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# Facing Future Growth Affirmatively

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## Facing Future Growth Affirmatively

*An analysis of a law firm's decision whether to grow, and how to do it*



GARY MUNNEKE  
Austin

There was a time when an attorney graduated from law school, hung out his shingle in a promising town, and practiced law. Getting started was not easy, to be sure, but somehow perseverance paid off, and, in time, receipts exceeded disbursements. Eventually, the attorney could expect a comfortable living, and a place of respect in the community.<sup>1</sup>

Times have changed. Professional economics is an increasingly crucial consideration in every law practice from the solo practitioner to the 200-lawyer office. Skyrocketing inflation in everything from law books to salaries has made efficient operation a necessity for economic survival. Attorneys have grown increasingly sophisticated in dealing with management problems, while the organized bar has focused increased attention on programs relating to professional economics and management.

Yet, very little attention has been given to the task

of recruiting new attorneys into the profession, specifically into the law firm. The majority of written material has been aimed at the medium-to-large-sized firm. Yet there are only 85 law firms in the state of Texas which employ 11 or more attorneys, and only seven of these employ over 40.<sup>2</sup> The recruitment problems of the smaller firm and solo practitioner have not been adequately discussed, although it is these attorneys for whom hiring decisions have the greatest impact.

In all probability, a new associate will lose money for some time before breaking even and eventually showing a profit for a firm. The breaking-even point is generally one to three years after joining the firm.<sup>3</sup> If the annual overhead costs (space, furniture, telephones, secretarial assistance)<sup>4</sup> approximate the as-

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associate's annual salary, then an associate paid \$15,000 for the first year will cost the firm \$30,000. Discounting the costs of training the associate and the time the associate may save experienced members of the firms, the investment in an associate is still a significant one extending over a period of several years.

For instance, a solo practitioner with gross receipts of \$75,000 and an overhead of 33 per cent will net \$50,000. Yet if the cost of adding an associate is \$30,000, he must bear that cost. Even with the fees the associate bills, he will more than likely produce a net loss to the firm. An associate who billed 1000 hours at \$20 per hour in the preceding example would produce a net loss of \$10,000. A larger firm can spread the associate's loss among a larger group, and the loss is, therefore, less economically significant. A \$10,000 loss shared by ten others amounts to \$1,000 each, by 100 others, \$100 each.

The decision whether to expand or not to expand is, thus, of great importance to the future well-being of the small law office. It is a decision which should not be made without a great deal of thought and planning. Unfortunately, in more instances than not today, small firms tend to eschew any organized approach in recruiting associates. The two examples, or some variation thereof, which follow, are repeated too often to count:

Attorney X in city A, Texas, contacted the University of Texas Law School to say that he needed to hire an associate immediately. His decision was made because he was quite well-off financially and found a growing caseload prevented him from devoting sufficient time to his golf game. He wanted to pay "five or six hundred a month" and was astonished to learn that it had been several years since new associates were going for that rate and was surprised to find few takers for his offer. Six months later he had found no associate.

Attorney Y in city B had heard that the law school placement services were aimed primarily at the big cities and couldn't help a rural lawyer like himself. So for almost five years he worked seventy to eighty hours per week and still turned away business. One day, Z, a recent law school graduate, appeared at his door, ready to work. The kid seemed bright enough and able to learn quickly. Y hired him on the spot.

Did X and Y make the most economically sound choice in their attempts to deal with their recruitment

problems? Was it necessary for Z to traverse the great state of Texas in the hope that he might find Y out there waiting for him? The answer to both these questions is "no." There is too much at stake for the attorney to treat the problem in such haphazard fashion.

It is the contention of this author that one's approach to the recruitment of associates should be given the same careful analysis that other questions of law office operation and management are given. Recruitment should be systematic; it should maximize the attorney's selection; and it should be done at the lowest cost possible to achieve the desired ends.

