step"] or Apeco.

If this sounds like ancient history in our fast-moving world of technological innovation, it probably was, although the year was only 1965. At that time high-

\*Reprinted with permission from American Bar Association Journal.

volume copying was defined by the industry as a staggering 2,000 copies per month. Salespeople carried sheets of printed material showing all the different items that might need to be photocopied (the checklist contained several dozen entries) so that prospects would come to realize how much they needed a copier.

While the necessity for a copier is now widely accepted by business in general and law firms in particular, selecting one is more difficult today than it has ever been, what with the various features, accessories, and types currently available and the multiplicity of pricing arrangements offered. The suggestions that follow should simplify the copier selection process and allow the modern, legal executive, whether a lawyer assigned this duty or a legal administrator, to match a copier to the applications and volume levels intended for it.

#### Step 1: Analyze Documents

The obvious, first step in selecting a copier is to determine accurately the applications it will be required to handle. This involves, first, breaking down the types of material that will be copied into form, image, and size classifications.

Form. List the types of items that will need to be copied according to their physical characteristics. For example, single sheets of light-weight (onion-skin/tissue) paper, standard-weight bond, card stock and rigid materials, stapled or clipped documents, multipart forms, bound pages and books.

The physical configuration of the material to be copied is an important consideration in the eventual selection of a copier, inasmuch as it can create unique and unexpected problems for the user.

Bound volumes, for instance, whose printed pages may offer no special difficulties for machines capable of copying them, might still be produced unsatisfactorily owing to an inability to position a particular page flush on the machine's exposure area. As a result, the page curvature caused by the spine of the volume, complicated by the design of the copier's flat-bed platen and a possible inability of its optical system to compensate for this effect, might cause dark shadows to appear on the copies, thus obscuring part of the printed image.

Image. Next classify these materials as to the quality and type of image they present. For example, original, typed correspondence and similar high contrast documents should offer no special reproduction problems for any copier. Colored paper or images on a dark background (like charts, graphs, and illustrations contained in magazine articles, along with some business forms) might be more difficult for some machines to copy legibly.

By the same token, lightly imaged matter (some carbon copies, penciled notations, ball-point and colored pencil handwriting) also might not copy well on some units. The need to change the copy quality control on a machine regularly in order to accommodate "light," "normal," and "dark" originals can be irritating and counterproductive.

Size. The size of the originals to be reproduced represents another factor in the copier selection process. If, in addition to letter-(8 1/2" x 11") and legal-sized (8 1/2" x 14") documents, ledger sheets (usually 11" x 17"), computer

printouts (typically 11" x 14") and similar large or odd-sized material will be copied, then a machine capable of accommodating these items will be required.

One decision at this point would involve assessing the desirability of obtaining exact-size reproductions, reduced images (of the larger documents or of all items), or to have the capability to select any combinations of these alternatives. In general, the ability to reduce the copied size of originals is limited to the more expensive class of machines. These units usually store copy paper up to a maximum size of 8 1/2" x 14" and, when they can copy them all, reduce over-sized documents accordingly.

#### Step 2: Define Needs

Once the types of originals that will need to be copied have been analyzed, the specific applications to which they will be subjected must be defined. Today's copiers are capable of handling a wide range of law office requirements. There exists, however, a tendency for users to "overbuy"--that is, to acquire a machine based on certain unique features that may not be utilized often or effectively enough to justify their added cost.

In selecting a copier one is confronted with machines that copy on both sides of a sheet of paper, use the firm's own letterheads, cut copies to match the size of the originals, copy from books and bound materials, feed documents automatically, produce actual-sized or reduced-sized copies, prepare offset masters, generate transparencies for visual projection, print colored copies, produce computer-generated forms and graphics, and collate and even staple completed reports.

Many of these operations, most of which would have been thought impossible in 1965, can be accomplished now at printing-press speeds. Unfortunately, no one machine is capable of accommodating all of these possible requirements. Therefore, the law office executive, having first analyzed the types of items that will be copied, should next zero in on those needs of the firm that must be satisfied. In the process a number of machines may be eliminated from consideration. In order to facilitate this second step in the copier selection process, let us look at some typical applications (interspersed with a few unusual ones) and the advantages they offer a law firm.

Dual-sided copying. The ability to reproduce originals on both sides of a sheet of copy paper (often referred to as "duplexing") offers two major advantages to a law firm: long documents, like legal briefs, can be reproduced on both sides of the paper, eliminating the extra cost of outside printing and decreasing turn-around time; multipage documents are reduced in bulk, thereby lessening the costs associated with mailing, handling, or otherwise forwarding them to remote locations.