Before proceeding, the law firm or attorney must answer one threshold question affirmatively: "If all other conditions are favorable, is growth desirable?" Many solo practitioners like being solo practitioners. Many small law firms have developed stable, harmonious and efficient relationships, which change may possibly disrupt. Some individuals have difficulty working with others, and an addition to the office will mean another potential conflict. Where previous disagreements among members of the firm have been buried, the consideration of bringing in a new associate may resurrect them again, especially those involving differences as to financial policy. These are but a few situations in which a decision to expand may be unwise. It is essential that this question be answered honestly. Although beginning with an honest appraisal may not assure a satisfactory solution, it may avoid an unsatisfactory one.

The attorney should also consider hiring additional non-legal personnel. A secretary or paralegal assistant will not be as expensive as an attorney, and by combining secretaries, paralegals, and word processing systems an attorney can increase productivity. However, non-lawyers are still not lawyers—their functions are limited both by training and by the Code of Professional Responsibility. Even the inexperienced attorney can do many things which the non-lawyer cannot: deal with complex legal issues, go to court, and counsel clients. In addition, a new attorney will generate income, which will probably far surpass that of his non-lawyer contemporaries.

Another alternative for the attorney is to associate with an experienced attorney through merger of their firms or office-sharing arrangements. This type of association can eliminate the need for training an associate, but it may not be helpful for an attorney desirous of reducing his workload. Hiring a young attorney with some experience may be an answer, but the problems of recruitment include all those of recruiting a recent graduate as well as factors of availability; i.e.—the pool of experienced candidates is not likely to be nearly as large as that of inexperienced ones.

The economy is also a consideration in the question of feasibility of expansion. First the national economy should be evaluated. In times of business expansion, law offices tend to expand and vice versa. More business to a certain extent means more legal business. Yet, for many reasons the national economy is not a wholly reliable indicator. State and local economies are just as important, if not more so. It is entirely possible for some area to be experiencing economic growth while other areas decline.<sup>5</sup> In such a situation

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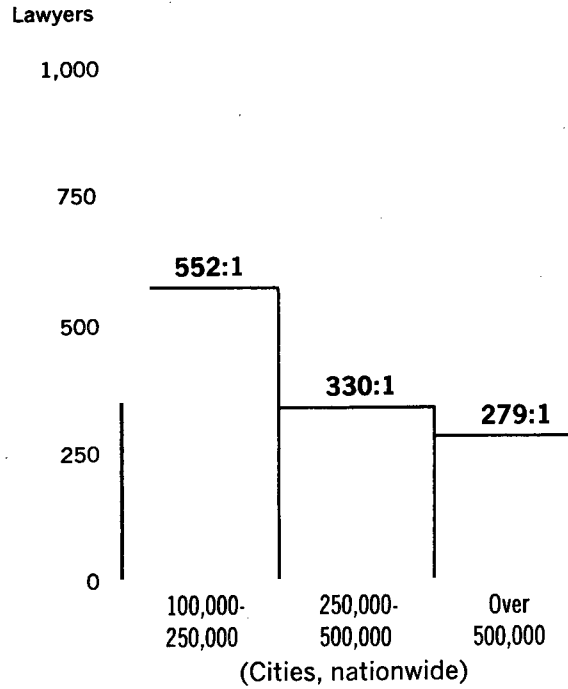
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the national economy would not be too helpful in deciding whether to expand.

There are other indicators which can provide guidance in answering the feasibility question. The present legal community of any city is a product of past economic conditions which may or may not be relevant today, but which continue to affect the practice of law in that community. The American Bar Foundation 1971 Lawyer Statistical Report states that there was one lawyer for every 572 people in the United States in that year.<sup>6</sup> The P/A (population/attorney) ratios ranged from 195:1 in North Carolina to 47:1 in the District of Columbia. Texas, with a ratio of 587:1 is very near the national average. Research at the University of Texas suggests that the population of a city affects this P/A ratio (See Figures 1 and 2).<sup>7</sup> These P/A ratios provide valuable insight into the feasibility of expansion, if one asks first whether the P/A ratio for a given city is higher or lower than predicted for a city of that size, and secondly, if there is a variance, whether it can be explained.