Utilizing "ordinary" paper. Many copiers that allow the use of a law firm's own letterheads and forms in their paper magazines (an obvious advantage for some applications like customized, but "original" form letters) will produce copies on vellum and transparent stock. Material can be reproduced for subsequent visual presentation by means of projectors and screens. Moreover, the ability of some of these units to copy typed names and addresses on peel-off, gummed labels provides additional versatility.



Another advantage of a machine's ability to use "ordinary" paper becomes apparent when the reserve stock of the regularly used supplies has suddenly (and surprisingly) run out, and it therefore becomes necessary to utilize whatever else may be on hand (mimeograph, offset, typing, and memo paper) until a new delivery can be effected.

#### COPIER COMPARISON CHART

Low Volume Copiers (up to 10,000 copies per month)

Unless otherwise indicated, all models are desk-top size, use coated paper stored in the machine, copy from books, make multiple copies automatically, and operate at low speed (up to 12 copies per minute). Maximum volume levels are based on manufacturers' published ratings. Automatic document feeders and collators, if offered, are usually extra-cost options.

Manufacturer	Model	\$ Purchase Price	Paper Feed	Maximum Copy Size	Maximum Monthly Volume	Expanded Features*	Comments
Bell & Howell	Emissary	1,295	roll	11 3/4 x 17	15,000		Medium speed+
A.B. Dick	625	995	sheet	8 1/2 x 14	5,000		
Gestetner	C-12	1,595	roll	8 1/2 x 14	15,000		
Minolta	1114TC	1,295	roll	11 x 14	5,000	0	
Minolta	1117TCA	1,595	roll	11 x 17	5,000	0	
Mita	500D	1,295	sheet	10 x 14	5,000		
Mita	900D	1,995	roll	11 x 17	15,000		
Olivetti	Copia 405	1,195	roll/sheet	9 3/4 x 14 1/2	5,000		Medium speed+
Olivetti	Copia 605	1,695	roll/sheet	9 3/4 x 14 1/2	15,000		Medium speed+
Pitney-Bowes	253	1,295	roll	8 3/4 x any	5,000		No multiple copy selector, no book copying capability
Pitney-Bowes	358-11	1,895	roll	8 1/2 x 14	15,000		
Pitney-Bowes	253AF	1,895	roll	8 3/4 x any	5,000	A	No book copying capability, no copy selector, Medium speed+
Sharp	SF205	745	sheet	10 x 14	5,000	0	
3M	732	1,295	sheet	8 1/2 x 14	1,000		No multiple copy selector
3M	VQC-SE	1,995	roll	10 x 14	5,000		
Toshiba	BD25	1,195	roll	10 x 14	5,000		
Yorktown	XR500	595	roll	11 x any	5,000	0	No book copying capability

\*Expanded features: A = automatic document feeder, 0 = offset master capability.

+Medium speed = 13 to 29 copies per minute.

# COPIER COMPARISON CHART

Medium Volume Copiers (up to 30,000 copies per month)

Unless otherwise indicated, all models copy from books, copy on bond (or bond-like paper), make multiple copies automatically, and operate at medium speed (from 13 to 29 copies per minute). Maximum volume levels are based on manufacturers' published ratings. Automatic document feeders and collators, if offered, are usually extra-cost options.

Manufacturer (Machine size)*	Model	\$ Purchase Price	Paper Feed	Maximum Copy Size	Maximum Monthly Volume	Expanded Features*	Comments
Canon (d)	NP-70	4,195	sheet	11 x 17	15,000	0	
Canon (d)	NP-L7	4,995	sheet	11 x 17	15,000	A,0	High Speed
Dennison (d)	BC-28	4,800	sheet	11 x 17	15,000	C,0	
Dennison (d)	BC-2000	5,500	sheet	11 x 17	35,000	C,0	
A.B. Dick (d)	675	1,595	roll	10 x 14 1/2	15,000	0	Coated paper
A.B. Dick (d)	901S	4,295	sheet	8 1/2 x 14	15,000	C,0	
IBM (c)	Copier II	15,000	roll	8 1/2 x 14	35,000	A,C	Semi-automatic document feeder
Minolta (c)	EG-201	3,995	roll	11 x 17	15,000	C,R	
Minolta (c)	1714-11	4,130	roll	8 1/2 x 11	15,000	0,R (2 sizes)	Coated paper
OCE (d)	1620	5,495	sheet	11 x 17	15,000	0	
Olivetti (d)	Copia 1600	4,495	sheet	10 x 14	15,000	0	

\*(Machine size)  
(c)=console  
(d)=desktop

\*Expanded features: A = automatic document feeder  
C = collator  
0 = offset master capability  
R = reduction capability

# COPIER COMPARISON CHART

Medium Volume Copiers (up to 30,000 copies per month)

Unless otherwise indicated, all models copy from books, copy on bond (or bond-like paper), make multiple copies automatically, and operate at medium speed (from 13 to 29 copies per minute). Maximum volume levels are based on manufacturers' published ratings. Automatic document feeders and collators, if offered, are usually extra-cost options.

Manufacturer (Machine size)*	Model	\$ Purchase Price	Paper Feed	Maximum Copy Size	Maximum Monthly Volume	Expanded Features*	Comments
Pitney-Bowes (c)	PBC Copier	10,825	sheet	10 x 14	35,000	0	High Speed
Royal (c)	RBC-IV	6,395	sheet	10 x 14	15,000	0	
Royal (c)	RBC-II	11,000	sheet	10 x 14	35,000	C,0	
Savin (d)	770	5,395	sheet	8 1/2 x 14	35,000	A,C	
Savin (d)	760	6,695	sheet	11 x 17	35,000	C	
SCM (c)	412	1,995	roll	8 1/2 x 14	35,000		High Speed, coated paper
SCM (c)	312R	1,995	roll	9 x 12	15,000	R (2 sizes)	Coated paper
Saxon (d)	3	2,995	sheet	8 1/2 x 14	15,000		
Saxon (d)	1	4,495	sheet	11 x 17	35,000	A	15 copies per minute in book mode, 30 copies per minute in sheet mode
Sharp (d)	SF730	4,495	sheet	10 x 14	35,000		Low speed
3M (c)	VHS-R	5,995	sheet	8 1/2 x 14	35,000	C,R	
Xerox (c)	3107	8,300	sheet	14 x 22	35,000	R (4 sizes)	
Xerox (c)	3400	17,000	sheet	8 1/2 x 14	35,000	A,C	

\*(Machine size)  
(c)=console  
(d)=desktop

\*Expanded features: A = automatic document feeder  
C = collator  
0 = offset master capability  
R = reduction capability

"Flat-bed" exposure. A machine that can copy from books and other bound or fastened material offers a law firm the ability to copy reference items from their law libraries, as well as three-dimensional objects like watches, jewelry, and similar unusual items that might be needed for exhibit or other reference purposes. Not having to remove staples and paper clips before documents can be reproduced also saves time--a valuable commodity in most law offices.

Automatic document feed. The ability to stack as many as fifty originals in a hopper, push some buttons, and let the machine do the rest can be a real convenience when one individual is required to copy many documents at one time. Not only is productivity enhanced (since the party may do other necessary tasks while the pages are being copied automatically) but sequenced material can be reproduced in the proper order. Unfortunately, current technology precludes the mixing of various types of materials (sizes, shapes, thicknesses) in the automatic feeding process. However, when copying volumes are high because of the number of documents copied, rather than the average number of copies made per original, automatic feeders can be extremely productive.

Collating and stapling. The advantages of getting what one vendor refers to as "finished sets"--that is, copies that have been collated, jogged, and stapled automatically by the machine--are obvious. Not so evident is the fact that there are varying limits as to the number of pages that can be stapled together at one time. Moreover, since the originals cannot be resequenced by the machine (the sets will be "finished" in the same order the pages were copied), some prearranging of the pages by the operator will be required. However, if a sufficient amount of time would normally be spent by operators manually handling documents and monitoring the copying procedure, then the extra cost of this capability may be justifiable.

Multisized copies. Virtually all copy machines have the inherent ability to produce copies on either letter- or legal-sized paper. When cut sheets are utilized, it is simply necessary to ensure that either the proper-sized paper has been loaded in the single hopper provided or that the appropriate magazine is engaged in machines which store two sizes of paper at a time. With roll-fed machines, simply selecting the proper size is usually sufficient to achieve the desired results.

Problems can arise, however, when a great deal of odd-sized copying is done. Relatively small originals, like invoices, memos, and receipts, would need to be assembled on the exposure area of the copier by the operator. ("Flat-bed" machines are ideal for this type of application.) The resultant copies might need to be trimmed manually.

Alternatively, depending on the paper-size options offered by the machine, an assortment of copy paper might need to be made available at all time. In these situations the "wrong" paper will always seem to be in the machine when copies are needed, necessitating a change to the appropriate stock.

To make the copying procedure as automated as possible, it is essential that the evaluator properly match the maximum image area to be copied with the document handling system (flat-bed or curved platen, automatic feeders, and the like) to

the needs of the law firm. Furthermore, the copy paper sizes that can be generated, and the extent to which this can be done automatically, including the need for collating, must also be carefully considered.