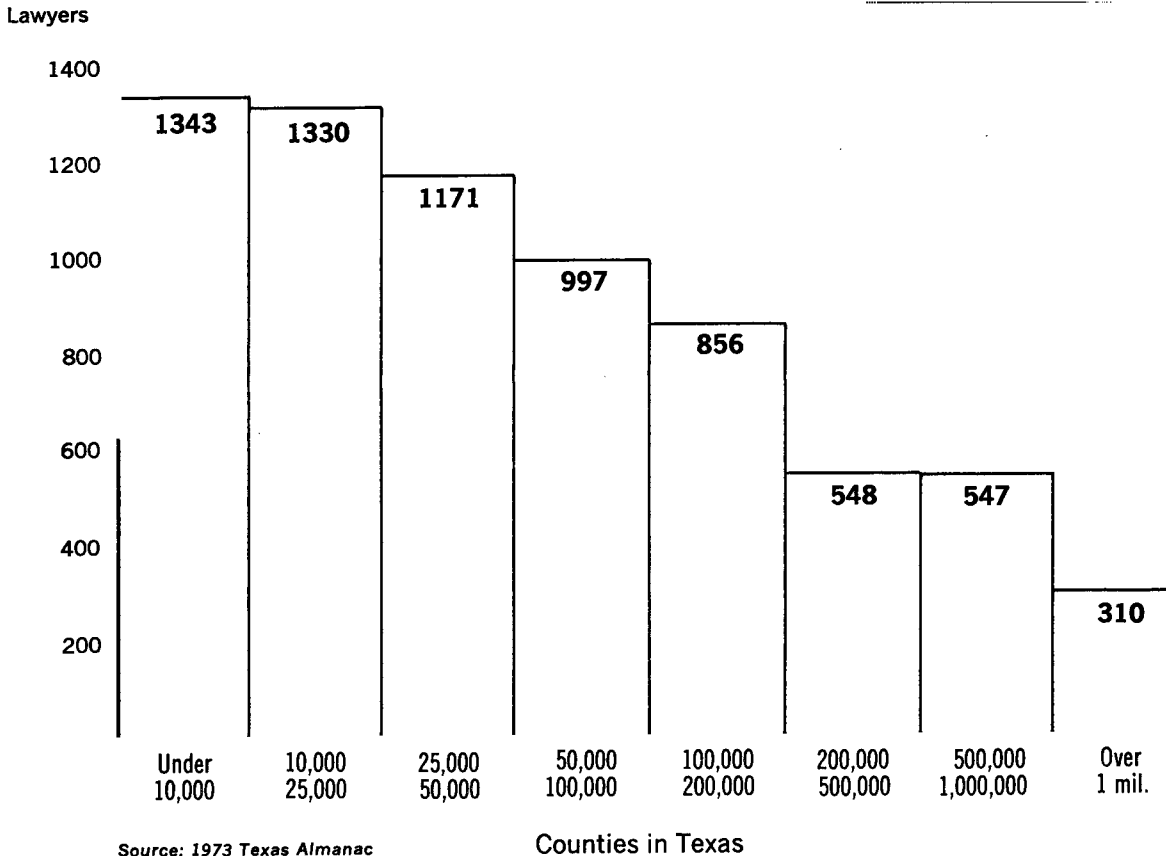
Another indicator relates to professional economics. Economic trends are likely to affect different areas of practice differently, and developments which are milk to one may be poison to another. Two recent examples come to mind. In 1973, the high interest rates and unavailability of money to lend depressed the

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Source: 1971 Lawyers Statistical Report

FIGURE 2



Source: 1973 Texas Almanac

Counties in Texas

real estate market and carried with it those lawyers dependent upon that market for their livelihood. On the other hand, law firms engaged in oil and gas law expanded during the same period due largely to the increased costs of petroleum products. The State Bar of Texas conducted an economic survey in 1967, the results of which were published in the Texas Bar Journal.<sup>8</sup> This survey can be helpful in evaluating the relative affluence of lawyers in different kinds of law practice in different areas of the state; however, the evaluator should take care to consider what has happened in Texas since 1968.

It may be that intra-office indicators are the best ones for analyzing the need to expand: if revenues are rising, if the law firm is continually facing an excessively heavy volume of work, if overhead factors make expansion an attractive economic possibility. They may reflect the growing reputation of the law office or other variables which do not appear in any broader analysis. Then, if the costs of hiring an associate can be predicted, the firm should be able to make some prognosis of its ability to meet these costs.

There is a risk involved; some associates never reach partnership; some never show the firm a profit. However, in every business decision, there is an element of risk. Careful planning before hiring may not eliminate that risk but can reduce the likelihood of a "bad investment" considerably.

Much of the recruiter's success will depend on his evaluative skills. Although applicant evaluation tends to be imprecise at best, and attorneys not accustomed to such evaluation may magnify the imprecision, the choice is not a random one, and there are techniques

which will improve the selection process.<sup>9</sup> However, "selection" is the key word, and in order to assure the best selection, a law firm should seek to identify the largest group of applicants possible.

The most efficient way to make contact with potential applicants is through the Placement Office of a law school. Figure 3 lists the name, address, and phone number of the individual to contact at each law school in Texas. The enrollment at these eight law schools exceeded 6,000 for the first time in the fall of 1974.<sup>10</sup> A large percentage will stay in Texas to practice after graduation. There are also other accredited law schools in the United States, and many graduates of out-of-state law schools eventually locate in Texas, as the state becomes an increasingly popular place to live. In addition, many law graduates change positions from time to time and placement offices typically maintain services for these people too.

Small firms have in the past often relied on one of the following methods of making contact with candidates: 1) Wait and see who knocks—a common method, despite the obvious inefficiency. 2) Use personal contacts to find a candidate; friends, friends of friends, relatives, in-laws, and business associates may be ready and willing to suggest a name, but such a selection process is apt to be tainted with favoritism, and friendship, no matter what else it may be, is no substitute for competence. 3) Advertise in professional journals, a technique which can be effective although not likely to provide the volume of applicants most attorneys would like to have.

Law school placement offices vary widely as to structure and activities, but the trend is toward increased services under the direction of a professional staff. In dealing with law school placement offices, there are two simple ways to establish contact with prospective employees. For specific procedures to be followed, the attorney should contact each school directly.

The first method is through a job listing or notice. At some placement offices the notice is posted openly and interested students are requested to contact the attorney directly. At others, the notice is blind—the student must contact the placement office staff for details. Some offices will collect resumes to be mailed, while others will require each student to mail his own. The cost of posting a job notice is minimal and the placement office handles most of the paperwork. The second is scheduling on-campus interviews. The advantage of such interviews is in the convenience. One can see all the interested applicants for a position at one time with the placement office handling the scheduling. It is also probable that the response to such interviews will be greater than to a job notice. The disadvantage, of course, is cost. For one attorney, this includes travel expenses (air fare or gasoline), meals, hotel expenses, and lost time (at an average of five billable hours per day at \$40 per hour the cost is substantial). If two attorneys come, more than one day is spent interviewing, or more than one law school is visited, the costs spiral. However, a face-to-face meeting tends to be much more helpful in allowing the attorney to make a selection than perusal of a stack of two-dimensional resumes.

A recent development in interviewing promises to



"ROUGH DAY AT THE OFFICE, DEAR?"

produce the best of both worlds. The use of videotape replays (VTR) of interviews conducted at an earlier time is a relatively novel idea in the area of job placement. The cost to employers utilizing such a procedure is substantially less than for on-campus recruiting visits, even if the employer bears the entire cost of producing the tapes. The loss, of course, is in personal contact, although a videotaped interview produces substantially the same picture of an interviewee as will a live interview.