### Step 3: Determine Volume

One of the difficulties in selecting a copier has always been to match properly a machine's engineering level with a law firm's copying volumes. Copy machines work very reliably when used in the quantity ranges in which they were originally designed to operate. No matter what the vendor's salespeople may say, specific copiers are limited to maximum and optimum volume levels--not always on purpose, as it turns out. Problems with excessive "down time" (periods when a copier is malfunctioning or inoperable) always arise as its maximum operating range is approached or frequently exceeded.

Overestimate volumes. In order to obviate this down time problem, it is better to overestimate a firm's projected volume levels than to be conservative in one's use of copy volume criteria. Past and present usage should be considered, of course, but certain assumptions must be made, as well. First, assume that a copy machine that "does more" than a model currently in use, in fact, will do so. Faster copying speeds, increased versatility, added features, and convenience factors will all add to the copying volumes already achieved. When the present copier is compared to the contemplated acquisition, each additional feature or advantage offered by the latter machine will result in a proportionate percentage increase of volume over present levels. Allow for this in your calculations.

Analyze run length. There is a big difference between making one or two copies of each of a dozen originals as opposed to making a dozen copies of one or two documents. The number of items copied each month is as important in the selection of a machine as the number of total copies made during the same period. It can indicate, among other things, whether or not an automatic document feeder, on the one hand, or a collator, on the other--or both--might be needed. Average run length can also have a bearing on costs, since some copier pricing plans favor higher volumes because of longer average runs per original.

### Step 4: Determine Utilization Mode

The argument between the relative merits of centralized versus decentralized copying is as undecided as ever. Advocates of both positions make impressive cases for their specific points of view. Those who favor the concept of having one centrally located, high-volume machine dedicated to full-time production cite a lower cost per copy and increased efficiency owing to the economies of scale implicit in this type of situation, among other points in their favor. Proponents of the decentralized copier configuration point to the inherent advantages in utilizing less-expensive, strategically located "satellite" machines for quick "convenience copies" made at the point of need.

In either case, it is necessary to consider the comparative advantages of making relatively low-cost "convenience" copiers available throughout the firm, or to install one, centrally located unit capable of handling all the firm's



volume. It should be kept in mind that the copier designed for centralized locations is likely to be more sophisticated and expensive than other types. Moreover, when a firm depends on one copier for its production and that machine breaks down, everything comes to a halt. Long lines of people waiting to make copies and employees spending too much time away from their desks add further complications. Until objections like these can be adequately overcome, decentralized copying will remain the preferable alternative.

#### Step 5: Evaluate Equipment

Having analyzed the types of material to be copied, defined the law firm's specific needs, determined anticipated volume levels and decided on the utilization mode to be employed by the firm, one is now ready to evaluate equipment offerings. The information which follows and in the comparison charts simplify this step in the copier selection process.

Copiers can be broadly categorized. The simplest classification has to do with the copying process used, which, in order to avoid getting involved with the technicalities, can be broken down into bond (and bondlike) or coated-paper machines. The copier/duplicators, all of which utilize a bond paper process, represent a third category. Other copying processes, using thermal or Diazo technologies, are now limited to special applications and can be excluded from this analysis.

#### COPIER COMPARISON CHART

High Volume Copiers and Copier/Duplicators (more than 30,000 copies per month)

Unless otherwise indicated, all models are consoles, copy on bond paper, copy from books, make multiple copies automatically, and operate at high speed (more than 30 copies per minute). Automatic document feeders and collators, if offered, may be extra-cost options.

Manufacturer	Model	\$ Purchase Price	Paper Feed	Maximum Copy Size	Expanded Features*	Comments
Canon	NP5000	8,975	sheet	11 x 17	0	Monthly maximum volume: 35,000 medium speed
Eastman Kodak	Ektaprint 100	32,500	sheet	8 1/2 x 14	0	
Eastman Kodak	Ektaprint 150	36,000	sheet	8 1/2 x 14	0,R (4 sizes)	
Eastman Kodak	Ektaprint 100AF	41,500	sheet	8 1/2 x 14	A,C,0	Automatic stapling
IBM	Series 111/10	26,000	sheet	8 1/2 x 14	A,C,0	Semi-automatic document feeder
IBM	Series 111/20	29,000	sheet	8 1/2 x 14	A,C,0,R (4 sizes)	Semi-automatic document feeder
SCM	6740	25,995	roll	14 1/2 x 17	C	
3M	Secretary III	9,245	sheet	8 1/2 x 14	C	Medium speed
Xerox	9400	85,000	sheet	8 1/2 x 14	A,C,R (3 sizes)	

\*Expanded features: A = automatic document feeder, C = collator, 0 = offset master capability, R = reduction capability.