The real beneficiaries of VTR interviews are the small law firms who have been unable to justify extensive recruiting trips, and the large number of students and graduates who would like to join small firms. Whether large or small, the many convenience aspects of videotaped interviews make it an extremely promising process. The attorney can stop the interview to answer the telephone, or to meet with a visitor or client. He can play back a videotaped interview as many times as he chooses, as well as devote full attention to the interviewee and leave the questioning, which often cuts into concentration, to someone else. Although many law schools do not yet have videotape capabilities, it is likely that they will in the near future.

This article would be derelict if it did not mention a number of other professional associations which sponsor placement activities. Very often these associations work closely with the law schools in establishing and conducting their programs. The American Bar Association has a service called the Lawyer Placement Information Service. This service attempts to match potential applicants with open positions in law offices. It tends to be geared more toward the practicing attorney looking for a change of position than

the new lawyer or law graduate. However, the LPIS has developed in conjunction with the ABA—Law Student Division a computerized matching system called JURISCAN.<sup>11</sup> This system is designed to assist practitioners in contacting recent graduates as well as experienced attorneys. Many state and local bar associations conduct some kind of placement program. This includes classified advertising for positions wanted and positions available in the journals, maintaining lists of interested persons and conducting referral activities. One of the most interesting programs is the Clerkship program sponsored by the State Junior Bar of Texas. Here, students are matched with employers for summer jobs. The summer clerkship is one of the best recruiting devices for the small firm able to wait for the right person. By hiring one or more law students each summer, the firm can evaluate each clerk in depth while enjoying the economic benefit of his work. All these services greatly simplify the task of contacting applicants. Since placement offices can provide the contacts, and the caliber of the candidates is higher than ever, perhaps the most difficult part of all is making the choice from those who applied.

During the upcoming spring and summer, the University of Texas Law School will be conducting a series of in-depth recruiting workshops in various cities in the state. These workshops will assist the practitioner in analyzing the job market and making a selection among candidates, determining compensation for new associates, and training inexperienced attorneys. These last two topics not covered in this article are as essential to the law firm's recruitment plan as the steps prior to the hiring decision, for they bear directly on how

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FIGURE 3

Texas Law School	Placement Director	Address	Phone
Baylor University Law School	Mrs. Alma McCarthy	Baylor Univ. Waco, Tx. 76703	(817) 755-1210
Saint Mary's University Law School	Prof. James N. Castleberry	2700 Cincinnati Ave. San Antonio, Tx. 78284	(512) 433-2311
South Texas College of Law	Mr. Richard Allen	1220 Polk Ave. Houston, Tx. 77002	(713) 225-1651
Southern Methodist University Law School	Mrs. Lillian Blair	SMU Campus, Dallas, Tx. 75222	(214) 692-2622
Texas Southern University Law School	Mr. Theodore Johnson	3201 Wheeler, Houston, Tx. 77004	(713) 528-4949
Texas Tech University Law School	Jossie Letheridge	P.O. Box 4030, Lubbock, Tx. 79409	(806) 742-6121
University of Houston Bates College of Law	Mr. Robert Milsead or, Ms. Becky Morgan	Univ. Placement Center, Student Life Bldg., Houston, Tx. 77004	(713) 749-3675
University of Texas School of Law	Asst. Dean Gary Munneke	2500 Red River Austin, Tx. 78705	(512) 471-1621
Lawyer Placement Information Service	Frances Utley	1155 60th St. Chicago, Ill. 60637	(312) 493-0533
Clerkship Program	John H. Dodge II Pravel & Wilson	2010 Marathon Bldg. Houston, Tx. 77002	(713) 224-2020
	John W. Odam Jr. Attorney General's Office	State Supreme Court Bldg. Austin, Tx. 78711	(512) 475-3212

soon a new attorney will become a productive part of the law office.

In conclusion, the decision to expand law practice is an important one which should be approached analytically. The individual practitioner or members of the firm must decide whether they are amenable to expansion, and if so, whether it is economically feasible. If the decision to expand is made, the firm should seek to identify the largest possible group of applicants, through the services offered by a law school placement office.