Coated-paper machines. These units are usually inexpensive, selling for as little as \$300. The more sophisticated models in this category, costing between \$1,500 and \$2,000, are generally acceptable for convenience volume levels of up to several thousand copies per month (although vendor's estimates are generally higher). Although the copies produced are "dry," these units generally use liquid toners and create an image directly onto copy paper containing a special coating essential to the copying process utilized. They are sometimes referred to as "direct electrostatic process machines."

Coated-paper machines offer the advantages of low initial cost and are invariably "desk-top" size. Copying speeds average about ten per minute. Available features include roll as well as cut-sheet feed, multiple-copy dials, and book-copying capability. Disadvantages include a generally higher cost for supplies (which can average five or six cents a copy), reproductions that can be marked by paper clips, and copies that tend to stick together and not jog and collate easily.

Bond-paper machines. These machines cover the widest spectrum of the copying market place. Costing between \$3,000 and \$17,000 (up to \$85,000 for those units defined as copier/duplicators), they vary in size from "desk-top" to huge, modularly configured consoles. Most of these utilize cut-sheet feed, copy from books, and make offset masters. Many of them offer collators, document feeders, and either an exact-sized or 11" x 17" reduction capability. Copying speeds average twenty per minute, and volume levels (excluding copier/duplicators) can run as high as 35,000 to 40,000 copies per month, depending on the model utilized, without any degradation of reliability.

Some bond-paper machines, unlike their counterparts that can utilize virtually any stock (including paper bags, if the commercials are to be believe), are limited to a special, bondlike paper supplied by the manufacturer. While copies feel as though they are on bond paper, the use of a firm's own letterheads, duplexing, and similar applications is precluded.

Copier/duplicators. These units are typically employed in a centralized configuration mode and can be viewed as high-volume production machines. Capable of handling quantities well in excess of 50,000 copies per month and operating at extremely high speeds, it would not be unusual to find them with sixty-bin collators, producing 100,000 to 200,000 copies monthly. Costing between \$26,000 and \$85,000 each, the copier/duplicator, although now at the top of the industry "pecking order" because of its speed and sophistication, should be considered only for those centralized, high-volume situations in which their higher cost can be more easily justified.

Inasmuch as most copiers currently available can adequately meet the majority of a law firm's requirements, the charts are arranged according to low-, medium-, and high-volume machines. Within these categories, models are listed according to the electrostatic process used, purchase price, and basic attributes and features.

In addition to outright purchase, most vendors of copying equipment offer rental and lease-purchase arrangements. While it may be more advantageous to purchase or lease the less expensive models, as equipment cost (and, therefore,

sophistication) increases, rental plans become more popular. Having first ascertained which copiers need be considered for acquisition, it then becomes advisable to explore all purchase alternatives that may be offered.

For the sake of brevity, only models which typify machines of their type or otherwise contribute to an over-all impression of what the industry, as a whole, offers are listed. As a result, manufacturers and models not represented may exceed the number depicted.

Much of the detailed information pertaining to costs and recommended volumes is based on the manufacturers' own, published representations and similar sources and may vary as to accuracy as of the date this article appears in print.

The point is that the charts should be used as a general guide only. It is incumbent on the person responsible for purchasing to evaluate the acquisition of a copy machine according to the guidelines in this article and other considerations that may apply to a law firm's specific situation. If the accompanying charts provide nothing more than a clarification of some of the concepts discussed and indicate a direction to be pursued, then they will have accomplished their purpose.

#### The Future is Now

It is obvious that today's copiers have made substantial progress since 1965, not only in their improved capabilities, but in reliability as well. The sign in your local store might now read COPIES IN COLOR MADE HERE. As to the much discussed office of the future, it is likely to contain, among other things, an "intelligent" copier, which, in addition to all of the features now available on today's equipment, will create charts, graphs, and business forms.

Receiving input directly from computers and remote, electronic typing systems, the intelligent copier will print and address form letters, create typeset, multiple-font documents, store thousands of pages of information in its electronic memory, and even transmit its data remotely, just as facsimile machines do now.

This new breed of copier will employ fiber optic tubes in TV-like screens, use lasers to print images, and operate at speeds measured in characters per second rather than pages per minute. Moreover, you won't have long to wait. The intelligent copier is here now.

Xerox is now field testing intelligent copiers at the White House, as well as other sites. Toshiba is readying its version for the United States market, Wang is reportedly preparing to market a similar unit within the next year.

We've said "goodbye" to 1965. Hello, 1981.