Choosing a new associate is not easy, and it is hoped that this article will be the beginning of a dialog which identifies the place of professional recruitment as an essential element of efficient office management.

1. See *Case and Comment*, July, 1974, Lester, Gaylord C., "The Legacy," at 44.
2. Figures were obtained in University of Texas Law School Placement Office research using the *Martindale-Hubbell Law Directory* (1974 ed.) and the *1974 Texas Legal Directory*.
3. *The Practical Lawyer*, April, 1973, Norton, George H., "A Formula for Compensating Associate Lawyers," at 45.
4. Utley, Frances, *Where Do I Go From Here: A Career Planning Manual for Lawyers*, American Bar Association, 1973, at 67.
5. See *Wall Street Journal*, December 20, 1974, Simison, Robert L., "Big D Avoids Bad R, or Dallas Sidesteps National Recession," at 1.
6. 1971 Lawyer Statistical Report, American Bar Foundation, 1972, 26, 59-67.
7. Many factors tend to lower the P/A ratio: the existence of business activity to any degree; federal, state or local governmental units, and a high per-capita income. By the same token, an absence of business, government or wealth can increase the ratio.
8. *31 Texas Bar Journal* 9, Bethel, Billie (ed.), "Facts vs Fantasy—The Economic Survey of Texas Lawyers, 1967," (1968).
9. *The Practical Lawyer*, April, 1974, Cushing, Bryant, and Cushing, Carol, "Picking the Best of the Brightest," at 53.
10. *37 Texas Bar Journal* 1055, "The Law School Story: 6000 Attend Texas Law Schools," (1974).
11. The announcement of the JURISCAN system was made in a press release dated December, 1974. More information should be available in the January 1975 edition of *The Student Lawyer*. ■

#### Grievances | continued from page 155

- (2) *Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.*

Attorneys observing the guidelines set forth in the above rule will necessarily prevent most, if not all, complaints from their clients concerning the handling

of the clients' funds by the attorneys.

Every law firm should establish office management procedures designed to insure implementation of the requirements in the above rule. The State Bar of Texas, through its Professional Efficiency and Economics Research Committee (PEER), has made available and continues to make available information and seminars on proper law office management. So there is no dearth of information to assist lawyers in establishing proper office management procedures. ■

#### Ethics Opinions | continued from page 158

##### OPINION 379 December 1974

**PUBLICITY—NAME OF BUILDING.** The name "Justice Plaza" may not properly be given to a building which is owned by a group of attorneys although said building is occupied by the attorneys, as well as the County Legal Aid office.

**Question:** May an attorney-building owner give to his building the name "Justice Plaza" even though such building is occupied by attorneys, as well as by the County Legal Aid office?

**Opinion:** DR 2-101 prohibits a lawyer from preparing or causing to be prepared any form of public communication that contains professionally self-laudatory statements calculated to attract lay clients. Such prohibition includes any form of commercial publicity. To give a building such name as to imply that occupants of the building are lawyers is no more than commercial publicity. Such name serves no useful purpose, and is a mere form of indirect solicitation.

Canon 1 provides that a lawyer shall assist in maintaining the integrity of the legal profession. Canon 9 provides that a lawyer should avoid even the appearance of professional impropriety. The conduct in question would also violate the spirit of Canon 1 and Canon 9. Despite the numerous changes in business practices, the legal profession is not relaxing the standard against advertising, and should not. (16-0).

#### Chief Justice Burger Urges Congress to Help Courts

Several proposals to solve the difficulties of badly overloaded courts have been suggested by U.S. Supreme Court Chief Justice Warren Burger in a year-end review of American court problems.

The Chief Justice has asked for quick congressional action on an omnibus judgeship bill in response to a two-year-old federal judiciary request for 52 new district judgeships and 13 new circuit judgeships.

He has urged careful consideration of a variety of suggestions for a new judicial forum between the Federal Courts of Appeals and the Supreme Court to provide more final authoritative decisions on national law and to help the Supreme Court cope with its growing docket.